



## BA Energy Inc.

Application to Construct and Operate an Upgrader  
Strathcona County, Fort Saskatchewan

July 19, 2005

**ALBERTA ENERGY AND UTILITIES BOARD**

Decision 2005-079: BA Energy Inc., Application to Construct and Operate an Upgrader,  
Strathcona County, Fort Saskatchewan

July 19, 2005

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# **ALBERTA ENERGY AND UTILITIES BOARD**

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**Calgary Alberta**

**BA ENERGY INC.**

**APPLICATION TO CONSTRUCT AND**

**OPERATE AN UPGRADER**

**STRATHCONA COUNTY, FORT SASKATCHEWAN**

**Decision 2005-079**

**Application No. 1347899**

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## **1 DECISION**

Having carefully considered all of the evidence, the Alberta Energy and Utilities Board (EUB/Board) finds the project to be in the public interest. Accordingly, the Board is prepared, with the approval of the Lieutenant Governor, to approve Application No. 1347899, subject to the commitments made by BA Energy Inc. listed in [Appendix 2](#) and subject to the conditions listed in [Appendix 3](#).

## **2 INTRODUCTION**

### **2.1 Application**

On May 28, 2004, BA Energy Inc. (BA Energy) filed Application No. 1347899 to the EUB and Alberta Environment (AENV) for approval to construct and operate an 41 400 cubic metre per day (m<sup>3</sup>/d) upgrader, the Heartland upgrader, and associated infrastructure in Strathcona County near Fort Saskatchewan, Alberta (south half of Section 10, Township 56, Range 21, West of the 4th Meridian). The upgrader is proposed to be developed in three equal phases, with the first phase scheduled for completion by late 2006.

### **2.2 Background**

Application No. 1347899 was registered by the EUB on June 1, 2004, and a joint Notice of Application was issued by the Board and AENV on June 8, 2004. The notice was advertised in the *Edmonton Journal*, the *Edmonton Sun*, the *Fort Saskatchewan Record*, and the *Strathcona County This Week*.

Following review of the application, supplemental questions from the Board and AENV were issued on September 21, 2004, and were responded to by BA Energy on November 17, 2004.

Information on health effects and non-criteria air emissions, missing from the original application, was filed by BA Energy on October 26, 2004. Following review, supplemental questions from the Board and AENV were issued on December 8, 2004, and were responded to by BA Energy on December 13, 2004.

In light of concerns expressed by residents and landowners in the vicinity of BA Energy's project and in response to a request by BA Energy, the Board issued a Notice of Prehearing on October 20, 2004. The notice was advertised in the *Edmonton Journal*, the *Edmonton Sun*, the *Fort Saskatchewan Record*, the *Strathcona County This Week*, and the *Sherwood Park News*.

The Board held a prehearing meeting on December 14, 2004, to discuss the scope of a possible hearing, timing, procedures, participant roles, costs, and funding.

On December 21, 2004, the Board issued its prehearing *Decision 2004-110*. The Board directed parties to proceed based on an information request process, and the Board set the hearing date as April 12, 2005. The prehearing decision report was issued to all participants that registered at the prehearing meeting, in addition to being posted on the EUB's Web site.

On January 31, 2005, following review of additional information filed by BA Energy, AENV declared that the environmental impact assessment (EIA) report of the Heartland upgrader project was complete, in accordance with Section 53 of the *Environmental Protection and Enhancement Act* (EPEA).

On February 1, 2005, the Board issued a Notice of Hearing for April 12, 2005. The notice was advertised in the *Edmonton Journal*, the *Edmonton Sun*, the *Fort Saskatchewan Record*, the *Strathcona County This Week*, and the *Sherwood Park News*.

Information requests from Northeast Strathcona County Residents (NESCR), Astotin Creek Residents' Coalition (ACRC), and Inter Pipeline Fund were filed on February 7, 2005, and responded to by BA Energy on February 16, 2005.

On March 29, 2005, BA Energy, with the support of NESCR and ACRC, requested a postponement of the April 12, 2005, hearing so that the parties might continue with their negotiations. On April 1, 2005, the Board advised registered participants by e-mail that it had granted BA Energy's request.

On March 29, 2005, AENV filed its hearing submission, followed by NESCR on March 31, 2005, and ACRC on April 6, 2005. BA Energy filed its reply submission on May 13, 2005.

On April 4, 2005, the Board issued a Notice of Rescheduling of Hearing, indicating that the hearing was cancelled and that it would be rescheduled at a later date. The notice was advertised in the *Edmonton Journal*, the *Edmonton Sun*, the *Fort Saskatchewan Record*, the *Strathcona County This Week*, and the *Sherwood Park News*.

On April 7, 2005, the Board advised registered participants by e-mail that the hearing was rescheduled to June 7, 2004, and on April 22, 2005, it issued a Notice of Rescheduling of Hearing. The notice was advertised in the *Edmonton Journal*, the *Edmonton Sun*, the *Fort Saskatchewan Record*, the *Strathcona County This Week*, and the *Sherwood Park News*.

On May 26, 2005, NESCR and ACRC advised the Board that they had withdrawn their objections to Application No. 1347899. On June 1, 2005, the Board advised registered parties by e-mail of the cancellation of the oral portion of the hearing.

Immediately following cancellation of the oral portion of the hearing, Jim Radke and Kathy Radke filed an objection to Application No. 1347899 and an objection to the cancellation of the hearing. The Radkes requested that the hearing be rescheduled.

On June 15, 2005, Tia Bartlett filed an objection to Application No. 1347899 and an objection to the cancellation of the hearing. Ms. Bartlett also requested that the hearing be rescheduled.

On June 22, 2005, and again on July 12, 2005, in response to a further request, the Board advised Ms. Bartlett that her request for the Board to convene a public hearing into Application No. 1347899 was denied.

On June 30, 2005, following additional submissions by BA Energy and the Radkes, the Board advised the Radkes that their request for the Board to convene a public hearing into Application No. 1347899 was denied.

In addition to the above steps, the Board, early in the proceeding process, established a link to information on the BA Energy application on the main page of its Web site, which contained all of the application information, notices, prehearing information, and all submissions made by interested parties. This Web site was kept updated.

Accordingly, the Board considers the close of evidence for this proceeding to be July 11, 2005.

### **2.3 Interventions**

A list of participants to these proceedings is contained in [Appendix 1](#).

At the December 14, 2004, prehearing meeting, NESCR, consisting of eight local residents and families, and ACRC, consisting of 12 local residents and families, registered as participants to the proceedings and subsequently filed objections to Application No. 1347899. All of the members of NESCR and ACRC lived within 1 to 5 kilometres (km) of the proposed Heartland upgrader.

Shell Canada Limited, Inter Pipeline Fund, and North West Upgrading Inc. registered as participants to the proceedings and reserved their right to participate in any hearing. However, they did not take a position with respect to Application No. 1347899, nor did they file any evidence to the proceedings.

The Strathcona County Taxpayer Association (SCTA) registered as a participant to the proceedings and subsequently filed a submission in support of Application No. 1347899.

John Murray, located in Ardrossan, registered as a participant to the proceedings. Mr. Murray filed a number of submissions in which he raised questions concerning the proposed Heartland upgrader. The Board and BA Energy responded directly to Mr. Murray's questions and BA Energy also met with Mr. Murray in person to discuss his concerns.

Herbert Veltman and Inge Veltman, located adjacent to the proposed Heartland upgrader site, gave notice of their intention to participate in the proceedings, but after having reached an agreement with BA Energy elected not to participate in the prehearing meeting.

Strathcona County declined to participate in the prehearing meeting or in the subsequent proceedings, stating that it had met and worked cooperatively with BA Energy to satisfactorily resolve its concerns.

Imperial Oil filed an objection to Application No. 1347899, citing technical concerns over BA Energy's proposal to inject process-related acid gas into the Leduc D-3 Formation and the impact this would have on Imperial Oil's ability to produce crude oil from the reservoir. When BA

Energy withdrew its acid gas injection proposal, Imperial Oil withdrew its objection to the project and declined to participate in the prehearing meeting.

On April 11, 2005, Morris Brabbins, located about 12 km southwest of the proposed Heartland upgrader site, filed a letter objecting to the rescheduling of the hearing and raising concerns regarding Application No. 1347899. BA Energy responded directly to Mr. Brabbins's questions, and BA Energy also met with Mr. Brabbins in person to discuss his concerns.

On May 26, 2005, NESCR and ACRC advised the Board that they were withdrawing their objections to Application No. 1347899, based on actions taken and commitments made by BA Energy in two areas. Firstly, BA Energy participated with NESCR and ACRC in drafting a Voluntary Purchase and Resident Relocation Proposal (Relocation Proposal) and made commitments to take certain steps to advance the finalization and implementation of the Relocation Proposal.

Secondly, BA Energy responded to a number of concerns raised by ACRC with respect to impacts arising from the Heartland upgrader and gave a number of commitments as to how those concerns would be addressed. The Relocation Proposal and the commitments made by BA Energy are contained in [Appendix 2](#).

NESCR and ACRC withdrew their evidence when they withdrew their objections to Application No. 1347899.

Following the withdrawal of objections from NESCR and ACRC, the Board considered the remaining registered participants and their submissions and determined that they did not qualify for standing pursuant to Section 26 of the *Energy and Resources Conservation Act*. Accordingly, the Board cancelled the oral hearing and the registered participants were notified on June 1, 2005, that the oral hearing was cancelled.

On June 1, 2005, following cancellation of the hearing, the Radkes filed an objection to Application No. 1347899. The Radkes had not previously registered as participants to the proceedings. The Radkes requested an opportunity to voice their concerns to the Board at an oral public hearing. As set out in its decision of June 30, 2005 (see [Appendix 4](#)), the Board denied the Radkes' request.

On June 15, 2005, two weeks after the hearing was cancelled, Tia Bartlett, a member of NESCR at the time it withdrew its objections, filed an objection to the cancellation of the hearing and requested that the hearing be reconvened. Ms. Bartlett made further requests in correspondence dated June 28, July 5, and July 11. As set out in its decisions of June 22 and July 12, 2005 (see [Appendix 5](#)), the Board denied Ms. Bartlett's request.

