



OIL AND GAS
COMMISSION



Mediation and
Arbitration Board

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
OIL & GAS COMMISSION
AND THE
MEDIATION AND ARBITRATION BOARD**

PURPOSE

The British Columbia Energy Plan, policy action number 54, targets “improved working relationships among industry and local communities and landowners by clarifying and simplifying processes, enhancing dispute resolution methods, and offering more support and information”.

The Oil and Gas Commission (OGC) is created under the *Oil and Gas Commission Act* and is responsible for regulating oil and gas activities and pipelines in British Columbia under the *Petroleum and Natural Gas Act* and the *Pipeline Act*.

The Mediation and Arbitration Board (MAB) is created under the *Petroleum and Natural Gas Act* and is responsible for resolving disputes respecting compensation for surface access between landowners and the holders of subsurface rights under the *Petroleum and Natural Gas Act*, *Pipeline Act*, *Mineral Tenure Act*, *Mineral Rights of Way Act*, *Geothermal Resources Act* and *Coal Act*.

In the spirit of the Energy Plan and enhanced service to parties seeking resolution, the OGC and the MAB wish to coordinate dispute resolution between landowners and oil and gas companies within their respective jurisdictions. The goal is to provide objective, comprehensive and streamlined dispute resolution to address the concerns of all parties.

BACKGROUND

Landowners in British Columbia generally hold title to the surface of their land, but they do not usually hold title to the sub-surface minerals including petroleum and natural gas. The Crown usually retains these rights, and has the power to dispose of them to companies that may subsequently wish to remove the resources.

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OIL AND GAS COMMISSION

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MEDIATION AND ARBITRATION BOARD

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The OGC is an independent one-window integrated regulatory agency with responsibilities for overseeing oil and gas operations including exploration, development, pipeline transportation and reclamation. The OGC has regulatory responsibility for industry activity from the exploration and development phases, through to facilities operation and decommissioning. It is charged with balancing a broad range of environmental, economic and social considerations. Among its more specific objectives are public safety, conservation of petroleum resources, fostering a healthy environment, and equitable participation in production. A company that wishes to remove petroleum and natural gas resources must obtain the OGC's approval for a project. The OGC provides consensual appropriate dispute resolution to address the unresolved concerns of persons who are affected by a proposed oil and gas operation.

The holder of a subsurface right has the legal right to access the resource but they must compensate landowners for entering and using the surface to access the subsurface resources.

The MAB is an independent quasi-judicial board established to resolve disputes between landowners and sub-surface holders with respect to surface access and compensation. If landowners and sub-surface holders are unable to negotiate a surface lease agreement providing the subsurface holder with access to the surface and the landowner with compensation for access, the MAB may issue a right of entry order and determine compensation and other terms. The MAB provides mediation and arbitration to resolve disputes.

In order to extract subsurface oil and natural gas, therefore, the holder of the rights to those resources must:

- Comply with the regulatory requirements of the OGC, including requirements for public safety, protection of the environment, and minimizing interference with affected landowners, and
- Negotiate surface access with the landowner or obtain a right of entry order from the MAB.

The OGC and MAB will frequently be required to resolve disputes between landowners and oil and gas companies with respect to the same land and proposed oil and gas installation. The parties to these disputes may raise issues before one agency that are within the jurisdiction of the other agency. Both organizations provide dispute resolution services within their respective spheres of jurisdiction but neither organization may provide dispute resolution for issues outside of their respective spheres of jurisdiction.

TERMS OF AGREEMENT

The OGC and MAB agree to coordinate dispute resolution services within their respective spheres of jurisdiction to comprehensively address the concerns of landowners and oil and gas companies. In this regard, the OGC and MAB agree as follows:

- i. The MAB will notify the OGC when it receives an application pursuant to section 16(1)(a) or (b) of the *Petroleum and Natural Gas Act* for a right of entry order or for damages caused by entry or occupation;
- ii. The OGC will notify the MAB when it receives an application under the *Petroleum and Natural Gas Act* or the *Pipeline Act* requiring private land access on which the **applicant** indicates surface access issues have not been resolved;
- iii. The OGC will notify the MAB when it receives a Notice of Unresolved Concern from a **landowner** with respect to any proposed project;
- iv. Each agency may refer the parties of a dispute before it to the other agency if it determines an issue arising in an application before it is within the jurisdiction of the other agency;
- v. The MAB and OGC will consult with each other to determine
 - a. Whether an issue arising in an application before it is within the jurisdiction of the other agency;
 - b. Whether an issue arising in an application before it should be referred to the other agency;
 - c. Whether the dispute resolution processes of both agencies may proceed at the same time with respect to the resolution of any disputes involving the same land or whether one agency should proceed with its dispute resolution process with respect to any particular issue prior to the other agency proceeding with its dispute resolution process.
- vi. The MAB and the OGC may have access to each others files with respect to any application before it for which it also has an application respecting the same land and parties;
 - a. To the extent files and information is shared between the OGC and MAB in furtherance of this agreement, each agency shall protect any non-public records or portions thereof provided by the other agency from unauthorized disclosure in accordance with any particular law, if possible, and shall obtain the consent of the parties involved in the application before sharing non-public records;

- b. To the extent files and information is shared between the OGC and MAB in furtherance of this agreement, each agency shall protect any non-public records or portions thereof provided by the other agency from unauthorized disclosure in accordance with any particular law, if possible, and shall obtain the consent of the providing agency before disclosing any confidential information;
- c. Each agency will specify when information it provides is being submitted "in confidence" so that the receiving agency can refuse disclosure of that material in accordance with the *Freedom of Information and Protection of Privacy Act*, or other applicable legislation.
- vii. The executive management of the MAB and the OGC will meet annually to review cases that have followed the intent of this Memorandum of Understanding (MOU);
- viii. Respecting all applicable privacy legislation, the OGC and MAB will co-author an annual summary of activities, cases and outcomes reviewed under this MOU and further provide that summary and possible recommendations for enhancement to the OGC Board of Directors, Deputy Minister of Energy Mines and Petroleum Resources, and Minister of Energy Mines and Petroleum Resources.

LEGAL LIABILITY

This MOU indicates the intentions of the Chair of the MAB and Commissioner of the OGC but does not create a contractual obligation between them.

Nothing in this MOU shall be construed to conflict with current legislation or regulations.

Nothing in this MOU is intended to create any right or benefit, substantive or procedural, enforceable at law by any person or organization against either agency, its staff, members or officers, or any other person, government agency or ministry.

OTHER PROVISIONS

Nothing in this MOU is intended to impose any funding obligations on either agency. Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to carry out its statutory, regulatory, or other official functions or to commit either agency to providing a particular service it would not otherwise provide in the scope of each agency's individual mandate.

This MOU may be amended or modified at any time by written agreement of the Chair of the MAB and Commissioner of the OGC.

EFFECTIVE PERIOD/TERMINATION

This MOU is effective as of the date of final signature by both agencies and will remain in effect until terminated by either agency. Either agency may terminate this MOU upon written notice to the other agency.

PERIODIC REVIEW/CONSULTATION

Respective of Terms vii and viii above, the agencies agree that on an annual basis the appropriate staff from both agencies will meet to review the content and continued relevance of this MOU. Proposals for change to this MOU can be made at any time, and appropriate amendments made as may be agreed upon.

APPROVED BY:

Original signed by

Cheryl Vickers
Chair
Mediation and Arbitration Board

January 31, 2008

Date

Original signed by

Alex Ferguson
Commissioner
Oil and Gas Commission

January 31, 2008

Date