



REGIONAL MUNICIPALITY  
OF WOOD BUFFALO

**Composite Assessment Review Board**

**REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 21/2011-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:**

Member:

Jeff Gilmour, Presiding Officer

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Staff:

N. MacDonald, Assessment Review Board Clerk

A preliminary hearing was held on October 24, 2011 in Edmonton in the Province of Alberta to consider complaints about the assessments 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 set out 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 Act. During the October 24, 2011 hearing, the parties addressed the CARB a preliminary issue relating to an application for disclosure pursuant to section 300 of relating to the above roll.

### Position of the Complainant

[3] The Complainant had made an application for disclosure of information with respect to whether CNRL was receiving the same treatment as every other heavy oil facility in the municipality. In the August correspondence, CNRL addressed 2 questions:

- a. Is CNRL asking the CARB to compel information; and
- b. If so, should notice be given to other parties as a result.

[4] In response to the first question, CNRL set out the background of its request arising from the 2010 assessment complaint. CNRL advised that it was not seeking entire renditions from other companies, but aspects that relate to the 6 or 7 main issues in dispute between the municipality and CNRL. CNRL advised that its request could be broken down into 2 aspects: a) that which is not sensitive or confidential, for example, regarding the application of a standard or methodology, or about requests for information. This makes up the majority of the section 300 request. b) some information which may fall into the category of sensitive or confidential, for example ratio relating to front-end loading or costs, or pre-investment.

[5] CNRL's position is that its application should be addressed at a preliminary hearing prior to the merit hearing, but that it should be heard after the assessor's position has been set down in writing. Once CNRL has had an opportunity to review the assessor's position, it can then determine whether it needs to make the application,

[6] In response to the second question, CNRL did not believe that the municipality should have written to the other parties in relation to CNRL's request. CNRL suggest that the municipality went too far in doing so, and created unnecessary difficulties for it by doing so. CNRL submitted that the action by the municipality was unfair. CNRL submitted that the CARB has other avenues to ensure that information provided by third parties are sealed and properly confidential. There is no requirement to bring third parties to the hearing when they are not parties to the hearing. The notice for affected parties was not intended to address a preliminary hearing as it may relate to section 300, since it relates to the CARB's discretion to compel information. CNRL quoted from the *Lord Realty* decision. The income and expense statement would be sensitive information. However, a taxpayer cannot have the expectation that its information would be sealed forever and never used in the context of a hearing. Further, the professionals at the hearings would face serious consequences in their professions if they misused the information. There are signed confidentiality agreements which would address the concern in relation to the use of confidential information at a hearing.

[7] It may be premature to compel the information now because some of the issues may fall away and CNRL would like to see the assessor's position in writing before asking for information. One way to address this might be to change the municipality's disclosure dates. CNRL acknowledged that the municipality was opposed to changing disclosure dates earlier than the March 30, 2012 date previously ordered by the CARB.

[8] In response to a question from the CARB in relation to how equity applies to machinery and equipment, which is a regulated assessment, CNRL advised that based on the *Strathcona*

decision, equity clearly applies. CNRL will argue that the question is whether the municipality fairly and consistently applied the regulation. In the 2010 appeal, CNRL's position was that the municipality did not. Equity cannot be addressed without looking at what the municipality did for other facilities.

[9] In rebuttal, CNRL argued that the CARB does not need to notify affected parties because the RMWB has already notified them. It questioned the benefit of having third parties at the hearing in relation to the disclosure of their information. The CARB does not send information to everyone who may be indirectly affected. The section cannot be read too broadly. There are measures in place to deal with confidentiality.

[10] CNRL suggests that the hearing on disclosure should occur after the municipality has provided its submissions.

### **Position of the Respondent**

[11] The sole issue is whether notice is required to companies when a property owner is asking the assessor to produce information from those parties to another party. In July, the CARB directed that the issue of what would be compelled to be produced would be decided well in advance of the merit hearing, so that there would be no request to adjourn the merit hearing.

[12] The question of production is a decision to be made by the CARB under section 465, not section 300. Section 300 is an opportunity for the property owner to ask for information about other property owners within the confines of that section. The remedy for the property owner who feels that the assessor has not responded is to go to the Minister for a compliance review. The CARB only gets involved after the evidence has been filed and that stage has not been reached yet. It requires an assessment of section 9(4) of the Regulation.

[13] The phrases in section 300 of the Act apply to property assessed at market value, not to regulated assessments. Subsection (d) does not apply to machinery and equipment. However, the argument is premature.

[14] The RMWB stated its position that procedural matters could be addressed by a one member board, but the future application under section 465 must be heard by a three member panel. It is more than a mere procedural or administrative matter. It will require a full examination of how equity is to be achieved for regulated assessments.