### 3 ISSUES

The Board believes that it is appropriate to comment on the following issues

- relocation proposal
- technical considerations
- environmental considerations



- sulphur recovery
- emergency response plan

## 4 RELOCATION PROPOSAL

As stated in previous decision reports, the Board is of the view that relocation of residents offers the only viable long-term solution to growing industrial development in the area and the resulting land-use conflicts with local residents.<sup>1</sup> The Board believes that the Relocation Proposal represents an important step towards addressing long-standing resident concerns about their properties and their ability to leave areas impacted by industrial development.

The Board acknowledges that if the Relocation Proposal is to be successful, cooperation and action will be required by various levels of government and industry. Failure to follow through could lead to ongoing regulatory delays and public conflict.

To this end, the Board intends to bring the concerns of the residents, and the Relocation Proposal as a key factor in addressing them, to the attention of the provincial government for its further consideration. The Board believes that the Relocation Proposal holds the promise of addressing public concerns with industrial development in the region. Further, this proposal holds the promise of addressing the past and current concerns of the Board relating to the impacts of industrial development on nearby residents.

## 5 TECHNICAL CONSIDERATIONS

The Board notes that BA Energy has committed to make a number of process changes to accommodate concerns expressed by ACRC. These commitments are outlined in the May 26, 2005, correspondence submitted by ACRC on behalf of itself, BA Energy, and NESCR (see [Appendix 2](#)). BA Energy agreed that, where appropriate, the project commitments it has made should be attached as conditions to its operating licence.

The Board acknowledges BA Energy's efforts to address ACRC's concerns and believes that these commitments are for the betterment of the project. While these commitments are not strictly required by the EUB, the Board has relied upon the commitments by BA in reaching its decision. Accordingly, the Board expects that the commitments will be fully implemented by BA Energy, provided that they do not contravene any regulatory requirements and do not otherwise impede the ability of the regulatory agencies in carrying out their duties.

The Board notes that neither ACRC nor BA Energy suggested specific approval conditions to include in BA Energy's approval. The Board has reviewed all of the commitments made by BA Energy and has determined that none needs to be included as conditions to the Board's approval.

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<sup>1</sup> *Decision D97-04: Dow Chemical Canada—Ethylene Plant Expansion, Fort Saskatchewan; Decision D97-07: Dow Chemical Canada—Polyethylene Plant Expansion, Fort Saskatchewan; Decision D98-01: CE Alberta Bioclean Ltd., New MTBE/ETBE Plant, Fort Saskatchewan Area; Decision D99-08 plus Addendum: Shell—Application to Construct/Operate an Oil Sands Bitumen Upgrader in the Fort Saskatchewan Area & to Amend Refinery Approval; Decision 2000-30 plus Addendum: Shell Canada – Cogeneration Plant and Hydrogen Pipeline, Fort Saskatchewan Area.*

However, the Board notes that some of the commitments should be addressed by AENV and has made recommendations to that effect in the following section.

## 6 ENVIRONMENTAL CONSIDERATIONS

With respect to the air emissions associated with BA Energy's proposed Heartland upgrader and subject to the Board's decision on sulphur recovery (Section 7), the Board is prepared to accept the findings of AENV and expects that AENV will deal with air emissions in accordance with its normal regulatory practices.

Specifically, the Board notes the following extracts from AENV's hearing submission:

### **Sulphur Dioxide Emissions (SO<sub>2</sub>)**

SO<sub>2</sub> emissions should be controlled using best available practicable technology. AENV views using Modified-Claus technology as meeting this control level.

AENV currently views the information that BA Energy provided to support the proposal to defer installation of a SRU [sulphur recovery unit] for the first phase of the project as insufficient to support the request. BA Energy has not provided convincing evidence that the use of additional lime within the USP [ultra selective pyrolysis<sup>TM</sup> unit] would have better or equivalent results in controlling H<sub>2</sub>S and SO<sub>2</sub> emissions.

### **Oxides of Nitrogen (NO<sub>x</sub>) Emissions**

Having regard to FAP monitoring results and the assumptions employed in the OLM and ARM [ambient ratio method] modelling exercises, AENV views it as unlikely that AAAQO [Alberta Ambient Air Quality Objectives] values for NO<sub>2</sub> will be exceeded.

AENV views the use of low NO<sub>x</sub> burner as an appropriate method to control NO<sub>x</sub> emissions from industrial boilers and heaters.

### **Volatile Organic Compounds (VOC) Emissions**

AENV considers a LDAR [leak detection and repair] program developed in accordance with the *Environmental Code of Practice for the Measurement and Control of Fugitive VOC Emissions From Equipment Leaks* as an appropriate program to reduce fugitive VOC emissions from equipment leaks.

### **Odorous Fugitive Emissions**

AENV views BA Energy's proposed measures to control fugitive H<sub>2</sub>S emissions as appropriate. The implementation of a LDAR program...is an appropriate approach to control fugitive H<sub>2</sub>S emissions.

### **Acid Deposition**

AENV views that any efforts to minimize NO<sub>x</sub> and SO<sub>2</sub> emissions, as described earlier in this submission, will help to address acid deposition issues.

The EIA report predictions suggest further deposition and/or ambient monitoring is needed to confirm that the acid deposition modelling estimates are conservative.

...any EPEA approval that may be issued for the Project may require BA Energy to participate in regional acid deposition monitoring efforts.

### **Human Health**

BA Energy used an acceptable methodology for its human health risk assessment. AHW [Alberta Health and Wellness] views the conclusions drawn in the assessment as reasonable.

The Board notes that with respect to the above emissions, AENV has indicated that any EPEA approval that may be issued for the project may require BA Energy to monitor for SO<sub>2</sub>, NO<sub>x</sub>, VOCs, and odorous fugitive emissions relative to modelling predictions and AAAQO. BA Energy could conduct the monitoring on its own or in collaboration with the Fort Air Partnership (FAP).

The Board notes that a comprehensive air monitoring network has been established within Strathcona County. The network is operated by FAP, a voluntary partnership of public, industry, government, Alberta's Industrial Heartland Association, and a nongovernmental organization. The Board believes that the work undertaken by FAP contributes significantly to improving the awareness of air quality issues and to assessing the impacts of industrial development on the air shed.

However, the Board believes that further consideration may be warranted to determine if the cumulative effects of air emissions from the Fort Saskatchewan and Edmonton areas are having adverse impacts beyond the eastern boundary of the FAP airshed. The Board believes that this would be useful for future applications, particularly in light of the increasing level of industrial development within the region that includes the proposed BA Energy Heartland upgrader.

The Board recognizes that cumulative effects of air emissions is a regional matter and does not view this matter as one that BA Energy, or any one particular facility in Strathcona County, is expected to deal with at this time. Rather, the Board believes that this matter is best dealt with under the responsibilities of AENV. Therefore, the Board requests that AENV work with EUB staff on this matter.

The Board notes that in the May 26, 2005, correspondence, ACRC raised concerns regarding events that could occur during start-up. While the Board notes that BA Energy has attempted to address some of these concerns in its application, as well as in its commitments to ACRC, the Board believes that based on previous industrial experience in the region, start-up may lead to public complaints regarding increased flaring, noise, and emissions. Therefore, the Board believes that it would be prudent to require BA Energy to provide further details on its proposed start-up procedures. The Board recommends that AENV consider requiring BA Energy to provide AENV, prior to start-up, with a summary of its proposed start-up procedures, detailing

- the duration and sequence of process units to be brought on stream,
- what flaring events could be expected to occur during start-up, including the duration and content of flared gases,
- how off-spec products would be handled during start-up procedures,
- what procedures BA Energy would have in place to deal with unexpected events, and

- what communication plans BA Energy would implement to keep residences and municipal and provincial government agencies advised of start-up activities.

The Board notes that in the May 26, 2005, correspondence, ACRC expressed concerns regarding the disposal of disulphide oil and associated odours. While BA Energy has committed to design its process to put residual disulphide oil into its crude product, the Board believes that the principle concern about this is odours, and not disposal per se. Therefore, the Board recommends that AENV condition BA Energy's approval to ensure that there are no off-site odour impacts arising from the production, handling, or disposal of disulphide oil.

In consideration of commitments made by BA Energy, the recommendations that the Board has made to AENV, and AENV's stated position as outlined in its March 29, 2005, submission to the Board, the Board is satisfied that the proposed Heartland upgrader is unlikely to result in significant adverse environmental effects and that environmental matters can be properly handled by AENV within its environmental regulations.

## **7 SULPHUR RECOVERY**

SO<sub>2</sub> emissions from BA Energy's proposed upgrader will be emitted from the main stack during normal operations and from the flare stack during upset conditions. SO<sub>2</sub> in the atmosphere can be transformed into sulphuric acid or sulphate particulates. High ambient SO<sub>2</sub> concentrations can contribute to acidic deposition, vegetation effects, and human health effects. SO<sub>2</sub> concentrations associated with emissions from the Heartland upgrader are not predicted to exceed the AAAQO.

BA Energy's proposed upgrader would produce acid gas. BA Energy proposed to install an SRU based on Claus technology to remove sulphur compounds contained in the acid gas stream. Tail gas would then be directed to the USP unit, where further sulphur removal would take place.

BA Energy's submission of January 20, 2005, requested that the installation of the SRU be deferred for the first phase of the project. BA Energy indicated that additional lime could be added to the USP unit to replace the SRU and still achieve similar SO<sub>2</sub> emission levels. This conclusion was based on test results that suggested lime could be used to suppress H<sub>2</sub>S generation in the reactor and increase sulphur recovery in the USP combustor.

BA Energy stated that the use of additional lime within the USP unit could be used as a backup recovery system to the SRU in the full-capacity build-out, i.e., the third phase of the project, and as an operational tool to ensure emission compliance in the event of an SRU upset.

While the Board acknowledges BA Energy's innovative approach to sulphur recovery, the Board is concerned that BA Energy has not provided evidence to substantiate its claim that its lime addition process would be capable of achieving the same level of sulphur recovery that would be expected using conventional sulphur recovery technology. The Board notes that this concern is also shared by AENV and ACRC.

By BA Energy's own admission, its technology is still in the testing stage. The Board believes that implementing this technology at the scale proposed by BA Energy, without a commercially proven backup recovery system, is inherently risky. The Board sees no compelling reason to

approve a process that could result in an increase in emissions above that achievable through conventional technology.

