



Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 006-2013-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: W. Kipp, Presiding Officer

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

A preliminary hearing was held March 21, 2013 in Edmonton in relation to a complaint filed in April 2012 relating to the 2012 amended assessment notice (2011 assessment for 2012 tax year) of the following property tax roll number:

8992004911

Revised Assessment: \$3,410,553,820

File 12-032

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] This preliminary hearing is in regard to the Phase 1 of the Canadian Natural Resources Ltd. (CNRL) Horizon oil sands project. This preliminary hearing related specifically to the 2011 machinery and equipment assessment for the 2012 tax year.

[2] At the preliminary hearing of February 26, 2013, the CARB directed another preliminary hearing for March 21, 2013. The issues which needed to be addressed included further preliminary matters, such as disclosure dates, and the Municipality's identification of what issues it believes are outstanding for this Complaint, following the Municipality's review of the decision of the CARB in Board Order CARB 001-2013.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

[3] The CARB derives its authority to make decisions under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c.M-26 (the MGA).

Position of the Parties

Complainant

Abuse of Process Application

[4] The Complainant argued that the Respondent's identification of issues will require a lengthy hearing of all of the issues answered by the CARB in Board Order CARB 001-2013. The Complainant believes that it constitutes an abuse of process and asks the CARB to hear its application on April 29, 2013 to determine whether the CARB will allow the Municipality to re-argue its case on all of the same points. The Complainant argued that the CARB should address its abuse of process application prior to the Respondent's production applications and argued that the Municipality should be compelled to provide a summary of what new evidence, or arguments are being proposed, to justify such an extensive request for a rehearing by April 8, 2013.

[5] The Municipality should provide a summary of the new evidence or arguments it intends to present for 2012 taxation by April 8, 2013. The Complainant would file its materials and argument in support of its abuse of process application on April 15, 2013, and the Respondent would file its rebuttal by April 24, 2013.

Production Application

[6] The Complainant opposed the Respondent's production application as being premature, at least until the Municipality provides a summary of its new evidence or arguments as referenced above. The Complainant reserved its rights to make an application for the production of third party information.

[7] Assuming the CARB will hear the Respondent's section 465 production application on April 29th, the Complainant indicated that the Municipality should file its materials for that application by April 15, with the Complainant's rebuttal filed by April 24, 2013.

[8] The Complainant indicated its position that these applications could be heard by a single member panel, but felt that if a three member panel were to hear the applications, the members would not be seized.

Disclosure Dates

[9] The Complainant did not have significant objection to the disclosure dates proposed by the Municipality in its March 15, 2013 letter, but required an extension to its initial filings date to June 17, due to the absence of three of the Complainants' principals for the last two weeks of May. It proposed:

June 17, 2013 for the Complainant's disclosure
August 16, 2013 for the Respondent's disclosure
September 27, 2013 for the Complainant's rebuttal

Hearing Process

[10] The Complainant did not object to a four day hearing week.

Respondent

Abuse of Process Application

[11] The Respondent disagreed with the Complainant's characterization of its response as an abuse of process. It believed that it had complied with the direction of the CARB in its previous order. It is up to the CARB to determine the Municipality's compliance with its direction and to either find that the Municipality has not complied, or to order further directions to the parties. The question is what authority the CARB has to grant the Complainant's abuse of process application. This will be a matter of legal argument.

[12] The Complainant's requested date of April 8, 2013 is premature. The Municipality hasn't seen the Complainant's authority, what criteria it is suggesting, etc. The Municipality argued that for all applications, the initial filing should be April 15, 2013, with rebuttal filed April 24, 2013 for the hearing on April 29, 2013.

[13] The Respondent argued that these applications would best be determined by a three member panel, but felt the members of the panel would not be seized.

Production Application

[14] The decision Board Order CARB 001-2013 indicated that the Board made its decision based on the evidence and the Municipality is entitled to request further documentation.

[15] If the Complainant is going to be bringing its own production application, the Respondent asks for notification of same so that preparations and notifications can be made.

