

# Company to Company Dispute Comprehensive Case Study

## Basic Background Facts

Competing EUB natural gas pipeline applications were filed by BP Canada and Devon Canada to tie in new and existing well production into a pre-existing sweet gas gathering system. Devon Canada filed an objection to BP Canada's pipeline application. The issues included:

- Where should the gas be delivered and processed? There exist two sweet processing plants capable of processing the gas. BP Canada has ownership in one of the plant/gathering systems, whereas Devon Canada has ownership in both plants/gathering systems.
- The size and location of the pipeline. BP Canada's dual pipeline proposal is longer but would enable delivery of BP's gas to its owned plant/gathering system. Devon's single pipeline proposal is shorter for delivery to a plant/gathering system in which BP would pay third party transportation/processing fees.
- What capital risk is each company prepared to assume given the recent high level of drilling activity and the fact well data were limited.
- What pipeline capital costs could legitimately be charged to the well payout account? Devon Canada elected not to participate in the drilling of one of the gas wells.
- The impact of the proposed pipelines may have on existing gathering construction, operation and ownership agreements.
- Impacts on future development plans for both parties given their existing land holdings in the area.

The EUB recommended that all parties engage in an ADR process to resolve their dispute.

### **Status of Negotiations**

Lengthy negotiations had stalled or become problematic because:

- Each party had different priorities, risk tolerance and senses of urgency.
- Negotiators had become frustrated and trust was on the decline.
- Information exchange was stalled.
- Concerns surfaced about the willingness to settle.
- Both sides believed an EUB Hearing process was the only solution.

### **EUB ADR Process**

The EUB expects companies engaged in inter-company disputes to attend a Preliminary Appropriate Dispute Resolution (PADR) meeting to assess if this alternative process might be able to resolve their conflict, rather than immediately commencing a lengthy EUB Hearing process.

Certus Strategies, an EUB Roster ADR Service Provider, was selected to facilitate the PADR meeting. Certus Strategies consulted with both sides to ensure both parties fully understood the process involved and purpose of a PADR meeting. When requested, Certus also provided coaching on how to prepare for an effective PADR meeting. Certus facilitated the parties' selection of John Curran as their mediator for the PADR meeting and handled documents and logistics. A complete ADR Project Plan and Budget was provided to both sides.

BP and Devon agreed to participate in a PADR meeting, and attached are the copies of:

**Preliminary ADR Meeting Agenda (Schedule A)**

The agenda was prepared and circulated prior to the parties attending the PADR meeting

**Mediation Agreement (Schedule B)**

This agreement was negotiated at the PADR meeting, mediated by John Curran. All participating parties ultimately agreed to and executed the EUB ADR mediation Agreement. The agreement detailed the mediation process and resolved issues such as information disclosure, confidentiality, and the roles and responsibilities of the participants.

PADR meetings are focused on process, not the dispute, and are an opportunity for the disputing party's to rebuild trust, plan the information/data exchange critical to any dispute resolution and ultimately design, co-operatively, a plan to constructively address the outstanding issues.

On completion of the PADR meeting, and mutual agreement on the mediation process, the disputing parties then proceeded to their first ADR meeting. It is at this ADR meeting that the parties begin to address the issues which have resolution of their dispute and begin the process of dispute mediation.

**Result**

The mediation session conducted by John Curran resulted in a settlement agreement and withdrawal of the Devon objection. The PADR/ADR process began on February 20, 2003 and concluded on March 16, 2003. The actual terms of the agreement remain confidential.

All ADR service provider fees and mediator costs totalled less than \$12,000 and were split equally between BP Canada and Devon Canada.

– Schedule A –

PRELIMINARY ADR MEETING  
AGENDA

March 6, 2003

EUB Pipeline Applications  
BP Canada [REDACTED] and Devon Canada [REDACTED]  
[REDACTED], Alberta

|                                 |                                      |
|---------------------------------|--------------------------------------|
| <b>BP Canada Energy Company</b> | <b>Represented by:</b><br>[REDACTED] |
| <b>Devon Canada Corporation</b> | [REDACTED]                           |
| <b>Pipeline Owner</b>           | [REDACTED]                           |
| <b>AEUB:</b>                    | [REDACTED]                           |
| <b>Mediator:</b>                | John F. Curran, Q.C.                 |

**Introductions**

**Purpose of the PADR**

1. Engage the right parties and the right level of authority.  
Understand and clarify EUB processes and procedures applicable to the Pipeline Applications.