Accordingly, the Board will condition BA Energy's approval as follows:

- 1) BA Energy's application for the use of lime addition technology as the sole means of sulphur recovery for the first phase of the Heartland upgrader is denied.
- 2) Primary sulphur recovery for the first phase of the Heartland upgrader will be based on Claus sulphur recovery technology, as described by BA Energy in Application No. 1347899.
- 3) Sulphur recovery for the Heartland upgrader will comply with the sulphur recovery requirements outlined in EUB *Interim Directive (ID) 2001-3: Sulphur Recovery Guidelines for the Province of Alberta* and any subsequent revisions.
- 4) Installation of lime addition sulphur technology as a demonstration project for the first phase of the Heartland upgrader is approved.
- 5) Three months prior to testing of lime addition technology, BA Energy must submit to the Board and to AENV, for their approval, any information that the Board requires and any information that AENV requires. The information that the Board requires must include, as a minimum, an operating plan that details how BA Energy will test its lime addition technology, how it will continue to meet its air emissions limits during the testing period, and how it intends to report its operating results, its air emission performance, and any other operating criteria as requested by AENV or the Board.
- 6) If BA Energy chooses to install lime addition technology for the first phase of its Heartland upgrader project and it can demonstrate to the satisfaction of the Board and AENV its claims as outlined in Application No. 1347899, then the Board, on application by BA Energy, would be prepared to reconsider its decision on sulphur recovery for additional phases of development.

## 8 EMERGENCY RESPONSE PLAN

The Board notes that in its application BA Energy has committed to develop a facility-specific emergency response plan (ERP) containing the following ERP objectives:

- protection of public and employee safety
- provision of effective leadership and a responsible assessment of an emergency situation
- communication of required emergency response information to personnel, government agencies, and others affected by an emergency
- provision of proper personnel training and equipment for emergency response to minimize the effect of an emergency

The Board also notes that BA Energy has stated that it will request membership in the Northeast Region Community Awareness and Emergency Response (NR CAER) once the project proceeds. NR CAER is a partnership of more than 40 industries, municipalities, chemical

transporters, and government agencies involved in emergency response and education initiatives in the industrial region northeast of Edmonton, including the Fort Saskatchewan area and the Heartland upgrader location. NR CAER provides for the sharing and implementation of best practices for coordinated response to industrial emergencies and natural disasters, focusing on joint emergency response and sharing of resources. The Board believes that participation in NR CAER is an important component of BA Energy's ERP.

Based on the commitments made by BA Energy, the Board is satisfied that BA Energy will develop an integrated, effective ERP that will be protective of its facility, its employees, and the public.

## **9 PUBLIC INVOLVEMENT, INTERVENER GROUPS, AND RELATED PROCESSES**

With respect to energy projects, industry is required to develop an effective participant involvement program that includes parties whose rights may be directly and adversely affected by the nature and extent of the proposed application. This program includes distributing the applicant's information package, responding to questions and concerns, discussing options, alternatives, and mitigating measures, and seeking confirmation of nonobjection through cooperative efforts. The industry is expected to be sensitive to the timing impacts on the public.

The public is strongly encouraged to participate in ongoing issue identification, problem solving, and planning with respect to local energy developments. Early involvement in informal discussions with industry may lead to greater influence on project planning and mitigation of impacts. The public is also expected to be sensitive to the timing constraints on the application review and decision process and on the applicant.

Nonetheless, the Board wishes to remind industry applicants that participant involvement does not end with the issuance of the Board's approval. Rather, the Board expects that effective participant involvement must continue throughout the life of the project.

The Board notes that despite public consultation by the applicant and notices issued by the Board between June 2004 and April 2005, certain individuals did not appear to understand their rights and abilities to participate in the hearing process, including the need to make their concerns known to the Board directly in a timely manner and the consequences for not doing so.

On a related matter, certain individuals did not appear to understand their rights, the consequences of being party to settlement negotiations, or how they subsequently became bound by an intervenor group's decision to participate in settlement negotiations and file a withdrawal of its objection.

It is unfortunate that the results of the settlement and hearing processes were not satisfactory to these individuals.

The Board believes that additional information provided to interested parties with respect to participation in the application review process would be beneficial. Accordingly, the Board will ask its staff to review the EUB's processes to see what can be improved in future applications

with respect to public consultation, the formation of intervenor groups, the impact of participant involvement in settlement negotiations, and related process issues.

Dated in Calgary, Alberta, on July 19, 2005.

**ALBERTA ENERGY AND UTILITIES BOARD**

*<original signed by>*

A. J. Berg, P.Eng.  
Presiding Member

*<original signed by>*

R. Houlihan, Ph.D., P.Eng.  
Acting Board Member

*<original signed by>*

G. J. Miller  
Board Member

## APPENDIX 1 LIST OF REGISTERED PARTICIPANTS

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Principals (Abbreviations used in report)	Representatives
BA Energy Inc. (BA Energy)	R. Neufeld
Northeast Strathcona County Residents (NESCR)	J. Klimek
Astotin Creek Residents' Coalition (ACRC)	G. Fitch
Government of Alberta	J. Moore D. Stepaniuk
Shell Canada	S. Denstedt
Inter-Pipeline Fund	G. Gin
Strathcona County Taxpayers Association	G. Burns
Northwest Upgrading Inc.	D. Bertsch
J. Murray	J. Murray
Herbert Veltman and Inge Veltman	D. Roth

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Mr. M. O. Brabbins filed a letter objecting to the rescheduling of the hearing but did not register as a participant to the proceedings.

Following cancellation of the hearing, Jim Radke, Kathy Radke, and Tia Bartlett filed objections to Application No. 1347899. The Radkes were represented by Mr. R. Secord. Following her withdrawal from NESCR, Ms. Bartlett was also represented by Mr. R. Secord.



**APPENDIX 2 RELOCATION PROPOSAL AND COMMITMENTS BY BA ENERGY**

The Board notes that BA Energy has committed to conduct certain activities in connection with its operations that are not strictly required by the EUB's regulations or guidelines. It is the Board's view that when a company makes commitments of this nature, it has satisfied itself that these activities will benefit both the project and the public, and the Board takes these commitments into account when arriving at its decision.

The Board expects BA Energy to carry out the commitments or to advise the Board if, for whatever reasons, it cannot fulfill a commitment. The Board would then assess whether the circumstances regarding the failed commitment warrant a review of the original approval. The Board notes that the affected parties also have the right to request a review of the original approval if commitments made by BA Energy remain unfulfilled.

**LAWSON LUNDELL** LLP  

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**BARRISTERS & SOLICITORS**

May 26, 2005

VIA COURIER

Alberta Energy & Utilities Board  
640 – 5<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 3G4

Attention: Ms. Tamara Bews, Law Branch  
R. R. Germain, Applications Branch

Dear Sir and Madam:

**BA Energy Inc. – Heartland Upgrader Application No. 1347899**

As you know, I am counsel to the Astotin Creek Residents Coalition. I write this letter on behalf of Mr. Neufeld and Mr. Roth, counsel for BA Energy, and Ms. Klimek, counsel for the Northeast Strathcona County Residents, as well as on behalf of my clients.

Please be advised that, pursuant to a private agreement among BA Energy Inc. (“BA”), the Astotin Creek Residents Coalition (“ACRC”) and the Northeast Strathcona County Residents (“NESCR”), the ACRC and NESCR (collectively, the “Residents”) hereby withdraw their objections to Application No. 1347899 by BA to construct and operate the Heartland Upgrader.

The Residents have agreed to withdraw their objections based on actions taken and commitments made by BA in two areas. First, as will be elaborated on below, BA participated with the Residents in drafting a “Voluntary Purchase and Resident Relocation Proposal” (the “Relocation Proposal”) and has made commitments to take certain steps to advance the finalization and implementation of the Relocation Proposal. The Relocation Proposal is enclosed for the Board’s review. BA and the Residents agree that this letter and the Relocation Proposal should form part of the EUB’s public record of the application.

Second, BA has responded to a number of concerns raised by the ACRC with respect to impacts from the Heartland Upgrader and given a number of commitments as to how those concerns will be addressed. The commitments given by BA are contained in two documents, which are enclosed for the Board’s review. The first is a letter dated May 5, 2005 from Mr. Neufeld to me. The second is an e-mail dated May 20, 2005 from Mr. Roth to me, attaching a modified version of a letter dated May 13, 2005 from Advantage Insight Group Inc. to me.

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By way of explanation, the May 13, 2005 letter consists of excerpts from Advantage's March 28, 2005 letter report that was filed as Schedule "B" to the Written Submissions of the ACRC. As indicated in the first paragraph of the May 13 letter, on April 29 Mr. Murray and I met with BA representatives to discuss the concerns raised by Mr. Murray in the March 28, 2005 Advantage letter. Mr. Neufeld's May 5 letter constituted BA's response to the March 28 Advantage letter, based on our discussions of April 29. Mr. Murray then responded to BA's May 5 letter, by way of the May 13 letter. In the May 13 letter, Mr. Murray followed the format of his March 28 letter report, with his response comments indicated in boldface. This led to a conference call on May 19, 2005 among Mr. Roth, Mr. Hyndman, Mr. Murray and me, in which BA responded to Mr. Murray's May 13 additional comments. As stated in Mr. Roth's e-mail, BA's responses were subsequently incorporated into Mr. Murray's May 13 letter and identified by underlining.

BA and the ACRC agree that the May 5, 2005 letter from Mr. Neufeld and the May 20, 2005 e-mail from Mr. Roth and the attached May 13, 2005 letter from Advantage (as modified by BA) should become part of the Board's public record of the application. BA agrees that, where appropriate, the project commitments it has made should be attached as conditions to BA's licence to operate the Heartland Upgrader.

The balance of this letter will deal with the Relocation Proposal. The Residents' agreement to withdraw their objections based on the development of the Relocation Proposal is an act of good faith that there will be concerted follow-up actions by the appropriate parties. The residents appreciate BA Energy's advocacy and effort in creating momentum for the creation of a property purchase/resident relocation program for residential properties in Alberta's Industrial Heartland. We note, however, that cooperation and action will be required of a number of parties to establish a land trust agency to implement this program in a timely fashion and for it to have the financial sustainability to deal fairly with all residents as their need for relocation arises.

