REGIONAL MUNICIPALITY OF WOOD BUFFALO

Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 014-2013

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act,* being Chapter M-26 of the Revised Statutes of Alberta 2000

BETWEEN:

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

- and -

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

BEFORE:

Members:	W. Kipp, Presiding Officer D. Thomas, Member
Board Counsel:	G. Stewart-Palmer, Barrister & Solicitor

Roll Number:	8992004911
Legal Description:	NE – 08- 096-11-W4M
Assessment Value	$3,438,633,520
Assessment Year	2010
Tax Year:	2011

[1] In its decision of February 11, 2013, the CARB reserved jurisdiction to address any issue arising from the calculation of the assessment arising from its determination of total project costs, excluded costs or abnormal costs.

[2] A hearing was held April 30, 2013 in Edmonton to address certain questions arising in relation to a complaint filed in April 2011 relating to the 2011 amended assessment notice (2010 assessment for 2011 tax year) of relation to its decision regarding the following property tax roll number:

8992004911	Revised Assessment: $3,438,633,520	RMWB file 11-090

[3] Another hearing was held June 20, 2013 in Edmonton in relation to a further issue arising in relation to the implementation of the CARB's decision. The April and June portions of the hearing were heard by two members of the CARB, who represent a quorum.

PART A: MERIT MATTERS

[4] This application concerned the issue of the determination of the included cost number following the implementation of the CARB's determination of the excluded cost amounts for the five accounts, among other items, from its order CARB Order 009-2013.

Complainant's Position

[5] The Complainant's position is that the included costs should be in the $4.5B $4.6B range. The Respondent has made a determination that the assessable costs are about $4.8B.

[6] The Complainant disputes the Respondent's application of an assessment ratio. The Complainant questions whether ratio must be applied, or whether a process of subtraction should be sufficient. Then, if a ratio is relevant, what should be the numerator and what should be the denominator.

[7] The Complainant accepts the CARB's ruling that the $10.732B total construction costs are to be used as the denominator for the ratios established by the CARB in its Order 009-2013. However, the Complainant does not agree that all of the excluded costs are to be factored against the total project costs. Rather, they should be factored against only the machinery and equipment since the CARB, in its Orders 001-2013 and 009-2013, indicated that the CCRG was applicable only to the machinery and equipment.

[8] On behalf of the Complainant, Mr. Celis outlined what CNRL believed the correct methodology to be. That methodology is to take the total project costs of $10.732B, subtract the amount for buildings and structures which results in approximately $10.368B, then subtract the excluded costs which CNRL calculated as $5,275,959,401. That leaves approximately $5.1B as assessable costs. CNRL removed the pre-investment of $918,541,000 which results in included costs for Phase 1 of approximately $4.5B.

[9] CNRL's view is that there is no need to apply a ratio to come to the included costs number. However, if a ratio is used, it should be with a denominator of $10.3B reflecting total machinery and equipment. The Assessor applied a ratio to arrive at $9.4B for Phase 1 and $919M for Phase 2 and 3. CNRL stated that the proportion used by the Assessor was 88% for Phase 1 and 8 % for Phase 2 and 3. This was in error because it totals 96% and not 100%.

[10] There is a resulting difference of $179M between the excluded costs the Assessor applied to the Horizon Project and the excluded costs that the CARB identified as excluded costs. CNRL stated that the Assessor used a ratio with a denominator of $10.7B which includes both pre-investment and buildings and structures.

[11] In its original rendition, CNRL did allocate part of the excluded costs to the buildings. It did not include the excluded costs for buildings in the total excluded costs claimed for machinery and equipment. For that reason, the ratio should not include the buildings and structures. The only place where the denominator of $10.7B was to be used was for the 5 items addressed in Board Order 009-2013.

[12] CNRL showed a “reverse” analysis to support its position.

Respondent’s Position

[13] The methodology used by the Assessor in his calculations was the same as was used in the evidence presented in the merit hearing. The Respondent calculated the excluded costs as $5,274,568,000. This includes the $918M of pre-investment. It is the excluded costs for the entire project – Phases 1, 2, 3.

[14] The Assessor started with the total project costs of $10.732B from which buildings costs of $364,430,000 was subtracted resulting in machinery and equipment costs of $10,368,000,000. From that the Assessor deducted $918M of pre-investment leaving a balance of $9,449,000,000 for Phase 1 machinery and equipment. One hundred percent of the pre-investment is non-assessable (shown in Exhibit R109). To arrive at the Phase 1 assessable cost of $4.8 billion, the Assessor applied an included cost ratio of 50.85% which was arrived at by dividing total excluded costs of $5,274,516,000 by total project cost of $10,732,493,000.

[15] The Assessor’s calculation of total excluded costs shown in Exhibit R108 is $5,274,516,000, which includes the excluded costs associated with Phase 2 and 3. The overall ratio for excluded costs is approximately 50%, so the total excluded costs included approximately $460 million of excluded costs associated with building Phase 2 and 3.