Discuss nature and extent of dispute: what is important, what needs to be resolved.

Plan possible options for resolving dispute-negotiation; interest based mediation; facilitation; arbitration or EUB hearing.

In particular, the purpose of the PADR is to establish:

1. The individuals who will represent the parties and have the authority to settle dispute and bind the parties to any agreement that may result from the mediation.
2. Identify counsel, if any, and/or consultants, who will represent the parties and their roles in the mediation.

3. Identify and agree on the issues in dispute that the parties desire to resolve through mediation.
4. Obtain commitment from the parties and their representatives to engage in a genuine problem solving process as an alternative to having an EUB hearing, including offering solutions, considering alternative solutions and making accommodations - negotiating a solution(s) in good faith.
5. Discussing and agreeing on the mediation process: who, when and where; private, confidential and without prejudice discussions; role of the mediator, the parties, their representatives and counsel; sharing of costs of the mediator and the mediation; exchange of information and data as required; explanation of the mediation process and what to expect of mediation: achieve agreement on all, or at least some, of the matters that may otherwise be heard in a hearing before the EUB; respond to and answer any questions anyone may have about the mediation process and the EUB ADR model.
6. As part of 5 above, check out the EUB's Information Letter (IL) 2001 - 1: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry at [eub.adr@gov.ab.ca](mailto:eub.adr@gov.ab.ca).

## **Mediation**

Goal - achieve a mutually acceptable settlement

- Voluntary
- Private, Confidential and Without Prejudice
- 
- Mediator's Role:
  - Neutral
  - Impartial
  - Facilitator
- Parties' Role
- Meeting in good faith and in a bona fide attempt to reach a resolution
- Overview of Process
- Initial explanation of Parties' perspectives: what is important, what needs to be resolved
- Identification of Issues to be addressed
- Joint problem solving by the Parties
- Development of a written, settlement agreement
- Rules or Procedures for the conduct of mediation or other ADR processes
- Caucus (separate meetings with the parties)
- Commitment to begin

## **Mediation Agreement – All parties and representatives to approve and sign.**

– Schedule B –

### **EUB ADR MEDIATION AGREEMENT**

Between **BP CANADA ENERGY COMPANY** ("BP") and **DEVON CANADA CORPORATION** ("Devon") respecting EUB Pipeline Application [REDACTED] and [REDACTED] (the "Applications") respecting [REDACTED], Alberta.

The purpose of the Mediation is to have the affected Parties discuss (i) the nature and extent of their Dispute, (ii) the process(es) they will use to identify and resolve issues in the Dispute and (iii) conduct the Mediation in accordance with the Alberta Energy and Utilities Board (EUB) Information Letter (IL) 2001-1: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry.

"Dispute" means the dispute between the Parties (collectively called the "Parties") related to or arising out of matters described in the Application.

"EUB Representative" means the EUB staff member(s) who is (are) a signator(ies) to this Agreement and who shall provide advice on technical and/or EUB process matters;

"Mediation" includes the Preliminary ADR meeting, mediation conference and the mediation proceedings.

"Mediator" means John F. Curran, Q.C.

"Parties" includes all of the corporations and individuals who are signatories to this Agreement but does not include the EUB Representative(s) or the Mediator.

In order for this EUB ADR process to be effective, Parties need to be willing to engage in a genuine problem solving process as an alternative to having an EUB board hearing.

1. The Parties, and their representatives and advisor(s) who are signatories hereto, each confirm that they will:
  - a) conduct themselves in an honest and forthright manner; and
  - b) make an honest and serious attempt to (i) design a process for resolving the Dispute and (ii) resolve the Dispute.
2. Each Party has full, unrestricted decision making authority to discuss the Dispute in the Mediation and is willing to listen to the other Parties, make accommodations and consider alternative solutions.
3. Each Party in this Mediation acknowledges and agrees that:
  - a) the Mediator will not act as legal counsel for any Party;

- b) any Party or the Mediator may terminate the Mediation at any time; and
  - c) no Party shall subpoena or require the Mediator to testify or produce records or notes in any judicial, arbitral, or other proceeding (collectively called "Proceedings"), or for any reason whatsoever.
4. The Parties understand that full disclosure of all information required for a full and frank discussion of options is a critical component in reaching a final resolution of substantive issues.

