



Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 023-2013-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	\$3,410,553,820
Assessment Year	2011
Tax Year:	2012

A preliminary hearing was held September 16-17, 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.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

[2] 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

[3] The Complainant asked the Board for a remedy in the nature of issue estoppel or abuse of process. It asks the Board to restore the “correct assessment” to the number declared appropriate for the included cost for the 2011 assessment. Since the Respondent has filed its disclosure materials, it is an appropriate time to bring this application for relief based upon the doctrines of issue estoppel and abuse of process.

[4] The Complainant reviewed the principles of issue estoppel, arguing that there is no question that the appeal is a quasi-judicial matter and the parties are the same. The Complainant recognized that the CARB, in decision CARB Order 010-2013, had questions about whether the decision was final. The Complainant argued that the decision was final as included costs are a fundamental component of a regulated assessment which gets carried forward. If something is omitted, mis-described or is not litigated that is fresh and compelling, it can be raised in a subsequent year.

[5] The doctrine of abuse of process is more flexible, and permits the CARB to take into account the re-litigation of settled issues. The Complainant reviewed the cases in its materials, including *Ganong*, *Zeppieri*, *Grandview*, *Fenerty* and *Halam Park*.

[6] Its position is that the assessment amount is identical to the previous year’s amount which has been adjudicated by the Composite Assessment Review Board. The Complainant argued that the Respondent’s change of position constitutes an abuse of process. The Respondent’s response to the inquiry pursuant to section 299 of MGA precludes the Respondent from coming up with different numbers in rebutting the appeal. Moreover, the Respondent is prevented from using the response to its section 295 request from a subsequent year in a previous year’s appeal. The Complainant argued that the Respondent is failing to apply the CARB’s decision from the 2011 tax year appeal, which is an abuse of process. The Respondent cannot present details and numbers in its recommendation different than those used to prepare the assessment.

[7] The Complainant argued that the CARB should consider whether the evidence filed by the Respondent is “fresh and compelling”, arguing that the “hindcast” report filed by the Respondent does not meet this test. It is a review of 28 renditions on questions of pre-investment, owners’ costs and productivity. The Complainant argued it is hearsay and, therefore, inadmissible. Since no weight can be placed on it, it cannot be fresh or compelling. The report is inadmissible, and is not relevant. If the report is admissible, the Complainant cannot cross-examine since the documents themselves are not before the CARB.

[8] The Complainant presented an overview of its position based upon its review of the Respondent's disclosure in the following areas:

- a. Owner's Costs - the Complainant argued this was fully litigated, and the evidence of percentages was not fresh and compelling.
- b. Pre-Construction Costs (Front-end Loading or FEL) – the entire issue of pre-construction costs was adjudicated in the 2011 appeal. The Respondent is relying on a “hindcast” report to show that the percentage of pre-construction costs is higher for the Horizon facility than it is for other Wood Buffalo plants. The Complainant argued that the “hindcast” study is not relevant, and also it is not admissible because it is a hearsay report.
- c. Site Preparation – the Respondent's position is based on the same theories that were advanced at the 2011 appeal hearing and those concerns were addressed in the evidence of Mr. Celis. There is nothing new and compelling in the Respondent's disclosure for this appeal.
- d. Unproductive Labour – this issue was thoroughly covered by the 2011 CARB and again, in April 2013, when the CARB further clarified its order. The Complainant was prepared to agree to the \$418 million set by the 2011 CARB. The municipality, through the same witnesses, is now suggesting that the factor of 1.27 be reduced to 1.24. If one applies the CARB's findings in order 001-2013 and applies the 1.24 factor, the appropriate deduction for unproductive labour is approximately \$554 million and that is the request that would be made if this matter is re-litigated. The 2011 CARB, however, was clear in its order and the Complainant is still willing to agree to the \$418 million amount. The Respondent's evidence is contradictory. Mr. Moore states that the mid-Alberta factor will remain in place for this year, but then Dr. Thompson and Mr. Elzinga argue that it should be removed. Aside from the hindcast study, there is nothing new that would compel a re-hearing of this issue.
- e. Double Counting of Productivity and Delays – this issue was addressed in the 2011 complaint hearing with evidence from Mr. Celis and Mr. Otsu that convinced the CARB that there was no double counting. The Respondent has no new material and simply hopes to have the Board consider it again this year.
- f. Pre-Investment – the Respondent's argument is a copy and paste of the 2011 evidence. As in 2011, Mr. Elzinga applies Schedule D depreciation – a concept that was rejected by the 2011 CARB.
- g. Excluded Cost Calculation error – this is the same issue as was presented to the CARB and which was addressed in order 014-2013. It has been reviewed and a decision was rendered therefore there is no need to go through the argument again.

