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DECISIONS

REGULATORY
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ENERGY REGULATORY REPORT

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*This monthly report summarizes energy decisions or resulting proceedings from applications before the Alberta Energy Regulator ("**AER**"), the Alberta Utilities Commission ("**AUC**") and the National Energy Board ("**NEB**"). For further information, please contact Rosa Twyman at Rosa.Twyman@RLChambers.ca or 403-930-7991 or Vincent Light at Vincent.Light@RLChambers.ca or 403-930-7994.*

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ALBERTA ENERGY REGULATOR

Canadian Natural Resources Limited: Application for Disposal Lloydminster Field (Decision 2014 ABAER 008)
Disposal Application

Canadian Natural Resources Limited ("CNRL") received approval to drill a well located at 00/03-17-051-02W4M (the "3-17 Well") on August 21, 2012 to dispose of produced and saline water into the Dina Formation. Subsequent to concerns from Ener T Corporation ("Ener T"), CNRL applied to the AER to dispose of produced and saline water into the Moberly and Cooking Lake formations instead, and received approval on April 23, 2013. As a result of poor injectivity, CNRL re-applied for disposal into the Dina Formation.

Ener T submitted a statement of concern in respect of its ability to dispose of fluids in its well located at 16-07-051-02W4M (the "16-7 Well") and possible saturation and over-pressurization of the Dina formation.

The AER considered the following issues in respect of the application by CNRL and subsequent statement of concern from Ener T:

(a) The need for additional disposal capacity;

(b) The evaluation of alternative disposal zones;

(c) The capacity of the Dina Formation for injection fluids; and

(d) The potential for adverse effects on Ener T's 16-7 Well.

CNRL submitted that the need for additional disposal capacity was established by the high water volumes produced with oil in the area, and that current productive wells were shut in due to a lack of available disposal capacity. Current and planned oil production figures in the area necessitated further disposal capability between 1200 to 1500 m^3/d. CNRL also submitted that the 3-17 Well was the preferred option as the most economical and due to its lesser environmental impacts as well. Ener T submitted that it did not contest the need for additional disposal capacity, but only that the proposed disposal volumes would contribute to oversaturation and overpressurization of the formation.

The AER held that additional disposal capacity was necessary due to the fact that certain wells had been shut in due to insufficient disposal capacity.

With respect to alternative disposal zones, CNRL submitted that the 3-17 Well was the preferred option, as the well was already drilled and would avoid the offsetting Sparky formation. CNRL did not prefer the remaining two wells as it noted they had been abandoned and there was some concern over casing integrity due to the age of the abandoned wells.

The AER held that the 3-17 Well would be a reasonable option, as it did not require any new work, and none of the parties had expressed any casing integrity concerns with respect to the 3-17 Well.

Ener T submitted that the proposed 3-17 Well location would wash out its 16-7 Well, which represents a substantial portion of it disposal assets. Ener T argued that the proposed placement was not in the public interest, and that a buffer zone should be placed around the 16-7 Well to protect Ener T's interests and ensure that there are no adverse impacts on the 16-7 Well. CNRL submitted evidence, including a case study of nearby adjacent Dina Formation wells that indicated that injection can occur at wells in close proximity without adverse outcomes, and was suggestive of a high capacity of the Dina Formation to receive injection volumes without adverse outcomes on nearby operators.

Therefore the AER concluded that CNRL and Ener T's disposal operations were capable of co-existing in operation with a low probability of causing adverse effects, as the maximum wellhead injection pressure assigned would mitigate Ener T's concerns. The AER also concluded that the addition of disposal capacity would allow additional oil production, which would result in greater royalties, and therefore represented a net benefit to Alberta.

The AER accordingly approved the application to dispose of class II fluids into the Dina Formation through the 3-17 Well. However, the AER directed CNRL to apply to the AER to commence disposals into the 3-17 Well, pursuant to *Directive 051: Injection and Disposal Wells – Well Classifications, Completions, Logging, and Testing Requirements (March, 1994*).

Release of the Inactive Well Compliance Program (AER Bulletin 2014-19)
AER Bulletin

On July 4, 2014 the AER released its Inactive Well Compliance Program (the "IWCP") for wells that are inactive and not in compliance with *Directive 013: Suspension Requirements for Wells ("Directive 013*"), with the stated goal of achieving full compliance within five years. The features of the IWCP, which applies to wells not in compliance with *Directive 013* as of April 1, 2015, are as follows:

(a) Each licensee under the IWCP will be required to bring 20 percent of noncompliant wells into compliance each year by reactivating or suspending the wells under *Directive 013* or

abandoning them under *Directive 020: Well Abandonment*;

(b) Annual compliance reports under the IWCP will be available to licensees as of April 1 of each year;

(c) The AER will reintroduce the inactive well licence list to assist industry in achieving compliance by tracking the number of inactive wells; and

(d) Self-disclosures or extensions for *Directive 013* or IWCP requirements will not be accepted under the IWCP.

The AER will be holding information sessions pertaining to the roll-out of the IWCP between July and October 2014.

Proration Measurement of Liquids-Rich Gas Wells (Bulletin 2014-20)
AER Bulletin

This bulletin, released by the AER on July 8, 2014, explains how licensees can apply for proration measurement of liquids-rich gas wells, which may minimize equipment costs for some wells.

Currently, *Directive 017: Measurement Requirements for Oil and Gas Operations (May 2013)* ("*Directive 017*") requires measurement systems for gas, hydrocarbon liquids, and water at gas wells producing liquids at a ratio greater than 0.28 m^3 of liquids per 103 m^3 of gas produced.