Specifically, the Residents have withdrawn their objections based on the following commitments and/or assumptions:

- BA Energy will continue with their advocacy of the property purchase/resident relocation initiative so that momentum for implementation is continued.
- The Companies operating in the region that have participated in the ICARI process (Industry Collaboration to Address Resident Issues) will support the creation of a property purchase/resident relocation program and will follow through with financial commitments to fund the program.
- Strathcona and Sturgeon Counties actively support the process, including providing meaningful financial participation.
- Alberta's Industrial Heartland Association will continue their sponsorship role in bringing the various stakeholders together to achieve consensus on the program parameters and building a shared commitment to move forward.
- The government of Alberta, who wish to facilitate the growth of the oil sands industry with added value in Alberta, and who directed the concentration of new refining and

upgrading to the area north of Fort Saskatchewan away from its original base on the eastern edge of Edmonton, will:

- Respond to the recommendations made by several independent tribunals—including the EUB—to resolve the land-use conflicts between residents and heavy industry in the AIH in a fair and equitable manner.\*
- Expeditiously commit financial support to the establishment of a land trust mechanism that will provide fair and equitable treatment to affected rural landowners and will facilitate value-added oil sands projects and other heavy industrial operations without the conflicts that have impeded expeditious regulatory decisions on projects and approval renewals.

For their part, the Residents commit to participate constructively in the ICARI consultative process to complete the framework and operating criteria for the property purchase/resident relocation program. The Residents sincerely wish to be in a position where it is not necessary to oppose projects in the Heartland that are in the economic interests of Alberta. However, they believe that the burden of industrialization of the area has been disproportionately placed upon the residents who live in the area designated for heavy industry and promoted as such by Alberta and the participating municipalities. They are acting in good faith at this juncture that they will be dealt with in a fair manner. If this good faith and trust is not appropriately honoured, it is

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\* Excerpt from the Environmental Appeals Board Decision No. 04-074-082-D (April 29<sup>th</sup>, 2005) referring to earlier decisions by the NRCB and the EUB

"....The Board remains convinced that the ultimate and most timely solution to the residents' concerns must involve a collaborative process with all affected parties..."

While deferring to the AEUB, at the time the Board felt compelled to comment on the land-use conflict. In light of the NRCB's Decision on the land-use conflict in this case, the Board feels compelled to restate the comments it made in 1999:

"...the Board believes that the main resolution that was being sought by these Appellants, and that is likely necessary to achieve any meaningful resolution of this situation, is a fair and equitable resolution of the land use conflict. Notwithstanding the considerable sympathy the Board holds for the Appellants under their circumstances, the powers provided to this Board by the Act do not provide the scope to resolve this land use zoning conflict because that ability does not fall within the powers of the Director.

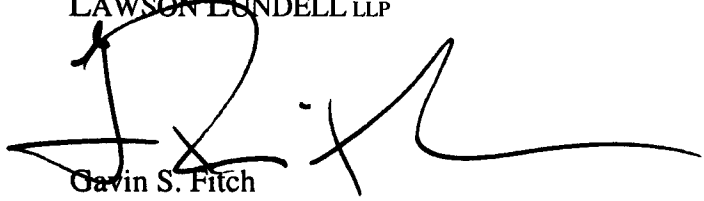
Despite our lack of jurisdiction to resolve this matter, the Board is compelled to note that a land use conflict that was described by the [A]EUB as 'leading to a deterioration of lifestyles' for affected residents remains unresolved more than two and half years later. Long term residents who have experienced increasing encroachment of major industrial developments upon their rural lifestyle now face the reality that their land has been re-zoned for industrial development, thereby restricting their freedom to upgrade their own residential property. On the face of it, this situation appears unfair and inequitable. The Board believes that industrial developers, local government and the provincial government (on behalf of all Albertans), all of whom are major beneficiaries of these industrial developments must find the means to achieve fair and equitable treatment for affected rural landowners. The industrial developers, as the initiators of these projects, should be showing some leadership in moving this process forward and ensuring that it reaches an expeditious conclusion."

likely there will be a return to confrontational strategies as the only option perceived to be available to the residents.

In providing you with this letter, BA and the Residents entreat the Board to take every conceivable step to support this important initiative and advocate for this longer term solution. As a logical starting point, we trust that the Board will appropriately communicate this information to government so as to promote long term success for property purchase/resident relocation initiative, and include this information in any Decision Report that the Board may issue with respect to BA's application.

Yours very truly,

LAWSON LUNDELL LLP

A large, stylized handwritten signature in black ink, appearing to be 'G. S. Fitch', written over the printed name.

Gavin S. Fitch  
GSF/jzc/Enc.

cc: Interested Parties List  
Jennifer Klimek  
Karen Trace  
Bernard Roth  
Richard Neufeld  
Al Hyndman

# **Voluntary Purchase and Resident Relocation Proposal**

**Prepared by the Astotin Creek Residents Coalition,  
the Northeast Strathcona County Residents, and BA Energy Inc.**

## **I. Introduction**

The following is a proposed framework for establishing a relocation purchase plan for the residents of "Alberta's Industrial Heartland" (AIH). What follows are concepts and objectives to be met in any such proposal as well as a suggested mechanism to implement those concepts and meet the various objectives. We recognize that there may be other methods to achieve the same ends, however, much effort and consideration have been invested into this proposal. Consequently we hope that this document will be useful in supporting the planning and implementation of this important initiative. It is hoped it will expedite these deliberations to the mutual benefit of all concerned.

## **II. The Contributors**

This document arose out of a mediation process between BA Energy, on the one hand, and the Astotin Creek Residents Coalition (ACRC) and the Northeast Strathcona Residents (NESCR), on the other. The ACRC and NESCR consist of 23 families who reside in that part of Strathcona County that lies northeast of Fort Saskatchewan and south of the North Saskatchewan River. The ACRC and NESCR objected to an application by BA Energy Inc. to develop a bitumen upgrader project in the Strathcona County portion of the AIH. With the assistance of a mediator, the parties agreed to work together to meet each other's objectives, recognizing the overall plan for the Industrial Heartland. The key focus of these conversations was the development of a long term-plan to free up the Heartland for industrial development, remove conflict with existing operations, and assist residents in moving out of the area in a timely fashion---the voluntary purchase proposal.

The ACRC and the NESCR represented a wide variety of backgrounds, histories and circumstances which assisted the process in casting the widest possible viewpoint. For example, within these groups were small acreage owners, hobby farmers, farmers with large holdings, young families, and those nearing or past retirement. Further there were a number of shorter term residents, though most were long-term residents of 20 plus years and still other were with family roots in the community going back generations.

As the industrial participant in these discussions, BA Energy Inc provided insight into the perspective of industry with respect to existing and future development in Strathcona County and the Heartland. BA Energy Inc. also assisted in providing valuable background on the activities of ICARI (Industry Collaboration to Address Residents Issues). This is the group of industrial companies and the two counties (Strathcona and Sturgeon) which has been formed to address the long-term plan for industrial development in the AIH and the impacts of this development on

residents. It was recognized that BA Energy Inc. is only one member of this group and had no authority to bind the association.

### **III. The Process**

This proposal was the product of hundreds of hours of deliberation and discernment. To assist the reader in appreciating this statement, the following is a brief summary of the time and effort invested in this proposal:

1. Initial meetings and correspondence were exchanged to discuss whether or not the participants could look at working together and whether or not engaging a mediator/facilitator would be appropriate.

2. Initial meetings took place between the mediator and the residents as well as the mediator and BA Energy Inc. to determine the general topic area and how a consensus-based process would be designed.

3. Further separate meetings with the mediator took place to talk about the idea of a voluntary purchase program and what each group might consider key objectives for such a plan. The mediator also met with a representative of the Alberta Industrial Heartland Association to determine how this process might support or augment the stakeholder process which has been designed to address the issue of voluntary purchase as well as other issues.

4. The two resident groups met with the mediator to discuss their vision of such a plan and subsequent meetings by telephone and otherwise were held to pull together common elements. The residents also met with an appraiser to better understand the various concepts associated with valuing property.

5. The residents prepared and presented to BA a draft voluntary purchase plan. Meetings were then held with BA and other members of the ICARI group with a view to seeking out common ground on the principles that would underlie a purchase plan.

6. Subsequent meetings between BA Energy Inc and the residents took place to bridge the gaps on key issues and refine this proposal.

### **IV. Overall Aim**

1. It was determined that the broad objectives of a voluntary purchase plan would need to include the following goals:

- a) to address the residents' concerns with respect to the industrialization of their neighbourhood by allowing residents who so desire to:
  - i) move within a reasonable period of time; and
  - ii) get a fair value for their land;

- b) to allow industry to locate projects within the AIH and operate while minimizing conflict with residents over land use; and
- c) to permit public bodies such as the County and the Province to participate in an orderly, transparent and integrated program which fairly addresses the needs of all residents and stakeholders and is able to stand the test of public scrutiny.

2. To achieve these broad objectives, the parties to this dialogue recognized that there are a number of key interests to be met:

- a) certainty that residents will be able to move out of the AIH within a reasonable period of time when proximity to industry and personal circumstances necessitate relocation;
- b) funding of the program should be established in an amount sufficient to sustain itself to the greatest extent possible, recognizing however that it is unlikely that there will be enough money at start-up to fund every potential purchase; therefore, additional contributions will likely be required in the future;
- c) a desire not to unnecessarily stimulate the departure of residents and thereby overburden the purchase program;
- d) the purchase program should meet the needs of the residents who wish to relocate but is not designed to assemble land for industry nor is it intended to interfere with the buying and selling of property in the marketplace;
- e) ensure the mechanism for valuing properties is predictable and based on accepted market value principles, recognizing that some properties in this area have been adversely affected by zoning and the presence of industrial development while others have been favourably affected;
- f) regarding valuation, a balance must be struck so as to not cause significant losses or windfalls to either the residents or the purchase program;
- g) to deal with the situation where there are more residents who wish to be relocated than funds available in the purchase program at any given time, a system must be devised to prioritize purchases.

3. The prerequisites for making the purchase program mechanism work include:

- a) all the players must participate, and in particular
  - i) heavy industries within the AIH;
  - ii) the affected municipalities; and
  - iii) the Province.



- b) there must be enough seed money to ensure that those who want to move immediately or, within two years, can do so; and
- c) there must be a funding mechanism to ensure that future funds are available when needed.

## **V. Suggested Mechanism**

1. Eligibility: any resident in the AIH would be eligible to have access to the purchase program.
2. What would the purchase program look like?
  - a) the purchase program would be administered by an independent agency established solely for that purpose. In addition to any other employees it may require, the purchase program would include a 3-person arbitration panel consisting of a lawyer, an accredited appraiser, and a layperson. The members of the arbitration panel would be chosen in consultation with the residents.
3. How would it work?

