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DECISIONS

REGULATORY
LAW CHAMBERS

ENERGY REGULATORY REPORT

Regulatory Law Chambers *is a Calgary-based boutique law firm dedicated to excellence in energy regulatory matters. We have expertise in oil and gas, electricity, including renewable energies and commercial matters, tolls and tariff, compliance and environmental related matters. We frequently represent clients in proceedings before the Alberta Energy Regulator ("AER"), the Alberta Utilities Commission ("AUC"), the National Energy Board ("NEB"), all levels of the Courts, and in energy related arbitrations and mediations.* ***Our advice is practical and strategic. Our advocacy is effective.***

This monthly report summarizes matters under the jurisdiction of the AER, the AUC and the NEB and proceedings resulting from AER, AUC and NEB decisions. For further information, please contact Rosa Twyman at Rosa.Twyman@RLChambers.ca or Vincent Light at Vincent.Light@RLChambers.ca.

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ALBERTA COURT OF APPEAL

Berger v Alberta (Utilities Commission) (2015 ABCA 153)
Leave to Appeal – Dismissed – Procedural Fairness

A number of applicants sought leave to appeal AUC Decision 2013-386: *AltaLink Management Ltd., Medicine Hat Area 138 kV Transmission Line (the "Decision")* which approved an alternate route for the 138 kV transmission line near Dunmore, Alberta (the "Dunmore Route"). The applicants, a group of persons who live or own property near the Dunmore Route, sought leave to appeal the *Decision* on the basis that discussions with AltaLink Management Ltd.'s ("AltaLink") land agents led them to believe that the AUC would approve the preferred route and not the Dunmore Route, leading them to not participate in the AUC hearing. Some of the applicants submitted that they had no notice of the hearing at all.

Rowbotham J.A. distilled the various grounds of appeal into one issue, namely:

(a) Did the AUC err in jurisdiction or application of procedural fairness by failing to find a lack of notice and refusing to allow a new hearing?

All parties acknowledged to the Court of Appeal that all of the Applicants received various types of notice as a matter of fact. However, the real issue in dispute was that the quality of the notice provided was affected by assurances given by AltaLink's land agents.

The Applicants argued that AltaLink's land agents represented to them that the prospect of an approval for the Dunmore Route was extremely remote, and that their participation in the hearing was unnecessary. The Applicants submitted that, in relying on such representations, they did not attend the hearing or provide evidence, thus nullifying the effect of their notice and raising issues of procedural fairness.

Rowbotham J.A. dismissed the Applicants' procedural fairness argument on the grounds that:

(a) Some Applicants participated in the hearing, and adduced evidence of their opposition to the Dunmore Route;

(b) The published notices clearly show the Dunmore Route and explain that the AUC can choose to approve any of the proposed routes; and

(c) AltaLink denied having made any representations as alleged by the Applicants.

The Applicants also alleged that the AUC held there were fewer landowner objections to the Dunmore Route, a factor that rendered the *Decision* a "close call", and that their participation could have led to a different decision.

Rowbotham J.A. also dismissed the Applicants' request for leave to appeal on the grounds that the appeal was not *prima facie* meritorious, and that the AUC's reasons, taken as a whole, were reasonable, since the number of landowners was but one factor in a wide variety of relevant and appropriate factors, including social, economic and environmental factors.

In the result, Rowbotham J.A. held that the Applicants had not raised a serious, arguable point, nor did the applicants demonstrate that the appeal would be *meritorious* on its face. Rowbotham J.A. noted that even if the proposed appeal was a challenge to the AUC's public participation program, the AUC would be owed considerable deference on that point.

ALBERTA ENERGY REGULATOR

Administration Fees (Industry Levy), (Bulletin 2015-15)
Bulletin

The AER announced its industry levy in the amount of $240,093,000 for 2015-2016. The industry levy represents the revenue required to support AER operations, as approved by the Government of Alberta, and set out in the AER Administration Fees Rules ("AFR") as follows:

Sector	2015 Allocation ($000)	2014A & 2014B
Oil and gas	174,308	176,476
Oil sands	62,184	63,062
Coal	3,601	3,630
Total	**240,093**	**243,168**

Invoices for administration fees under the industry levy will be mailed out on May 7, 2015, and are sent to and payable by the party that was the operator as of December 31, 2014. The AER provided a breakdown of the fees payable for oil and gas operators, sorted by total production amounts as follows:

Class (Oil and Gas Operator)	Production (m^3/yr)	Base Fee
1	Service wells	$100.00
2	<300	$100.00
3	300.1-600	$125.00
4	600.1-1200	$312.00
5	1200.1-2000	$750.00
6	2000.1-4000	$1250.00
7	4000.1-6000	$1,625.00
8	>6000.1	$1,875.00

For oil sands production, the AER set the allocation based on the following categories:

Category	Allocation ($000)	Adjustment Factor
Primary ongoing	7,374	3.417290
Thermal ongoing	24,087	5.090885
Thermal growth	14,747	3.118329
Mining ongoing	9,094	1.998134
Mining growth	6,882	12.869544
Total	**62,184**	

With respect to coal production, the AER set the administration fee based on each mine's share of total production volumes, and set the industry levy as $0.118762 per tonne of coal.