The bulletin sets out the following criteria that the AER will apply in assessing applications for proration measurement for specific sites:

(a) Production must be from liquids-rich gas reservoirs where the liquid-to-gas ratio for a well is greater than 0.28 m^3 of liquids per 103 m^3 of gas;

(b) A multiwell pad development approach must be used where several wells are drilled at a single surface location; and

(c) Each test separator must have a maximum of eight wells.

Applications for proration measurement must be made pursuant to section 5.2 of *Directive 017*.

Control Well Requirements for Horseshoe Canyon and Belly River Coalbed Methane Development (Bulletin 2014-21)
AER Bulletin

As a result of collected reservoir information from the Horseshoe Canyon and Belly River coal zones, the AER released Bulletin 2014-21 on July 8, 2014. The bulletin grants immediate relief from the following control well requirements in the *Oil and Gas Conservation Regulations*:

(a) Annual flow meter logging requirement in section 11.145(1)(b) for Horseshoe Canyon and Belly River coal bed methane pressure and control wells; and

(b) Control well requirements in section 7.025(1).

The AER noted that it "anticipates that the revised control well density [...] will be lower than what is currently required." In the interim period, the AER noted that licensees have the opportunity to submit applications to rescind control wells to reduce the density of control well coverage. Applications may not exceed coverage of more than nine townships, and each township must have at least one remaining control well.

The AER will still require:

(a) Initial and end-of-life pressure tests for coal bed methane pressure and control wells as set out in Bulletin 2011-36; and

(b) That coal bed methane pressure and control wells be completed only in coals (and not in sands or other formations) as set out in *Directive 062: Coalbed Methane Control Well Requirements and Related Matters*.

The AER expects to address long term revisions later this year.

AER Closure and Liability Organization and Contacts (Bulletin 2014-22)
AER Bulletin

This bulletin provides information about the new structure of the AER as it relates to remediation and reclamation responsibilities that were assumed under the *Environmental Protection and Enhancement Act* after March 29, 2014. The new AER groups focused on remediation and reclamation obligations are separated into three main contact groups at the AER:

(a) The In Situ Group, which consists of the Land Conservation and Remediation Team, and the Reclamation Programs Team;

(b) The Oil and Gas Group, which consists of the Mine Financial Security Program Team, the Liability Management Team, the Abandonment Team, and the Aging Infrastructure Initiative Team; and

(c) The Mining Group, which consists of the Drilling Waste and Contamination Management Team, the Remediation and Contaminated Sites Team, and the Operations Group.

Independent Panel Review of the Canadian Natural Primrose FTS Causation Report

Independent Panel Review

The AER appointed and formed an independent panel (the "Panel") to review:

(a) The technical merits of the bitumen flow-to-surface ("FTS") events observed in 2013 at Canadian Natural Resources Limited's ("CNRL") Cyclic Steam Stimulation project at Primrose (the "FTS Events"); and

(b) The Causation Report submitted by CNRL subsequent to the FTS Events.

The Panel agreed with CNRL's conclusions with respect to causation, which concluded that:

(a) Vertical hydraulically induced fractures and pathways facilitated fluid transfer between otherwise impermeable shales that would normally favour horizontal fracture propagation; and

(b) Changes to the overburden altered the direction of principal in-situ stresses.

These conditions, according to the Panel, created necessary conditions for bitumen in the Grand Rapids formation to cause an FTS event.

The Panel noted that the transition pathway for fracture growth between the Grand Rapids formation and the overlying Joli Fou formation strongly favours horizontal growth. The Panel agreed with CNRL's conclusions that the vertical growth may have been influenced by the presence of natural vertical fractures at the interface, or a wellbore with inadequate cement as potential pathways, despite the uncommon occurrence of these conditions.

The Panel stated that the diagnostic fracture injection tests performed by CNRL were supportive of the belief that the permeability of oil-containing natural fractures was too low to create significant fluid flow. However, the Panel also pointed out that the diagnostic tests may not be fully representative of the actual conditions of the FTS Events, as there was no injection-related uplift during the tests, and the total volume tested limited CNRL's ability to test a large number of natural fractures.

The Panel strongly advocated an approach using a discrete fracture network, along with core and image log data. The Panel noted that such an approach would greatly assist in characterizing the frequency, geometry, orientation, and flow properties of the natural fractures, faults and bedding planes in the Colorado group.

With respect to flow pathway, the Panel noted that CNRL identified, with a high probability, two wellbores that established a flow path for fluid releases from the Clearwater reservoir. The Panel suggested that the following information should be presented in examining a well to define the potential for establishing a flow path:

(a) Flow rates between perforations during well testing;

(b) Cement bond log results for unpressured and pressured passes, and estimates of annular gaps;

(c) Effects of casing temperature;

(d) If a casing failure occurs:

  (i) Fluid losses to the Colony formation gas sand or Colorado group; and

  (ii) Casing integrity pressure test results; and

(e) Other possible enhanced measures to detect microseismic events in addition to passive seismic monitors already in place in order to enhance monitoring that can provide an alert for reservoir and caprock events such as fracture propagation, movements of intersecting discontinuities, and the capability to detect whether a fracture or fault network was involved. However, the Panel noted that full coverage of the area was not warranted.