*(Please note: It is recognized by the Contributors that the question of how the program works is complicated and will require thoughtful reflection and detailing. This section is an attempt to outline the key principles.)*

- a) a resident wishing to relocate out of the AIH would make an application to the program identifying the location of his or her property and any unusual personal or family reasons for needing to move from the area;
- b) it is recognized that at any given time there may be multiple applications pending before the program. In that event:
  - i. the purchase program would assign the applicant a priority number based on a weighted proximity formula which takes into account number and size of existing or approved industrial sites and their distance from the resident (note: considerations for measuring mileage include centre of facility, edge of facility, resident fence line etc.);
  - ii the purchase priority established by the weighted proximity formula may be altered if there are any unusual or family reasons cited in support of an application for relocation. In such a case, the applicants and the program administrator shall attempt to agree on an altered purchase priority, failing which the issue will be referred to a member of the arbitration panel.
- c) as new applications are received and an applicant is waiting for his property to be purchased, that applicant's priority assignment may change, however, after a certain period of time (suggested 1-2 years after receipt of application) that applicant will have first priority for purchase by virtue only of time spent waiting

in the program; ie, no resident will have to wait longer than 1-2 years to have his or her property purchased.

- d) as part of an application, the resident will include an offer to sell his or her land to the purchase program in a specified amount, which offer the purchase program may or may not accept;
- e) the program may at this stage request that the resident list the property for sale at the offered price for a short but reasonable period of time (suggested 90 days) in order to test whether there is an existing market for the purchase of that property (note: it is anticipated that this provision would only apply in respect of property furthest away from industrial development);
- f) if the resident is unable to sell his or her property and makes an offer which the purchase program does not accept, the purchase program would have the property appraised using an appraiser selected from a roster of appraisers established by the purchase program in consultation with residents. If the resident so chooses, he can ask that a second appraisal be conducted, using an appraiser selected by the resident from the roster of appraisers. The purchase program would be responsible for all appraisal costs;
- g) once the property has been appraised, the resident and the purchase program will attempt in good faith to negotiate the sale of the property from the resident to the purchase program; and
- h) if the purchase program and the resident are unable to negotiate the compensation payable to the landowner, the matter would be referred to the arbitration panel.

#### 4. How would land be valued?

The focus would be on assessing the market value of each property recognizing that small parcels are negatively affected by the presence of industrial development and the impact of industrial zoning while some larger parcels may be positively affected by these impacts. Further, as always, much depends on location and whether or not industry is interested in purchasing a particular parcel for development at any point in time. It was agreed that valuation should also acknowledge that certain opportunities typically available to residents in an unrestricted market place have been removed yet it is also recognized that this is not an expropriation program where the expropriating authority is demanding the owner give up his or her land.

In this regard the following is proposed:

- a) with respect to smaller parcels (country residential) the negative effects of existing or proposed heavy industry on adjoining rural residential and agricultural property (improved and vacant) are to be ignored;

- b) with respect to larger parcels (farm properties) the negative effects of existing or proposed heavy industry on adjoining property are to be ignored, recognizing however that further work may have to be done to address the fear that purchases of large parcels could place significant stress on the purchase program;
- c) further to the above, future land use as designated in statutory plans, such as the Strathcona County Municipal Development Plan or Area Structure Plans, are to be recognized in valuing individual properties. However, consistent with standard appraisal practice, where the market value of a property is based on a future land use (eg. heavy industrial), the time for development of the land for that future land use will be considered, having regard to such factors as proximity to existing industrial development, services, etc.;
- d) any unique valuation circumstances should be recognized on a case-by-case basis (eg, a property with two building sites, one of which was developed at the expense of a non-titled owner); and
- e) the process would be flexible enough to provide for transactions that suit the particular resident's needs.

5. Relocation/inconvenience expenses: a formula would be worked out for fairly compensating residents for relocation costs and damages for inconvenience in addition to receiving money for the sale of their property. Options in this regard include providing a fixed sum, a percentage of the purchase price, a mechanism for addressing special needs, or a combination of all of these. Special thought on how to address relocation costs for larger farm parcels will likely be necessary. For example, where the market value of the land is determined by reference to a future use (eg, heavy industrial), with the result that the price paid exceeds the total of the land's agricultural value plus the cost of relocating existing improvements, no relocation/inconvenience costs would be payable.



## FRASER MILNER CASGRAIN LLP

Richard A. Neufeld  
(403) 268-7023  
richard.neufeld@fmc-law.com

May 5, 2005

*VIA EMAIL*

Lawson Lundell  
Barristers and Solicitors  
Suite 3700  
205 - 5th Avenue S.W.  
Bow Valley Square 2  
Calgary, AB T2P 2V7

Attention: Gavin Fitch

Dear Sir:

**Subject: BA Energy Inc. Proposed Heartland Upgrader  
EUB Application No. 1347899 / EPEA Application No. 001-203303  
Astotin Creek Residents' Coalition – Project Concerns  
File No. 516493-1**

Further to BA Energy Inc.'s ("BA") meeting with you, Mr. Murray and Mr. Navratil of April 29, 2005, we are writing to confirm how BA proposes to address the Astotin group's project concerns.

### Emissions

- In order to address process upset conditions so as to ensure steam availability for purging and to assist combustion during flaring, BA will design its CO furnace for firing on fuel gas to generate steam and heat for both start-up purposes as well as normal operation. BA will provide for further steam and heat availability through a separate furnace that is independent of the CO furnace and will direct the combustion gases to the common CO furnace stack. BA will enter into necessary gas transportation contracts to ensure that sufficient fuel gas supply is available to generate the steam necessary for these operations.
- BA will design and construct its DRU to operate with an indirect heat source so that this unit will not need its own furnace.

- BA will design and operate its process to avoid atmospheric storage requirements for pentanes used as a decontamination agent in the ADC<sup>TM</sup> unit. Pentanes-rich decontamination agent will be fractionated from naphtha generated by the USP<sup>TM</sup>. Storage of decontamination agent will be confined to a pressurized surge drum within the unit. To provide for initial startup, decontamination agent will be trucked or railed to the plant site.
- To ensure smokeless flaring, any sustained flaring, such as that associated with the start-up, will be undertaken using a flare equipped with steam to ensure complete combustion. In the event of flaring required for relieving the reactor system, to the extent that this flaring occurs at all, BA will undertake to ensure that it is brief.
- BA is committed to using a process that will not involve a process for solid-forming liquid asphalt. BA will design its ADC<sup>TM</sup> unit such that solid asphaltene formation will take place as part of the process and will not require special rotoforming or pelletization equipment that could be the source of emissions. BA is committed to an asphaltene solids handling and loading system that will control fine particulate emissions. This will also be the case for dust control concerns related to the loading and transportation of spent limestone/coke. The loading of these materials will occur through direct connection from a silo to a truck/rail car loading facility where BA commits to using a dust collection system for any areas that are prone to dusting.
- To address concerns regarding vapour containment associated with sulphur shipping, BA will employ the best practices used at other Alberta sulphur production facilities, which will include degassing equipment for product sulphur.
- To address concerns regarding disposal of disulphide oil and associated odours, BA will design its process so as to put residual disulphide oil produced from Merox treating into its crude product, avoiding the need to collect and dispose of disulphide oil as a separate product.
- To address other fugitive emissions concerns, BA will employ engineering standards for fugitive emission containment that include the following:
  - Double mechanical seals with a barrier fluid will be used on pumps that are in volatile liquid hydrocarbon or H<sub>2</sub>S-containing fluid (such as sour water).
  - Equipment drains will discharge into a closed drain system.
  - Sample points will discharge into a closed drain system.
- BA is also committed to a leak detection and repair (LDAR program) to ensure that any fugitive emission sources resulting from its operation are promptly identified and addressed. This LDAR program will comply with applicable CCME (1993) requirements. BA will use the results of the program to help focus and refine its maintenance practices and inspection frequencies. Regarding the effectiveness of the LDAR program, BA notes that most of the atmospheric emissions from fugitive equipment leaks tend to be from components in gas or vapour service rather than from those in liquid services as is reflected

in the published emission factors. Components in odourized or H<sub>2</sub>S service tend to have much lower average fugitive emissions than those in non-odourized or non-toxic service. As well, different types of components have different leak potentials and repair lives. Components that are chronic or frequent leakers will be given the most attention and include compressor seals, pressure relief valves, pressure-vacuum safety valves and thief hatches on blanketed storage tanks and control valves.

### **Water Issues**

- Regarding water supply, BA will withdraw its request for approval for use of the Beverly channel as a supplement source of water supply. BA will make commercial arrangements for the supply of water through pipeline facilities.
- BA will use a closed recovery system as a hydrocarbon drainage system for process equipment. Hydrocarbon products will drain into a unit system and be recovered.
- For surface drainage, BA commits to the use of an API separator to remove hydrocarbons from drainage from paved process areas discharged into the process area drainage pond. BA will ensure that water transferred from the process area drainage pond to the storm pond, is free of oil prior to the transfer.

### **Rail and Truck Traffic Issues**

- BA is committed to receiving its feedstock and delivering its product through pipelines to be planned and constructed by third parties, such as Terasen. BA will not be trucking its required volume of feedstocks and products. BA is committed to only using trucking for limited volumes of start-up inventories, such as condensate, or for small volumes of specialty feeds that are not pipeline connected.
- With respect to construction, BA undertakes to work with its contractors to institute busing or carpooling programs to reduce traffic volumes and congestion of traffic at the intersection of Highway 15 and Range Road 214. BA will also work with its contractors to ensure that on-site workers travelling by vehicle to the site stay on the main route from Highway 15 and do not use side roads passing by area residents.
- BA is committed to working with the County and local RCMP to control speed and enforce adherence to the stop sign on Range Road 562.
- BA undertakes to work with CP to address resident concerns over the use of whistles at night when trains cross Range Road 211. BA will also work with CP to address residents concerns regarding the cutting of grass at the Range Road 211 crossing. Finally, BA will work with CP to determine if it is possible to avoid assembling two-mile trains that cross Range Roads 213 and 214. As part of this discussion, BA will investigate the replacement of the use of Range Road 213 with 212 to allow two-mile train assembly without road obstruction.

**Noise**

- All major noise sources are located outside of buildings, such that open doorways will not have a significant affect on cumulative noise and BA's ability to comply with Guide 56. Nevertheless, to the extent reasonably possible, BA will commit to closure of building doors with noise sources during operation.