[9] The Complainant further argued that the use by the Respondent of the Complainant's answer to the 2013 section 295 request in the hearing for the 2012 tax year is an abuse of process.

[10] Further, the Respondent had ignored the confidentiality of others by including references to the nature of estimates; partial disclosure of a DBM summary; a reporting on productivity; estimate information and partial AFEs.

[11] The Complainant requested the CARB to direct the assessment to the amounts determined by the CARB for the 2011 tax year appeal, as identified in paragraph 177 of its brief.

[12] In relation to the issues raised by the Respondent in its email of September 6, 2013, the Complainant provided the following response:

- a. Scope of oral evidence based on the issues for the 2012 tax year complaint – This will be addressed by the CARB’s decision.
- b. Hearing Procedure - Whether the Complainant’s witnesses should give oral evidence on both their initial and rebuttal reports, followed by the Respondent’s witnesses. The Complainant urged the CARB to follow the ordinary process of having the Complainant give evidence, then the Respondent, and then the Complainant giving rebuttal evidence, particularly in relation to productivity, where the Complainant does not know how the Respondent established the number.
- c. Are there disputes regarding qualifications to give opinion evidence? At this time, the Complainant does not take issue with the qualifications of the Respondent’s witnesses.
- d. Hearing Schedule – which 4 days will the Board sit each week? The Complainant has no objection to not sitting Friday, November 8th and Monday, November 11th. The Complainant also requested an early end on October 24 (3 pm) and no sitting on November 19, 2013.
- e. Order of the Complainant’s witnesses – The Complainant will advise closer to the hearing.

Respondent

[13] The Respondent noted that the Complainant’s theme is one of “redoing”, but the legislation is clear that this is not a rehearing of the 2011 tax year complaint, but a new complaint in relation to the 2011 assessment for the 2012 tax year. The Complainant has made inconsistent submissions, arguing variously that the assessor should have regard to the totality of the information the assessors knows, but then arguing it should not take into account information received in response to his section 295 request. The Respondent argued that the Complainant has advanced arguments not accepted by the CARB, and in direct opposition to the CARB’s findings.

[14] The Respondent has filed new evidence and it is before the CARB. While this evidence is “fresh”, it will be up to the CARB to make a determination of whether it is compelling.

[15] The results of the “hindcast” study are not hearsay since the Respondent’s witnesses have reviewed the documents and their report recounts their firsthand knowledge of the records. If the CARB has any concerns about the report, that goes to weight, not admissibility. The CARB in Order 001-2013 relied upon similar evidence from various Complainant witnesses in relation to such matters as the purpose and contents of the DBM and EDS, the sanction budget, etc. The Respondent did not have the documents in question before it and could not cross examine on them.

[16] The Respondent stated that the issues before this CARB have already been narrowed. Although the Complainant had the opportunity to narrow the issues in response to the decision (CARB 001-2013), it chose to file the same materials. The Respondent, therefore, had no option but to respond to the issues raised by the Complainant. However, the Respondent believes the issues in this complaint are much narrower.

[17] In relation to the Pre-Investment (Overbuilt Operating Machinery and Equipment), The Complainant has argued that the overbuilt machinery and equipment is not part of an operational unit, and therefore not machinery and equipment. The Respondent had to respond to this, but it accepts that the equipment is operating, is machinery and equipment, and is to be fully operating in 2018. The Respondent submitted that the sole question in this area is whether the past practice of the Respondent was to exclude costs of overbuilt operating machinery & equipment.

[18] On the issue of front end loading (pre-construction costs), the previous CARB relied upon statements from the Complainant's witnesses that the costs for DBM and EDS were not included for other properties in the Municipality. The DBM and EDS were not produced by the Complainant in this hearing, nor in response to a section 295 request for the 2013 tax year or 2014 tax year. In its absence, the Respondent has included excerpts from other DBM and EDS to show that other property owners in recent history have provided these documents. This is in response to the statements of Mr. Shaw. This is the issue before the CARB in relation to front-end loading.