The AER also included in the industry levy, the collection of $2,600,000 to fund the Alberta Upstream Petroleum Research Fund in 2015. The AER advised that payment of all invoices is required by June, 2015, regardless of whether an appeal has been filed or not.

Revised Addendum to Directive 036: Alternative Pressure Testing Method (Bulletin 2015-16)
Bulletin – Directive 036

The AER announced updates to the requirements related to testing of drilling equipment under Directive 036: *Drilling Blowout Prevention Requirements and Procedures* ("*Directive 36*"). Updates included changes to section 7, and the addition of a new addendum to *Directive 36* for testing blowout prevention equipment for class II, III, and IV wells. The AER noted that while the revisions are intended to provide regulatory flexibility, the balance of *Directive 36* remains unchanged, and failure to follow the pressure testing methods set out in *Directive 36* will result in enforcement action. The AER summarized the extent of the changes as follows:

(a) Licensees will no longer be required to apply for a pressure testing waiver if they follow the alternative pressure testing requirements;

(b) The alternative pressure testing method can be used for class II, III, and IV wells when an intermediate casing string will be set in the well; and

(c) The alternative pressure testing requirements do not apply to class V and VI wells, critical sour wells, and sour gas wells with an approved site-specific emergency response plan.

New Edition of Directive 050: Drilling Waste Management (Bulletin 2017-17)
Bulletin - Directive 050

The AER announced a new edition of Directive 050: *Drilling Waste Management* ("*Directive 50*"), setting out new requirements for treatment and disposal of drilling waste generated in Alberta. The AER provided the following synopsis of revisions in the new edition:

(a) Section 7: Management of Cement Returns:

(i) Pump methods may be used for disposing of accumulated water within a cement return storage system without prior approval under section 19;

(ii) Cement returns stored in a segregated pit must be buried or removed within 18 months; and

(iii) Allowing the reuse of earthen pits for the storage of cement returns to reduce the need for additional storage area.

(b) Section 8: Drilling Wastes from Pipelines:

(i) Drilling mud systems composed solely of water and bentonite do not require toxicity evaluations; and

(ii) Field screening for pH, electrical conductivity, sodium adsorption ratio and nitrogen is permitted.

(c) Various sections have been updated to incorporate content from previous documents published in 2012 as frequently asked questions.

(d) Sections have been amended throughout to reflect the changes introduced in the *Responsible Energy Development Act*.

The new edition of *Directive 50* can be reviewed in its entirety by clicking here.

Ongoing Regulatory Document Review: Rescission of Directive 048 and Informational Letter 94-02 (Bulletin 2015-18)
Bulletin – Directive 048

The AER announced that effective immediately, the following regulatory documents are rescinded:

(a) IL 94-02: Injection and Disposal Wells ("IL 94-02"); and

(b) Directive 048: *Monthly Custom Treating Plant Statement* ("*Directive 048*").

The AER explained that the requirements of IL 94-02 are already contained within Directive 051: *Injection and Disposal Wells* and Part 6 of the *Oil and Gas Conservation Rules*, and that the data required by *Directive 048* is collected through one of its data services, Petrinex (the supporting calculations are also found in AER Manual 011: How to Submit Volumetric Data to the AER).

The AER noted that IL 94-02 and *Directive 048* were therefore duplicative and unnecessary.

Updates to Directive 017: Measurement Requirements for Oil and Gas Operations (Bulletin 2015-19)
Bulletin – Directive 017

The AER announced the release of a revised edition of Directive 017: *Measurement Requirements for Oil and Gas Operations* ("*Directive 017*"), which revises requirements for:

(a) Measurement points used for AER accounting and reporting purposes; and

(b) Measurement points for upstream petroleum facilities and downstream pipelines operations. The revised edition provides extensive updates for several requirements, including proration measurement requirements under sections 3, 4, 5, 7 and 8, heavy oil measurement under section 12, and water measurement under section 15.

The AER also noted that the revisions to *Directive 017* may result in some consequential changes to the Enhanced Production Audit Program, such as Compliance Assurance Indicators. The AER advised that such changes will be communicated separately once finalized.

The updated version of *Directive 017* can be found here.

Pembina Pipeline Corporation Prehearing Meeting Applications for Two Pipelines Fox Creek to Namao (2015 ABAER 002)

Hearing Adjournment – Hearing Participation

The AER held a prehearing meeting in respect of two pipeline project proposals by Pembina Pipeline Corporation ("Pembina"), which would extend approximately 270 kilometres from Fox Creek, Alberta to Namao, Alberta the ("Project").

