



LAWSON LUNDELL

BARRISTERS AND SOLICITORS

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INTRODUCTION

Welcome to Lawson Lundell's energy law newsletter, dedicated to keeping our readers informed about developments in the energy sector in Western Canada. We distribute the newsletter four times per year to our clients and friends. Occasionally we distribute stand alone articles on special topics. If you are not on our mailing list but would like to be; would like to suggest that someone else receive the newsletter; or would like to be taken off the mailing list, please contact Chris Sanderson at 604-631-9183. Back copies of this newsletter may be found on our web site at www.lawsonlundell.com in the Legal News & Publications and Energy Law section.

REGIONAL

Terasen Announces Oil Sand Pipeline Projects

Terasen has announced plans for a new \$1 billion twin pipeline project between Fort McMurray and Edmonton, to move oil from the massive oil sands projects being contemplated or already under way in the Fort McMurray area. The twin pipeline project would double Terasen's earlier \$500 million proposal for a single pipeline that was postponed in May of 2003. Coupled with its plan to twin its existing Trans Mountain oil pipeline between Edmonton and Vancouver, the recent announcement puts Terasen head-to-head with Enbridge, which in October announced its own plans for an Alberta-BC pipeline to move oil from the oil sands projects to West Coast ports.

Terasen has made no firm decision with respect to either project and does not expect to until 2005, with the outcome depending in part on its other recent proposal to sell part of its BC-based natural gas distribution utility.

BRITISH COLUMBIA

Government Response to BCUC Heritage Contract Recommendations

The BC government released its response to the British Columbia Utilities Commission's (BCUC's) recommendations regarding a Heritage Contract, Stepped Rates and Retail Access on November 28, 2003 (see Fall 2003 edition of this newsletter on the Lawson Lundell website). With minor exceptions, the BC government has accepted the entirety of the BCUC's recommendations. In doing so government passed new legislation - the *BC Hydro Public Power Legacy and Heritage Contract Act* - which prohibits BC Hydro from disposing of its core generation, transmission and distribution assets, and which empowers Cabinet to implement the BCUC's recommendations by regulation. Since then Heritage Special Direction No. HC2 was issued, attaching a form of Heritage Contract between the generation and distribution arms of BC Hydro that provides for electricity to be passed from the former to the latter at embedded cost (the "revenue requirement" model proposed by BC Hydro and recommended by the BCUC). Heritage Special Direction No. HC2 also provides for deferral accounts to be established that will mitigate

trade revenue and water inflow risks.

Regarding stepped rates and retail access for industrial and large commercial customers, government accepted the BCUC's recommendations that the implementation of these initiatives should wait until completion of BC Hydro's revenue requirement proceeding, and the establishment of new transmission tariffs for the BC Transmission Corporation. Stepped rates and retail access tariff applications are expected to be filed in late 2004 or early 2005.

BC Hydro Files Revenue Requirement Application

On December 15, 2003 BC Hydro filed, for the first time in over 10 years, a revenue requirement application. In the application BC Hydro seeks approval of across the board rate increases of 7.23% and 2.0% for the fiscal periods commencing April 1, 2004 and April 1, 2005, respectively. BC Hydro also seeks the establishment of deferral accounts contemplated by the new Heritage Contract regulation (see note above) and a reduction in certain wholesale transmission service rates. Rate design issues are not addressed in the application, but are to be brought forward in an application BC Hydro says it will bring in late 2004 or early 2005. The BCUC approved the proposed rate increase on an interim basis, effective April 1, 2004. An oral hearing into the application is scheduled to commence on May 17, 2004.

Public Review of the Federal Moratorium on Oil and Gas Activities in B.C. Offshore

Since 1972, federal and provincial policies have imposed moratoria on various B.C. offshore oil and gas activities. In 2001 and 2002, the B.C. government commissioned a scientific review and task force on the moratorium and, based on its results, asked the government of Canada to consider lifting the federal moratorium. In 2003, the Minister of Natural Resources Canada announced a three-part review of the federal moratorium for the Queen Charlotte region.

The review includes a Royal Society of Canada Science Review, a First Nations Engagement Process, and a Public Review Panel process. Workshops conducted as part of the Science Review have been completed, and a report to the Minister is expected in February. The First Nations Engagement Process will be conducted by the federal government and will proceed concurrently with the Public Review Panel process.

The Public Review Panel will conduct public hearings to hear views on whether the federal moratorium should be lifted or remain in place, and to examine the broad environmental and socio-economic impacts associated with any decision on the moratorium. The Panel will not be reviewing resource ownership or jurisdiction. The Public Review Panel will submit a report to the Minister on the process undertaken, the views of participants, and the Panel's evaluation, conclusions and

recommendations. The report is scheduled for submission by the end of June 2004. The Panel's report will be advisory and will not constitute a decision on whether to lift the moratorium.

The Public Review Panel has already conducted initial public meetings in a number of coastal communities for the purpose of receiving input on the process for the substantive hearings. It will begin those public hearings after the release of the Science Review report, allowing at least a month between the start of the hearings and the release of the report.

GSX Pipeline Project

In our Fall 2003 Newsletter, we reported that the Joint Review Panel had released the report on its *Canadian Environmental Assessment Act* review of the GSX pipeline project, and that the Panel concluded that the project was not likely to result in significant adverse environmental effects. On November 28, 2003, the National Energy Board released its Reasons for Decision, concluding that, subject to the approval of the Governor in Council, it would issue a Certificate of Public Convenience and Necessity for the GSX project. The Certificate conditions include a requirement for confirming regulatory approvals for the proposed Vancouver Island Generation Project (VIGP), which would depend on the GSX pipeline for gas supply. In September of 2003 the BCUC had denied the VIGP application and recommended that the proponent, BC Hydro, initiate a Call for Tender process, which may include



the VIGP project, for on-island capacity and energy. The Call for Tender process is currently underway.