[19] In relation to productivity, the Respondent indicated that the issue was whether the claim in account 24 has been overstated. Part of the question in productivity relates to the Edmonton area modifier. The Respondent's witness reports review the model put forward by the Complainant's witnesses and is in direct response to the new position taken by the Complainant's witnesses.

[20] In relation to owner's costs, the Respondent has reviewed and provided a conclusion on each expenditure. In light of Order 001-2013, the Respondent questions the specific ones with construction management and oversight. The question is whether these have a nexus to construction. This is a limited number of disputed expenditures.

[21] In relation to site preparation, the Respondent had asked for an explanation of the expenditure. In cross-examination in the 2011 tax year complaint hearing, Mr. Celis could provide no details. There is new evidence in relation to this issue.

[22] The Respondent strongly argued that there has been no breach of confidentiality by the Respondent's use of the excerpts contained in its disclosure.

[23] The Respondent argued that it can use section 295 to request information. There is no authority to suggest the taxpayer can put conditions on the use of the information requested under section 295.

[24] In relation to the issues raised by the Respondent in its email of September 6, 2013, the Respondent provided the following input:

- a. Scope of oral evidence based on the issues for the 2012 tax year complaint – This will be addressed by the CARB in its decision.
- b. Hearing Procedure – The Respondent urged the CARB to direct the Complainant's witnesses to give oral evidence on both their initial and rebuttal reports, followed by the Respondent's witnesses to prevent a repetition of direct evidence.
- c. Are there disputes regarding qualifications to give opinion evidence? The Respondent does not have an objection to the qualifications of the Complainant's witnesses, but indicated that in the 2011 hearing, the challenges to qualifications took quite a bit of time in the hearing.
- d. Hearing Schedule –The Respondent asks the Board to consider not sitting on Friday, November 8th and Monday, November 11th.
- e. Order of the Complainant's witnesses
- f. Order of the Respondent's witnesses - the Respondent will call Mr. Moore, then Dr. Thompson and then Mr. Elzinga.
- g. Have the necessary copies (electronic and hard copies) been received for all of the Exhibits, including the source material referenced by Mr. Otsu? The Respondent had concerns in relation to the hard copies of Mr. Otsu not matching the electronic version.
- h. Technology requirements – power point projector, etc – the Respondent will provide a laptop and projector for the hearing.

DECISION

[25] Through a series of preliminary hearings, it has been determined that not all of the 2011 issues are issues for 2012. This CARB has identified six areas that at least one party finds to be an issue:

- a. Pre-Construction Costs
- b. Site Preparation
- c. Unproductive Labour
- d. Pre-Investment
- e. Delays
- f. Owner's Costs

[26] There is also a question of whether or not there was double counting or errors in the calculations of costs for unproductive labour and delays costs.

[27] The foregoing are the only areas of disagreement raised by the parties. Such being the case, this CARB will not consider any evidence nor hear any testimony on any other matters that were issues in the 2011 complaint. For all of those 2011 tax year issues, this CARB accepts the findings of the 2011 CARB in its Order 001-2013 (including subsequent explanatory orders). This CARB will direct the municipality to make any necessary changes to the 2012 tax year assessment to make it conform to the 2011 CARB's final order for all areas except those identified above. These directions will be incorporated into the CARB order that results from the 2012 merit hearing. The 2012 merit hearing that commences on October 15, 2013 will have regard to filed evidence and witness testimony regarding only those issues set out below and only in regard to the specific items or matters as described. For each issue, there is a finding and CARB decision and detailed reasons follow the summary clauses.

[28] Pre-Construction Costs – the Board will hear testimony and review evidence only in regard to past and current practices in the treatment of these costs in preparing assessments of industrial property within RMWB.

[29] Site Preparation – the Board will hear testimony and review evidence regarding this issue. There is sufficient fresh evidence to compel the Board to consider all aspects of this issue as it relates to assessment.

[30] Unproductive Labour – the Board will hear testimony and review evidence regarding this issue. There is sufficient fresh evidence to compel the Board to consider all aspects of this issue as it relates to assessment.

[31] Double Counting of Productivity and Delays – the Board will consider evidence and hear testimony only for determination of whether or not there has been a double counting of any cost item(s).

[32] Pre-Investment – The Board will hear testimony and hear evidence related directly to past and current practices in the treatment of pre-investment or oversized equipment for assessment purposes.

[33] Delays – the Board will not consider any evidence nor hear any testimony regarding delays other than that related directly to the aforementioned possible double counting of certain cost item(s).