**Fire Hazard in the Astotin Creek Natural Area**

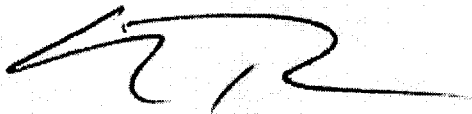
- To address the existing fire potential in the Astotin Natural Area, BA will, with the consent of Strathcona County, clear and maintain the Rge Rd 212 right-of-way in a manner that will allow controlled access to the right-of-way, which would include County emergency services in the event of fire.
- BA will work with Astotin Creek residents in consultation with the County and the Province of Alberta to determine what further measures can be taken to reduce the existing fire hazard in the Astotin Creek Natural area as well as to limit access to and inappropriate activities within that area.

BA hopes that the measures that it has discussed in this letter address the project-specific concerns raised by the Astotin group and, together with progress that can be made in developing common principles for bringing forward into the land bank implementation process, these measures can provide the basis for the Astotin Creek Resident's Coalition to withdraw their opposition to BA's application. At minimum we believe that these commitments should enable the Astotin group to amend its written submissions, to acknowledge that BA has addressed its project-related concerns, and focus on the outstanding land bank issue.

BA looks forward to meeting with you at our scheduled mediation session with the NESCR next week. If you have any questions or comments on matters addressed in this letter, please contact us at your earliest opportunity.

Yours truly,

**FRASER MILNER CASGRAIN LLP**



for: Richard A. Neufeld  
:sd

## Gavin Fitch

---

**From:** Roth, Bernard [bernard.roth@fmc-law.com]  
**Sent:** Friday, May 20, 2005 2:51 PM  
**To:** Gavin Fitch  
**Cc:** 'ahydman@telus.net'; Neufeld, Richard  
**Subject:** Project Issues



Responses to  
Advantage Insight...

Gavin,

Further to our conference call with you and Mr. Murray of yesterday, we are attaching a copy of Mr. Murray's May 13, 2005 letter with BA's confirmed responses underlined.

<<Responses to Advantage Insight letter May 13 2005.pdf>>

Bernard J. Roth  
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Advantage Insight Group Inc.

May 13, 2005

**Lawson Lundell LLP**  
Suite 3700  
205 - 5th Avenue S.W.  
Bow Valley Square 2  
Calgary, Alberta  
T2P 2V7

Attention Mr. Gavin Fitch

**Re: BA Energy Process Review – Response to Clarifications**

On March 28, 2005, we provided comments resulting from our review of the BA Energy EUB Application. On April 29, we met with the BA Energy management to discuss our concerns, and on May 5 they provided some additional written comments. As you have requested, he have reviewed the comments provided in the May 5 letter.

For ease of comparison, we have maintained the format of our March 28 letter, and we have attempted to reconcile the BA Energy response with the issues we presented at that time. The plain text is from our March 28 letter and the bold italic text is our current response.

**Plant Integration**

The plant appears to be very interdependent with steam generation being tightly integrated with the process through the CO Boiler, the only identified source of onsite heating. If there is a serious process upset that causes a loss of the CO Boiler, then there will be no steam available for purging systems and no steam for combustion assistance on the flare. This increases the risk of incomplete combustion and excessive emissions.

***During the meeting on April 29 and in their May 5 letter, BA Energy advised that they have added a second independent boiler to their project. This satisfies this concern provided that this additional boiler has been sized to handle steam loads that will be experienced during an upset.***

[www.cti-advantage.com](http://www.cti-advantage.com)

Suite 210, Alastair Ross Technology Centre. 3553 – 31 Street N.W. Calgary, AB T2L 2K7 Canada  
Phone: 403-571-1705 - Fax: 403-571-1709



We confirm these issues have been resolved.

### **Feedstock**

Bitumen upgraders have had two forms, the integrated production facilities/upgraders like Syncrude, Suncor, Opti/Nexen, and CNRL, or the more remote upgraders like Scotford and Husky. The integrated upgraders are self contained facilities producing their own feedstocks and directly upgrading that feedstock to a synthetic crude product, while the other upgraders must receive a diluted stream that is capable of flowing through a pipeline to the plant. Alternately these diluted streams are marketed directly to a variety of Canadian and US markets.

The most common methods for diluting the bitumen are dilution with gas plant condensate to produce "diluted bitumen" (dilbit) or dilution with synthetic crude that is produced in one of the existing bitumen upgraders to produce a synthetic crude/bitumen blend (synbit). The diluted bitumen product has been the product of choice from all areas of the province except the Fort McMurray area where the lack of natural gas processing facilities has meant that no condensate is available. The preferred alternative for that area has been to deliver synbit blends because synthetic crude is readily available for use as a diluent.

The exception to this has been Scotford Upgrader/Muskeg River operation. They have built a dedicated diluent line that allows them to recycle a proprietary diluent from their Fort Saskatchewan upgrading facility to their mine site north of Fort McMurray.

For an upgrader, processing dilbit requires a different processing configuration than processing synbit so once feedstock is set, this limits the feedstock options that the facility has.

The BA Energy application identifies the feedstock as diluted bitumen arriving at the Terasen terminal adjacent to the BA Energy site.

Currently diluted bitumen is delivered to Edmonton on the Cold Lake pipeline, on the Rainbow Pipeline, and through the Corridor pipeline. Cold Lake pipeline has capacity to move diluted bitumen to the BA Energy site, in some volumes, and the location of that pipeline would make interconnection to the Teresen terminal relatively easy. The benefit to Teresen of having a new terminal for this material is less clear however, and if that were the supply it would seem as if the Teresen terminal would be little more than a contracting out of the project's tank farm.

The Corridor pipeline is owned by Teresen and passes near or through the proposed terminal site. It is the only line bringing a diluted bitumen stream from the Fort McMurray area but that diluted bitumen contains a proprietary diluent used for the Albion/Scotford operation. Scotford diluent is normally recycled back to the Albion mine for re-use. It must be kept separate from other diluents that are used in Alberta.

The Rainbow pipeline brings some bitumen into the Edmonton area but it enters Edmonton on the opposite side of the North Saskatchewan River from the proposed Tarasen Terminal. It seems unlikely that these volumes will have any access to the plant unless they are trucked out of Edmonton.

There is nothing in the application to suggest that the more common synbit blend that is currently being delivered out of Fort McMurray is being considered as feedstock for the plant. If Synbit blends were considered, they would require a significant process reconfiguration.

Currently other pipeline connections to bring bitumen into Edmonton are being considered but to date there have been no firm commitments to build those lines. Also, it is unclear whether these other pipelines will deliver diluted bitumen or synthetic crude/bitumen blends.

The concern to residents is that if the pipeline situation does not resolve itself before the first phase of the BA Energy project is on line, then there is a possibility that diluted bitumen would be trucked to the site. This would have the effect of increasing truck traffic and increased site emissions from the unloading facility. It would also change the tankage requirements for the project.

***Our primary concern was the possibility of BA Energy trucking crude to and/or products from the plant site. The commitment made during our meeting, and documented on Page 3, Truck and Rail Traffic point 1, eliminates this concern except where specific concerns are identified in other parts of this letter.***

We confirm these issues have been resolved.

### **Diluent Recovery Unit**

The Diluent Recovery unit that is proposed is the established technology for separating diluent from bitumen. It is unusual for it to be constructed without any furnace for heat addition however this furnace does not seem to be a part of the design basis or the emissions profile from the facility.



If at a later date there is a switch to synbit as a feedstock, there will be a need for more equipment and probably one or more furnaces in the unit.

***The concerns we expressed have been dealt with both through the clarification of their feedstock strategy and through the advice that the diluent recovery unit has been designed without any furnace.***

We confirm these issues have been resolved.

### **ADC Unit**

The ADC unit is a variation of a solvent deasphalting process using a pentane solvent. There is no information on solvent being stored on site or of it being brought to the site and unloaded. The unit does not contain any furnaces for assisting in solvent recovery. This pentane solvent has a low boiling point and it will cause emissions unless vapor containment is provided.

Solvent deasphalting technologies are well established and understood. While there is no information available on BA Energy's specific application of the technology, there is no particular reason to question the technical capability of the process.

There is no information on the method for asphaltene recovery. It is indicated that the asphaltene is stored as a solid but the process for cooling the stream to create that solid is not identified. The concern is that there will probably be vapor emissions during that solidification process but there is no information on any vapor recovery or emissions management strategy. Also, depending on the process of solidification, dust emissions may be a concern.

***It was indicated in the meeting, and confirmed in BA Energy's letter, that solvent will not be stored on-site except for nominal volumes in the pressurized surge drum. In the meeting however, it was indicated that there would be a pentanes storage tank in the terminal but this is not included in the tankage assumptions contained in Table A-7 of the Additional Information Report – Air, Human Health and Odours dated October 2004. Further clarification is needed.***

Pentanes are not to be stored in the terminal. Rather condensate will be stored in the tank farm and pentanes are then concentrated within the unit. This is consistent with the EIA basis.

***BA indicated that their method of asphaltene recovery would not result in any emissions. We have no comment on this because we do not have***

***access to process details. It should be noted however, that solvent carryover with the asphaltenes can be as much of a concern as dust emissions.***

While solvent carryover to the asphaltene product is not anticipated to be a problem, the asphaltene product recovery system will operate with negative pressure with recovery or incineration of the vent gas.

## **USP Unit**

The partial combustion of heavy hydrocarbons/solids is a proven method of heat generation for heavy oil cracking processes. What is unknown about this process is the configuration of the equipment that would allow the oil feed, at very low pressures, to be heated to a high enough temperature to crack the oil with the associated combustion process providing process heat.

This process is technically feasible but there are a number of mechanical and process considerations that could influence the reliability and safety of the design. First, any accidental inclusion of air in the cracking side of the process would create the potential for fire or even explosions. Secondly, the accidental transfer of hydrocarbon gases to the combustion side of the process could lead to a large partially combusted stream going through the CO boiler and being released as CO or unburned hydrocarbons out the main stack. With the information provided, the probability of these types of incidents is unknown but the potential emissions consequences could be significant.

The addition of the limestone to the combustion process is similar to certain coal combustion strategies and the chemistry of those processes is well documented. There is too little information provided in the application to assess the effectiveness of sulfur recovery in this part of the BA Energy process. The use of a CO Boiler after the partial combustion operation is also a standard configuration. It appears that there is supplemental natural gas firing on the CO boiler allowing the boiler to operate when the USP is shutdown.

Baghouses have not been as common as precipitators for dust collection on boiler exhaust streams but the technology is suitable for this application if it is designed properly. Provision of extra baghouse capacity, as identified by BA Energy, is critical though to allow for dust recovery and bag replacement.