Finally, the Panel recommended a pilot program to monitor vertical strain in order to provide deformation data associated with steam injection and production cycles. The Panel noted that if the pilot were to be successful in providing useful data, it could be expanded to other areas where there may be a risk of future FTS events.

ALBERTA UTILITIES COMMISSION

AltaGas Ltd., Gas Utilities Act Code of Conduct Regulation Audit Exemption for 2013 and 2014 (Decision 2014-198)

Exemption Request – Audit

AltaGas Ltd. ("AltaGas") applied pursuant to section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* ("*GUCCR*") requesting an exemption from the requirement to provide the AUC with audit reports for 2013 and 2014 under section 40(3) of the *GUCCR*.

[Note: This decision is similar to a companion application filed by AltaGas Utilities Inc. for the same exemptions. It is summarized in the June 2014 edition of our newsletter.]

AltaGas submitted that it had demonstrated material compliance in previous years, and that an exemption would support principles of regulatory efficiency.

The AUC considered that AltaGas had the onus of proving that the application would be in the public interest, citing section 37 of the *GUCCR* for the proposition that compliance audits are mandatory for gas distributors and default suppliers.

The AUC denied AltaGas' application, noting that past compliance is no guarantee of future compliance, and referred to AltaGas' recurrent non-compliances in 2010 and 2012 with respect to sections 3 and 9 of the *GUCCR*. The AUC also noted that audits may identify non-compliance instances that were undetected by AltaGas, and would therefore be beneficial. AltaGas was directed to file an application requesting approval of its audit for the 2013 calendar year on or before July 22, 2014.

However, the AUC indicated it would consider waiving the requirement to have an independent auditor for each affiliated entity (i.e. allow a joint audit) if AltaGas could demonstrate that a joint audit would satisfy the purposes of the *GUCCA* and principles of cost efficiency.

ATCO Electric Ltd. Steen River Power Plant Capacity Increase (Decision 2014-203)

Power Plant Capacity Increase

ATCO Electric Ltd. ("ATCO") applied pursuant to section 11 of the *Hydro and Electric Energy Act*, and section 27(1) of the *Isolated Generating Units and Customer Choice Regulation* ("*IGUCCR*") to alter and operate the Steen River Power Plant by replacing two 35-kilowatt (kW) generating units designated as CUL 441 and CUL 442 with two 60-kW generating units to be designated CUL 504 and CUL 505.

No objections or concerns were received from stakeholders or the public.

The AUC determined that the application met all of the technical, siting, emissions, environmental and noise standards required and therefore approved the application by issuing Approval No. U2014-328.

As the power plant was listed on the *IGUCCR*, the AUC also replaced CUL 441 and CUL 442 with CUL 504 and CUL 505 in Part A of the Schedule to the *IGUCCR*.

Market Surveillance Administrator Preliminary Matters in Market Surveillance Administrator Allegations Against TransAlta Corporation et al, Mr. Nathan Kaiser and Mr. Scott Connelly (Decision 2014-204)

Hearing Scope – Process – Standard of Disclosure

The AUC released this decision to set a process schedule for Proceeding No. 3110 (the "Proceeding") and to provide direction regarding:

(a) The scope of the Proceeding;

(b) The standard of disclosure; and

(c) The need for a written interrogatory process.

Scope of Proceeding

The parties had agreed that the scope of the Proceeding would be limited to the allegations in the Market Surveillance Administrator ("MSA") application and the defences and mitigating factors raised by the defendants. The AUC held that section 53 of the *Alberta Utilities Commission Act ("AUCA")* requires the AUC to hold a hearing into the matters in the MSA's application and that the scope of the hearing would be set as agreed to by the parties.

TransAlta Corporation, TransAlta Energy Marketing Corp. and TransAlta Generation Partnership ("TransAlta") submitted that the scope of the hearing should be defined "on the basis that economic withholding and the timing of discretionary outages at merchant units is lawful." The AUC declined to make a ruling on this submission, as that issue would be best dealt with at the hearing itself.

Standard of Disclosure

The AUC also considered the appropriate level of disclosure (in keeping with its Bulletin 2010-017, which requires the AUC to determine the appropriate level of disclosure on a case by case basis), and having regard to a balance of the relevant interests in an administrative hearing.

Mr. Connelly and Mr. Kaiser submitted that the MSA was required to disclose additional materials, such as investigative documents and other relevant information from witnesses. Conversely, the MSA submitted that it should only have to disclose those documents it intends to rely on to prove its case, rather than all those that are relevant to its case.

In providing its ruling on the matter of disclosure, the AUC cited section 9(2) of the *AUCA* as codifying the common law right of a respondent to know the case against it, and the following five factors used to identify procedural fairness requirements by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*:

(a) The choice of procedure made by the agency;

(b) The nature of the statutory scheme;

(c) The nature of the decision;

(d) The legitimate expectations of the individual; and

(e) The importance of the matter to the affected individual.

In taking the above into account, the AUC analogized the Proceeding to a professional disciplinary or licensing proceeding. The AUC noted that some precedent exists that the standard of disclosure should be limited to those documents that the applicant will rely on in proving its case when the respondent is a corporation. However, as the Proceeding involved both individuals and corporations, and included "considerable personal and professional consequences" to the individuals, the AUC opted for a standard of disclosure based on relevance to the case. Therefore the AUC directed the MSA to make available all documents relevant to the matters raised, whether the documents are inculpatory or exculpatory. The AUC also ordered the MSA to provide a list of documents it would not disclose to the respondents, and to provide a rationale for non-disclosure. The AUC held that it would resolve any disputes as to whether a document is relevant.

