

Composite Assessment Review CARB**REGIONAL MUNICIPALITY OF WOOD BUFFALO CARB ORDER CARB 2014-009-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: R. Mowbrey, Presiding Officer

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

Roll Number:	8992004911	Roll Number:	8992004911
Legal Description:	NE – 08- 096-11-W4M	Legal Description:	NE – 08- 096-11-W4M
Assessment Value	\$3,487,862,970	Assessment Value	\$3,990,469,110
Assessment Year	2012	Assessment Year	2013
Tax Year:	2013	Tax Year:	2014

A hearing was held via teleconference on August 18, 2014 in relation to complaints filed in relation to the above assessments.

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] This hearing is in regard to the Phase 1 of the Canadian Natural Resources Ltd. (CNRL) Horizon oil sands project. This hearing related specifically to the 2012 assessment for the 2013 tax year, and the 2013 assessment for the 2014 tax year.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

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

Municipal Government Act

454.2(3) Despite subsections (1) and (2) but subject to the conditions prescribed by the regulations, a council may establish a composite assessment review board consisting of only a provincial member appointed by the Minister.

Matters Relating to Assessment and Taxation Regulation 310/2009

36(2) A one-member composite assessment review board may hear and decide one or more of the following matters:

(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;

[3] The parties did not have any objection to the matter being heard by a single member CARB panel as established by council pursuant to s. 454.2(3) of the *Municipal Government Act* (Act). The jurisdiction of the CARB panel is provided by s. 36(2)(b) of the *Matters Relating to Assessment and Taxation Regulation 310/2009* (Regulation) relating to procedural matters regarding the scheduling of a hearing and the disclosure of evidence.

[4] The CARB had no bias in relation to this matter.

Position of the Parties

Complainant

[5] The Complainant wanted the Municipality to advise what issues it was intending to pursue. The Complainant's position was that two complete rulings on the Phase I rendition has resolved all issues, leaving nothing to be resolved for the 2013 and 2014 tax years.

[6] The Complainant understood the Municipality was seeking a hearing to compel production of documents under section 465 as well as an application to prohibit the appeal based on section 295. The Complainant requested a preliminary application on the basis of abuse of process, as it viewed the need for a hearing for these two tax years fell within the abuse of process application previously brought by the Complainant.

[7] The Complainant wished to know when the exchange schedule would be set, and wished to hear from the Municipality as to what issues it felt needed to be heard by the CARB. The Complainant requested that the hearing be completed by year end (2014), which it believed to be its statutory right.

[8] The Complainant stated that it felt that the Municipality was only partially responding to the CARB's direction to advise about the outstanding issues, the dates and the amount of time required for it to be resolved. The Complainant asked for clarification from the Municipality if the Municipality's position was that the only outstanding issues were the production of documents and the application to strike, and that if the applications were unsuccessful, then the matters are done. The Complainant stated that it had made continual requests to have the merit hearing by the year end. The Complainant was still not clear as to what issues were outstanding and being pursued by the Municipality. If the merit hearing was not scheduled until after the preliminary hearings, the parties would return to the CARB in December or January to set merit hearing dates. The Complainant was reluctant to agree to any dates until the Municipality provided answers to the CARB about the outstanding issues and the time it would take to have evidence on them.

[9] If the Municipality was attempting to gather information to defend an assessment, the Complainant is prejudiced by agreeing to any extensions beyond year end. The Complainant would like to establish the outstanding issues for the merit hearing and to pick dates for disclosure and the merit hearing.

[10] Although the Complainant wished to have the other matters addressed, it was available for November 3 – 6, 2014. Based upon those dates for preliminary applications, the Complainant suggested the following disclosure dates:

- a. Applicant's submissions – October 8, 2014
- b. Respondent to the Applications submissions – October 22, 2014
- c. Rebuttal – October 29, 2014

[11] The Complainant stated that it was being prejudiced from an evidentiary perspective as well as facing a costly financial burden. It once again restated its desire to have the matter heard on its merits prior to year end.

Respondent

[12] The Respondent stated that there were significant preliminary matters which need to be resolved before the merit hearing. These apply to both the 2013 tax year and the 2014 tax year. The Municipality wishes to bring an application for dismissal of the complaints for failure to comply with section 295 requests made in each year. Should the CARB choose not to dismiss the complaints, the Municipality is also bringing an application for production of documents under the CARB's powers in section 465. The Municipality stated that the documents requested are no surprise to the Complainant. They are the design basis memorandum and the engineering design specifications.

[13] The Municipality understood the Complainant wished to bring a preliminary application of abuse of process, but questioned how the Complainant will show the authority of the CARB to change an assessment without having a hearing for the 2013 and 2014 years.

[14] If the Respondent is successful in its section 295 application, there will be no merit hearing. If the Complainant is successful on its abuse of process application, it is not clear whether there would be a merit hearing due to the question of the CARB's jurisdiction to change an assessment without a hearing.

[15] The Municipality believes that all four applications would span approximately 4 or 5 days. All of those hearings would require a three member panel. The Respondent is asking the CARB to schedule its two preliminary applications for both years at the same time. Although the evidence is a little different for each year, the application can be heard at the same time.

[16] In response to questions raised by the Complainant, the Respondent stated that it felt there was a need for the merit hearing for the 2013 and 2014 tax years, regardless of whether the Municipality was successful in its section 295 application and section 465 application. The leave to appeal application to the Court of Queen's Bench sought in relation to the 2012 tax year remains outstanding.