[34] Owner's Costs – the Board will not consider any evidence nor hear any testimony regarding owner's costs by business unit or on an overall basis. The Board has no fresh or compelling evidence to cause it to make any determinations that vary from those of the 2011 CARB. In its order following the 2012 merit hearing, this CARB will direct the municipality on the treatment of these costs for the 2012 assessment.

[35] In relation to the issues raised in the Respondent's email of September 6, 2013:

- a. Scope of oral evidence based on the issues for the 2012 tax year complaint – This has been address in the paragraphs above.
- b. Hearing Procedure - The Complainant will call its witnesses on their initial reports, followed by the Respondent's witnesses, then followed by the Complainant's witnesses on rebuttal, but solely to give evidence in relation to the issues identified by the CARB in the above paragraph.
- c. Are there disputes regarding qualifications to give opinion evidence? – The CARB will accept the witnesses identified as experts, as such, unless there are challenges to their qualifications. The CARB expects the parties to avoid lengthy introductions and recitations of qualifications.

- d. Hearing Schedule – which 4 days will the Board sit each week? The CARB will sit Monday to Thursday each week, with the Monday start (or Tuesday start in the case of October 15, 2013) being 10 am. There will be no hearing days on Friday, November 8th, Monday, November 11th, Tuesday November 19 (if the hearing continues until that time), and an early departure on Tuesday, October 24 (3 pm).
- e. Order of the Complainant's witnesses – the CARB asks the Complainant to identify the order of its witnesses as soon as it can to the Respondent.
- f. Order of the Respondent's witnesses - the CARB confirms that the Respondent has identified the order of its witnesses: Mr. Moore, Dr. Thompson, and Mr. Elzinga.
- g. Have the necessary copies (electronic and hard copies) been received for all of the Exhibits, including the source material referenced by Mr. Otsu? The CARB directs the Complainant to reconcile the differences between the list of references provided electronically, and the paper copies provided to the CARB and marked as exhibit C26 and to provide the reconciliation to the parties and to the CARB as soon as possible.
- h. Technology requirements – The CARB confirms that the Respondent has offered to provide a power point projector and laptop for the hearing, and that the MGB offices have a microphone system, whiteboard, and screen.
- i. Do any of the Exhibits require page numbers? – The CARB directs that the Complainant resubmit as soon as possible exhibit C23 (Mr. Stowell's report) with the pages numbered consecutively from 1 to the end and to provide copies to the CARB and the Respondent upon completion of this task.
- j. Are all of the Exhibits legible (larger copies needed)? The CARB may request documents be enlarged during the course of the hearing, but at this time does not need to make this direction.

REASONS

[36] The position of the parties can be briefly summarized as follows. The Complainant argues that the whole of the 2012 tax year hearing need not be conducted as the determination by the CARB constituted for the 2011 tax year complaint has already determined all of the issues in dispute, and the Respondent's evidence is neither fresh, nor compelling. The Respondent argues that the issues have already been limited, and that its evidence is fresh, and should be considered by the CARB to address these issues.

[37] The CARB has reviewed disclosure and oral evidence and the resulting board orders from the 2011 tax year complaint. The CARB has reviewed all evidentiary disclosure and oral evidence pertaining to the 2012 tax year assessment complaint. For the reasons which follow, the CARB does not find that it should decline to hear the 2012 complaint pursuant to the doctrine of issue estoppel. Similarly, the CARB has not determined that there is an abuse of process by the Respondent which would require that the 2012 merit hearing be cancelled and an order

issued to effectively reinstate the 2011 assessment as set by the 2011 CARB. The CARB recognizes that there are similarities, at least in terminology, in the issues expressed for both 2011 and 2012 tax year assessment complaints. The annual assessment process encompasses a number of steps.

- a. First, the municipality requests information pursuant to s. 295 of the MGA, considers the information provided by the taxpayer, prepares an assessment and enters that assessment on the roll.
- b. Next, the taxpayer receives the assessment notice, requests details of how the assessment was prepared pursuant to s. 299 of the MGA and then files a complaint if it is deemed necessary.
- c. The Complainant (taxpayer) files its evidence and argument regarding the complaint. It is at this point that the issues for the complaint are set out.
- d. The Respondent (municipality) files its evidence and argument in response to the evidence and argument related to the issues.
- e. The Complainant prepares and files rebuttal evidence that is directly related to the Respondent's evidence.