PART C: DECISION

[16] The total included costs for Phase 1 machinery and equipment is $4,466,452,436 as set out in the table below, and as further described in the reasons, below.

Paragraph from Order 001-2013	Item	Amount $	Note
209	Total Project Cost	10,732,493,000	No change
210	B&S	-364,430,000	No change
211	FEL	-597,948,000	No change
212	Pre-Investment	-451,218,882	Note 1
213	Secondary Crushers	-50,238,904	No change
214	Linear (Co-gen.)	-125,637,248	No change
215	Uncontested	-1,028,945,000	Note 2
216	Contested	-3,667,475,530	Note 3
217	Account 25 Recalculation	19,853,000	Note 4
	TOTAL INCLUDED COST – PHASE 1 M&E	**4,466,452,436**	

PART D: REASONS

[17] The CARB notes that the 2 members of this CARB panel considered the evidence and arrived at this decision.

[18] The table contained at paragraph 16 of this decision sets out the numbers the CARB has determined to establish the included costs of Phase 1 Horizon.

[19] As set out at paragraph 209 of Order 001-2013, the starting point is to take the total project costs which the CARB found to be $10,732,493,000.

[20] From that the amount for buildings and structures is deducted - $364,430,000, leaving a total for machinery and equipment of $10,368,000,000. This was identified at paragraph 210 of Order 001-2013.

[21] From the amount of $10,368,000,000, the amount for front end loading is deducted - $597,948,000. This was identified at paragraph 211 of Order 001-2013.

[22] From the evidence, it is clear that the $918M for pre-investment contains a portion for the Phase 2 and 3 amounts. In order to reflect the amount of excluded costs for Phase 1, the pre-investment must be adjusted to remove the amount for Phases 2 and 3.

[23] Note 1: Total pre-investment = $918,541,000 which is 8.86% of total M&E of $10,368,063,000. The excluded costs were for all machinery and equipment, but did not include buildings. Therefore, the excluded costs attributed to pre-investment would be 8.86% of $5,274,516,000. (This is the total on page 2 of Exhibit R108.) Therefore, $467,322,118 of the excluded cost is attributable to Phase 2/3, and that amount must be subtracted from $918,541,000, leaving $451,218,882 as pre-investment deduction from Phase 1.

[24] The CARB preferred the evidence of Mr. Elzinga in relation to the calculation of total excluded costs ($5,274,516,000) because his calculations seemed to match the ratio the CARB had provided.

[25] Note 2: For Accounts 2, 3, 5, 6, 7, 8, 10, 11, 14, 15, 16, 17, 18, 20, 21, 22, 27, 31, 33, 35, 37, 38, 41, 42, 43 and 44, these amounts are shown in Exhibit R108 and on page 10 of C106. The same amounts are shown in exhibit R108. The parties have agreed on these amounts.

[26] Note 3: Order 001-2013 instructed the parties to work these contested amounts out since some of them relied upon the ratio that the CARB indicated had to be based on total project cost of $10.7B. For the most part, the parties agreed on these amounts other than for the $1.4M that Mr. Celis noted in his brief and testimony. The CARB accepted the amount calculated by Mr. Elzinga because it seemed to match the ratio the CARB had provided. There were five accounts in dispute, but one had $0 as an exclusion so Accounts #12, 13, 25 and 29 were adjusted in accordance with Order 009-2013.

[27] Note 4: In R108, the full amounts for accounts 12, 13, 25 and 29 were excluded, so pursuant to the CARB's direction on application of ratios, there had to be an adjustment of $19,853,000 (Elzinga R108 P.2).

[28] On page 2 of 4 of the assessment calculation, the 2008 Horizon Phase 1 line should now have $4,466,452,436 as Assessable Cost rather than the $4,805,081,937 that is there now.

[29] The factors that convert the assessable cost to an assessment would then be applied.

[30] It is so ordered.

Dated at the City of Calgary in the Province of Alberta, this 3rd day of July, 2013.

FOIP Act s.17(1)
[redacted]

For: W. Kipp, Presiding Officer

APPENDIX "A"
DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO. ITEM

Exhibit #	**Document**	**Filed**
C106	Written Submission by Marco Celis	June 20, 2013
R107	Written Submission by John Elzinga	June 20, 2013
R108	Summary of Horizon Costs by Account	June 20, 2013
R109	Industrial Assessment Calculation Detail Report June 13, 2013	June 20, 2013

APPENDIX "B"
REPRESENTATIONS

PERSON APPEARING CAPACITY

1.	G. Ludwig	Counsel for the Complainant
2.	B. Dell	Counsel for the Complainant
3.	M. Celis	Business Analyst, CNRL
4.	B. Balog	Manager, Legal Corporate Operations, Legal Counsel, CNRL
5.	C. M. Zukiwski	Counsel for the Respondent
6.	R. Baron	Assistant Chief Regional Assessor, Regional Municipality of Wood Buffalo
7.	J. Elzinga	Assessment Consultant
8.	E. Thompson	Engineering Consultant

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Subject	**Type**	**Sub-type**	**Issue**	**Sub-issue**
CARB				