Need for Written Interrogatory Process

On the issue of the need for a written interrogatory process, the AUC held that the nature of the Proceeding is quite different from situations such as rate or facility proceedings where the use of written interrogatories, such as information requests, are quite common. The AUC also referred to its Bulletin 2010-017 again to note that it was unlikely that the AUC would consider a written interrogatory process in an administrative penalty proceeding. The respondents all submitted that a written interrogatory process was necessary to gain clarity in respect of the MSA's application. The MSA, by contrast, submitted that a written interrogatory process was inappropriate in the circumstances, as it argued that most of the proposed information requests amounted to written cross-examination. However, the MSA stated that it would assist the respondents in understanding the underlying data submitted with the MSA's expert reports.

The AUC held that a written interrogatory process was unnecessary because:

(a) It had previously ordered a greater amount of disclosure from the MSA to the respondents; and

(b) A large number of the respondents' requests related to information or documents already disclosed by the MSA per the AUC's order.

However, the AUC allowed a limited number of the information requests filed by the respondents, as it classified them as a true request for particulars from the MSA, and that the respondents were entitled to know about those particulars pursuant to section 9(2) of the *AUCA.*

The AUC rejected information requests from TransAlta to ENMAX Energy Corporation and Capital Power Corporation on the basis that:

(a) Neither were parties to the Proceeding; and

(b) The AUC was not satisfied that it should exercise its authority to compel either of them as witnesses given their limited scope of submissions.

Process and Schedule

With respect to the process and schedule in the Proceeding, the AUC opted to bifurcate the Proceeding into two phases:

(a) Phase One, in which the MSA has the burden of proving the allegations put forth in its application; and

(b) Phase Two, which would only occur if the MSA is successful in Phase One, whereby the AUC would inquire into the appropriate remedy for the misconduct.

The AUC also set out the process for introducing and responding to the case in the Proceeding. The AUC held that the MSA has pre-filed all of its evidence, thereby alleviating the concerns from the respondents that the MSA may attempt to "split its case". In the same ruling, the AUC also held that the respondents are not required to file or present factual evidence until the MSA's case has been closed, with the narrow exception of requiring the respondents to pre-file their expert evidence.

The AUC also held that the MSA's right of reply would be limited to only addressing new matters arising from any expert evidence from the respondents.

The AUC set out a schedule for the Proceeding and provided notice that the hearing into the MSA's allegations would commence at 9 a.m. on Monday, December 1, 2014.

Syncrude Canada Ltd. Mildred Lake Power Plant (Decision 2014-212)
Standing – Power Plant

As a preliminary matter to the application itself, the Athabasca Chipewyan First Nation ("ACFN") applied for standing before the AUC to oppose the application. ACFN submitted that it held constitutionally protected aboriginal and treaty rights pursuant to section 35 of the *Constitution Act, 1982*. As a result, ACFN submitted that they would be directly and adversely affected by the construction of the Mildred Lake power plant, as it asserted that the proposed power plant would be within the ACFN's traditional territory and would therefore adversely affect the ACFN's ability to exercise their treaty rights, particularly with respect to water usage on the Athabasca River.

The AUC, in rendering its decision on standing, cited the applicable two-part test under subsection 9(2) of the *Alberta Utilities Commission Act* ("*AUCA*") developed by the Alberta Court of Appeal in *Dene Tha' v Alberta* (*Energy and Utilities Board*) 2005 ABCA 68 at para 10.

> *"The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interests or rights. The second test is factual."*

The AUC assumed, without deciding on the substance of the assertion, that the ACFN was entitled to exercise their rights as asserted in their submission, thus satisfying the first branch of the test. However, since the proposed power plant would occupy a 100 by 200 metre area approximately five kilometers from the Athabasca River, and approximately 15 kilometers away from the nearest residence, the AUC held that the ACFN had failed to demonstrate that its treaty rights in and around the Athabasca River may be affected by the proposed power plant.

Accordingly, the AUC considered that a hearing was not required, as no parties had met the test for standing under section 9 of the *AUCA*.

0747744 B.C. Ltd. Water Rates Approval Application for the Lakes of Muirfield Residential Development (Decision 2014-217)
Water Rates Application - Standing

Pursuant to an order for foreclosure granted by the Alberta Court of Queen's Bench, the title to property held by Muirfield Land Corp. ("Muirfield") vested in 0747744 B.C. Ltd., including a water utility serving the Lakes of Muirfield residential development.

0747744 B.C. Ltd. applied to the AUC on March 27, 2014 pursuant to section 89 of the *Public Utilities Act* ("*PUA*") for approval of the rates, terms and conditions approved in Decision 2009-048 for the continued operation of the water utility serving the Lakes of Muirfield.

The AUC received two objections from the public which did not concern the rates or terms and conditions applied, but were critical of 0747744 B.C. Ltd. generally, as both objectors were unsecured creditors of Muirfield. The AUC reiterated that the application under section 89 of the *PUA* requires only a finding on what rates may be charged and the applicable terms of service for the water utility. The AUC stated that the object of a section 89 application did not have the effect of approving a franchise, assigning water or utility rights or providing a licence to operate as a public utility, and that the AUC's decision in any event would have no effect on the interests of the unsecured creditors. As such, and owing to the fact that neither intervenor established a right or interest that may be directly and adversely affected by the application, the AUC denied standing to both unsecured creditors.

