



REGIONAL MUNICIPALITY  
OF WOOD BUFFALO

**Composite Assessment Review Board**

**REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 004-2011-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 (Act).

**BETWEEN:**

Canadian Natural Resources Limited (CNRL) represented by Wilson Laycraft – Complainant

- a n d -

Regional Municipality of Wood Buffalo (Municipality) represented by Reynolds Mirth Richards & Farmer LLP - Respondent

**BEFORE:**

Member:

J. Gilmour, Presiding Officer

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Board Administration:

N. MacDonald, Assessment Review Board Clerk

A preliminary hearing was held on June 29, 2011 in Fort McMurray in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

8992004910	Assessment	\$271,014,420	CARB file 11-090
8992004911	Revised Assessment	\$3,438,633,520	CARB file 11-090

**PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

Construction of the Canadian Natural Resources Limited oil sands project was completed in 2009. The first roll number relates to a property assessment for building and structure, namely three camps at the Canadian Natural Resources Limited site. The Complainant raises 7 issues, as set out in the Reasons for Complaint document filed by the Complainant.

The second roll number 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**

The CARB derives its authority to make decisions under Part 11 of the Act. During the hearing, the parties addressed the CARB on several preliminary issues, which are addressed below.

Preliminary Issue 1	Scheduling of Building & Structure hearing Roll #8992004910 and Evidence Disclosure timelines
Preliminary Issue 2	Scheduling of Machinery & Equipment hearing Roll #8992004911 and Evidence Disclosure Timelines
Preliminary Issue 3	Scheduling of Further Preliminary Hearings for Roll #8992004911
Preliminary Issue 4	Position of Parties in relation to application for disclosure pursuant to section 300 on Machinery & Equipment Roll #8992004911

**Preliminary Issue 1 – Scheduling of Building & Structure Hearing Roll #8992004910**

The CARB heard from counsel for CNRL who indicated that the most important thing is to get the fundamentals of the machinery & equipment roll (#8992004911) appeal sorted out. To require the parties to deal with the building & structure appeal (#8992004910) (the “camps”) hearing at the same time as preparing for the machinery & equipment hearing did not adequately consider the strain on resources to prepare for the Court application addressing the 2010 machinery & equipment appeal, as well as the preparation required for the 2011 machinery & equipment appeal. CNRL argued that setting the 2011 camps hearing before the 2011 machinery & equipment hearing would be a strain on resources, a distraction and cumbersome. CNRL’s preference would be to have the camps hearing sometime early in 2012.

The CARB heard from counsel for the Municipality whose position was that the appeal in relation to the building & structure roll 8992004910 was a separate and distinct matter. The position of the Municipality was to have the camps hearing set for some time in the fall of 2011. A deadline imposed by the CARB would focus the parties and might assist the parties in exploring settlement options and possibly reaching a resolution.

**Decision**

The presiding officer indicated that his preference was to have the camps hearing in 2011 and gave the parties an opportunity to find agreeable dates for the hearing and for the evidence exchange.

The parties agreed to the following dates:

CNRL Disclosure:	October 3, 2011
Municipality Disclosure:	November 21, 2011
CNRL Rebuttal:	December 5, 2011
Hearing date:	December 14-16, 2011

All disclosure is due by 4:00 p.m. on the dates set out above, as is the usual practice of the CARB.

**Reasons for Decision:**

The CARB had been advised by the parties that they were able to reach a resolution on the 2010 camps appeal. While there is no guarantee that the parties will be able to reach a resolution on the 2011 camps appeal, the CARB is of the view that this appeal can easily be heard apart from the machinery & equipment appeal, even though some of the witnesses may be the same between the two hearings. The CARB believes that setting a date for the merit hearing and for the evidence exchange may encourage the parties to reach a resolution of this matter. If they are not able to reach a resolution, then the matter is scheduled for hearing prior to the end of the year, so that the appeal can be resolved in a timely manner.