Disclosure Dates

[16] The Respondent's expert, Mr. Elzinga will be out of the country until the end of July, and therefore proposed the following disclosure dates:

June 17, 2013 for the Complainant's disclosure
August 22, 2013 for the Respondent's disclosure
September 27, 2013 for the Complainant's rebuttal

Hearing Process

[17] The Respondent had requested a four day hearing week, with hearing times from 9:00 a.m. to 4:00 p.m.

Decision and Reasons

Abuse of Process and Disclosure Applications

[18] The next preliminary hearing is set for April 29-30, 2013 at the MGB offices in Edmonton, starting at 10:00 a.m. The purpose of the hearing is to address the Complainant's abuse of process application and the Respondent's production application, and any other matters arising in the interim relating to the 2012 complaint.

[19] The parties must arrange for a court reporter and the cost for the court reporter is to be shared between the Complainant and the Respondent. The parties must provide a copy of the transcript to the CARB at no cost to the CARB.

[20] By no later than 4:30 p.m. on April 15, 2013, the parties shall file their submissions in support of their applications. By no later than 4:30 p.m. on April 24, 2013, the parties shall file their rebuttals. By no later than April 15, 2013, the parties must advise CARB Counsel which, if any, exhibits from the 2011 merit hearing they may wish to rely upon, so that arrangements can be made to have those exhibits brought to the April 29, 2013 hearing.

[21] The submissions may be sent electronically to the CARB Clerk and CARB Counsel. The parties must send **four paper copies** of their submissions to CARB Counsel, not to the CARB Clerk, as has previously been the case.

[22] As part of their initial submissions due on April 15, 2013, the CARB asks both parties to respond to the following inquiry. In Board Order CARB 001-2013, the CARB set out a table at paragraph 218, reproduced below for ease of reference. The table sets out in summary form the issues which were before the CARB in the 2011 merit hearing. For the 2012 merit hearing, the CARB wishes to know:

- a) Which items listed below remain in dispute for the 2012 year and for which the parties will lead evidence? Will the parties be leading evidence in relation to all of the items listed in the table below?
- b) Are the parties in agreement on any of the items listed below, and for which no evidence will be lead?
- c) The Municipality has identified a list of issues in its letter dated March 15, 2013. Does this mean the Municipality will only be leading evidence on the issues identified in its letter dated March 15, 2013?
- d) Will there be any other items disputed?

Extract from Table from 2011 Merit Hearing – CARB Board Order 001-2013

Description	
Total Project Costs	
Buildings and Structures	
Value of Machinery and Equipment	
Pre-Construction Exclusion (FEL)	
Pre-Investment	
Contested Excluded Costs: (examination of contested 46 line items)	
#4	Costs to clear, drain, level, shape and finish site ready for construction
#9	Abnormal exchange rates
#12	Design changes
#13	Costs relating to rework unless original efficiency or capacity increases
#19	Domestic sewage treatment and disposal systems (plant & camps)
#23	Adequate labour force readily available at the worksite is assumed
#24	Unproductive labour
#26	Added costs due to night shift work (i.e., light plants, etc.)

Description	
#28	All costs of exercise programs to improve worker productivity or safety
#29	Extra costs resulting from labour material or equipment delays
#30	Abnormal costs due to inclement weather conditions (i.e., temperature, snow/rainfall)
#32	Abnormal rental/freight costs (i.e., heavy lift cranes in short supply)
#34	Computer Hardware/Software not used to operate the plant
#36	Temporary facilities and services
#39	Interference costs (i.e., extra costs due to existing plant facilities)
#40	Over built or under utilized improvements
#42	Business Unit Owner's costs (not directly related to construction activities)
#42	Overall Owner's Costs (not directly related to construction activities)
#45	Material or Equipment Cost "Spikes"
#46	Project costs not directly related to the Construction of "Improvements"

Disclosure Dates for Merit Hearing

[23] The disclosure dates for the merit hearing are as follows:

12 June, 2013 Complainant's disclosure
 22 August, 2013 Respondent's disclosure
 3 October, 2013 Complainant's rebuttal

[24] The submissions may be sent electronically to the CARB Clerk and CARB Counsel. The parties must send **four paper copies** of their submissions to CARB Counsel, not to the CARB Clerk, as has previously been the case.