The AUC otherwise held that the rates, terms and conditions established in Decision 2009-048 continue to be just and reasonable, and approved them for the continued operation of the Lakes of Muirfield development water utility by 0747744 B.C. Ltd.

AltaLink Management Ltd. Red Deer Area Transmission Development (Decision 2014-219)
Facility Application

On June 14, 2013, AltaLink Management Ltd. ("AltaLink") applied to the AUC to build and operate the following facilities as part of the Red Deer transmission development project:

(a) Rebuild transmission lines 80L, 755L, 637L and 648L in and around the Red Deer and Sylvan Lake area;

(b) Build a new substation in the Didsbury area, to be designated as New Johnson 281S;

(c) Build a new substation and transmission line in the Innisfail area, to be designated as New Hazelwood 287S and 419L/420L, respectively;

(d) Build a new substation and transmission line in the Ponoka area, to be designated as the New Wolf Creek 288S substation and new transmission line 421L/422L, respectively;

(e) Build a new 138-kilovolt (kV) transmission line in the Lacombe area, to be designated as transmission line 423L; and

(f) Redesignate portions of transmission line 80L between the Olds 55S substation and Innisfail 214S substation as transmission line 443L, and the portion between the North Red Deer 217S substation and Blackfalds 198S substation as transmission line 444L.

AltaLink also proposed to salvage transmission line infrastructure on the 673L, 648L, 755L, 910L, 80L, 166L, 918L, 929L, 910L and 883L transmission lines, and all of the equipment at the existing Didsbury 152S substation as part of the projects.

The AUC noted that the Alberta Electric System Operator had obtained approval for the Needs Identification Document on April 10, 2012, pursuant to Decision 2012-098.

Due to the large footprint and multi-faceted nature of the facilities applications, a large number of parties participated in the hearing. The AUC held that AtlaLink's consultation program met all of the requirements of AUC *Rule 007*.

With respect to stakeholder concerns about exposure to electric and magnetic fields ("EMF") caused by the operation of the high voltage lines, AltaLink stated that EMF would only be strongest when close to the lines, and would rapidly decrease as the distance from the line increases, to the point where EMF would be difficult to measure at a distance of 150 metres. AltaLink submitted that the EMF levels were well below the guidelines established by the International Commission on Non-Ionizing Radiation Protection.

The AUC held that exposure to EMF, based on the expert testimony and on a literature review, was not likely to be a cause of any long-term adverse health effects.

Many stakeholders near the 138-kV lines submitted that the construction of transmission lines would negatively affect their property values by up to 27 percent at a distance of approximately 10 metres from the transmission line, with the negative price impact decreasing as distance increased. Some stakeholders also expressed concerns about impacts on agricultural activities, including impacts from weeds and clubroot infestation.

AltaLink submitted a regression analysis of paired sales of properties that compared similarly situated properties with and without 138-kV lines on or near the property, and found that there was no statistically significant effect on property values at a 95 percent confidence level. With respect to weed control and clubroot, AltaLink proposed a weed control program as part of its environmental specifications requirements ("**ESR**") to mitigate the possibility of transferring topsoil on machinery through cleaning and soil management.

The AUC placed little weight on AltaLink's evidence on impacts to property value, as it considered the report to be generic in nature, and lacked route-specific economic impacts for the transmission lines. The AUC held that the intervenors used the proper approach to assessing impacts by using a distance sensitive calculation, however, the AUC did not accept the specific price impact proposed, and gave that evidence little weight due to concerns over sampling bias by disregarding certain studies. The AUC therefore determined that there was insufficient evidence to suggest that there would be a property value impact caused by the project, with the exception of one specific community.

With respect to the concerns over weed control and clubroot, the AUC held that the mitigation measures proposed by AltaLink were suitable and responsive to the concerns of the intervenors.

AltaLink submitted that its ESR, and the commitments contained therein, identified the specific mitigation measures to reduce the environmental impact of the project. The ESR contained, among other things:

(a) Field studies and surveys for each project component prior to construction;

(b) Alternative routes and construction options compared and assessed using only environmental impacts to establish a proposed route; and

(c) Plans for post-construction reclamation, including recontouring, topsoil replacement, erosion control measures, and re-vegetation plans.

The AUC accepted AltaLink's evidence with respect to environmental impacts, as little or no evidence was presented to contradict AltaLink. The AUC further approved of the proposed mitigation measures in the ESR, and found that the use of existing rights of way for the project would minimize any adverse effects and assist in achieving post-construction reclamation.

The AUC held that the project would comply with AUC Rule 012: *Noise Control* as AltaLink's noise impact assessments all predicted night-time sound levels within the permissible

range, and that no other party submitted evidence regarding noise impacts.

The Utilities Consumer Advocate submitted evidence that the cost of the project was far in excess of the variance allowed in comparison to the Needs Identification Document. AltaLink submitted that, due to changes in scope and different routing options, the cost of the project fell outside the plus or minus 30 percent variance set out in the Needs Identification Document. While the AUC expressed some concerns about the increase in costs, it held that the facility application was not the appropriate venue to implement changes to the Needs Identification Document process.

