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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*.



AER re Qualico Reconsideration

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.