The prehearing meeting addressed mainly procedural matters, but addressed the following two main issues:

(a) A request for an adjournment of the hearing. The AER granted this request and released an updated hearing schedule with this decision; and

(b) Some parties signed confirmations of non-objection, however, the AER nonetheless confirmed their right to participate in the hearing.

Adjournment

A group of 40 nearby landowner interveners (the "Grassroots") requested an adjournment of the hearing from the proposed start date of July 13, 2015 to October 26, 2015. The Grassroots indicated that agricultural harvesting activities would be largely complete by this time, allowing the members to fully and effectively participate in the hearing.

The request for adjournment was supported by the Gunn Métis Local 55, the Driftpile First Nation, the Alexander First Nation and the Alexis Nakota Sioux Nation. Each group advised that the hearing schedule would directly conflict with planned cultural events.

Pembina opposed the adjournment, noting that the start date of the hearing was fair and reasonable.

The AER addressed the need for an adjournment by looking to the following factors in rendering its decision:

(a) The nature of the project;

(b) The timing of the request relative to the hearing date;

(c) Whether there have been any previous requests for adjournments;

(d) Whether the hearing schedule was established in consultation with the parties;

(e) Whether there would be an unnecessary or unjustified delay; and

(f) Whether the adjournment would prejudice any of the participants.

With respect to each of the above factors, the AUC held that:

(a) The project was significant in size and scope;

(b) The adjournment request was made well in advance of the hearing date;

(c) No previous adjournments had been requested;

(d) The schedule was developed without consulting the affected parties;

(e) The parties had acted reasonably in preparing for a potential hearing; and

(f) The intervener groups would be prejudiced by pressing forward with the hearing date, as the current timing conflicted with the agricultural business of the landowners and the cultural practices of First Nations interveners. The AUC noted that Pembina did not provide any specific examples of how it might be prejudiced.

The AER therefore granted the request for an adjournment, and set a new hearing date of October 26, 2015.

Confirmation of Non-Objection

With respect to the second issue, Pembina raised concerns respecting the AER's decision to grant preliminary participation to some members of the Grassroots, noting that they had previously confirmed their non-objection to the Project.

The AER held that the *Alberta Energy Regulator Rules* of *Practice* (the "*Rules*") does not preclude parties who have previously signed confirmations of non-objection from participating in a hearing. The AER also noted that, since Grassroots intended to participate as a single group, the addition of a few individual members should have a negligible effect on the hearing. On this basis the AER held that the members of Grassroots who previously signed confirmations of non-objection may participate in the hearing as part of the Grassroots group.

Decision

The AER issued a revised hearing schedule to reflect the findings in this decision, and included opportunities for parties to file information requests prior to the start of the hearing.

ALBERTA UTILITIES COMMISSION

Generic Proceeding to Establish Parameters for the Next Generation of Performance-Based Regulation Plans (Bulletin 2015-10)
Bulletin – Generic Proceeding – Performance-Based Regulation Plans

The AUC issued a letter to AltaGas Utilities Inc., ATCO Electric Ltd., ATCO Gas and Pipelines Ltd., ENMAX Power Corporation; EPCOR Distribution & Transmission Inc.; FortisAlberta Inc.; Consumers' Coalition of Alberta; The City of Calgary; and the Office of the Utilities Consumer Advocate in respect of the performance-based regulation ("PBR") plans approved by the AUC in Decision 2012-237. The AUC noted that it proposed to continue with PBR for electric and gas distribution utilities in accordance with the principles set out in its prior decisions.

Therefore, the AUC provided notice to the above referenced parties, that it was initiating a generic proceeding to determine the parameters for the next generation of PBR plans, as the current plans are set to expire in 2017. The AUC noted that its intention was to establish all of the parameters in advance of applications from companies for the next generation of PBR plans.

The AUC enclosed a preliminary list of issues, seeking further input from parties in identifying the issues relevant to setting parameters for the next generation of PBR plans. The AUC noted that the issues were not intended as a test of the validity for a particular parameter, or to argue the merits of a particular element within the PBR plan. The preliminary list of issues can be viewed here.

The AUC provided a preliminary schedule for the proceeding which can be found in the Bulletin.

A process for filing applications to implement the next generation framework for PBR applications will be initiated following a decision in the generic proceeding.

ENMAX Power Corporation 138-2.82L and 138-2.83L Transmission Realignment (Decision 3368-D01-2015)
Line Relocation

ENMAX Power Corporation's ("ENMAX") application to realign transmission lines 138-2.82L and 138-2.83L (the "Lines") is as a result of Remington Development Corporation's ("Remington") decision to terminate its right-of-way agreement with ENMAX. ENMAX disputed the termination, however the Court of Queen's Bench and Alberta Court of Appeal ("ABCA") upheld Remington's right to terminate the right-of-way in 2011 and 2012. However, the ABCA directed that the Lines shall not be removed or relocated until ordered by the AUC.