The AUC held as follows for each of the routing options on each proposed transmission line:

(a) The preferred routing option as proposed by AltaLink for Transmission Line 80L using existing rights of way, and some underground construction routes was reasonable, noting that the potential increased costs were offset by the lower impacts to landowners and the environment, and that the mitigation proposed was sufficient to offset the impact;

(b) The preferred routing option as proposed by AltaLink for Transmission Line 755L, Transmission Line 637L and Transmission Line 648L were reasonable, as each line followed the previous existing alignment, and as such there were no social, economic or environmental impacts that would suggest the routes were not in the public interest;

(c) The proposal to salvage the Didsbury 152S substation, and the new construction of the Johnson 218S substation was reasonable, and that AltaLink's proposed mitigation measures with respect to drainage and visual impacts were appropriate to alleviate the concerns of the intervenors. The AUC also held that the proposed route for Transmission Line 417L/418L was reasonable, as it would be located along existing disturbances such as road allowances, and was required to connect the Johnson 218S substation to transmission line 166L and 918L;

(d) The 419L/420L transmission line and Hazelwood 287S substations should be constructed using the preferred route and preferred location over the alternate routes proposed, as the total impacts, costs and length were smaller than the alternate route. Despite there being a greater number of landowners opposed to the preferred route, the AUC held that the number of landowners opposed does not necessarily imply greater impacts; and

(e) The Wolf Creek 288S substation should be constructed using the preferred route and location on account of lower environmental impacts and lower costs.

The AUC held that the Red Deer area transmission development was consistent with the Needs Identification Document, and met the needs identified by it. The AUC granted AltaLink 5 new substation permit and licences, 23 permit and licences to construct, alter, redesignate or operate transmission lines, and 1 permit and licence to decommission and salvage a transmission line.

Suncor Energy Inc. MacKay River 874S Substation Industrial System Designation (Decision 2014-220)
Industrial System Designation

The AUC approved Suncor Energy Inc.'s ("Suncor") application for approval of additional equipment to be installed at its MacKay 874S substation within the boundaries of its industrial system designation.

The AUC directed Suncor to resubmit an application to include a 260-kV T6 transformer as part of its industrial system designation.

FortisAlberta Inc. 2012-2014 Phase II Distribution Tariff Compliance Filing (Decision 2014-224)
Compliance Filing

FortisAlberta Inc. ("Fortis") applied to the AUC for approval of its 2012-2014 Phase II Distribution Tariff pursuant to Decision 2014-018 which directed Fortis to provide updated schedules. Fortis applied for approval of:

(a) 2014 rates, options and riders for the purposes of setting its 2015 performance based regulation rates for its next adjustment filing;

(b) A net distribution adjustment refund of $57,000 to be spread across all rate classes based on revenue allocation; and

(c) Amendments to its customers and retailer terms and conditions of service.

In respect of setting 2014 rates, options and riders, Fortis noted that due to the large number of rate and system changes for 2014-2015, Fortis requested that the AUC approve the 2014 rates for use in 2015, since the implementation of the new rate structure may be delayed beyond January 1, 2015. The AUC accepted Fortis' explanation and found extending the 2014 rates to be an effective bridging mechanism between rate structures.

Fortis' application for the $57,000 refund arose from the difference between forecast revenue and the proposed 2014 rates on the new rate structure. Fortis applied to have this amount included in the 2015 annual performance based

regulation adjustment filing. As the amount was small when spread across all rates, and would not have a significant impact on the rates themselves, the AUC approved the refund amount.

Fortis also applied to have smart meters for retail customers included in the terms and conditions, including a service charge for meter reads for customers that refuse to adopt a standard meter, as the AUC had previously held that those charges should not be included as system costs. Fortis also applied to include changes to meter reading charges to have a minimum number of meter reads per year.

The AUC held that Fortis' application was consistent with previous decisions, and would ensure greater accuracy in fulfilling Fortis' responsibilities as a load settlement agent under AUC *Rule 021*.

The AUC held that Fortis had complied with its remaining directions, and therefore approved the application.

ATCO Gas and Pipelines Ltd. (South) Construction of the East Calgary B Extension Pipelines (Decision 2014-225)
Extension Pipelines Construction

ATCO Gas and Pipelines Ltd. (South) ("ATCO") applied to construct and modify nine different pipelines under Licence Nos. 5895 and 3105 located in Rocky View County and in Calgary to increase the pipelines' capacity to compensate for larger volumes of gas to the Shepard Energy Centre and to maintain supply to the City of Airdrie. ATCO submitted that the business case for the East Calgary B Extension was approved by the AUC in Decision 2013-430.

ATCO confirmed that there were no outstanding objections to the project and that all stakeholders had provided a confirmation of non-objection.

Pursuant to sections 4.1 and 11 of the *Pipeline Act*, the AUC approved of the amendment of Licence Nos. 5895 and 3105 to include the proposed gas utility lines.

Notice Issuance Related to Electric and Natural Gas Facility Applications (Bulletin 2014-10)
Facility Applications

This bulletin outlines the AUC's plans to change its application review procedures for facility applications. Notably, public notices for facility applications will be issued simultaneously with information requests from the AUC, instead of the previous procedure where the notice was issued after completing information requests with the AUC.

Power plant exemptions – Elimination of Application Requirements for Power Plants with a Capability of less than 10 Megawatts that are Generating Electric Energy Solely for the use of the Owner (Bulletin 2014-11)
Power Plant Exemption

This bulletin outlines the AUC's plans to eliminate the need for applications for power plants larger than one megawatt and smaller than ten megawatts that generate electric energy for the owner's own use and consumption (including use as primary, back-up/standby, temporary or emergency use) provided that the following conditions are met:

(a) No person is directly and adversely affected;

(b) The plant complies with AUC *Rule 012: Noise Control*;

(c) No environmental effects; and

(d) Adequate protection is installed to isolate the unit from a connected wire owner, or the owner must enter into an operating agreement with the wire owner, if connected to a distribution or transmission system.