**Privacy and Confidentiality**—Privacy relates to the information that someone discloses about themselves or some thing. Confidentiality is the component of privacy that deals with what people do with the information they know about others. As related to this Mediation, discussions among the Parties and their representatives and advisors are private and confidential and on a "without prejudice" basis and are based on the premise that for the Mediation to work effectively, Parties should engage in collaborative discussions and disclose all relevant information so that full understanding of each other's objectives and interests can be achieved. This process should lead to solutions that will satisfy many of their important interests.

However, it is also recognized that information required by the regulatory process cannot be held confidential, such as that dealing with public safety, environmental protection, and resource conservation. Matters that the Parties decide must remain confidential might include financial and contractual details, the conditions or circumstances under which a Party would remove an objection, the mitigating measures a Party would offer in order to have an objection removed, or individual health records.

5. The Parties, the Mediator and the EUB Representative agree that all information, offers, promises, conduct and statements ("Information"), whether written or oral, made in the course of the Mediation by any of the Parties, their agents, employees, consultants or counsel, the Mediator or the EUB Representative(s) are private, confidential and "without prejudice" and as such all signatories to this Mediation Agreement agree that:

- a) They will keep confidential all Information disclosed by a Party in the Mediation with the exception of:
  - i) Information required to be disclosed by the EUB regulatory process or which is otherwise in the public domain at the time of its disclosure or which, after disclosure, becomes part of the public domain other than by disclosure by a Party;
  - ii) Information which a Party can show was in its possession at the time of disclosure and was not acquired from the disclosing Party;
  - iii) Information received by a Party from a third person without a covenant of confidentiality, provided such third person is under no obligation of confidentiality with respect to the Information.

- b) Upon termination of the Mediation for any reason whatsoever, each Party shall, and shall cause all agents, employees, consultants and counsel to immediately return or cause to be returned to the disclosing Party, or, upon a Party's request, shall destroy or cause to be destroyed, all copies of any Information in any form or medium prepared and presented by the Party or its agent, employees, consultants and counsel during the Mediation.
- c) In addition, for this Mediation, Parties agree as follows:
  - i) The Mediator may disclose any information provided by any Party to any other Party unless the Party disclosing the information requests that the information be kept confidential.
  - ii) The Mediator may meet with the Parties individually and collectively.
  - iii) No Party shall rely on or introduce in evidence in subsequent Proceedings:
    - A) another Party's views, suggestions or willingness to accept a settlement proposal that arises out of the Mediation; or
    - B) any admissions made by any other Party in the course of the Mediation.
- 6. In addition to the foregoing, the Parties hereby agree upon the matters set forth and described in Schedule "A" hereto which is incorporated into and forms a part of this Agreement.
- 7. The terms of this Agreement will guide but not limit negotiations among and between the Parties.
- 8. This Agreement may be executed in separate counterparts and all the executed counterparts together shall constitute one agreement.

DATED at Calgary, Alberta, this 6<sup>th</sup> day of March, 2003

**BP CANADA ENERGY COMPANY**

**DEVON CANADA CORPORATION**

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**BP Representatives/Advisors**

**Devon Representatives/Advisors**

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**EUB Representative**

**MEDIATOR**

\_\_\_\_\_

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John F. Curran, Q.C.

**Schedule "A"** attached to and forming part of the Mediation Agreement dated the 6<sup>th</sup> day of March, 2003 between BP and Devon and their respective representatives and advisors, the EUB Representative and the Mediator

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### THE MEDIATION PROCESS

The Parties agree as follows:

9. For purposes of the Mediation, all issues concerning required information of an expert, technical or scientific nature will be resolved by mutual agreement of the Parties.
10. Costs of the Mediation (including science and technology) will be managed and determined by mutual agreement of the Parties.
11. The Parties agree to provide the following data, information and documents by 17:00 hours on Tuesday, March 11, 2003;
  - a) BP to provide to Devon:
    - i) Hard copy of BP's AEUB Pipeline Application No. [REDACTED] dated [REDACTED] to construct a 6" pipeline from [REDACTED] to [REDACTED].
    - ii) BP's business plans respecting tie-in of its proposed 6" pipeline at [REDACTED] particularly in regard to:
      - A) BP's intentions whether or not to charge BP's pipeline capital/operating costs to the [REDACTED] well payout account; and
      - B) BP's – [REDACTED] Oil Ltd.'s plans in regard to the [REDACTED] tie-in of BP's proposed 6" pipeline.
    - iii) Total capital requirements for BP's proposed 6"
    - iv) BP's actual (historical) capital/operating costs to deliver gas to Wapiti gas plant.
    - v) Test results of BP's [REDACTED] well.
    - vi) Description of current operating conditions at the Wapiti gas plant and as anticipated for the next 6 months (April – October, [REDACTED]), including but not limited to:
      - A) gas processing capacity;
      - B) existing/anticipated bottlenecks and estimated costs to overcome;
      - C) pipeline looping and costs; and

