ALBERTA ENERGY AND UTILITIES BOARD

SUBMISSION OF PARAMOUNT ENERGY TRUST
IN RESPONSE TO BOARD COUNSEL'S
LETTER OF JANUARY 26, 2004

GENERAL BULLETIN 2003-28 (GB 2003-28)
PHASE 3 PROCEEDINGS

January 30, 2004

January 30/04

Submission of Paramount Energy Trust

1.1 Introduction

1. This Submission is made in response to Board Counsel's letter of January 26, 2004, and is supplemental to prior submissions made by or on behalf of Paramount Energy Trust ("PET"). PET also asks that it, coupled with the correspondence dated January 7 and January 19, 2004, be treated as an application by PET pursuant to sections 39 and 40 of the *Energy Resources Conservation Act*, R.S.A. 2000, Chapter E.10, (the "Act"), requesting the Alberta Energy and Utilities Board (the "Board") to review and alter the order and direction set out in its letter of December 17, 2003, the letter from Board Chairman Neil McCrank dated January 2, 2004, and the letter from Board Counsel dated January 20, 2004. PET also applies to the Board for a hearing on these issues, pursuant to section 40 of the Act.

2. PET is an income trust with substantial quantities of natural gas affected by GB 2003-28 and the Board's directives and orders relating to General Bulletin 2003-28 ("GB 2003-28"). In total, in excess of 250 gas wells, all capable of producing gas, are affected. It would appear that some 25 mmcfd of current and recently shut-in production is presently at risk and is affected and as much as 45 mmcfd may be at risk. That in turn represents many hundreds of millions of dollars. On numerous prior occasions, and as recently as January 2004, PET has apprised the Board of the significant and material effect upon it of GB 2003-28.

1.2 Facts

3. In July 2003, the Board issued GB 2003-28. By letter dated December 17, 2003, the Board provided preliminary notice to industry that pursuant to GB 2003-28, a hearing would be held to make final decisions respecting the production of gas. That advice was supplemented by letter dated January 2, 2004 from Board Chairman Neil McCrank, advising of the scope of the hearings, the terms upon

which the hearings would be conducted, and the scheduling of filing evidence, as well as dates.

4. By letter dated January 7, 2004, legal counsel for PET wrote to Board Chairman McCrank, expressing concern with the scope of the proposed hearings, as well as the scheduling. By letter dated January 20, 2004, Board Counsel, on the instructions of Board Chairman McCrank, responded to PET's letter of January 7, 2004, rejecting PET's pleas and request that the scope, scheduling, and timing of the hearings be varied.

5. In addition to this exchange of correspondence, Encana, Devon, BP Canada Energy, PET, and CNRL also made submissions relating to these issues, recommending alternatives to the process directed by the Board. These recommendations would provide for a more comprehensive and thorough review.

6. On January 26th, the Staff Submissions Group ("SSG") of the Board delivered its recommendations for production status of gas wells in the Athabasca-McMurray region. It would appear that the recommendations as to shutting in of wells extends to wells previously approved for production under ID 99-1, as well as grandfathered production previously approved through hearing decisions. The current recommendations would call for the shut in of over 50 wells previously approved under ID 99-1 or through hearing decisions. If that is so, additional jurisdictional and procedural issues may well arise.

7. On January 28th, Mr. Justice Wittman of the Alberta Court of Appeal delivered his reasons respecting applications which had been made to that court by BP Energy, CNRL, Devon, PET, and ProGas for leave to appeal certain aspects of GB 2003-28 and related Orders. Leave was granted.

8. The Regional Geological Study (the "Study") dated December 31, 2003 covers many thousands of hectares of land in northern Alberta. It was first disclosed to industry on January 2, 2004, late in the day. Immediately upon receipt, PET dedicated its entire technical staff to a review of the Study in an effort to determine its potential effect upon PET's production. These efforts continued through the evenings and weekends. It soon became apparent that this was a

massive undertaking, and that the Study was incomplete, inasmuch as it was admittedly based upon data which did not include a comprehensive review and integration of all available pressure data which was critical to the analysis at hand. Of particular concern was the 're-interpretation' of EUB Pool Orders which is critical to the issues which affect gas producers. This has resulted in 400 different pools, within the Study area. Definition of the sizes and distribution of the Pools is a matter of major significance, whether at an interim hearing, or a final hearing. It may be of even greater concern on an interim basis if the Study is to be used, as appears to be the case, as the basis for shutting in gas production. If gas is shut in on an interim basis, without any ability to be compensated should it later appear that it ought not to be shut in, irreparable harm will have been done.

9. As noted, upon receipt of Chairman McCrank's letter of January 2, 2004, PET immediately registered concerns about the process, the scheduling, and the hearing dates. Since that time many other gas producers similarly affected by GB 2003-28 and the Board's subsequent orders and directives have registered concerns similar to those registered by PET.

1.3 Entitlement to a Hearing and Review of the Proposed Hearing Process

10. The Board's orders and directions, as set out in its correspondence of December 17, 2003, January 2, 2004, and January 20, 2004, were all made without the holding of a hearing. Accordingly, pursuant to section 40 (1) of the Act, PET requests that the issues raised in this correspondence, as well as the representations set out in its legal counsel's letter of January 7, 2004, be the subject of a hearing, or, alternatively, at a minimum, a pre-hearing conference, dealing with these issues.