[38] The CARB notes that the 2011 hearing proceeded in the absence of the assessor to give first hand evidence. Neither party chose to take steps to compel the attendance of the assessor. As a result, significant portions of the Board decision were based upon third hand statements as to the assessor's usual practices.

[39] The CARB believes that the evidence proposed to be given in this hearing of a hindcast study as to the assessor's usual practices for such machinery and equipment may be, if found credible, fresh, compelling and necessary to a correct and equitable decision. Therefore, the CARB believes there to be no issue estoppel for those portions of its prior decision where the assessor's usual practices were an issue. The CARB notes that although it has reviewed the evidence for the purpose of this application, it has not made a final determination regarding the evidence, and will weigh all evidence heard by it during the merit hearing in making its decision on the merits of the appeal.

[40] While the CARB believes it would have been preferable to have had this type of evidence in the 2011 hearing, in the factual circumstances of that hearing's context it does not find there to be an abuse of process in presenting this type of evidence that may be central to the questions this Board must answer.

[41] For this 2012 tax year assessment, the CARB recognizes that there was a final CARB decision rendered for the 2011 tax year assessment and that the decision was not finalized until several months after the 2012 assessment would have been entered on the roll. The Respondent, therefore, did not have the benefit of that 2011 decision prior to making the 2012 assessment. Nor was the 2011 decision available when the s. 299 request and response were made. The Complainant, in making its complaint for the 2012 year, had to rely upon the s. 299 response that it had in hand which essentially meant that all issues for the 2011 complaint became issues for the 2012 complaint.

[42] The CARB has reviewed its previous decision CARB Order 010-2013 in light of the arguments advanced in this preliminary hearing. In relation to issue estoppel, the CARB confirms that a complaint hearing is quasi-judicial in nature, and that the parties are the same as had been before the CARB in the 2011 tax year hearing. In addition, the CARB confirms that the decision in CARB Order 001-2013 is final for the 2011 tax year. The CARB is aware that the assessment which is the subject of the 2012 tax year complaint is for a regulated assessment, not a market value assessment.

[43] However, in relation to the question of whether it is the same issue or question before this CARB (constituted to hear the 2012 tax year complaint), the CARB is not convinced that it is so. Unlike the situation in the cases advanced by the Complainant, Alberta has a yearly assessment, with a yearly right of appeal. Although the headings listed by the parties to describe the matters are the same (not surprising since the headings reflect the nomenclature of the CCRG), this is not conclusive that the issues are the same.

[44] The CARB has reviewed the disclosure packages filed by the parties in light of the arguments advanced and is not prepared to find that the issues are identical to those previously decided. The CARB is concerned that to do so would be to preclude complaint hearings for successive years in an annual assessment hearing process. The CARB has been pointed to no case law which compels this result, and the CARB is not prepared to exercise its discretion to come to this conclusion.

[45] The CARB notes that the application of the doctrine of abuse of process is less rigid. While the CARB is not prepared to grant an order under the doctrine of issue estoppel, it has examined both the evidence and argument in relation to the doctrine of abuse of process.

[46] The evidence filed by the Respondent is new – some of it in relation to work done by the Respondent's witnesses in reviewing other persons' documents (the "hindcast study"); and some in relation to the Complainant's new reports (Tham and Otsu). In this regard, this CARB notes that the decision of the CARB in the 2011 tax year complaint was influenced by the fact that the questions centred around the decisions and practice of the assessor, who did not give evidence in that hearing.

[47] The CARB accepts that the "hindcast" study filed by the Respondent as it relates to some, but not all, of the issues provides fresh or new evidence. The CARB notes that the study is the result of work done by Dr. Thompson and Mr. Elzinga, and is not hearsay in the sense that it is not something told the witnesses by someone else. While the CARB notes the Complainant's concerns in relation to its ability to cross examine the witnesses, this same argument was made by the Respondent in the 2011 tax year hearing and found not to be an issue of admissibility. So too, in the 2012 tax year complaint, this is an issue in relation to the weight the CARB will place on the document, and not to its admissibility.

[48] In making a determination of whether there has been an abuse of process, the CARB has examined each of the issues identified by the parties, the decisions of the CARB in relation to the 2011 tax year complaint (CARB Order 001-2013, CARB Order 009-2013, CARB Order 014-

2013 and CARB Order 020-2013); the evidence filed by the parties, and their arguments in relation to the issues identified by them.

