



REGIONAL MUNICIPALITY
OF WOOD BUFFALO

Composite Assessment Review CARB

REGIONAL MUNICIPALITY OF WOOD BUFFALO CARB ORDER CARB 006/2012-P

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act*, being Chapter M-26 of the Revised Statutes of Alberta 2000.

BETWEEN:

Canadian Natural Resources Limited (CNRL) represented by Wilson Laycraft - Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) represented by Reynolds Mirth Richards & Farmer LLP - Respondent

BEFORE:

Members:
Wayne Kipp, Presiding Officer

CARB Counsel:
G. Stewart-Palmer, Barrister & Solicitor

Staff:
N. MacDonald, Assessment Review Board Clerk

A preliminary hearing was held on August 14, 2012 in Edmonton to consider a preliminary matter in relation to a complaint about the assessment of the following property tax roll number:

8992004911 Revised Assessment: \$3,438,633,520 RMWB file 11-090

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] Construction of the Canadian Natural Resources oilsands project was completed in 2009. The roll number being considered in this preliminary hearing is an amended machinery and equipment (M&E) assessment. The amended assessment of \$3,438,633,520 was sent to the property owner on March 11, 2011. The Complainant has raised the issues in its Reasons for Complaint document.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

[2] The CARB derives its authority to make decisions under Part 11 of the *Municipal Government Act*.

[3] The CARB conducted a preliminary hearing on August 14, 2012. During the preliminary hearing on June 19 and 20, 2012, the parties requested a preliminary hearing to address any issues which may need further direction from the CARB prior to the merit hearing of this matter which is set to start on October 15, 2012.

[4] The parties requested a preliminary hearing to address the following matters:

- a) The schedule for each week (start times and days) the CARB will be sitting;
- b) The CARB's expectations with regard to the timing of the completion of the transcript;
- c) The proposed order of the witnesses;
- d) The manner in which the evidence could be presented (typical procedure or evidence presented on an issue by issue basis);
- e) The length of time needed for the hearing and any time efficiencies to be adopted;
- f) Feedback and direction on the proposed list of issues;
- g) Review of the proposed exhibit list to ensure all necessary copies are available, complete and with page numbers;
- h) Room set up to accommodate the court reporter, witness table, screen and projector; and
- i) List of other preliminary issues and the proposed times those applications will be made (at the start of the merit hearing or before the merit hearing).

Schedule for the Hearing

[5] Counsel for the Complainant indicated that he is checking about a potential conflict for the last days of the merit hearing, but wishes to have enough time to conclude. He suggested that it may be more realistic to accommodate a late start on Monday mornings and an early departure on Fridays.

[6] Counsel for the Respondent shared concerns about having sufficient time to complete and suggested that the first couple of weeks start as long weeks and then the CARB re-evaluate the hearing schedule.

Transcripts

[7] Counsel for the Complainant indicated that the Complainant it is open to all suggestions regarding the transcript, including accommodating a request by the CARB for daily transcripts. He indicated that the complainant does not expect the traditional deadlines for the rendering of a decision following the closing of the hearing and would waive any deadlines so that the CARB does not need to meet the 30 days required for a decision.

[8] Counsel for the Respondent supported that position.

Proposed Order of Witnesses

[9] The Complainant indicated that it will be calling the following witnesses:

- a) Ken Shaw
- b) Kerry Minter
- c) Lynn Zeidler
- d) Terry Stowell
- e) Fumio Otsu
- f) Marco Celis

[10] The Complainant indicated the order of witnesses has not been set at this time. Counsel for CNRL has spoken with counsel for the Municipality and will continue to have discussions about the order of witnesses. In response to a question from the CARB about witness availability, counsel for the Complainant indicated that in the main, his witnesses are available. A weekly transcript may resolve some of the attendance issues for his witnesses.

[11] The Municipality is calling two witnesses: Mr. Elzinga and Dr. Thompson. In response to a question from the Chair about witness availability, counsel for the Respondent indicated there were no conflicts for the municipality's witnesses at this time. Both of the municipality's witnesses will need to be present for the duration of the hearing.

Length of Time Required for the Hearing and any Efficiencies to be Adopted

[12] Counsel for the Complainant indicated that there are 10 issues for the merit hearing including one issue which is a request for documentation under Section 299. He will consider whether that issue is dealt with during the merit hearing or at a preliminary application. He will consider his position and advise the CARB if and when another preliminary hearing is scheduled.

[13] Counsel for the Complainant stated that given that this is a five to six week hearing, the challenge will be to get the evidence in chief in within the first 10 to 15 day range so that the Respondent has adequate time to present its case and for the Complainant to have time for its rebuttal.

[14] Counsel for the Municipality indicated that certain matters may not be an issue; for example, the entitlement of witnesses to give opinion evidence. Counsel for the Respondent and for the Complainant are engaged in ongoing discussions to determine whether there are efficiencies which can be gained by not challenging certain uncontentious matters.