Accordingly, ENMAX requested approval to:

(a) Remove and salvage segments of the Lines and 13 structures;

(b) Install new lines in 910 metres of new underground duct banks;

(c) Construct a new overhead segment of transmission line 2.83L on four new steel monopole structures; and

(d) Replace three existing towers with termination structures.

One intervener expressed concerns about road and lane closures, and impacts on businesses during construction. In response ENMAX committed to mitigating such impacts by providing staff during construction to aid in traffic flow, and erecting signage to show that the businesses were open during construction.

ENMAX estimated the cost of the relocation would be approximately $13.3 million, with an in-service date of Q3 2016. ENMAX developed six alternatives, however, it rejected five due to the fact that:

(a) Four were located on Remington's lands; and

(b) One was located on Alberta Transportation's lands.

Both parties refused to grant rights-of-way to ENMAX along any of the rejected alternate routes. Accordingly, ENMAX considered the possible cost and compensation that could be ordered by the Surface Rights Board associated with the rejected alternate routes to be indeterminate, and of little use for selecting a preferred route. Therefore ENMAX selected its preferred underground route along 10th and 11th Ave. S.E. in Calgary.

The AUC held that such uncertainty with respect to the Surface Rights Board valuations was not a sufficient basis on which to accept the proposed route. The AUC also noted that Remington did not participate in the hearing with respect to the Lines, and the AUC had no information on which to determine Remington's plans for the land over which the Lines are located. The AUC held that it was unable to approve the relocation of the Lines in a vacuum.

Therefore, owing to the lack of information supporting a need to relocate the Lines, the AUC was not persuaded that any relocation was necessary. The AUC accordingly found that the proposed relocation of the Lines was not in the public interest and denied the application.

AltaLink Management Ltd. Springbank 9723R Radio Site Telecommunications Upgrade (Decision 3362-D01-2015)
Consultation – Siting – Visual Impacts – Health and Safety – Property Values

AltaLink Management Ltd. ("AltaLink") applied for a new 95-metre tall telecommunications tower, and to salvage the existing 79-metre tall telecommunications tower, at the Springbank 9273R radio site near Aspen Woods in southwest Calgary, Alberta.

In its application, AltaLink proposed to:

(a) Salvage the existing tower at the existing site;

(b) Construct and operate the proposed tower at the existing site approximately 10 metres north and five metres east of the existing tower;

(c) Expand the inner fence at the existing site by approximately six metres by six metres to the northeast; and

(d) Upgrade the associated telecommunications equipment and modify the site power supply.

Six nearby residents expressed concerns about the visual impacts, property value impacts and other environmental and safety risks concerning the construction of the new tower. Accordingly, the AUC considered the following issues in a public hearing:

(a) Did AltaLink's participant involvement and consultation program meet the requirements of AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designation and Hydro Development* ("*AUC Rule 007*")?

(b) Was the proposed project site suitable?

(c) Does the proposed project create visual impacts?

(d) Would there be health and safety risks as a result of construction and operation of the proposed project?

(e) Would the proposed project have a negative impact on the property values of nearby residences?

Consultation

AltaLink submitted that its participant involvement program exceeded the requirements of *AUC Rule 007*, as it notified stakeholders within a minimum of 800 metres from the outer fence line of the proposed site, and held an information session for landowners, in addition to providing project materials to stakeholders.

Interveners stated that they had difficulty contacting AltaLink, and expressed frustration over a perceived lack of meaningful consultation.

The AUC held that AltaLink's participant involvement program met the requirements of *AUC Rule 007*, and acknowledged that effective participant involvement programs may not resolve all stakeholder concerns.

Siting

On siting matters, AltaLink submitted that the project was a replacement of existing infrastructure, as part of its obligations to operate and maintain its facilities in a safe and reliable manner. AltaLink stated that the existing tower site connects six other telecommunications sites, and forms part of the "backbone" of the interconnected electric system. AltaLink submitted that the proposed site was based on AltaLink's ability to provide an optimal signal path for telecommunications signals.

Intervenors requested that the tower be relocated away from people and property, and submitted that current reliability issues with the existing tower were potentially due to the siting of the existing tower.

The AUC determined that the proposed site was technically feasible, and that the height increase proposed by AltaLink was necessary to meet reliability standards for telecommunications. While the AUC recognized that the proposed site may create adverse impacts, the AUC found that the location of the site was acceptable.

Visual Impacts

With respect to visual impacts, AltaLink submitted that the replacement tower would have a lower visual impact for the following reasons:

(a) It would be unpainted (as opposed to the existing alternating red-white paint pattern);

(b) It would be 40 percent narrower than the existing tower; and

(c) It would use light-emitting diodes (as opposed to incandescent lights) which would be less visible at ground level.

AltaLink also submitted that it received direction on the lighting configuration from Transport Canada to ensure it meets all other regulatory requirements.

As a further mitigation measure, AltaLink committed to spending between $5,000 and $15,000 to plant trees at the site to mitigate potential visual impacts at ground level.