11. Mr. Justice Wittmann addressed the matter of a hearing in the following language:

> [53] But a determination of mootness now on the evidence before me is not possible. That determination is dependent on future events occurring as scheduled and the Board providing the parties with the kind of hearing they seek this Court to order. (emphasis added)

12. The "hearing(s)" proposed by the Board are not the kind of hearings required, or sought by PET. PET is not in a position to fairly develop evidence relating to the matters in issue, nor is the process such that it will be able to challenge or call into question the Study, and in particular, the size and distribution of Pools, which so materially affects its property interests. Imposing arbitrary time constraints, limitations on evidence, and restraints upon cross-examination as set out in the Board's directives and orders have the effect of denying due process, natural justice, and a fair hearing. This concern has been repeatedly identified to the Board by PET and other gas producers.

13. The recommendations made by the SSG are also of considerable concern to PET, particularly in light of the process which the Board proposes to follow. PET, and others, remain in the position where they are not being provided with the information or adequate evidence upon which the Shut-in Orders have been recommended by the SSG. Since June 2003, virtually every gas producer has been asking a rather basic question: what is the evidence that we need to meet. To date, that has been incomplete. There has not been any meaningful response to that question, and the process that the Board intends to follow does not allow for any meaningful inquiry on this critical and fundamental issue. This is reiterated in the correspondence to PET from Board Counsel dated January 28 and January 29, 2004.

14. In order for the hearing to be fair and meaningful, whether interim or final, as contemplated by Justice Wittmann, it is fundamental that the parties know the case they have to meet and that they be given a full and fair opportunity to respond. The RGS, which appears to form the foundation of the present recommendations, has disregarded the substantial majority of the pressure information presently available. As a consequence, there is now very little agreement on pool sizes. Moreover, the members of the SSG who made the January 26th recommendations participated in the creation of the RGS. However, we know little, if anything about why they reached their

recommendations, who they are, and their qualifications. Interested parties are entitled to cross-examine these persons, if fairness is to prevail.

15. In its submission to the Court of Appeal, the Board said that it "intends to observe the rules of natural justice", and that the hearings "would comply with any obligations of the Board discussed in respect to natural justice." PET calls upon the Board to honour these commitments, as part of any hearing process, whether characterized as interim or final. Anything less is unacceptable.

16. Immediacy and urgency should not displace fairness and natural justice, particularly if there is no effective means by which gas producers can be compensated for gas shut in on an interim basis. This is a far different situation from an interim rate case, in which the interim rate can and often is later adjusted. Absent some effective way of compensation for lost production revenue, the adverse financial consequences of an interim Order could be very significant. PET has a very real concern for the process proposed for the "interim" hearing.

17. The Board has been aware of the issues which are the subject matter of GB 2003-28 since 1996. Prior to 2000, it convened two major hearings wherein many of the technical issues were fully explored with information that was current at that time. The Board has had pressure and production information available to it, at all times. If there is now a perceived urgency or immediacy, that should not result in a request, or direction, that basic rights be compromised or disregarded. PET also submits that a pool-by-pool assessment indicates that many of the pools are not at a pressure which gives rise for an immediate concern.

18. If there is truly an urgency, there are other means by which that urgency can be addressed, immediately, thus alleviating any further conservation concerns, whatever they may be.

19. There is also the issue of how the hearing(s) will be conducted, including who will be the members of the Panel, and whether there has been or will be any interaction between the Panel and Board Staff, and if so, will it be transparent. The Board is well aware of the concerns expressed by some parties in this

respect, as is evident from the decision of Madame Justice Conrad to grant leave to appeal from the Board's decision in Chard/Leismer. Moreover, depending upon the Board's selection of who the Panel members will be, there may be an issue as to whether one or more of those persons should disqualify themselves, for any number of potential reasons. Hearing participants should be apprised of these fundamentals, well in advance of any hearing(s). Compliance with the rules of natural justice mandates that these concerns and issues be specifically addressed, in advance. It will be cold comfort to hearing participants to have the Board make determinations, shut-in gas, and then have the Court of Appeal quash the shut-in orders. Who will compensate for the lost production?

20. It seems apparent that, in the interests of conservation, the Board is of the mind that at present no attention needs to be given to the bitumen deposits, whether they are recoverable, or what the expected value is of any risked incremental bitumen resource. The obvious question is how can the issue that the Board intends to address at the 'interim' hearing be considered, without considering what constitutes potentially recoverable bitumen, and where it is located. These matters cannot be disregarded. While the Board may say that it does intend to and will address these issues, in time, where does that leave the interests of the gas producers in the meantime. If these are truly matters of public interest, the Board has the ability to recommend to the Minister that the gas interests be expropriated. As the owner of the bitumen resource, presumably the Minister is concerned both about the value of the respective resources, as well as socio-economic impacts and the public interest. If the public interest calls for shutting in of gas, the Minister has the power to do what is required to bring about such a result.

All of which is respectfully submitted this 30th day of January, 2004

Sue Riddell Rose

President & COO