Manner in Which the Evidence is to be Presented

[15] Counsel for the Respondent indicated that the municipality's evidence has been segregated on an issue by issue basis. While there are some introductory topics, she believes that the hearing may be able to be conducted on an issue by issue basis and have the witnesses limit their testimony to those issues so that the CARB hears both parties on the issue before moving to another issue.

[16] Counsel for the Complainant indicated that he had anticipated a traditional presentation of evidence.

Feedback and Direction on the Proposed List of Issues

[17] Counsel for the Respondent indicated that the parties are still working on a proposed Agreed Statement of Facts. The document has promise and may serve to shorten some of the testimony.

[18] The parties have taken an attempt at writing an issue statement (a list of questions the CARB must decide). Counsel for the Complainant is looking at that draft. Both parties are asking for the CARB's patience on both an Agreed Statement of Facts and a Statement of Issues.

[19] Counsel for both parties indicated they are also continuing to work on a general plan for the hearing.

Proposed Exhibit List

[20] Counsel for the Municipality indicated that the cost rendition has not been provided to the CARB in the 2011 merit hearing and will need to be so.

[21] Both parties want the exhibits to be numbered so that they can use those numbers as they are preparing for the merit hearing.

Room Set-Up and Equipment

[22] Counsel for the Municipality requested electronic equipment including a projector and screen so that the cost rendition can be displayed.

[23] Counsel for the Municipality indicated that she will bring a laptop and projector for the hearing.

[24] Counsel for the Complainant requested break-out rooms for the parties.

Other Preliminary Issues

[25] Counsel for the Complainant indicated that he has no preliminary issues at this time, but will need to assess the Section 299 issue. He indicated that they are trying to resolve as much as they can between counsel for the parties.

[26] Counsel for the Municipality suggested another preliminary hearing date to address other issues.

Decision

Schedule for the Hearing

[27] The hearing will run for full weeks for the first couple of weeks and then the Board will make a decision whether the evidence is being entered sufficiently quickly to reduce the number of sitting days.

[28] The hearing is scheduled for October 15 through to and including November 23, 2012.

[29] The start time for October 15 is 1 p.m. For the first week, the hearing will continue all week, but on all Fridays, the hearing will conclude approximately 1 or 2 o'clock p.m. so that the parties can travel and the CARB can spend time reviewing the materials from the week.

Transcript

[30] The CARB would like to have transcripts produced in weekly batches; not receive all of the transcripts at the end of the hearing.

[31] If the hearing concludes on Friday about noon, the CARB should receive the week's transcripts at one time as soon as possible once the week has ended.

Proposed Order of Witnesses

[32] No determination has yet been made on the order of witnesses. This may be raised by either party at the next preliminary hearing.

Length of Time Required for the Hearing and any Efficiencies to be Adopted

[33] If they have not already provided CV's for their witnesses, the parties are directed to provide them by the disclosure dates for the next preliminary hearing (September 20). At the next preliminary hearing, the parties are to advise the CARB if they have any objection to witness qualifications and, whether the witness is able to give opinion evidence.

Manner in Which the Evidence is to be Presented

[34] The CARB made no decision on how to handle the order of the hearing because it will require a three-member CARB. If the parties cannot reach an agreement on this issue, either is able to raise this issue as part of the issues to be addressed at the next preliminary hearing. The parties must provide argument and disclosure in relation to the issue by the disclosure dates identified below.

Feedback and direction on the proposed list of issues

[35] The CARB also directed the parties to file an agreed statement of fact and issues, to the extent that they are able to agree on any of the issues, by no later than September 24, 2012.

[36] The CARB directs this matter to be added to the agenda for the next preliminary hearing.

Proposed Exhibit List

[37] The CARB distributed an exhibit list for the use of the parties.

Room set up to accommodate the court reporter, witness table, screen and projector

[38] Counsel for the Municipality is asked to confirm by the next preliminary hearing if she can bring a laptop and projector for the hearing. If not, the CARB will make arrangements for them to be provided.

[39] The CARB confirms that break-out rooms will be provided for each party.

Other Preliminary Issues

[40] The CARB directs the parties to ensure that all pages of their disclosure including all tabs are page numbered.

[41] The CARB set September 24 and 25, 2012 for the next preliminary hearing with any application to be filed by a party no later than September 13, 2012 and the response documentation to be filed by the responding party no later than September 20, 2012.

[42] It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 5 day of September, 2012.



For: W. Kipp, Presiding Officer

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING	CAPACITY
1. G. Ludwig	Counsel for the Complainant
2. C. M. Zukiwski	Counsel for the Respondent
3. C. Killick-Dzenick	Counsel for the Respondent
4. B. Moore	Regional Assessor, Regional Municipality of Wood Buffalo