The AUC held that, while the tower would create an impairment of viewscape, the proposed tower would replace an existing tower, and found that the visual impacts could be mitigated.

Health and Safety

Some residents raised safety concerns about a potential tower collapse, noting that several residences fall within the potential radius of a tower collapse. AltaLink responded by noting that it has not had a tower failure in the past 60 years, and have engineered its towers to ensure that a collapse would cause the tower to buckle on itself, and not fall on its side due to the tension of the guy wires.

The AUC determined that, given the design of the proposed tower, the tower would not create a material safety risk to area residents.

Property Values

Several interveners raised the issue of impacted residential property values. The AUC held that no expert reports were filed with respect to the impacts, and that the evidence introduced was brief, and in the nature of personal opinion. Therefore the AUC determined that there was insufficient evidence to find that the proposed tower would have an impact on residential property values.

Decision

Accordingly, the AUC determined that in taking into account all of the submissions in the proceeding, the proposed tower would have minimal impacts or adverse effects, or that any effects could be effectively mitigated by AltaLink. Therefore, the AUC held that the upgrade to the Springbank 9273R telecommunications tower was in the public interest pursuant to section 17 of the *Alberta Utilities Commission Act*.

TransAlta Corporation, as Manager of the TransAlta Generation Partnership 2013-2014 General Tariff Application (Decision 3466-D01-2015)
General Tariff Application

TransAlta Corporation, as Manager of the TransAlta Generation Partnership ("TransAlta") applied to the AUC for approval of its 2013-2014 general tariff application ("GTA"). TransAlta requested approval of:

(a) A revenue requirement of $4.46 million for 2013;

(b) A revenue requirement of $4.98 million for 2014;

(c) Terms and conditions of service for 2013 and 2014;

(d) Deferral and reserve accounts for 2013 and 2014;

(e) Reconciliation of its deferral account for property taxes and payments in lieu of property taxes for 2011 and 2012; and

(f) Reconciliation of its deferral account for tower payments for 2011 and 2012.

TransAlta's relatively small rate base and revenue requirement was noted by the AUC to be a result of specific assets being withheld by TransAlta arising from the Alberta Energy and Utilities Board Decision 2002-038, which authorized the sale of TransAlta's transmission assets and business to AltaLink. TransAlta explained that the operating and capital maintenance of these assets are performed by AltaLink, who acts as TransAlta's sole contractor. Therefore, TransAlta explained that its GTA was inextricably linked with AltaLink's forecasts used for its transmission assets, including:

(a) Capital ratios;

(b) Depreciation studies and resulting depreciation rates;

(c) Debt rates;

(d) Inflation rates;

(e) Salary escalators;

(f) Terms and conditions; and

(g) Other items, such as operations and management costs, as agreed to between TransAlta and AltaLink.

AltaLink's rates were approved in Decision 2013-407.

TransAlta requested direct operation and maintenance costs of $1.68 million for 2013 and $1.865 million for 2014. The Consumers' Coalition of Alberta ("CCA") submitted that the salary escalator rates of 5.25 percent as applied for by TransAlta were out of line with increases in prior years, noting that the year-over-year average increase was approximately 4 percent in the previous 3 years. CCA proposed an escalator rate of 3.75 percent.

The AUC held that, consistent with previous GTA filings, TransAlta's use of AltaLink's approved parameters was reasonable, and therefore approved TransAlta's operations and maintenance costs as filed.

TransAlta requested administrative and general expenses of $546,000 for 2013, and $1.051 million for 2014. TransAlta submitted that its 2014 revenue requirement increase of 11.8 per cent was predominantly due to the cost of its $500,000 insurance deductible arising from a fire on the Blood First Nation's Reserve.

TransAlta identified an error in its filing for outside services employed, noting that its legal expenses associated with the Blood Reserve fire had been double counted. Once as part of the deductible paid, and a second time as part of its outside service account for 2013 and 2014. TransAlta proposed to remove these items from its application.

The AUC held that, consistent with previous GTA filings, TransAlta's use of AltaLink's approved parameters was reasonable, and therefore approved TransAlta's general and administrative costs as filed, and directed TransAlta to refile amounts requested under "outside services employed".

With respect to the cost of the insurance deductible, the CCA did not oppose its inclusion, but recommended that the burden of the risk of the deductible should be spread out over time as it was a cost related to an insurable event and not a one-time cost. The CCA therefore recommended that the entire amount be amortized over a five year period commencing in 2014.

TransAlta opposed the CCA's recommendation, noting that considerable regulatory lag already exists for recovery of costs, and that the size of the deductible in relation to its overall revenue requirement was quite large. Any additional lag would be unreasonable.

The AUC agreed with TransAlta that any additional lag would be unreasonable, and approved the requested funding for the insurance deductible cost.

With respect to TransAlta's requested reconciliation of its deferral and reserve accounts, its applications were not opposed by any interveners. The AUC determined that the requested amounts were reasonable, approving them as filed.