[15] Nothing prevents CNRL from putting its case together, from its review of its own documents in accordance with the CCRG. It can advance why it feels that its claim for excluded costs fits under the CCRG. This bears no relation to how the assessor prepared the assessment.

[16] In relation to the Municipality's letter to the other assessed persons, there is no confusion about what the assessor is stating. It is not a s. 295 request. Further, the letter from the RMWB to the other assessed persons is not notice from the CARB under section 462. The CARB must provide notice, not the municipality. Further, the section cannot be read to say that the CARB

must give notice of a merit hearing, but not for a preliminary hearing. Notice requires notice of every step in the proceeding.

[17] The other assessed persons have the potential to be affected by this complaint, since the CARB might order the RMWB to produce information belonging to them. The information is provided by assessed persons on the understanding it is to be kept confidential. Notice should be provided to these parties about what CNRL wishes to be produced. CNRL's request is not clear. The April 27, 2011 letter is specific, but the August 15, 2011 letter indicates a request for ratios. The request needs to be clarified. Further, the affected persons need to be notified of the hearing and give an opportunity to make submissions if they wish. Failure to give notice is fundamental and failure to do so may provide grounds for the CARB's decision to be overturned. The only material before the CARB on the question of notice has been provided by the municipality, and it provides that notice should be provided.

[18] The RMWB opposes any adjustment to the disclosure dates already provided by the CARB. Any application to compel information should be done sufficiently early to not affect the merit hearing dates already ordered.

[19] The RMWB suggests that the hearing on disclosure should occur as early as possible to prevent a delay in the merit hearing and in any event before March 30, 2011.

**Decision:**

[20] With its November 30, 2011 filing, CNRL shall provide a detailed list of what it is requesting the municipality to produce and from whom it is requesting that information.

[21] By 4:30 pm on December 16, 2011, the municipality shall provide its response to CNRL with a copy to the CARB as to what it is prepared to disclose and what it will not disclose, as well as its availability for a 2 day hearing to occur in either January or February 2012, but which hearing is to occur no later than February 17, 2012.

[22] By 4:30 pm on December 21, 2011, CNRL shall provide its response to the RMWB with a copy to the Board, and its availability for the 2 day hearing.

[23] If the municipality is prepared to disclose information in response to CNRL's request, it shall provide that information by January 16, 2012 at 4:30 pm.

[24] If CNRL has any rebuttal submissions, CNRL shall provide the rebuttal by January 23, 2012 at 4:30 p.m.

[25] A 2 day preliminary hearing will be set to occur before February 17, 2012. The hearing will be heard by a 3 member panel of the CARB. The hearing will be held in Edmonton and the CARB Secretary will advise the parties of the location.

**Reasons for Decision:**

[26] The CARB notes that CNRL takes the position that an application to compel information from third parties is premature until the RMWB has filed its materials on March 30, 2012. It has argued that having the municipality provide its disclosure first will permit CNRL to determine what the municipality is prepared to file and may eliminate some of the claims for disclosure. By contrast, the municipality has argued that if CNRL wishes to make its application, it should be made sufficiently early for the hearing to be scheduled and the decision issued by the CARB, while still maintaining the scheduled start date for the merit hearing of May 6, 2011.

[27] Both parties have agreed that the hearing would likely take 2 days. The CARB notes that if a hearing were scheduled for after March 30, 2012 there is only approximately 8 weeks in which to provide notice to the parties, conduct a 2 day hearing, issue a decision and provide sufficient time for the disclosure of evidence, if so directed by the CARB.

[28] In a previous order, The CARB set the merit hearing start date for May 6, 2012. The merit hearing is scheduled for 6 weeks. The CARB is reluctant to schedule a preliminary hearing close in time to that hearing, whose results may cause the merit hearing to be adjourned. The merit hearing for the 2011 appeal is already beyond the end of December 31, 2011. Although this CARB has found that it does not lose jurisdiction if the hearing extends beyond the end of the year, it recognizes that there is much to be said for having the matter resolved between the parties, both to provide certainty for the parties, and to ensure that appeals do not drag on and to ensure that the appeals are not delayed.

[29] The CARB has already set November 30, 2011 as the date for CNRL to provide its disclosure. The CARB is of the view that by that date CNRL should be aware of what third party information it is requesting from the municipality and whose information it is requesting. Since the filing date for CNRL has already been set, the CARB is of the view that it makes sense for CNRL's demand for information to be filed at the same time. Therefore, the CARB directs CNRL to provide a detailed list with its November 30, 2011 filing.

[30] The CARB believes that the municipality should be in a position to review the list provided by CNRL and advise if it will be providing the information. If the municipality advises that it will be providing certain information, then it should be able to do so in the time provided. If the municipality is not prepared to disclose the information, then the dates set out in this Order should provide sufficient time for notice to be given to the affected third parties so that they may choose to attend and make representations.