However, if a plant is to be connected to the Alberta Interconnected Electric System, no exemption from applying to the AUC is available.

Owners must still maintain adequate records to demonstrate compliance for post-construction audits by the AUC.

Various AUC NID and Facility Applications
Needs Identification Document - Facility Application

The AUC approved the following need application and related facility application upon finding that:

- The public consultation complies with *AUC Rule 007*;
- The noise impact assessment summary complies with *AUC Rule 012*;
- There was no evidence that the AESO need assessment is technically deficient;
- The facility proposed satisfies the need identified;
- Technical, siting and environmental aspects of the facilities comply with *AUC Rule 007*;
- Considering the social, economic and environmental impacts, the project is in the public interest; and
- The project is in accordance with any applicable regional plan.

Decision	Party	Application
2014-222	AESO	Red Deer 63S Substation Upgrade NID Application
	AltaLink Management Ltd.	Red Deer 63S Substation Upgrade Facility Application

The AUC approved the following facility applications upon finding that:

- The public consultation complies with *AUC Rule 007*;
- The noise impact assessment summary will comply with *AUC Rule 012*;
- Technical, siting and environmental aspects of the facilities comply with *AUC Rule 007*; and
- Considering the social, economic and environmental impacts, the project is in the public interest.

Decision	Party	Application
2014-208	AltaLink Management Ltd.	Goose Lake 103S Substation Telecommunications Upgrade
2014-209	Taylor Processing Inc.	15MW Cogeneration Power Plant Facility Application
2014-212	Syncrude Canada Ltd.	Mildred Lake 92-MW Power Plant Facility Application
2014-214	Harvest Operations Corp.	Six-MW Power Plant Facility Application
		Six-MW Power Plant Exempt from section 11 of the *HEEA*
2014-215	ATCO Electric Ltd.	Decommission and Salvage Approval for Transmission Line 6L68
		Facility Approval to Alter and Operate the Sturgeon 734S Substation.
2014-218	Encana Corporation	4.425-MW Power Plant Exemption

Various AUC Franchise Agreements
Franchise Agreement

Pursuant to section 139 of the *Electric Utilities Act* the AUC approved the following franchise agreements upon having found that they were necessary and proper for the public convenience and properly serve the public interest. In each case the term of the agreement is 10 years with two five year options. The approved franchise fees are indicated below as are any applicable linear tax rates.

	Franchise Fee as % of Delivery Revenue	Linear Property Tax Rate
Village of Wabamun - FortisAlberta Inc. (Decision 2014-199)	3%	3.25%
Village of Warburg - FortisAlberta Inc. (Decision 2014-200)	10%	2.69%
Town of Cochrane – FortisAlberta Inc. (Decision 2014-201)	15%	1.54%
Village of Breton – FortisAlberta Inc. (Decision 2014-202)	20%	2.61%
Town of Olds – FortisAlberta Inc. (Decision 2014-206)	8.59%	1.16%
Village of Stirlilng – FortisAlberta Inc. (Decision 2014-207)	8%	1.80%
Town of Edson – FortisAlberta Inc. (Decision 2014-210)	5%	2.15%
City of Camrose – FortisAlberta Inc. (Decision 2014-216)	6%	1.82%

NATIONAL ENERGY BOARD

Updated Guidance for Companies on National Energy Board Publications
Publication Changes

The NEB, after completing a review of its Participation and Lands Publications, made changes to publications that may be used for public engagement, and which may form part of the NEB's Filing Manual requirements. The changes account for amendments to *the National Energy Board Act* and the *Canadian Environmental Assessment Act, 2012*.

The NEB replaced the following publications:

(a) "*Information for a Proposed Pipeline or Power Line Project: What You Need to Know"* is replaced by:

  (i) *"NEB Information for Proposed Pipeline or Power Line Projects that Do Not Involve a Hearing"*; and

  (ii) *"NEB Information for Proposed Pipeline or Power Line Projects that Involve a Hearing"*;

(b) *"The Public Hearing Process: Your Guide to Understanding NEB Hearings"* is replaced by "*NEB Hearing Process Handbook*"; and

(c) *"Pipeline Regulation in Canada: A Guide for Landowners and the Public"* is replaced by *"NEB Landowner Guide".*

The publications affected can be found by clicking here. The NEB encourages companies to update these materials for consultation purposes.

Kinder Morgan Canada Inc.; Trans Mountain Pipeline ULC Request to Lift Pressure Restriction Safety Order SO-T260-005-2013 NPS 24 Mainline Liquids Leak
Safety Order – Pressure Restriction

Kinder Morgan Canada Inc. ("KMC"), after discovering two separate leaks stemming from cracks discovered in earlier inline inspections on its NPS 24 Mainline, applied a voluntary pressure restriction on its mainline. On August 2, 2013, the NEB issued Safety Order SO-T260-005-2013 to maintain that pressure restriction.

On June 3, 2014, KMC applied to lift the pressure restriction for its Sumas to Burnaby segment. The NEB held that KMC's engineering assessment and submissions complied with the commitments set out in its Integrity Assurance Plan and therefore allowed the Sumas to Burnaby segment to return to full service by lifting the pressure restriction.

The NEB reiterated that KMC must demonstrate compliance to its Integrity Assurance Plan for the remaining segments of its mainline before the pressure restrictions on these segments would be lifted.

