



Alberta Energy and Utilities Board to decide who owns coalbed methane in Alberta

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Alberta Energy and Utilities Board to decide who owns coalbed methane in Alberta

The issue of coalbed methane (CBM) ownership, frequently disputed between coal rights holders and holders of mines and minerals rights other than coal, has been the subject of numerous recent applications to the Alberta Energy and Utilities Board (AEUB). The AEUB recently announced that it will hold a hearing relating to legal entitlement of CBM on split-title freehold mineral lands in Alberta. This approach to determining the issue of CBM ownership is in marked contrast to the approach taken in British Columbia, and is garnering significant interest in the province.

CBM, also known as natural gas in coal or coalbed gas, is natural gas produced from coal seams. CBM is commonly referred to as an “unconventional” form of natural gas for the reason that it is primarily stored through adsorption to the coal itself. In other words, the coal acts both as the source of the gas and the storage reservoir (see the AEUB’s EnerFAQs on coalbed methane for more detail). By contrast, most “conventional” natural gas is gas that is stored in the pore space of the rock. Natural gas contained in coal (which consists primarily of methane) is released in response to a drop in pressure in the coal. The Alberta Geological Survey estimates that there are up to 500 trillion cubic feet of gas in place in all the coal in Alberta. It is unclear what proportion of this gas will be recoverable.

In Alberta, current government policy on the subject is set out in *AEUB Informational Letter IL 91-11*, issued in 1991. Coalbed methane is considered to be a form of natural gas, and it is subject to the same drilling, production and operational rules as other forms of natural gas. In accordance with this policy, all acts and regulations that pertain to natural gas also pertain to CBM.

While some American courts have considered the issue of CBM ownership, no definitive statement of law concerning who owns CBM has been made by the Canadian courts to date. As it stands now in Alberta, ownership of CBM gas is determined on a case by case basis, having regard to the language of the original Crown Grant, subsequent instruments of transfer, the intentions of the parties to such transactions, applicable legislation and principles of interpretation, and any relevant case law.

Alberta’s approach to determining CBM ownership is in sharp contrast to the approach taken in British Columbia, which determined the matter by statute. Under British Columbia’s *Coalbed Gas Act* (the Act), coalbed gas belongs to the owner of the natural gas rights and not to the owner of the coal rights. The Act, which came into force April 10, 2003, applies retroactively to Crown and freehold minerals. Notably, section 6 of the Act bars claims for compensation against the government arising from the operation of the Act, as well as all causes of action that might otherwise arise out of the extraction, production or removal of coalbed gas by a non-owner prior to the Act becoming effective.

In Alberta, the lack of legislation on the subject has caused the thorny issue of CBM ownership on freehold lands to be taken on by the province’s energy regulator. While some suggest that the AEUB lacks the jurisdiction to make the determination, the AEUB is currently scheduled to hear legal, scientific and technically based evidence and submissions related to ownership of CBM and measurement and accounting of coalbed methane production on October 16. Over 13 industry associations and members are registered in the proceeding. Pending a decision in the matter, the

Board has held all applications in which legal entitlement to CBM is at issue in abeyance, including all facilities, resources and review and variance applications.

Any decision by the Board is expected to bring some much needed certainty to industry in Alberta, and allow development of coalbed methane to proceed. Many argue that CBM development has been hampered in the past at least in part due to the uncertainty surrounding who owns CBM – in 2004, gas produced from coal zone CBM wells represented less than 0.5 per cent of Alberta's total gas production for the year. However, in leaving the final determination on the subject to regulators, it remains open to the AEUB to find that CBM belongs to the coal rights holder, an outcome not only inconsistent with the approach taken in respect of provincial Crown minerals, but also in direct conflict with that legislated in neighboring jurisdictions. It is further unclear whether the decision will raise issues of liability for past working of coalbed gas deposits by coal rights holders. A decision in the matter is expected from the AEUB early in the new year.

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