The AUC also approved the continued use of deferral and reserve accounts for tower payments, hearing costs and property taxes (or payments in lieu of property taxes) as each of them are paid on an actual basis.

With respect to rate base matters, TransAlta's proposed rate base parameters were not opposed by any interveners, and were approved by the AUC as filed. However, the AUC did direct TransAlta to file an application to reconcile and direct assign capital projects for its GTA at a future date, noting that it had not requested any amounts for construction work-in-progress (or CWIP) in its GTA.

With respect to return on rate base, TransAlta's requested capital structure of 36 per cent equity and 64 percent debt was approved by the AUC in Decision 2191-D01-2015. Therefore the AUC approved the capital structure of TransAlta as filed. However, since TransAlta's placeholder for return on equity of 8.75 percent was adjusted by Decision 2191-D01-2015, the AUC directed TransAlta to re-file its application with a revised return on equity of 8.3 per cent for its GTA.

The AUC also approved TransAlta's cost of debt as filed, noting that consistent with previous GTA filings, TransAlta's use of AltaLink's approved cost of debt parameters was reasonable.

The AUC directed TransAlta to re-file its application on or before June 5, 2015.

ATCO Electric Ltd. Compliance Filing Pursuant to Decision 2014-283 (Decision 3509-D01-2015)

Compliance Filing

This decision arises from ATCO Electric Ltd.'s ("ATCO") application for approval of its proposed disposition of its 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances. In Decision 2014-283, which first dealt with these applications, the AUC directed ATCO to refile its 2012 transmission deferral application to reflect the findings in Decision 2014-283. This Decision addresses ATCO's compliance filing.

The AUC noted that most of ATCO's compliance submissions were not contested, nor were they subject to information requests. Therefore, the AUC only commented on directions it held were not adequately addressed, or that were contested by interveners.

Despite ATCO's general compliance with the AUC's directions, the AUC held that it was not persuaded that the updated 2012 capital addition amounts for the following projects, should be accepted at this time:

(a) Green Stocking Substation Project;

(b) Halkirk Wind Power Interconnection Project; and

(c) Enbridge Leismer Point of Delivery Project.

With respect to the Green Stocking Substation, the AUC determined that the addition to rate base from direct assigned projects would be no more than $45,718,997, subject to any additional information provided by ATCO in its compliance filing. ATCO submitted that the $45,718,997 figure shown in its reports at the time reflected categorization errors for contract labour and material costs that were later corrected. As part of its compliance filing, ATCO therefore requested that the AUC allow an addition of $50.5 million as the basis for the 2012 capital addition.

The AUC found that ATCO's assertions were not supported by any information on the record that was not already available, and also failed to demonstrate that the full $50.5 million figure was incurred in 2012. The AUC therefore denied the requested increase to the 2012 capital addition.

The AUC also denied an increase to the 2012 capital addition amount for the Halkirk Wind Power Interconnection Project and for the Enbridge Leismer Point of Delivery Project on the same basis.

ATCO had requested an additional $0.4 million above the $20.6 million previously approved by the AUC for the Halkirk Wind Power Interconnection, and an additional $0.1 million above the $2.7 million approved by the AUC for the Enbridge Leismer Point of Delivery Project.

In Decision 2014-283, the AUC also directed ATCO to remove disallowed legal fees from its costs for Project 55585 – Northeast Loop. ATCO submitted that the total disallowed amount in its compliance filing was $558,000, and submitted that the remainder of the legal fees be approved by the AUC, as they were within the guidelines established in Decision 2014-283. In support of its refiling, ATCO provided redacted copies of invoices from Bennett Jones LLP, noting that the redactions were for confidential information, including rates and hours.

The Consumers' Coalition of Alberta ("CCA"), argued that ATCO had included a total of $385,000 in legal costs that had not been previously approved by the AUC. The CCA argued that ATCO was effectively undertaking a review and variance application hidden within its compliance filing. The CCA requested that the AUC disallow these amounts and instruct ATCO to cease such practices. The CCA also requested that the unredacted invoices be placed on the record of the proceeding.

The AUC determined that ATCO's submissions in redacting the documents were insufficient, as ATCO was required to file a motion with the AUC to seek confidential treatment of the information, which it failed to do. However, the AUC exercised its discretion to not order the production of the unredacted documents, since ATCO had provided the requisite information to keep the information confidential.

The AUC also disallowed the additional $385,000 in legal fees requested by ATCO, noting that its direction in Decision 2014-283 did not provide for the inclusion of any such amounts. Therefore the AUC directed ATCO to remove these legal fees in its second compliance filing.

With respect to deferral account reconciliations, ATCO provided an updated summary of the net refund to the AESO arising from the reconciliation of 2012 deferral accounts after taking into account ATCO's proposed compliance with directions from Decision 2014-238, and the carrying costs for the current compliance filing. ATCO calculated the net refund amount to be approximately $31,291,000, assuming a settlement of the refund in June 2015.