**Preliminary Issue 2 – Scheduling of Machinery & Equipment Hearing Roll #8992004911 and Evidence Disclosure Timelines**

The CARB heard from counsel for CNRL who indicated that the scheduling of the 2011 machinery & equipment appeal should be scheduled to run either concurrently or consecutively with the 2010 machinery and equipment appeal. Counsel submitted that the most sensible approach was to have the 2010 appeal heard first, followed by the 2011 appeal. Due to the overlap of witnesses and evidence, there would be duplication should the hearings for the 2 years be separated. The CARB would be able to distinguish the evidence that applies only to one hearing or the other.

Counsel for CNRL submitted that there was a natural logic to the order of 2010 preceding or being heard concurrently with the 2011 appeal. CNRL is opposed to the appeal for the 2011 year preceding the appeal hearing for the 2010 year because it would be letting in the “fruit from the poisoned tree”. The 2010 assessment was arbitrary. The Municipality’s report would be the foundation of its 2011 evidence. Counsel for CNRL was concerned that a CARB hearing the 2011 evidence would not have the benefit of the analysis of what went behind it and that the history from the 2010 appeal would not be put before it. It would be an enormous waste of resources for the appeal for 2010 and 2011 to be heard separately.

Due to the natural logic of having the 2010 matter proceed prior to the 2011 appeal, CNRL’s preference is to schedule the 2010 and 2011 merit hearing for the same time. Further, scheduling the two appeal hearings together would mean that the CARB would have the advantage of having the Court’s decision on a number of issues. Counsel for CNRL submitted that it would be remiss to put the 2011 merit appeal ahead of the 2010 merit appeal, without a decision on equity and the legality of the 2010 assessment. If, by May, 2012, there was no decision from the Court, then the merit hearings might have to be rescheduled. However, it would be more logical to have a rescheduled hearing, then having two 10 week hearings in one year or in each successive year. The two hearing should be scheduled to start on May 7, 2012, and that date should be revisited in January or February 2012, to determine the status of the Court’s decision.

Counsel for CNRL noted that the parties agreed to a May 7, 2012 start for a hearing. He indicated that counsel for the Municipality had suggested CNRL file by October 15, and the Municipality file by March 3. However, the Municipality had notified CNRL that the Municipality may be seeking an increase in the amended assessment. There would be no use filing materials in relation to a number, and then having to respond to a new number. He suggested that a date should be set for the Municipality to provide the new assessment value and then CNRL should respond to that.

The CARB heard from counsel for the Municipality who indicated that it is prepared to have the 2011 machinery & equipment merit appeal heard in the spring of 2012. Counsel for the Municipality questioned whether the CARB has jurisdiction to schedule the merit hearing for the 2010 machinery & equipment appeal in light of the Court ordered stay of that merit hearing. In addition to the question of the stay, there are other reasons not to hear the two appeals together. The Municipality submitted that the two appeals are not linked, nor ought they necessarily to be linked. The evidence for one year is restricted to that year. It will be difficult for the CARB to deal with the evidence from each year separately. On the issue of equity, CNRL has squarely raised the issue in the 2011 appeal, so what the Court says in relation to the 2010 appeal will be of no value to the 2011 appeal. The 2010 appeal raised the issue of nullity, but there was no claim in relation to nullity for the 2011 appeal.

The Municipality stated that no evidence was heard by a CARB in relation to the 2010 machinery & equipment appeal. The CARB has heard no evidence in relation to what the costs were and which elements should be included and the rationale for that inclusion or exclusion. All of the CARB's decisions have related to procedural matters, including:

- a. CNRL's s. 299 request;
- b. whether equity was a new issue from what was included on the complaint form;
- c. whether the CARB can declare an amended assessment a nullity; and
- d. whether the CARB has the power to rehear matters.