[25] The submissions for each party must have consecutively page numbered, starting at page 1 at the beginning of the report, then increasing for each page, to the end of the report, including any tabs. For greater clarity, each page of every submission must have a unique page number. Failure to comply with this direction may result in the CARB directing the party who fails to file appropriately numbered materials to reproduce its materials to the satisfaction of the CARB.

[26] The CARB reminds the parties that they are to file all evidence upon which they wish to rely. This includes any Power Point presentations, graphs, charts, diagrams, etc. The CARB is mindful of the issues which arose during the 2011 merit hearing as a result of the creation of white board drawings and parties' objections to those. The CARB is directing the parties to put their minds to the evidence it requires to present its case sufficiently early to avoid such issues arising in the 2012 merit hearing.

[27] The Board also directs that any charts or tables which are contained within any witness report must be of a sufficient font size to be legible without the need for reading aides, such as magnifying glasses, etc. The Board recommends a font size of at least 8 point. This may require that tables be reproduced on paper larger than 8 1/2" x 11". Failure to comply with this direction may result in the CARB directing the party who fails to file legible materials to reproduce its materials to the satisfaction of the CARB.

Hearing Process

[28] The merit hearing hours shall be 9:00 a.m. to 4:00 p.m., with the hearing week being four days' per week. The specific days shall be determined by the panel hearing the complaint.

Reasons

[29] Both parties have preliminary issues which they believe need to be addressed prior to the merit hearing proceeding. The CARB agrees that in order to make the merit hearing run as efficiently as possible, these preliminary matters should be addressed and decided upon prior to the merit hearing.

[30] The disclosure dates ordered by the CARB were ultimately agreed by the parties, taking into account witness availability and the CARB believes that they are fair, taking into account the complexity of this hearing and fact that the merit hearing is slated for a date in the fall of 2013. A four day week is appropriate given the length of time the hearing is schedule for, and should allow the parties and their counsel time to arrange their other business matters.

[31] The CARB has directed appropriate pagination due to the issues which arose for the CARB in the 2011 merit hearing due to the page numbering of certain exhibits, for example, C39. In addition, the CARB wishes to streamline the hearing and to reduce the number of applications to admit what may amount to new evidence, or new iterations of filed evidence (for example, Power Point presentations, diagrams, etc.). There is sufficient time for the parties to put their minds to whether the witnesses require diagrams or other pictorial versions of their evidence. The parties should present all such evidence on their filing dates. This will ensure that no party is taken by surprise, and will ensure that the CARB will have such evidence before the hearing, and in electronic form.

[32] The CARB notes that the Municipality did respond to the CARB's direction in Board Order CARB 002-2013-P. Upon examination of the response in light of the issues addressed by the CARB in the 2011 merit hearing, this CARB wishes to know whether the parties will be leading evidence on all the same issues, or whether the parties are in agreement about certain matters. This is to ensure that the CARB understands the issues being taken by the parties, it has made the direction in paragraphs 22 and 23 of this Order. This matter will also form part of the discussion at the April 29, 2013 preliminary hearing.

[33] It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 26th day of March, 2013.


W. Kipp, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO. ITEM

Exhibit #	Document	Filed
PR4	Letter of Reynolds Mirth Richards and Farmer LLP	March 15, 2013
PC5	Letter of Wilson Laycraft LLP	March 20, 2013

APPENDIX "B"

REPRESENTATIONS

PERSON APPEARING CAPACITY

- | | | |
|----|----------------|--|
| 1. | G. Ludwig | Counsel for the Complainant |
| 2. | K. Minter | Supervisor of Operations Accounting, CNRL |
| 3. | B. Balog | Manager, Legal Corporate Operations, Legal Counsel, CNRL |
| 4. | C. M. Zukiwski | Counsel for the Respondent |
| 5. | B. Moore | Regional Assessor, Regional Municipality of Wood Buffalo |

For MGB Use Only

Subject	Type	Sub-type	Issue	Sub-issue
CARB	Jurisdictional/Procedural	Machinery & Equipment	Evidence Disclosure	