[17] The Municipality has a limited availability for a merit hearing in the fall because its witnesses will be engaged in another large complaint going to hearing in February. Although the matter had been tentatively scheduled in October of 2013 for 2014, the dates were unrealistic. The position of the Municipality was that there are significant preliminary matters which must be decided before any merit hearing is scheduled. If the Complaint is dismissed, there is no merit hearing.

[18] The Respondent's position is that decisions of the CARB are not precedential and that different evidence may be brought each year, even if the issue is the same. The Respondent stated that issues include but were not limited to the following (in no particular order):

- a. Is there a section in the Construction Cost Reporting Guide which allows the exclusion of costs for operating machinery and equipment (what CNRL calls pre-investment)?
- b. Are some of the costs CNRL has entitled "owners costs" costs of construction which should be included costs?
- c. Are costs for a document called the Design Basis Memorandum and costs for a document called the Engineering Design Specifications excluded costs as feasibility studies under the Construction Costs Reporting Guide (what CNRL calls "front end loading")?
- d. How have the claims for abnormal costs, specifically delays, governed by section 2.500 of the Construction Costs Reporting Guide been calculated?
- e. Is there double counting in CNRL's claim for abnormal costs for productivity losses, governed by section 2.500 of the Construction Cost Reporting Guide?

[19] The Respondent has available November 3 -5 and the morning of November 6 and was prepared to have the preliminary issues argued at that time from the 2013 and 2014 tax year as well as the cost application from the 2012 tax year.

[20] In rebuttal to the comment about the Complainant's desire to have a hearing before year end, the Respondent stated that it has a right to bring the Assessor who prepared the Assessment, who is Mr. Elzinga. The CARB had been previously critical of the Municipality not bringing the Assessor who had prepared the Assessment in a previous tax year and the Municipality wishes to avoid that.

Decision and Reasons

[21] A preliminary hearing comprised of a three person panel to address the following four matters has been scheduled:

- a. An application under section 295;
- b. the Municipality's application under section 465;
- c. the Complainant's application for abuse of process; and
- d. the Complainant's application for costs in relation to the 2012 tax year.

[22] The hearing is scheduled for November 3, 4, 5 and the morning of November 6, 2014 in Edmonton at the Municipal Government Board Offices. On November 3, 2014 the hearing will start at 9:30 am. The start time of the other days will be at the direction of the panel hearing the appeal.

[23] The disclosure dates for submissions in relation to costs are as follows:

Applicant's submissions	October 8, 2014
Respondent's submissions to the Application	October 22, 2014
Applicant Rebuttal	October 29, 2014

[24] Each party must provide its submissions electronically to the other parties and to the CARB Clerk and CARB Counsel by no later than 4:30 pm of the required date. Hard copies may follow on the following day. The parties are requested to send 5 hard copies to the CARB Counsel in Edmonton.

[25] The CARB directs that the parties consecutively page number each page of the submission, including any materials contained as exhibits or tabs.

[26] The parties should arrange for a court reporter to be present during the hearing with the cost to be shared between the parties, and a copy of the transcript provided to the CARB at no cost.

[27] The CARB agrees with the Complainant that section 468(1)(b) of the Act provides that the hearing should be in the current year, and subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons, before the end of the taxation year to which the complainant that is the subject of the hearing applies. However, in *Edmonton (City) v. Edmonton (Assessment Review Board)*, 2010 ABQB 634, Mr. Justice A.W. Germain dealt with the issue notion of postponements. At page 9, para 43, Justice Germain stated that "the regulation must therefore be interpreted in such a way that the definition of exceptional circumstances cannot be so narrow and restrictive as to prevent hearings that are fair to both litigants."

[28] The CARB recognizes that the Complainant wishes to proceed as soon as possible and have the hearing before year end. However, the CARB must provide procedural fairness to both parties. If the CARB were to set the hearing before year end, there is the potential to prejudice the Respondent, who has indicated that the assessor who prepared the assessment has other obligations and is not available for the hearing dates requested by the Complainant. The CARB is of the view that scheduling a hearing before year end has the potential to prejudice the Respondent. Should the CARB schedule hearing dates to occur prior to year-end, the Respondent could ask for a postponement based upon the lack of availability of its witness. Based upon considerations of fairness to both parties and the potential prejudice to the Respondent, the CARB has set the preliminary hearing for the above noted dates in November, and is not prepared to schedule merit hearing dates until the preliminary issues have been heard.

[29] It is so ordered.

Dated at the City of Edmonton in the Province of Alberta, this ____ day of September, 2014.


R. Mowbrey, Presiding Officer

APPENDIX “A” – EXHIBITS

1.	Letter from Reynolds Mirth Richards & Farmer LLP	August 12, 2014
2.	Letter from Wilson Laycraft LLP	August 15, 2014

APPENDIX “B”**PERSON APPEARING****CAPACITY**

- | | | |
|----|-------------------|---|
| 1. | G. Ludwig, Q.C. | Counsel for the Complainant |
| 2. | J. Laycraft, Q.C. | Counsel for the Complainant |
| 3. | K. Minter | Supervisor Operations, Accounting, CNRL |
| 4. | M. Celis | Business Analyst, CNRL |
| 5. | C. M. Zukiwski | Counsel for the Respondent |
| 6. | M. Langer | Student, Shores Jardine LLP - Observer |

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Subject	Type	Sub-type	Issue	Sub-issue
CARB		Machinery & Equipment		