[31] The CARB heard the argument on the parties on the issue of whether the letter from the municipality provided sufficient notice. In that regard, the CARB is not persuaded by the argument of CNRL. Section 462 provides that where a matter is to be heard by a CARB, it is the obligation of the designated officer to provide notice to "any assessed person other than the complainant who is affected by the complaint".

**462(2)** If a complaint is to be heard by a composite assessment review board, the designated officer must

- (a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and
- (b) within the time prescribed by the regulations, notify the Minister, the municipality, the complainant and any assessed person other than the complainant who is affected by the complaint of the date, time and location of the hearing.

[32] Given the mandatory language of the section, the CARB determines that the obligation to provide notice falls to the designated officer, which on the wording of the section is not the municipality in its role as a respondent to the complaint. Although the RMWB did send a letter to third parties, the CARB is of the view that the mandatory language of section 462(2) requires separate notification to the third parties of the hearing date. It will then be for those third parties, once notified, to determine if they wish to attend the hearing, and if so, whether they wish to make representations.

[33] The CARB also heard argument in relation to whether the determination to compel information from third parties could be heard by a CARB comprised of a single matter or whether it would have to be determined by a CARB comprised of 3 members. Section 36 of the *Matters Relating to Assessment Complaints Regulation* AR 310/2009 provides that one member composite assessment review boards are to hear and decide procedural and administrative matters only. Although the scope of hearing can be expanded under 36(2)(d), it can only be done with the consent of both parties, which is not the case in this matter.

**One-member composite assessment review board**

**36(1)** Pursuant to section 454.2(3) of the Act, a council may establish a composite assessment review board consisting of only one member.

**(2)** A one-member composite assessment review board may hear and decide one or more of the following matters:

- (a) a complaint about a matter shown on an assessment notice, other than an assessment;
- (b) a procedural matter, including, without limitation, the scheduling of a hearing, the granting or refusal of a postponement or adjournment, an expansion of time and an issue involving the disclosure of evidence;
- (c) an administrative matter, including, without limitation, an invalid complaint;
- (d) any matter, other than an assessment, where all of the parties consent to a hearing before a one-member composite assessment review board.

[34] The RMWB advised the CARB that should a single member board hear a matter outside its jurisdiction, the validity of the decision may not withstand a challenge. In order to avoid the risk of challenge on this ground, the hearing on this matter will be scheduled before a three member CARB. Since the parties will be together in December, 2011 at the building and structure merit hearing, it was agreed by the parties that any issues which may need to be addressed between them could be raised before the CARB at that time.

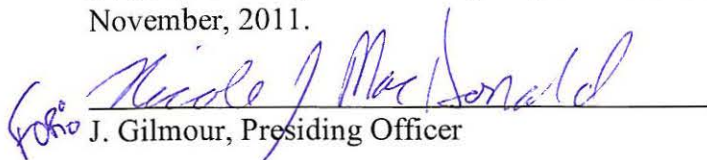
**DECISION**

[35] In relation to Roll 899200491, the following hearing and disclosure dates are ordered:

- a. With its November 30, 2011 filing, CNRL shall provide a detailed list of what it is requesting the municipality to produce and from whom it is requesting that information.
- b. By 4:30 pm on December 16, 2011, the municipality shall provide its response to CNRL with a copy to the CARB as to what it is prepared to disclose and what it will not disclose, as well as its availability for a 2 day hearing to occur in either January or February 2012, but which hearing is to occur no later than February 17, 2012.
- c. By 4:30 pm on December 21, 2011, CNRL shall provide its response to the RMWB with a copy to the Board, and its availability for the 2 day hearing.
- d. If the municipality is prepared to disclose information in response to CNRL's request, it shall provide that information by January 16, 2012 at 4:30 pm.
- e. If CNRL has any rebuttal submissions, CNRL shall provide the rebuttal by January 23, 2012 at 4:30 p.m.
- f. A 2 day preliminary hearing will be set to occur before February 17, 2012. The hearing will be heard by a 3 member panel of the CARB. The hearing will be held in Edmonton and the CARB Secretary will advise the parties of the location.
- g. If the parties require another preliminary hearing as referenced in earlier decisions of the CARB, they may request direction from the CARB during the merit hearing for Roll 8992004910, currently scheduled for December 14-16, 2011 in Fort McMurray.

It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 17<sup>th</sup> day of November, 2011.

  
J. Gilmour, Presiding Officer

**REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 21/2011-P**

## APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
-----	------

R9	Letter of October 17, 2011 from Reynolds Mirth Richards & Farmer LLP to CARB (with attachments)
----	---

## APPENDIX 'B'

## ORAL REPRESENTATIONS

<u><b>PERSON APPEARING</b></u>	<u><b>CAPACITY</b></u>

1. G. Ludwig Counsel for the Complainant  
2. C. M. Zukiwski Counsel for the Respondent