



ENERGY REGULATORY REPORT

This monthly report summarizes matters under the jurisdiction of the Alberta Energy Regulator (“AER”), the Alberta Utilities Commission (“AUC”) and the Canada Energy Regulator (“CER”) and proceedings resulting from these energy regulatory tribunals. For further information, please contact a member of the [RLC Team](#).

Regulatory Law Chambers (“RLC”) is a Calgary based boutique law firm, specializing in energy and utility regulated matters. RLC works at understanding clients’ business objectives and develops and implements successful legal and business strategies with clients and industry experts, consistent with the legislative scheme and public interest requirements. RLC follows a team approach when working with our clients, industry experts, and other aligned stakeholders. [Visit our website to learn more about RLC.](#)

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ALBERTA ENERGY REGULATOR

Qualico Developments West, Reconsideration of the April 20, 2022, Decision, AER Decision 2024 ABAER 007***Facilities – Environmental***Application

Qualico Developments West Ltd. (“Qualico”) filed an application, as amended (“Application”), with the Alberta Energy Regulator (“AER”) requesting pursuant to s 33 of the *Pipeline Act* that the AER direct Plains Midstream Canada ULC (“Plains”) and Pembina Pipeline Corporation (“Pembina”) to make alterations to their pipelines located in Edmonton, Alberta (“AB”). Qualico also requested the alteration costs be shared equally between Qualico and Plains, and Qualico and Pembina for their respective pipelines.

Qualico is developing land in northeast Edmonton in the Horse Hill area and, as a developer applying for subdivision and development approvals, it must upgrade and construct arterial roads. The pipelines in question cross the roads that must be upgraded by Qualico.

Decision

The AER initially denied the Application but subsequently decided to reconsider the denial and held a hearing that resulted in this decision. The AER directed Plains and Pembina to provide protective measures for their respective pipelines where they cross below the intersection of Meridian Street and 167 Avenue in Edmonton, AB. The AER directed Qualico to pay for the engineering and construction of those protective measures. Additionally, the AER denied Qualico’s application to direct alterations of Plains’ pipeline where it crosses below 172 Avenue on the west side of Meridian Street in Edmonton, AB, as those alterations were already in place and complete. Finally, the AER directed Plains and Pembina to pay for any proactive maintenance that may be necessary for their respective pipelines.

Pertinent Issues*AER Jurisdiction and Discretion under Section 33 of the Pipeline Act*

Plains and Pembina characterized the issue as a private dispute about cost sharing and the

application as a cost-sharing application. They submitted that it was not in the public interest for the AER to intervene in a private matter where there was no need for it to do so and that the AER should exercise caution in engaging in the private commercial realm. They regarded the AER’s initial decision that denied the Application as rightly decided.

Qualico stated that Plains’ and Pembina’s willingness to undertake the pipeline alterations did not mean the AER is without jurisdiction under s 33 of the *Pipeline Act*.

The AER disagreed that deciding the Application was intervening with a private matter and, therefore, not in the public interest. The AER was of the view that it has the required jurisdiction and a duty to decide the application.

The AER held that the legislature did not refer to any dispute as a necessary condition for the AER to direct pipeline alterations or protective measures and that there was no reason to narrow the interpretation of s 33 of the *Pipeline Act* in the manner suggested by Pembina, Plains, and other parties.

In the AER’s view, in accordance with the *Pipeline Act* and the *Responsible Energy Development Act*, an event that introduces new challenges to a pipeline’s ability to safely transport hydrocarbons must be anticipated and addressed in accordance with the applicable standards, including the requirements set out in *CSA Z662, Oil and Gas Pipeline Systems*. When overseeing the safe, orderly, efficient, and environmentally responsible operation of pipelines and transportation of energy resources, the threshold for the AER directing such work is not high. When directions are necessary to ensure ongoing public safety and environmental protection, it is in the public interest for the AER to make such directions. Further, the AER determined that the regulations do not state that there was an additional requirement regarding the public interest when ordering costs.

Is Directing the Work at 167 Avenue in the Public Interest?

Based on the description of the work provided by Pembina and Plains, the AER determined that the

planned construction work at 167 Avenue is normal industry practice.