The design of the CO Boiler is not detailed but it is not uncommon to have some mechanism to bypass the CO Boiler when there is a process upset. If the boiler is bypassed, emissions of particulate and CO will increase dramatically.



Emissions from this type of upset do not appear to have been included in the application.

***During our discussion with BA Energy, they acknowledged that there are scenarios that would lead to excessive emissions but, they indicated that there are control interlocks to prevent this from being a probable situation. In the absence of any further information, or comment from BA Energy, our concerns still remain.***

As discussed with Mr. Murray, BA Energy acknowledges that the type of upset where a reversal results in unburned hydrocarbons from the CO-Boiler is conceivable although we believe, less likely than for a conventional fluidized bed system such as an FCC. Even if occurrences were comparable to an FCC, while they do occur, such events are neither frequent nor catastrophic when they do occur. Many thousands of residents live within a kilometer of these facilities in Alberta.

### **Gas Treating**

Sulfur is present in the gas stream leaving the USP and it is removed in an amine treating unit. This is standard gas treating technology and it is technically sound. The gas is presumably dried before being delivered by pipeline to the CO boiler or to offsite markets. The routing of vents from the gas drying process has not been identified.

Propane is separated from the gas and appears to be treated in a Merox unit before being shipped by truck to an offsite market. Two Merox units are identified but there is no mention of the feedstock for the second unit. It could be for a separate butane stream or it could be for stabilization of the mercaptan sulfur in the light naphtha.

The technologies used in these processes are well established. Merox treatment of propane usually includes removal of the sulfur compounds as a disulfide oil. Disulfide oil handling and storage is not mentioned anywhere in the application. Also, there will be an offgas line from the disulfide separator, and the routing of this line, as well as assumptions about any emissions associated with it, are not addressed.

Merox reagent is not identified in the list of onsite chemicals.

***BA Energy has clarified that they will have a Merox type treating unit for LPG, and they will have another unit for treating the mercaptan sulfur in the light naphtha. They further indicated that any extracted disulfide oil will be***



***re-injected into the crude oil prior to shipment. Assuming there is a market for crude containing disulfide oil, our concerns about the disulfide oil are eliminated.***

We confirm these issues have been resolved.

***The other concerns still remain however. The routing of the vents from the gas drier and the disulfide separator has not been addressed and Merox reagent (note that Merox processing is shown in the plot plan information although BA Energy indicated in our meeting that they have not made a final decision on the technology to be used) has not been included in their list of chemicals.***

The general design philosophy is to avoid open vents where volatile hydrocarbons or odour-causing compounds are present. Any such vents associated with the gas sweetening process will go to a recovery or thermal destruction system.

### **Sulfur Recovery**

The sulfur recovery configuration has not been committed with some consideration being given to a Claus unit, but with a request for flexibility to allow utilization of the USP for sulfur recovery, or for some combination of the two strategies.

The Claus technology is well established and if there is a sufficient number of stages and/or a tail gas unit, the process will meet Alberta emission requirements.

The disposal of acid gas or tail gas in the USP is an unknown process. Presumably the tail gas would be re-injected into the combustion zone where the sulfur would be absorbed on the limestone but it would seem that the mixing of the limestone with the acid gas would be the most critical component of this process.

***This point has not been addressed in BA Energy's response and the concerns remain.***

Alberta Environment (AENV) has indicated that there is insufficient evidence to support deferral of the Clause Sulphur plant through the use of lime addition in the process. AENV and EUB staff have considerable knowledge in the area of sulphur recovery technology. BA Energy suggests that the matter of SRU



deferral be left to a review by AENV/EUB technical staff of test results to support deferral of the SRU.

In any event, BA Energy has committed to meet the same sulphur emission limit as with the SRU operating at EUB guideline recovery criteria.

### **Product Delivery Systems**

The current plan appears to be for a pipeline to move product from the Terasen terminal to the Edmonton hubs of both Enbridge and TransMountain Pipelines. While this is certainly feasible, it is an extremely congested pipeline route and it is unclear what regulatory hurdles would be faced in building this line. Any other delivery routing would appear to eliminate some of the markets that are identified in the application.

If the product line is not built, then products would have to be moved by truck to an Edmonton area terminal. This would significantly increase traffic on local roads as well as loading emissions at the site.

The movement of LPG from the site by truck is a change of scope since the original application. In the original application no LPG storage was indicated, now storage will be required. Also, a truck loading facility will be required with additional emissions and traffic.

Disulfide oil would appear to be a product from the Merox units but its handling and shipping has not been discussed. Disulfide oil has a very offensive odor and the system for odour containment is of concern.

Sulfur is to be shipped from the site as a liquid. There is no indication of any vapor containment for either the liquid storage or the loading system.

Spent limestone/coke as well as asphaltenes will be moved from the site. While dust control is considered for storage, there is no indication of dust control strategies from either the loading or transportation operations.

***BA Energy has indicated in their letter that they will not truck products from the plant, and this addresses our concerns regarding pipeline connections.***

We confirm these issues have been resolved.





***In our meeting with BA Energy they indicated that LPG would not be trucked from the site although that was not included in their clarifying letter. The concerns with LPG storage remain.***

There will be no LPG product. C<sub>3</sub> – gas will be delivered to a third-party as a gas. C<sub>4</sub>S will be incorporated into the synthetic crude product.

***Since the current plan is that disulfide oil will be re-injected into the product, there should be no particular concerns regarding the handling of this material.***

We confirm these issues have been resolved.

***In their letter, BA Energy indicated that they will degas the sulfur storage but they have remained silent on emissions containment at the loading facility.***

Vent gas from liquid sulphur loading will be to a closed system.

***They have indicated that solids loading facilities will include dust control facilities.***

We confirm these issues have been resolved.

### **Waste Water Processing**

The waste water system seems to consist of an API separator, and a surface drainage system that discharges to a water pond. There is no mention of any type of closed hydrocarbon drain system.

This system as described in the application is not the norm for modern processing facilities of this complexity.

The absence of any closed recovery system for drainage of equipment will result in larger quantities of hydrocarbons being released into the more open drain system feeding the API separator. This will result in higher emissions from sewer vents and from the separator than would be expected from other design configurations.

Also, the routing of water runoff from maintenance activities and from process areas to an open pond will inevitably lead to this pond often having some oil on it. While skimming facilities have been provided for the pond, no emissions have been assumed.



***BA Energy has dealt with all of the waste water issues in their clarification letter. From this new information it appears that their system will be consistent with current design practice.***

We confirm these issues have been resolved.

## **Flare**

The flare system consists of a low and a normal pressure flare. While the technical logic of the two flare configuration is clear, it is less clear why the use of the low pressure flare would be considered to be so unlikely that there is no provision for smokeless flaring. This flare will presumably release whenever there is a compressor failure on the discharge of the USP unit because in that situation there is no other routing for the USP vapours. Most cracking unit gas flares are provided with facilities for smokeless flaring.

***Our concerns with the flare design remain. During the meeting with BA Energy it was unclear just when the low pressure flare would be used, but it appeared that there would be a need to flare during the plant start-up as well as during USP or compressor upsets. It was our understanding that BA Energy would provide additional details on the design and operation of low pressure flare system (all equipment that was connected to it and release scenarios) but this was not included in their written response.***

***In the clarification letter BA Energy reiterates that they do not intend to have steam on the low pressure flare.***

Flare systems that will be used for sustained flaring of gas will be designed to have steam-assist for smokeless operation per Alberta Environment criteria.

## **Fugitive Emissions**

The fugitive emissions program for the plant calls for a Leak Detection and Repair (LDAR) program and there are a number of very general statements on good design practice.

To minimize fugitive emissions from a facility of this nature, the process must first be designed and constructed to minimize emissions, then the LDAR program can be used to minimize emissions from the equipment that has been installed.

Specific fugitive emissions strategies could include:



- Selection of pump seals (note the only reference to seal selection is where it refers to “high H<sub>2</sub>S concentration gas streams”). Emissions can be reduced by the use of double mechanical seals on pumps operating in light hydrocarbon service
- Use of closed sampling systems
- Routing of process vents, and compressor vents to a closed vapor recovery system
- Minimization of oil in sewer systems and in the open drainage system
- Collection of vapors from process tanks. This has been addressed by using floating roof tanks for the terminal emissions profile but has not been addressed for the unidentified smaller waste oil, slop, solvent, and potentially oily water tanks.

It is not clear that flare emissions have been included in the fugitive emissions considerations.

***In their clarification letter BA Energy has indicated that they will have double seals with a barrier fluid on high vapour pressure pumps. This addresses the emissions from the pumps that are handling high vapour pressure liquids.***

We confirm these issues have been resolved.

***During our meeting with BA Energy they indicated that they would be using closed sample connections but in their clarification letter they indicate that their sample points will drain to a closed drain system. We do not consider these to be equivalent statements and we assume they will still have open sample connections with higher than necessary emissions levels.***

Sample points for gases, volatile liquids and odour-causing streams will be of the closed type.

***With respect to other fugitive emissions – tank vents on waste tanks, routing of process vents, etc. – BA Energy has not made any commitments.***

The design philosophy will be to avoid open vents from volatile sources. Waste tank vents will go to a closed recovery or thermal destruction system. No further comments.



## Noise

The noise profile was done assuming that all buildings will have doors closed during operation. This is not consistent with normal operation of shops and other buildings with large entry doors.

There does not appear to be any consideration of normal background noise from the flare.

There does not appear to be any particular commitment to use low noise equipment on the site. It would seem that the strategy is to use the Natural area lands around the site as a noise buffer and there is no real consideration of fence line noise levels.

***In their clarification letter BA Energy indicates that they expect their "major noise sources" will be located outside (airfin exchangers were indicated to be the major source of noise during our meeting). In the Environmental Impact Assessment section 5.6.6, it is indicated that the air fin exchangers will be designed for a noise level of 85 dBA at 1m. It is further indicated that the housed compressors will have similar noise levels.***

***If the compressor noise levels are limited to 85 dBA, we are satisfied that BA Energy's noise management approach is reasonable.***

We confirm these issues have been resolved.

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### APPENDIX 3 APPROVAL CONDITIONS

This section is provided for the convenience of readers. In the event of any difference between the conditions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail. The following conditions are from Section 7 of the decision report.