The AUC accepted ATCO's calculations. However, since the AUC as it had not accepted all of the components of the compliance filing, the AUC directed ATCO to refile its 2012 deferral account and filing for adjustments to reflect the findings in this decision prior to June 30, 2015. The AUC did note that ATCO should assume a decision to be issued in August 2015, since the contents of the second compliance filing would be non-contentious in nature.

EDF EN Canada Development Inc. Blackspring Ridge Wind Power Plant Post-Construction Comprehensive Noise Study (Decision 3537-D01-2015)

Noise

This decision arises from a previous decision of the AUC, Decision 2013-004, approving modifications to the 300MW Blackspring Ridge wind power plant, located approximately 30 kilometres north of Lethbridge (the "Blackspring Wind Plant") ("*Decision 2013-004*"). The approvals for the Blackspring Wind Plant were later transferred to EDF EN Canada Development Inc. ("ECDI").

In *Decision 2013-004*, the AUC directed Greengate Power Corporation, on behalf of Blackspring Ridge IA Wind Project Ltd. ("Blackspring") to conduct a post-construction noise survey at specified receptor sites.

ECDI submitted a post-construction noise assessment which measured noise levels at one-second intervals and wind speeds at ten-second intervals for a total of 67 hours across five different receptor locations. ECDI submitted that the noise exceeded permissible levels during representative conditions, primarily due to background noise levels, and wind noise that could not be eliminated in the noise samples. However, ECDI submitted that the noise from the Blackspring Wind Plant did not exceed the AUC daytime and nighttime noise limits imposed by AUC Rule 012: *Noise Control* ("*Rule 012*").

The AUC held that ECDI conducted an appropriate noise study at the required receptor locations as set out in *Decision 2013-004* and satisfied the requirements of *Rule 012*. The AUC found that ECDI collected an appropriate amount of noise data for use in isolation analysis of representative conditions. However, the AUC determined that for one of the receptors, the adjusted sound level was not compliant with the nighttime permissible sound level of 40 dBA Leq, as the AUC observed that the three nearest wind turbines were operating at lower capacities of 72, 68 and 53 percent capacity. The AUC was not persuaded that an extensive isolation analysis could not be conducted. Accordingly, the AUC found that further study was required at this receptor to demonstrate compliance with *Rule 012*.

The AUC held that the post-construction noise assessment was compliant for all receptors, save for one location, and directed ECDI to conduct a follow-up post-construction comprehensive noise study within two years of the date of this decision at that receptor location.

NATIONAL ENERGY BOARD

WesPac Midstream – Vancouver LLC Application for a Licence to Export Natural Gas (Letter Decision)
Export Licence - LNG

WesPac Midstream – Vancouver LLC ("WPMV") applied to the NEB pursuant to section 117 of the *National Energy Board Act* (the "*NEB Act*") for a licence to export natural gas as liquefied natural gas ("LNG") for a term of 25 years, with the following characteristics:

(a) Located at the outlet of the loading arm at the WesPac LNG Marine Terminal and the hose connector of the pump at the truck rack at the Tilbury liquefaction plant adjacent to the Marine Terminal, both located at Tilbury Island in Delta, British Columbia; and

(b) Starting on the first date of export:

(i) A maximum annual export quantity of 4.76 billion cubic metres ($109m^3$) or 168 billion cubic feet (Bcf) of LNG; and

(ii) A maximum overall quantity of 116.44 $109m^3$ or 4,100 Bcf of LNG over the term of the licence.

In this Letter Decision, the NEB noted that natural gas exports must:

(a) Be authorized by an order or licence under section 116 of the *NEB Act*;

(b) Be surplus to Canadian requirements, as determined by the NEB under section 118 of the *NEB Act*; and

(c) Be reported under section 4 of the *National Energy Board Export and Import Reporting Regulations.*

Canadian Requirements

WPMV submitted that the quantity of gas it seeks to export did not exceed the surplus to Canadian requirements, through two studies:

(a) Supply and Demand Market Assessment ("SDMA"); and

(b) Export Impact Assessment ("EIA").

The SDMA stated that the outlook for the Canadian and North American gas markets is characterized by ample, stable supplies and competitive, stable prices. The SDMA also stated that the forecasted Canadian natural gas demand growth rate was not sufficient under any of its sensitivity tests to have a material impact on its conclusions that there will be an adequate volume of surplus natural gas.

The EIA similarly offered conclusions that WPMV's proposed export volumes were highly unlikely to cause Canadians difficulty in meeting their gas requirements over the proposed licence term. Both reports also noted that not all Canadian LNG export projects will proceed to operation, in which case the surplus amount would be larger.

The NEB held that the resource base in Canada was large, and able to accommodate reasonably foreseeable Canadian demand, including LNG exports as applied for by WPMV. The NEB accepted WPMV's analysis of Canadian demand, and the size of Canada's natural gas resources. Accordingly, the NEB determined that Canadian gas requirements will be met.