[49] The CARB examined each of the issues outlining its reasons in relation to each one.

Pre-construction

[50] The CARB believes that the sole question in dispute between the parties in relation to pre-construction is the Respondent's past practice in relation to the use and acceptance of the DBM and EDS. The Complainant has put in issue the question of the Respondent's past practice in the use and acceptance of the DBM and EDS through their witnesses Mr. Stowell and Mr. Shaw. The "hindcast" study provided new evidence in response to the Complainant's position. The CARB finds that more detail of past practices will enable it to come to a definitive decision regarding assessability or non-assessability of the costs of studies of this nature (DBM and EDS).

Pre-Investment

[51] This issue deals with the Complainant's oversizing of certain equipment. The sole issue is the question of the Respondent's past practice and whether it has consistently treated oversizing as an abnormal cost and then measured it in a consistent manner. This issue deals with the assessor's past practice and the CARB believes the evidence filed by the Respondent on this issue is fresh. Evidence of the consistent treatment of these costs as abnormal costs in assessing other similar plants could assist this CARB in making its decision for 2012.

Productivity

[52] The CARB has reviewed the evidence filed by all witnesses on the issue of productivity. Although the Respondent has argued that the sole issue is whether there has been a double counting in relation to the delay claim, the CARB notes that there is no commonality between the parties' positions and evidence. Therefore, the entirety of the productivity claim is at issue between the parties. Only to the extent that it is affected by a claim for double counting, the delay claim is also brought into issue. If necessary, this Board will adjust the assessment to account for any "delay" double counting, otherwise it will direct the municipality to set the 2012 excluded cost for delays in a similar manner to that for 2011.

Excluded Cost Calculation error

[53] The calculation of the excluded cost percentages was a determination made by the previous CARB once it had made a determination of all included costs. This issue may arise, but it is premature to make a determination about the number or the calculation until the issues listed above have been addressed.

Owner's Costs

[54] On the issue of owner's cost, the Board finds that there is no fresh and compelling evidence to warrant a hearing upon this issue and the respondent is estopped from presenting evidence and argument contrary to the Board's 2011 determination of this issue. To do so would constitute essentially a re-do on this issue, which the Board believes may constitute an abuse of process.

Site Preparation and section 295

[55] The evidence in relation to site preparation arose from the Complainant's response to the 2013 section 295 request. The Complainant argued that it was an abuse of process for the Respondent to rely upon the Complainant's 2013 response in the complaint for the 2012 tax year and urged the CARB not to accept this evidence. The Respondent argued that the information is relevant and should be considered. The CARB has noted the concerns of the Complainant. While a court has extensive powers, the CARB is not a court, and its jurisdiction is limited by section 467 (to change or not to change an assessment). The CARB has not been provided with any authority which suggests that it can ignore evidence which is relevant to the dispute between the parties, and which, when ultimately assessed as part of the merit hearing, may carry sufficient weight to convince the CARB. The CARB notes that the Respondent has provided its disclosure in accordance with the provisions of MRAC. When the CARB makes its determination on the merits, it will weigh this evidence and make a determination following that weighing. However, at this time, the CARB does not believe it can exclude the evidence, nor does it feel that it constitutes an abuse of process, particularly in light of its interest in assuring a fair and accurate assessment.

Confidentiality

[56] In relation to the allegation of a breach of confidentiality, the CARB has reviewed the evidence disclosed by the Respondent. The information includes tables of contents, and limited excerpts of information which do not contain any detailed information. The CARB notes and understands both parties' concern in relation to the issue of confidentiality, but having reviewed the information this CARB does not accept that any confidential information has been disclosed.

Administrative Matters

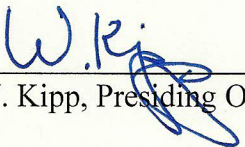
[57] The CARB has made a number of procedural rulings above in order to streamline the hearing, including start times and days when the CARB will not sit. These directions were provided so that the CARB will not need to spend time during the hearing addressing these matters when they can be addressed in advance.

[58] In relation to the order of the hearing, the CARB notes that the CARB for the 2011 tax year complaint followed a traditional model of having the Complainant's witnesses give rebuttal separately from their direct evidence. In light of the Complainant's stated concerns about not understanding how the Respondent has calculated its numbers on productivity, the CARB is prepared to have the Complainant's witnesses give rebuttal evidence after the Respondent's witnesses have given evidence. However, the CARB will be attentive to the scope of the rebuttal evidence to prevent a restatement of direct evidence.