Although evidence has been filed by the parties in the 2010 appeal, there has been no merit hearing nor any decision on the merits of the Construction Costs Report Guide (CCRG) costs. Since no evidence has been heard, there is nothing for the Court to review and therefore, no decision of the Court that would provide guidance to the CARB for the 2011 merit hearing. There is an equal argument that the 2011 decision would help the panel determine the 2010 merit appeal when it is heard.

The Municipality recommended that the 2011 appeal be scheduled for May 2012. In terms of disclosure dates, counsel for the Municipality suggested that if it was going to seek an increase, it could advise CNRL by August 30, 2011. Then the rest of the disclosure dates would be October 15, 2011 for CNRL, March 30, 2012 for submissions by the Municipality and April 20, 2012 for CNRL rebuttal.

## Decision

The parties agreed to May 7, 2012 as the start date for the merit hearing. The hearing and disclosure dates are set out below:

Municipality to advise CNRL whether it seeks to increase the M&E assessment and why:	August 30, 2011
CNRL Disclosure:	October 31, 2011
Municipality Disclosure:	March 30, 2012
CNRL Rebuttal:	April 20, 2012
Hearing date start:	May 7, 2012
Duration of hearing:	6 weeks



The parties are also to provide an Agreed Statement of Facts by April 20, 2012.

All disclosure is due by 4:00 p.m. on the dates set above, as is the usual practice of the CARB.

**Reasons for Decision:**

The CARB has been advised of the decision of the Court of Queen's Bench which granted a stay against the 2010 M&E appeal. The parties indicated that CNRL's appeal would likely be heard in the fall of 2011. In light of the stay of proceedings granted by the Court, the CARB does not believe that it has the ability to schedule a merit hearing for the 2010 appeal and was provided with no authority to support the proposition that the CARB can do so in light of the stay.

Although there is a stay of proceedings in relation to the 2010 appeal, there is no such limitation in relation to the 2011 appeal. The CARB is aware of the time limits for decisions set out in Section 54 of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009. The dates provided will exceed those specified in the Regulation. However, due to the complexity of the matter, the volume of materials expected to be produced, and the need to provide the parties with sufficient time to both prepare their cases for the merit hearing and to respond to the cases being put forward by the other party, the CARB believes that it is appropriate that the hearing of this matter be scheduled for May 7, 2012, which the CARB notes is mutually agreed to by both parties. The CARB does not wish to delay the 2011 appeal based upon the results of the Court challenge to the 2010 preliminary rulings, since there is no guarantee when the Court will make its decision.

The exchange deadlines require the Municipality to advise CNRL by August 30, 2011 whether it will be seeking to increase the assessment, which provides six weeks for CNRL to review and respond to that information prior to its filing deadline of October 31, 2011. Given the nature of the case, the CARB believes that the disclosure deadlines set out above give the parties sufficient time to prepare their own case and to respond to the other parties' case. The CARB has set six weeks for the hearing. The CARB has imposed the requirement to file an Agreed Statement of Facts in an effort to focus the parties on what is truly at issue for the time set for the hearing.

**Preliminary Issue 3      Scheduling of Further Preliminary Hearings for Roll #8992004911**

Counsel for the Municipality requested that there be a more intensive case management program by the CARB.

Counsel for CNRL indicated that he was not opposed to setting further preliminary hearings, with the parties advising the CARB a week or so in advance of any issues. He indicated that he is agreeable to attending in Edmonton if that would be of assistance to the CARB.

**Decision**

A second preliminary hearing is set for August 25, 2012 at 9 a.m. in Edmonton at the MGB offices.

By August 15, 2011, the parties are to advise the CARB and each other of any issues which require resolution during that hearing.

### **Reasons for Decision**

Given the submissions of the parties in relation to the complexity and volume of materials anticipated in this appeal, and the expected duration of the hearing, the CARB believes that both parties will benefit from regularly scheduled hearings to address issues which may arise. This preliminary hearing and any others scheduled will assist in an effective and efficient hearing.