The NEB found that the aggregate volume of LNG export licences submitted to date represent a significant volume of LNG export from Canada and face a growing, but limited market for LNG. As a result, the NEB also accepted the conclusions of the EIA and the SDMA, that not all LNG export licences issued by the NEB will be used to their full allowance.

Information Requirement Exemption

WPMV requested relief from the information requirements for gas export licence applications pursuant to section 12 of the *National Energy Board Act Part VI (Oil and Gas) Regulations* (the "*Oil and Gas Regulations*"), and also from the NEB's Filing Manual.

The NEB noted that in its Interim Memorandum of Guidance Concerning Oil and Gas Export Applications and Gas Import Applications under Part VI of the National Energy Board Act, the NEB no longer requires applications for export licences to file the information contained in section 12(f) of the *Oil and Gas Regulations*. Accordingly, the NEB granted the exemption, and therefore found that the further relief from the Filing Manual was unnecessary.

Other Requests by WPMV

WPMV also requested a 15 percent annual tolerance to the amount of natural gas that may be exported for any 12-month period as part of its licence.

The NEB accepted the request for the 15 percent annual tolerance. The NEB noted that the maximum annual quantity under the licence is inclusive of the annual tolerance amount, and it is the NEB's practice to licence term

quantities with an allowance for annual tolerances rather than to expressly grant a term tolerance.

WPMV also requested authorization to export natural gas on its own behalf and as an agent for others. The NEB held that section 116 of the *NEB Act* does not require the holder of the licence to also be the owner of the natural gas. Therefore the NEB held that this request was unnecessary to include in the terms of the licence.

Export Points

With respect to the export points requested by WPMV, the NEB held that it considers the act of "exporting" to occur at the point where gas is removed from Canada, and not when it is loaded for transport. The NEB noted that the exception to this approach is for loading arms at LNG terminals, where the LNG is loaded directly onto vessels for export. As a result, the NEB approved the following locations as export points:

(a) The outlet of the loading arm at the WesPac LNG Marine Terminal in Delta, British Columbia for marine exports;

(b) The marine cargo terminals in the metropolitan area of Vancouver, British Columbia for marine exports; and

(c) The highway border crossings along the international boundary between British Columbia and the United States.

Licence Expiry

WPMV also requested that the licence expire ten years from the date of issuance if exports have not commenced by that date. The NEB approved this condition, consistent with its standard practice.

Decision

The NEB accordingly decided to issue an export licence to WPMV with the terms and conditions noted above, and subject to the approval of the Governor in Council.

AltaGas Holdings Inc., for and on behalf of AltaGas Pipeline Partnership Application for leave to abandon the Pouce Coupe A Pipeline (Letter Decision MHW-003-2015)

Abandonment

AltaGas Holdings Inc., for and on behalf of AltaGas Pipeline Partnership ("AltaGas") applied pursuant to section 74(1)(d) of the *National Energy Board Act* ("*NEB Act*") and section 50 of the *National Energy Board Onshore Pipeline Regulations* to abandon the Pouce Coupe A Pipeline (the "*Pipeline*") in-place. AltaGas noted that it had carried out abandonment activities on October 27, 2007 without NEB approval, and that the Pipeline was no longer in service.

AltaGas submitted that the abandonment work was completed in 2007, and that the cost of any further abandonment related work would be approximately $30,000. AltaGas stated that the abandonment work was completed in accordance with Canadian Standards Association Z662-07, Oil and Gas Pipeline Systems ("CSA Z662"), including:

(a) Pigging to clean the Pipeline;

(b) Purging the line; and

(c) Filling with nitrogen.

AltaGas submitted that the Pipeline was cut and capped off at LSD 13-06-081-13 W6M and blind flanged at LSD 10-08-081-13 W6M. Both ends of the Pipeline were tagged at the endpoint locations.

The NEB found that the abandonment activities were carried out in accordance with the version of CSA Z662 that was current at the time of abandonment. The NEB agreed with AltaGas on its decision to abandon the Pipeline in-place, given the relatively small diameter of the pipeline. However, the NEB held that it required further assurance that the pigging and purging of the Pipeline mitigated any significant sources of contamination. Accordingly, the NEB imposed a condition requiring AltaGas to file a Phase I Environmental Site Assessment with the NEB to evaluate the potential for contamination associated with the Pipeline, and confirm that no contamination was found, or to provide a plan for remediating any contamination. The NEB further imposed a condition to demonstrate that the remediation of contamination (if any) is completed in a report to the NEB.

The NEB determined that AltaGas had sufficient funds to carry out any remaining abandonment activities and noted that AltaGas acknowledged its ongoing responsibility for any potential remediation needed in the future, for so long as AltaGas retains ownership of the Pipeline.

The NEB granted AltaGas' request for leave to abandon the Pipeline, in accordance with the conditions set out above.