The AER noted that all parties agreed the protection of pipelines was necessary and determined that further prolonging this impasse by not directing the work was not in the public interest. It found that directing the protective measures is in the public interest and exercised its discretion to direct the protective measures.

Is Directing the Alterations at 172 Avenue in the Public Interest?

Plains and Pembina argued that the application for the 172 Avenue crossing was moot, as the work had already been finished.

The AER applied the same considerations as it did when considering the work at 167 Avenue and it did not find a need to direct any alterations of the Plains' pipeline below 172 Avenue because the work at 172 Avenue had been completed, and the concerns that applied to the other intersections did not apply here.

Payment of the Cost of the Work and Material

Qualico requested that the AER order that the costs be shared between Qualico and the respective operator of each crossing pipeline. Qualico characterized a 50/50 cost sharing for pipeline crossings as a public interest consideration. Qualico reasoned that cost-sharing would create equity between Qualico, Pembina, and Plains and help mitigate the negative effects on landowners arising out of the existence of the pipelines, including the cost of pipeline crossings' upgrades on homebuyers.

Pembina and Plains stated that the principles of first-in-time, first-in-right, and cost causation require any second-in-time user to bear 100% of the costs of a crossing upgrade they request.

The AER noted that the capital needs for development, including road building, are part of the development business and that it is not exceptional or extraordinary to invest capital upfront and get returns later. The AER was not convinced that assigning the cost to Qualico for this crossing work would be contrary to any regulation or assign an unreasonable or unforeseen burden.

Consequently, the AER ordered Qualico to pay for the engineering and construction of the protective measures related to the two pipeline crossings at Meridian Street and 167 Avenue. It further ordered that Pembina and Plains pay for any proactive maintenance that may be found necessary for their respective pipelines.

ALBERTA UTILITIES COMMISSION

AUC inquiry into the ongoing economic, orderly and efficient development of electricity generation in Alberta Module B Report, AUC Report in Proceeding 28542

Markets – Renewables

Inquiry

On August 2, 2023, the Government of Alberta (“GOA”) issued an order-in-council (“Order”) directing the Alberta Utilities Commission (“AUC”) to hold an inquiry into the ongoing economic, orderly and efficient development of electricity generation in Alberta. The AUC separated the inquiry into two modules to explore the issues identified in the Order. This proceeding was the Module B, which addressed the impact of the increasing growth of renewables on generation supply mix and electricity system reliability.

Module B Report

The AUC described the transition of the electricity system as a balance between the following three pillars: decarbonization; affordability; and reliability. According to the AUC, each pillar is crucial but interlinked with the other pillars as Alberta is working to decarbonize its electric system while minimizing the impacts on affordability and reliability.

In the AUC’s view, renewables will play an important role in transitioning Alberta’s electric system to net zero. However, the intermittent nature of renewables, as well as other characteristics of inverter-based resources, will have increasing impacts on the grid as they make up a larger portion of Alberta’s generation supply mix.

In this proceeding, the AUC examined the following: the electric energy supply adequacy and generation supply mix; pool prices, price volatility and affordability; and the potential role of demand response. The AUC concluded that market and policy framework changes are necessary to accommodate the transition.

The AUC made the following observations in the Module B report:

- Many aspects of system reliability are impacted by renewable generation, with the Alberta Electric System Operator (“AESO”) assessing

options to address the key areas of reliability in the short term;

- Under the current market design, expected unserved energy in the late 2030s will be significant and with a potential for unprecedented load-shed events, and an increased rate of decarbonization, i.e., net zero by 2035 instead of 2050, will exacerbate the supply adequacy issues;
- Renewables lower pool prices and increase volatility, reducing the signal for dispatchable generation to enter the market;
- Under the current market design, increased renewables will exacerbate the supply adequacy issues;
- Newer low-carbon technologies could be considered first-of-a-kind but carry a greater level of associated risk, particularly under the 2035 decarbonization target;
- Energy storage can play a role in reducing the supply adequacy issues but it is not a complete solution since it is not expected to be economic under the current energy market design and the AESO tariff;
- Given the scale of the expected unserved energy, minor changes to the supply mix assumptions will not alleviate the supply adequacy concerns;
- Under the current market design, pool prices will continue to be stable but are expected to increase at a rate above inflation in the 2030s, and an increased rate of decarbonization, i.e., net zero by 2035 instead of by 2050, will exacerbate the affordability issues;
- Demand response has some potential to mitigate the supply adequacy impacts and reduce future costs to electricity consumers;
- Investors are concerned about the current level of policy uncertainty; and
- Under the current market design, by the late 2030s, consumers would be paying significantly higher rates for electricity, while receiving a substantially lower level of reliability, which

makes changes to the market design and policy framework necessary.