- 1) BA Energy's application for the use of lime addition technology as the sole means of sulphur recovery for the first phase of the Heartland upgrader is denied.
- 2) Primary sulphur recovery for the first phase of the Heartland upgrader will be based on Claus sulphur recovery technology, as described by BA Energy in Application No. 1347899.
- 3) Sulphur recovery for the Heartland upgrader will comply with the sulphur recovery requirements outlined in EUB *Interim Directive (ID) 2001-3: Sulphur Recovery Guidelines for the Province of Alberta* and any subsequent revisions.
- 4) Installation of lime addition sulphur technology as a demonstration project for the first phase of the Heartland upgrader is approved.
- 5) Three months prior to testing of lime addition technology, BA Energy must submit to the Board and to AENV, for their approval, any information that the Board requires and any information that AENV requires. The information that the Board requires must include, as a minimum, an operating plan that details how BA Energy will test its lime addition technology, how it will continue to meet its air emissions limits during the testing period, and how it intends to report its operating results, its air emission performance, and any other operating criteria as requested by AENV or the Board.
- 6) If BA Energy chooses to install lime addition technology for the first phase of its Heartland upgrader project and it can demonstrate to the satisfaction of the Board and AENV its claims as outlined in Application No. 1347899, then the Board, on application by BA Energy, would be prepared to reconsider its decision on sulphur recovery for additional phases of development.

**APPENDIX 4 BOARD LETTER OF JUNE 30, 2005, RE JIM RADKE AND KATHY RADKE'S REQUEST FOR AN ORAL PUBLIC HEARING INTO APPLICATION NO. 1347899**

Writer's Direct Line: (403) 297-7430  
E-Mail: [tamara.bews@gov.ab.ca](mailto:tamara.bews@gov.ab.ca)  
Fax: (403) 297-7031

Via Email

June 30, 2005

Fraser Milner Casgrain LLP  
30<sup>th</sup> Floor, Fifth Avenue Place,  
237-4<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 4X7

Ackroyd, Piasta, Roth & Day LLP  
Barristers and Solicitors  
1500, 10665 Jasper Avenue  
Edmonton, Alberta  
T5J 3S9

**Attention: Mr. Richard Neufeld**

**Attention: Mr. Richard Secord**

Dear Sirs:

**Re: BA Energy Inc. (BA Energy)**  
**Application No. 1347899**

On the afternoon of June 1, 2005, the Board received correspondence from Jim and Kathy Radke which states that they are directly affected by and object to the BA Energy application. This correspondence was received after the Board had advised the parties on that the oral portion of the hearing scheduled for June 7, 2005 had been cancelled.

Subsequently, the Board requested and received the following submissions in response to the Radke's June 1, 2005 letter of objection:

- Correspondence dated June 3, 2005, June 16, 2005, and June 23, 2005 from Fraser Milner Casgrain LLP on behalf of BA Energy;
- Correspondence dated June 16, 2005 from Ackroyd, Piasta, Roth & Day LLP, which attaches a letter dated June 15, 2005 from its clients Jim and Kathy Radke; and
- Correspondence dated June 27, 2005 from Jim and Kathy Radke.



**June 30, 2005 Letter**  
**Page 2**

After carefully considering the submissions, the Board notes the following

- Jim and Kathy Radke requests that the Board convene a public hearing so that the Board can listen to the issues that they have with BA Energy.
- BA Energy submits that it would be unfair, and it is unnecessary, for the Board to proceed with a hearing at this time.

The Board notes that Jim and Kathy Radke argue that they were not given the opportunity for a fair hearing as they did not receive direct notice of the proposed BA Energy application. The Radke's request is based on their view of the application of natural justice as it applied to their situation. The Board also notes that BA Energy argued that Radke's request is unfair. The Board considers that the test for matters of natural justice is whether the alleged lack of notice is so unfair that the cancellation of the hearing in question should be set aside.

In their submissions, Jim and Kathy Radke indicate that:

- They first became aware of the BA Application when they saw a notice in the Fort Record.
- They were under the impression that they could not participate in the EUB hearing that they were not entitled to express their opinions because they were tenant farmers.
- They received no notifications or project related correspondence delivered to their residence.
- They learned in approximately March/April 2005 that two neighbours' groups were going to participate in the EUB hearing scheduled for June 7, 2005. They appreciated the issues that these groups were raising and they thought that their concerns would be addressed in the EUB Hearing through these groups.
- They learned recently that individuals who are directly affected do have the right to attend at the start of EUB hearings to register an appearance and to express their concerns.

The Board notes that it published the following public notices in the appropriate local newspapers (Edmonton Journal, the Edmonton Sun, the Fort Saskatchewan Record, the Strathcona County and the Sherwood Park News):

- June 8, 2004: Notice of Application
- October 20, 2004: Notice of Prehearing
- February 1, 2005: Notice of Hearing
- April 22, 2005: Notice of Rescheduling of Hearing

**June 30, 2005 Letter**  
**Page 3**

Further, the Board established a link to information on the BA Energy Application on its website that contained all of the Application information, Notices, prehearing information and all submissions made by interested parties. This web site was kept updated.

In the Board's Notice of Hearing of February 1, 2005, the Board stated the following:

If you have an interest in this matter, you are required to make a submission with respect to this application even if you have previously filed a submission with the Board or with BA Energy on this application.

If there are no submissions received, this hearing may be cancelled and the EUB will continue to process the application without further notice or without a hearing.

Based on the above, the Board concludes that Jim and Kathy Radke were aware of the BA Application and proceedings and that they had the opportunity to participate. Further, the Board considers that there was ample public notice and that the Board went beyond its normal practices by establishing a dedicated website that contained all relevant information to make it easy for any member of the public to be informed of the Application and its related progress and submissions by all parties. Within all of its notices, the Board notes that contact information was provided which would have allowed Jim and Kathy Radke the opportunity to ascertain, clarify, and investigate their rights and obligations to participate in the proceedings.

The Board believes that Jim and Kathy Radke had an obligation to take reasonable steps to inform themselves about their rights and obligations to participate in the proceeding but the Board considers that Jim and Kathy Radke did not do so. The Board further believes that there are fairness considerations to BA Energy who is entitled to know the case they have to meet and to the other intervenors who have engaged the Board's process, retained experts, filed submissions and ultimately reached an agreement on issues that led to withdrawing of their objections.

Based on the foregoing, the Board denies the Radke's request.

Yours truly,

*<Original signed by>*

Tamara Bews  
Board Counsel



**APPENDIX 5 BOARD LETTERS OF JUNE 22 AND JULY 12, 2005, RE TIA  
BARTLETT'S REQUEST FOR AN ORAL PUBLIC HEARING INTO  
APPLICATION NO. 1347899**

Via Email

June 22, 2005

Mr. Richard Secord  
Ackroyd, Piasta, Roth & Day LLP  
Barristers and Solicitors  
1500, 10665 Jasper Avenue  
Edmonton, Alberta  
T5J 3S9

Dear Mr. Secord:

**BA ENERGY INC.  
APPLICATION NO. 1347899**

The Alberta Energy and Utilities Board (Board) acknowledges receipt of your correspondence dated June 15, 2005 which attaches a letter from your client, Tia Bartlett, regarding the above-referenced application.

According to the EUB's records on this application, your client was a member of the North East Strathcona Residents (NESCR) and was represented by its legal counsel, Ms. Jennifer Klimek, until June 13, 2005. On May 26, 2005, the EUB received the following correspondence:

- Email and attached correspondence dated May 26, 2005 from counsel for Astotin Creek Residents Coalition (written on behalf of counsel for BA Energy Inc., counsel for the NESCR, and on behalf of the Astotin Creek Residents Coalition), pursuant to which the NESCR and Astotin Creek Residents Coalition (collectively, "the Residents") withdraw their objections to the above referenced application based on an agreement reached among the Residents and BA Energy Inc.
- Email and attached correspondence dated May 26, 2005 from counsel for BA Energy Inc. (BA Energy) requesting a cancellation of the scheduled hearing.

Mr. Richard Secord  
June 22, 2005  
Page 2

In light of the foregoing, the Board agreed on June 1, 2005 to cancel the oral portion of the hearing scheduled to commence on June 7, 2005 and advised the parties of same.

Given that NESCR (which included your client) withdrew its objection to the above referenced application and NESCR was represented by legal counsel, the Board has determined no further action will be taken by the Board with respect to your client's request at this time.

Yours truly,

*<Original signed by>*

Tamara Bews  
Board Counsel  
c: Richard Neufeld, BA Energy Inc. (via email)

Writer's Direct Line: (403) 297-7430  
E-Mail: [tamara.bews@gov.ab.ca](mailto:tamara.bews@gov.ab.ca)  
Fax: (403) 297-7031

Via Email

July 12, 2005

Ackroyd, Piasta, Roth & Day LLP  
First Edmonton Place  
1500 – 10665 Jasper Avenue N.W.  
Calgary, Alberta T5J 3S9

**Attention: Richard Secord**

Dear Sir:

**Re: BA Energy Inc. (BA Energy)**  
**Application No. 1347899**

On June 28, 2005, July 5, 2005 and July 11, 2005, the Alberta Energy and Utilities Board (Board) received correspondence from your client, Tia Bartlett, wherein she makes further requests to the Board for an oral hearing since she alleges that third-party mediation did not address her concerns. This correspondence was received after the Board advised your client that her request to re-schedule the hearing for the above-referenced application was dismissed.

After reviewing your client's recent submissions, the Board re-confirms its previous decision of June 22, 2005 that given that NESCR (which included your client) withdrew its objection to the above-referenced application and NESCR was represented by legal counsel, no further action will be taken by the Board.

Although your client does not appear to understand how she was bound by the NESCR decision to participate in settlement negotiations, accept BA Energy's commitments, and file a withdrawal of its objection, the facts remain that your client was part of the NESCR group at the time when it withdrew its objection on May 26, 2005 and did not notify the Board until June 15, 2005 (after the oral portion of the hearing was cancelled) of her dissatisfaction with NESCR's position. It is unfortunate that the results of the settlement discussions between BA Energy and NESCR did not satisfy your client.

Richard Secord

July 12, 2005

Page 2

Your client's request to meet with the Board cannot be granted for the reasons that follow. It is in the hearing process where the Board hears evidence and argument from all interested parties. It is not appropriate for the Board to meet with an individual participant alone outside the hearing process.

Yours truly,

*<Original signed by>*

Tamara Bews  
Board Counsel

c: Tia Bartlett (via email)  
Richard Neufeld, Fraser Milner Casgrain LLP(via email)