

Composite Assessment Review Board**REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 012-2013-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
D. Thomas, Member
P. Klug, Member

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

Roll Number:	8992004911
Legal Description:	NE – 08- 096-11-W4M
Assessment Value	\$3,222,500,860
Assessment Year	2009
Tax Year:	2010

A preliminary hearing was held June 20, 2013 in Edmonton in relation to a complaint filed in April 2010 relating to the 2010 amended assessment notice (2009 assessment for 2010 tax year) of the following property tax roll number:

8992004911 Amended Assessment: \$3,222,500,860 RMWB file 10-004

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 2009 assessment for the 2010 tax year.

[2] The roll number is an amended machinery and equipment (M&E) assessment. The original assessment notice with an assessment of \$2,413,340,490 was mailed to the property owner on March 1, 2010. The amended assessment notice with the revised assessment amount

of \$3,222,500,860 was sent to the property owner on March 5, 2010. The Complainant questioned not only the quantum, but the legality of the amended assessment.

[3] The merit hearing for the 2010 tax year had been under a Court Ordered stay which was lifted following the decision of Mr. Justice Verville issued February 7, 2013 in 2013 ABQB 91. The Complainant has filed an appeal of Justice Verville's decision. That appeal has not been set for hearing as of the date of this preliminary hearing.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

[4] The CARB derives its authority to make decisions under Part 11 of the MGA.

Position of the Parties

Complainant

[5] The Complainant opposed any attempt for the parties to file further evidence. The Complainant argued that if there was some request to "reopen" the evidence, then it would be necessary for the CARB to hold a preliminary hearing to address this issue. The preliminary hearing would address:

- a) What is the position of the Board to accept new evidence after the filing dates pursuant to MRAC have closed?
- b) What change will the Municipality will be seeking? Once CNRL knows this, it can respond.

[6] The Complainant stated that the timing of such an application should be after the Respondent files its materials in support of the 2012 tax year complaint. In this way, it will become clearer what the Municipality's position will be.

[7] The second concern raised by CNRL was in relation to the scheduling of the hearing. The Complainant recognized the timing concerns for the Respondent's Counsel and its witnesses and is prepared to accommodate them. It indicated its concerns with having two hearings in 2014: one in the late spring in relation to the 2010 tax year; and one in the fall for the 2013 tax year.

[8] Following comments made by Counsel for the Respondent, the Complainant indicated that the setting of the merit hearing for the 2010 tax year complaint could be set now by the CARB with the expectation that the date may change, depending upon the timing of the Court of Appeal decision. Alternatively, the CARB may choose to wait before setting the date of the hearing.

[9] The Complainant recognized that equity was an issue upon which further evidence may need to be filed.

Respondent

[10] The Respondent indicated that the stay of the hearing for the 2010 tax year had been lifted once Justice Verville's decision was issued. In its decision, the Court indicated that CNRL raised equity on the complaint form. The Respondent will not oppose that decision. However, if equity is an issue before the CARB, no evidence was filed on that point. At a minimum, the parties will need to file evidence on that point.

[11] In addition, depending upon the outcome of the Court of Appeal in relation to the section 299 matter, the Board may have to reconsider this issue and address this matter.

[12] The parties have no control over the timing of the Court's decision. It is clear that the appeal has not yet been scheduled and will not be scheduled for some time.

[13] In terms of timing of the hearing, Counsel for the Respondent will be on sabbatical for April and May of 2014. Some of its witnesses will not be available for the month or so before that.

[14] The Respondent questioned how much time will be necessary for the hearing. It also requested the mechanism to address the filing of evidence on equity, at a minimum. The Respondent stated that, at this stage, it estimated that three weeks will be necessary for the hearing. This may be middle of June to the first week of July of 2014.

[15] The Respondent asked for some direction about a mechanism to revisit the evidence. In addition, the Respondent asked for some direction from the CARB to deal with the state of knowledge of the parties in 2013 in relation to materials filed in 2010.

Decision and Reasons

[16] In light of the concerns raised by the parties in relation to the timing constraints coming from the uncertain time of a decision from the Court of Appeal, the CARB will not set a hearing date for this matter.

[17] However, the CARB asks that the parties bring this matter forward for the next preliminary hearing scheduled for August 12, 2013 to advise the CARB as to the status of the appeal to the Court of Appeal.

[18] The CARB recognizes that the Complainant is undertaking an appeal from the decision of Justice Verville. The outcome of that appeal is unknown at this time. That decision may impact the issues before the CARB. The CARB notes the section 299 matter on this issue. Depending upon the result of the Court of Appeal, the CARB may need to re-examine the evidence.

[19] The CARB agrees that the issue of equity is a matter upon which the parties should be allowed to file evidence. At this time, the CARB believes it would be prudent to wait until the Court of Appeal has ruled, before having the parties file evidence on the issue of equity, as the decision may result in the parties having to file more evidence on other issues.

[20] The CARB is aware that the filing deadline set out in MRAC has expired. However, the decision of the Court of Appeal and the requirement for the filing on the issue of equity may lead the CARB to direct further filings in the interests of having an efficient and expeditious hearing.

[21] As a result, the CARB believes that the best approach is to put this matter over to the August preliminary hearing so that the parties can update the Board as to the status of the appeal and anything else which may arise. Depending upon the update from the parties, the CARB may, after that hearing, set hearing dates and other matters.

[22] The CARB recognizes that the parties had spoken about a hearing in the latter part of June, 2014. Depending upon the timing, the Board may be looking to those dates for a merit hearing on the 2010 tax year. The CARB notes that this matter has been outstanding for four years and although it recognizes the circumstances leading to this timing, the CARB believes it would be in the best interest of all parties to reach some finality in relation to the outstanding tax years.

[23] It is so ordered.

Dated at the City of Calgary in the Province of Alberta, this 27th day of June, 2013.

A handwritten signature in blue ink, appearing to be 'W. Kipp', is written above a horizontal line.

For: W. Kipp, Presiding Officer

APPENDIX “B”
REPRESENTATIONS

PERSON APPEARING	CAPACITY
1. G. Ludwig	Counsel for the Complainant
2. B. Dell	Counsel for the Complainant
3. B. Balog	Manager, Legal Corporate Operations, Legal Counsel, CNRL
4. M. Celis	Business Analyst, CNRL
5. C. M. Zukiwski	Counsel for the Respondent
6. R. Baron	Assistant Chief Regional Assessor, Regional Municipality of Wood Buffalo