Additionally, the AUC made a commitment to explore the demand response opportunities, including time-varying rates, as a priority item in the near term.

WR2 Wind GP Corp. and Wild Rose 2 Wind Inc. Wild Rose 2 Wind Power Project Amendment, AUC Decision 27729-D01-2024

Facilities – Environmental

Application

WR2 Wind GP Corp. and Wild Rose 2 Wind Inc. (collectively, “WR2”) filed an application with the Alberta Utilities Commission (“AUC”) for approval to amend the Wild Rose 2 Wind Power Project (the “Project”). Approval 27412-D02-2022 (“Approval”) provided WR2 with the authority to construct and operate the Project.

Decision

The AUC approved the application in part, subject to conditions. The AUC denied the approval of two specific turbines, T10 and T11, because of their visual impacts.

Pertinent Issues

WR2 filed its application as an amendment application, and the AUC adopted this characterization at the outset of the proceeding. The AUC noted that the scope of amendment applications does not involve a reopening of consideration of the Project as a whole or an opportunity to re-litigate issues already decided. However, the AUC stressed that an amendment proceeding is ordinarily premised on the understanding that the applicant is free to build the previously approved project, even if the proposed amendments are denied.

In this case, WR2 acknowledged that it cannot practically build the Project under the terms of the Approval, which also had a lapsed construction completion date, due to advances in wind turbine technology and the unavailability of the previously approved equipment. Accordingly, the AUC held that the amendments to the Approval are required for WR2 to act on the Approval.

WR2 did not request an extension of the lapsed construction completion date in the Approval as a separate relief in addition to the requested amendments. The AUC found that WR2 was not in compliance with the construction completion deadline in the Approval but decided to exercise its discretion to approve in this proceeding a time extension of the construction completion date to December 31, 2025.

According to the AUC, overall, the amendment application showed a general reduction in environmental impacts from the initially approved Project. The AUC found that WR2 showed reasonable efforts to reduce the environmental impacts of the Project as it relates to environmental considerations, other than bats and pronghorn, and that these impacts were acceptable.

With regard to bats, the AUC determined that the trends of declining bat populations were very concerning and that mitigations at wind projects, including the Project, offer a means of addressing these trends. Based on these findings, the AUC imposed a number of conditions relating to bats.

With regard to pronghorn, the AUC found that, while the Project’s potential impact on pronghorn was not an issue in the original approval issued 13 years ago, new scientific evidence subsequently emerged that required the risks to pronghorn populations to be addressed. The AUC imposed a condition of approval requiring WR2 to abide by any requirements, recommendations and directions provided by Alberta Environment and Protected Areas, including any additional monitoring and mitigation necessary to address adverse impacts to pronghorn migration patterns in the Project area.

The AUC also assessed the visual impact of the Project on the stakeholders in the area. The AUC noted that visual impacts are ultimately subjective in nature, acknowledging that the turbines in this amended project will be taller but also noting that the number of turbines has decreased compared to the initial approval. In general, the AUC found that the applied-for turbines and proposed turbine placement would result in the project having an overall similar visual impact on area residents compared to the original layout, with one exception.

The AUC found that proposed turbines T10 and T11 were too close to a local church from a visual impact, community, and spiritual use perspective. The AUC was persuaded that it was likely that the proximity of these turbines would negatively impact

the congregation's enjoyment of the church and its ability to meet the spiritual and mental balance needs of the community. The AUC concluded that this visual impact could not be mitigated to an acceptable degree and that it was in the public interest to deny the approval of turbines T10 and T11.

The AUC found that the negative impacts associated with the Project were outweighed by the conditions and required mitigations, including the expected

benefits of the Project. The AUC concluded that the application, as conditioned in this decision, was in the public interest and compliant with existing regulatory standards, including the information requirements prescribed in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*. The AUC approved the application subject to conditions and denied approval of turbines T10 and T11.