[59] The tabs to Exhibit C23 are not ordered consecutively from 1 onwards, and the CARB has directed the Complainant to replace it with a volume that is so numbered in order to facilitate the CARB being able to easily find the pages referred to by the witness during the hearing. The current numbering is not numeric, and may lead to confusion during the hearing.

[60] It is so ordered.

Dated at the City of Calgary in the Province of Alberta, this 7th day of October, 2013.



W. Kipp, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
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Exhibit	Description	Date Filed
PC1	Letter of Wilson Laycraft LLP and attachment	February 19, 2013
PR2	Letter of Reynolds Mirth Richards and Farmer LLP	February 21, 2013
PC3	Letter of Wilson Laycraft LLP	February 21, 2013
PR4	Letter of Reynolds Mirth Richards and Farmer LLP	March 15, 2013
PC5	Letter of Wilson Laycraft LLP	March 20, 2013
PC6	Brief of the Complainant Tabs 1 - 3	April 15, 2013
PC7	Brief of the Complainant Tabs 4 - 26	April 15, 2013
PR8	Respondent's Legal Argument – Section 465 Application	April 15, 2013
PC9	Complainant's Response to Section 465	April 22, 2013
PR10	MGA s299 Report for Horizon 2012 Assessment	April 22, 2013
PC11	Letter of Wilson Laycraft LLP	April 24, 2013
PR12	Respondent's Legal Argument - Issue Estoppel	April 24, 2013
C13	Brief of the Complainant	June 12, 2013
C14	Compendium of Legal Briefs of Complainant	June 12, 2013
C15	Consolidated Authorities of Complainant Vol. 4	June 12, 2013
C16	Evidentiary Report of M. Celis, Canadian Natural	June 12, 2013
C17	Schedule 6 - 2009 Assessment Rendition of M. Celis	June 12, 2013
C18	Power Point Presentation of M. Celis	June 12, 2013
C19	Report of L. Zeidler, P. Eng., Canadian Natural	June 12, 2013
C20	Power Point Presentation of L. Zeidler	June 12, 2013
C21	Report of K. Shaw, Ryan & Company	June 12, 2013
C22	Report of K. Minter, Canadian Natural	June 12, 2013
C23	Report of T. Stowell, Stowell Consulting	June 12, 2013

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C24	Report of F. Otsu, Project Review & Analysis	June 12, 2013
C25	Report of T. Tham, P. Eng., Canadian Natural	June 12, 2013
C26	Otsu References	July 23, 2013
R27	Respondent's Legal Argument	August 22, 2013
R28	Respondent's Volume of Legislation	August 22, 2013
R29	Respondent's Volume of Authorities	August 22, 2013
R30	Respondent's Volume of Reference Documents - Part 1	August 22, 2013
R31	Respondent's Volume of Reference Documents - Part 2	August 22, 2013
R32	Respondent's Volume of Documents	August 22, 2013
R33	Witness Report of Mr. John Elzinga	August 22, 2013
R34	Powerpoint Presentation of Mr. John Elzinga	August 22, 2013
R35	Witness Report of Dr. Ed Thompson	August 22, 2013
R36	Powerpoint Presentation of Dr. Ed Thompson	August 22, 2013
R37	Witness Report & CV of Mr. Brian Moore	August 22, 2013
C38	Brief of the Complainant August 29, 2013 Re: Issue Estoppel/Abuse of Process Part 2	August 29, 2013
R39	Respondent's Legal Argument – Issue Estoppel	September 6, 2013
R40	Email of C. Zukiwski Re: CNRL 2012 TY Assessment Complaint	September 17, 2013

APPENDIX “B” REPRESENTATIONS

PERSON APPEARING CAPACITY

- | | | |
|----|--------------------|--|
| 1. | G. Ludwig | Counsel for the Complainant |
| 2. | J. Laycraft, Q.C. | Counsel for the Complainant |
| 3. | B. Balog | Manager, Legal Corporate Operations, Legal Counsel, CNRL |
| 4. | M. Celis | Business Analyst, CNRL |
| 5. | K. Minter | Director, |
| 6. | C. M. Zukiwski | Counsel for the Respondent |
| 7. | C. Killick-Dzenick | Counsel for the Respondent |
| 8. | B. Moore | Chief Regional Assessor, Regional Municipality of Wood Buffalo |

For MGB Use Only

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