Kinder Morgan Energy Partners, L.P. (Kinder Morgan) Cochin Pipeline System Western Canada - Safety Order SO-K077-005-2012 - Condition 5 and 6 - Leave to Open Order OPLO-K077-004-2014
Safety Order

The NEB issued a letter to Kinder Morgan Energy Partners, L.P. ("Kinder Morgan") noting that the NEB had concluded its review of Kinder Morgan's documents filed in compliance with Condition 5 and 6 of the Safety Order SO-K077-005-2012 (the "Safety Order").

The Safety Order had previously restricted the pressure on the Elmore, Saskatchewan to Fort Saskatchewan, Alberta segment of the Cochin Pipeline System to 4,137 kPa because of remnant integrity concerns expressed by the NEB in the Safety Order – namely, that the NEB deemed Kinder Morgan's former crack detection methodology used to assess the Cochin Pipeline System as inappropriate. The NEB lifted the pressure restriction and allowed Kinder Morgan to operate that segment of the Cochin Pipeline System at its maximum operating pressure of 9,929 kPa, as Kinder Morgan had completed the required fitness for service assessment under Condition 5 of the Safety Order. The NEB also directed Kinder Morgan to fulfill its commitments set out in its fitness for service assessment dated May 30, 2014.

Canadian Natural Resources Limited Section 47 Application dated 7 March 2014 for Leave to Open the Ladyfern Pipeline
Leave to Open

By way of a letter decision, the NEB granted Canadian Natural Resources Limited's ("CNRL") application under section 47 of the *National Energy Board Act* for leave to open the Ladyfern pipeline. However, the NEB expressed its concern over CNRL's apparent lack of supervision while performing a hydrostatic test in which a pressurized line was left unattended for 14 hours.

The NEB directed CNRL to explain why it left the pressurized line unattended and what steps would be taken to assure future compliance.

NEB Inspection Officer Order No. DWL-001-2014: Enbridge Pipelines Inc. Line 3 Replacement Project Environmental Protection Plan Non-Compliances
Non-Compliance – Environmental Protection Plan

In the course of Enbridge Pipelines Inc.'s ("Enbridge") replacement of its Line 3 pipeline, an NEB inspector

observed non-compliances on and off the right-of-way, causing both property damage to agricultural lands and environmental damage to wetlands. Accordingly, the inspector issued an order pursuant to section 51.1 and 51.1(2) of *the National Energy Board Act* requiring Enbridge to suspend work until the non-compliances have been remedied, and among other things, to take the following measures:

(a) Not re-start construction until a resume work order is issued by an NEB inspection officer;

(b) Immediately address any safety concerns on the right of way, including signage and fencing;

(c) Create safe access to the right of way for specified persons (names redacted in the order);

(d) Create a detailed assessment of all safety and environmental issues on and off the right of way for the Line 3 replacement project, and create an action plan including a timetable for addressing each item identified prior to August 4, 2014;

(e) Review, revise and submit its Environmental Protection Plan to an NEB inspection officer for review by August 31, 2014; and

(f) Provide details on how Enbridge will restrict site access to control club root contamination.

NEB to Review Proposals Related to Same Season Relief Well Policy (News Release)
News Release – Well Policy

On July 11, 2014 the NEB announced it will review the following two proposals for deepwater drilling in the Arctic with respect to whether these proposals would meet the intent of the Same Season Relief Well Policy ("SSRWP"):

(a) Imperial Oil Resource Ventures Ltd. ("IORVL") for the Beaufort Sea Exploration Joint Venture Drilling Program; and

(b) Chevron Canada Limited ("Chevron") for Exploration License EL 481.

The SSRWP requires applicants, such as IORVL and Chevron, to demonstrate, in a contingency plan, that they have the requisite capability to drill a relief well in the same drilling season, to kill a well that is out of control. Applicants must either demonstrate compliance with the policy or demonstrate how they would meet or exceed the intended outcome of the policy, which is to minimize harmful impacts on the environment.

The press release notes that both applicants intend to use alternative well control measures in lieu of the SSRWP, and that the NEB has granted a review of both applications to determine whether the proposals meet the application of the SSRWP.

The public is invited to comment on each application separately by August 1, 2014.

FEDERAL COURT OF APPEAL

Forestethics Advocacy Association v Canada (Attorney General), (2014 FCA 182)
Consolidate Applications – Increase Page Limit

In this decision, Northern Gateway Pipelines Limited Partnership ("Northern Gateway"), a respondent to approximately nine requests for leave to appeal under section 55(1) of the *National Energy Board Act* (the "*NEB Act*"), and one request for leave to appeal under section 22(1) of the *NEB Act*, applied to the Federal Court of Appeal to consolidate the applications for leave to appeal, and to increase the page limit allowed under the *Federal Courts Rules* to 85 pages, as Northern Gateway proposed to file a single reply in the consolidated matters.

Each of the applications for leave to appeal referenced herein arises from the Order in Council P.C. 2014-809, and the NEB's issuance of certificates of public convenience (OC-060 and OC-061) for the two pipelines proposed by Northern Gateway.

Northern Gateway's application to consolidate the applications for leave to appeal was granted, as the applications all arose from the same facts and law.

However, Northern Gateway's application to increase the page limit on its respondent's memorandum to 85 pages was denied. Stratas, JA cited the common issues and facts as among the parties applying for leave to appeal (despite their differing views on the matters) and the need for conciseness as set out in Rule 70 of the *Federal Courts Rules* as reasons for denying the application.