ALBERTA

Gas/Bitumen Dispute: An Update

On January 2, 2004 the AEUB released its regional geological study of the Wabiskaw McMurray region in the Athabasca Oil Sands Area, identifying where natural gas is in contact with bitumen. The team that conducted the study consisted of 15 geologists and engineers from 11 companies and 27 full-time staff from the AEUB. The release of the study marks the beginning of Phase 3 of the AEUB's bitumen conservation requirements. As mentioned in our previous newsletters, the AEUB believes that associated gas production presents an unacceptable risk to bitumen recovery using steam assisted gravity drainage. AEUB staff used the study results to prepare recommendations respecting the production status of specified gas wells in the study area by analyzing which gas wells negatively impact bitumen recovery. The staff recommendations were released on January 26. The AEUB has scheduled an interim hearing for March 8, 2004 to allow gas and bitumen producers an opportunity to challenge any staff recommendations. Parties that disagree with the AEUB staff well-status recommendations must notify the AEUB by February 9, 2004.

To date, 330 gas wells have been shut-in on an interim basis (representing 40.5% of the area's daily

gas production), and 608 gas wells obtained temporary exemptions and continue to produce. The study contains a list of 464 gas pools found to be in contact with bitumen and 313 gas pools that are not in contact with bitumen in the Wabiskaw-McMurray. The AEUB intends to decide the status of all gas production within the area of concern by April 1, 2004.

On the same topic, the Alberta Court of Queen's Bench has declined to exercise jurisdiction over the dispute between the natural gas well owners in the Wabiskaw-McMurray area and the AEUB arising from the AEUB's shut-in order. Affected companies sought judicial review of the AEUB's General Bulletin GB 2003-28 issued in July 2003, ordering the shut-in of more than 930 gas wells. The Court determined that the Court of Appeal is the more appropriate venue to consider the scope of the AEUB's jurisdiction and whether the shut-in order was in breach of the rules of natural justice. Since then a single justice of the Court of Appeal has granted the owners leave to appeal the AEUB's shut-in order.

AEUB Approves ATCO Retail Asset Sale to Direct Energy

On December 5, 2003, the AEUB issued Decision 2003-098 approving the transfer of certain ATCO retail natural gas and electricity assets to Direct Energy. Direct Energy is also newly authorized, through an affiliate, to be the service provider under the electricity and natural gas tariffs in the ATCO service territories. Decisions

2003-106 and 2003-108, issued December 18, 2003, approve the tariff rate structure to be used by Direct Energy, which uses flow through methodologies similar to those currently used by ATCO. For electricity customers, Direct Energy must replace these flow through energy rates with hedged rates by July 1, 2004. In order to demonstrate that Direct Energy's billing costs represent fair market value, the AEUB approved the use of deferral accounts and ordered Direct Energy to undertake a comprehensive benchmarking study. Billing costs are expected to be fully reviewed in a future proceeding. The combined impact of the foregoing on residential gas customers will be a monthly bill increase of approximately \$3.40, and on residential electric customers a monthly bill increase of approximately \$3.80 per month. Now that Board approval of the asset transfer has been obtained, it is expected that ATCO and Direct Energy will finalize and conclude the sale agreement shortly.

New Transmission Development Policy Released

On December 22, 2003, Alberta Energy issued its new (approved) Transmission Development Policy Paper (the "Policy"). As referred to in our previous newsletters, the new Policy seeks to ensure that adequate electric transmission capacity is in place so that transmission capacity does not become a barrier to development in the province. To that end the AESO is encouraged (through unspecified means) to be proactive in the development and reinforcement



of the transmission system. The most significant tangible change to transmission policy is that load customers will become wholly responsible for the embedded costs of transmission service, effective January 1, 2006. Under the new policy, generators will be responsible only for their local interconnection costs and the incremental costs of location based loss charges, as well as financial commitments and payments towards transmission system upgrades. The policy is not yet in force – a regulation to implement the policy is currently being drafted by Alberta Energy, and is expected to be released soon for stakeholder review and comment. The new transmission regulation is expected to be in force by March 2004.

Coalbed Methane Reports Released

The Alberta Geological Survey, a part of the AEUB, released two scientific reports on coalbed methane (“CBM”) on October 22, 2003. The studies, representing the latest, most comprehensive scientific data available in the province about CBM, examine the factors that can affect CBM producibility in Alberta, and estimate the maximum gas in place for the Plains and Foothills regions to be greater than 500 trillion cubic feet. It is not yet known what proportion of this gas can be produced based on current technology and economic conditions.

NORTHWEST TERRITORIES

Mackenzie Valley Pipeline Update – Applications Expected mid-2004

The proponents of the Mackenzie Gas Project said in December 2003 that they now expect to file regulatory applications by mid 2004. The producers group previously submitted a Preliminary Information Package to regulators in April 2003. The producers group continues to estimate production startup between 2008 and 2010.

The spokesperson for the producers group, Hart Searle of Imperial Oil, recently downplayed rumours of a delay in the application process due to stakeholder negotiations between the producers group, the federal government, and the Deh Cho First Nation. The list of Deh Cho grievances with respect to the project includes the lack of any requirement for consent from hunters and trappers along the pipeline corridor; the perceived lack of full participation by the Deh Cho in environmental assessments by the Mackenzie Valley Environmental Impact Review Board; and the perceived failure to complete of an acceptable revenue sharing agreement with Canada.

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