D) compression requirements and costs.

b) Devon to provide to BP:

i) Hard copy of Devon's AEUB Pipeline Application [REDACTED] dated [REDACTED] to construct an 8" sweet gas pipeline from [REDACTED] to [REDACTED] and a 4" sweet gas flow line from [REDACTED] to [REDACTED].

ii) Gas flow split information, including accounting, administrative, gas volumes and costs.

iii) Total capital requirements of Devon's proposed 8" pipeline and 4" flowline.

iv) Devon's actual (historical) capital operating costs to deliver gas to Narraway gas plant.

v) Test results of Devon's well.

vi) Description of current operating conditions at the Narraway gas plant and as anticipated for the next 6 months (April – October, [REDACTED]), including but not limited to:

A) gas processing capacity;

B) existing/anticipated bottlenecks and estimated costs to overcome;

C) pipeline looping and costs; and

D) compression requirements and costs.

The foregoing data and information may be transmitted electronically to all signatories to the Mediation Agreement and by hard copies of the pipeline applications shall be provided directly to Messrs. [REDACTED] on behalf of BP, and [REDACTED] on behalf of Devon. All such data and information shall be treated as confidential and the provisions of clause 5 of the Mediation Agreement to which this Schedule "A" is attached shall be applicable thereto.

12. The first mediation meeting is scheduled for Thursday, March [REDACTED] commencing at 13:00 hours at the offices of Certus Strategies, 1440, 1122 - 4 Street SW, Calgary, Alberta.
13. The Mediator, the EUB Representative and the mediation process herein provided for are agreed to by all Parties. The mediation is a voluntary process. It continues to be voluntary throughout. In the event that all or any portion of the Dispute is settled, the Parties shall enter into a written, binding agreement of settlement outlining the settlement. Unless the Parties otherwise agree, the Mediator will prepare or facilitate the preparation of the Settlement Agreement. Each corporate Party will have as one of its representatives a person who has

authority to enter into, and execute, a binding Settlement Agreement. Such persons are as follows:

BP: [REDACTED]

Devon: [REDACTED]

14. The Parties acknowledge and agree that the Mediator is an independent, impartial, trained professional, and is not an agent or employee of any of the Parties or the EUB. The Mediator will not participate in any EUB hearing arising or resulting from the Application. The Mediator has no investment in any particular results of the Mediation and is not paid based on any mediated settlement. The fees of the Mediator will be shared in equal proportions by the corporate Parties who execute and deliver this Agreement to the Mediator.
15. The Parties have identified the following as the issues they have agreed to address through discussions/negotiations in the Mediation:
  - a) How best to put natural gas on production in a timely manner for all existing BP and Devon natural gas wells in the [REDACTED] area.
  - b) Size of pipeline(s):
    - i) Location
    - ii) Timing
    - iii) Flexibility in planning for pipeline(s).
  - c) Where should natural gas produced from the [REDACTED] area be delivered and processed:\
    - i) North and/or South
    - ii) Capital/operating costs
    - iii) Accessibility arrangements for existing/future production and certainty/comfort in respect thereof.
  - d) Short and long term plans for Devon's proposed 8" pipeline and 4" flowline and BP's proposed 6" pipeline as to their use for transmission of natural gas from wells in the [REDACTED] area including:
    - i) Operatorship and business arrangements relating to BP's-Devon's penalty wells
    - ii) Design of pipeline system(s)
    - iii) Operatorship of pipeline and business arrangements with [REDACTED].

16. Additional matters (if any):  
N/A
17. The Parties will complete and deliver to the EUB the EUB's Participant Feedback Forms.

***Prepared by the C2C Team 4 as a guide***