#### **Preliminary Issue 4      Position of Parties in Relation to Application for Disclosure Pursuant to Section 300 on Machinery & Equipment Roll #8992004911**

Counsel for the Municipality stated that CNRL had requested information from the Municipality in relation to the other oilfield companies and their information and exclusions given under the CCRG. The Municipality had indicated that the information was confidential and could not be provided. If CNRL is going to make such an application, it will likely want this before they are required to file their witness reports. The Municipality is of the view that the CARB must give notice under section 462(2) of the Act to the assessed person, other than the complainant, who is affected by the complaint. A number of the affected persons have indicated to the Municipality that they want notice of the hearing. If this is to be done before the deadline for submissions by CNRL, notice must be given soon.

Counsel for CNRL indicated that he would like the Court's direction on the question of equity first. The issue would get raised eventually and the CARB could compel the information in advance of or at the hearing. He does not agree that other parties must be involved. He submitted that there was no need to hear the matter before the Court's decision on the equity question raised in the 2010 matter.

### **Decision**

By August 25, 2011, CNRL is to advise the Municipality and the CARB if it will be seeking the production of confidential construction cost information of a series of other assessed persons in the Municipality. At the preliminary hearing of August 25, 2011, the parties will present their positions in relation to whether notice to other parties is required and, if determined that notice is required, the scheduling for such a hearing.

### **Reasons for Decision**

The CARB is of the view that it would be most efficient to have the evidence filed at once. Given CNRL's disclosure date of October 31, 2011, the CARB believes that it is in all parties' interest to know whether CNRL will be requesting the production of confidential construction cost information from other assessed persons prior to the filing of their evidence. This issue is clearly before the CARB based upon CNRL's 2011 appeal notice. CNRL will have approximately seven weeks to decide whether it is seeking this information. If the answer is yes, the process can then hear further submissions on this matter at the August 25, 2011 preliminary hearing.

**DECISION**

1. In relation to Roll 8992004910, the following hearing and disclosure dates are ordered:

CNRL Disclosure:	October 3, 2011
Municipality Disclosure	November 21, 2011
CNRL Rebuttal	December 5, 2011
Hearing date:	December 14-16, 2011

All disclosure is due by 4:00 p.m. on the dates set out above, as is the usual practice of the CARB.

2. In relation to Roll 8992004911, the following hearing and disclosure dates are ordered:

Municipality to advise CNRL whether it seeks to increase the M&E assessment and why:	August 30, 2011
CNRL Disclosure:	October 31, 2011
Municipality Disclosure	March 30, 2012
CNRL Rebuttal	April 20, 2012
Hearing date start:	May 7, 2012
Duration of hearing	6 weeks

The parties are also to provide an Agreed Statement of Facts by April 20, 2012.

All disclosure is due by 4:00 p.m. on the dates set above, as is the usual practice of the CARB.

3. A second preliminary hearing is set for August 25, 2011 commencing at 9:00 am at the Edmonton MGB offices. By August 15, 2011, the parties are to advise the CARB of any specific issues which need to be addressed by the CARB.
4. At the August 25, 2011 hearing, CNRL is to advise the Municipality and the CARB if it will be advancing its request for production of confidential construction cost information of a series of other assessed persons in the Municipality and be prepared to address the issue of scheduling of a further preliminary hearing for this matter.

It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 18<sup>th</sup> day of July 2011.

*Nicole J. MacDonald*  
 For: J. Gilmour, Presiding Officer

**APPENDIX "A"**

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

<b>NO.</b>	<b>ITEM</b>
R1	April 28, CNRL 2010 Assessment Complaint
R2	November 8, 2010 Originating Application
R3	February 2, 2011 Originating Application
R4	Notice of Decision re TransAlta Utilities Corporation v. Designated Linear Assessor for the Province of Alberta
R5	CARB Board Order 007-2010-P
R6	CARB Board Order 027-2010-P

**APPENDIX 'B'**

ORAL REPRESENTATIONS

**PERSON APPEARING      CAPACITY**

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