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BRITISH COLUMBIA

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Welcome to Lawson Lundell's first newsletter dedicated specifically to the energy industry in Western Canada. Our Newsletter is intended to help our clients in or affected by the energy industry identify recent developments of significance throughout the region.

Extraordinary uncertainty and volatility have marked the past few years in the energy business. Implementation of partial retail deregulation in Alberta brought home the significance of the restructuring in that industry to virtually every commercial undertaking. Enormous but highly uncertain power export earnings have become a source of major political controversy in British Columbia. Very high prices for natural gas last winter and potential long term shortages of oil have lead to renewed interest in a northern pipeline. In short, energy is back in the news in a way it has not been since the 1970's. Staying on top of developments through the common energy market that exists in western North America has never been so difficult nor so necessary. While many of you have sophisticated capability to monitor developments within their primary jurisdiction, we believe our regional breadth can assist you in keeping up with related developments in adjacent jurisdictions.

The Newsletter is organized into 5 sections: British Columbia, Alberta, the Northwest Territories, the Yukon and the Western U.S. Producers, transporters, sellers and major consumers of energy in each of these areas need to understand the most significant developments in all of these jurisdictions in order to anticipate what will happen to their own business. The restructuring in the gas and electrical industries that has occurred to date has created a regional industry where separate local industries dominated in the past. Wherever possible we will identify those developments in each jurisdiction which have implications for the region as a whole.

For further information about us please contact [www.lawsonlundell.com](http://www.lawsonlundell.com) or call one of our lawyers identified on the back page.

The election of a new government in May has lead to the potential for some major changes to the way in which the energy business is conducted in B.C. The potential for revitalizing the energy sector through new policies was a major focus of the new government's election campaign and soon after taking office they announced a specific review of energy policy. In addition they announced significant modifications to the process for looking at the potential for development of B.C.'s offshore oil and gas resources.

Energy Policy Review

The government announced its energy Policy review on August 2001 The Terms of Reference for the Review can be found at the following link. <http://www.em.gov.bc.ca/PublicInfo/newsreleases/memnrs2001/termsreference.htm>

The members of the task force are:

- Jack Ebbels, Deputy Minister of the ministry of energy and mines, chair;
- Peter Meekison, energy policy consultant;
- John Bechtold, oil and gas expert;
- Erik Westergaard, hydroelectricity expert;
- Brenda Eaton, Deputy Minister to the premier;

Key Dates:

- By November 2, 2001: Initial written public submission
- By November 30, 2001: Draft Energy Policy Report
- By January 15, 2002: Completion of consultation with selected parties
- By February 15, 2002: Submission of Energy Policy Report to the Minister
- By February 28, 2002: Establishment of British Columbia's Energy Policy.

The Province has also extended the BC Hydro rate freeze to March 31, 2003. The rate freeze may be



lifted by Cabinet Order. It is anticipated that the final energy policy produced by government will determine the manner in which BC Hydro's rates will be regulated and if and when the rate freeze will be lifted.

Other issues likely to be determined through the policy review are the extent of restructuring if any of BC Hydro, the means to encourage the development of the IPP industry in the electric sector and the government's perspective on key infrastructure development required in the natural gas industry over the next decade.

### Offshore Oil and Gas Review

On October 19, 2001, the BC government announced the appointment of a scientific panel to review whether B.C. offshore oil and gas resources can be developed in an environmentally responsible way. The Panel is to report by January 15, 2002. More information can be found at: <http://www.em.gov.bc.ca/PublicInfo/newsreleases/memnrs2001/IB02.htm>

The report of this panel is intended to replace in part the more complex process recommended in the Backhouse Report prepared for the previous government.

### B.C. Government, Treaty 8 First Nations Sign New MOUs

Three First Nations in northeast B.C. have signed new Memoranda of Understanding with the B.C. Government about oil and gas development in their traditional territories. The Blueberry River, the Prophet River and the West Moberly First Nations are all signatories to Treaty 8.

The "enhanced" MOUs replace MOUs signed in 1998 and 1999. The main focus of the MOUs is to provide greater certainty for the First Nations and industry on consultation obligations related to oil and gas activities. More information on the MOUs is available on the Lawson Lundell website, at [www.lawsonlundell.com](http://www.lawsonlundell.com). Click on News, Resources and Publications, choose

Newsletters: and choose the newsletter entitled Northern Practice Update.

### Regulatory Decisions

#### British Columbia Utilities Commission ("BCUC")

##### Sale of West Kootenay Power Ltd.'s ("WKP") dams to Columbia Power Corporation ("CPC") and Columbia Basin Trust ("CBT") denied.

On October 26, 2001, BCUC turned down the application of WKP to CPC and CBT. CPC and CBT proposed to pay a substantial premium above the book value of the dams being sold and WKP wished to retain that premium exclusively for the benefit on its shareholder, Utilicorp United Inc. The BCUC ruled that it would only allow the sale to proceed on the basis that any premium was split between the shareholder and existing ratepayers. It remains to be seen whether the parties will decide to proceed on this basis. Note: West Kootenay Power changed its name to Utilicorp Networks Canada (British Columbia) Ltd. effective October 22, 2001.

**Access Rate to BC Hydro Distribution System Established.** On June 1, 2001 the BCUC established a 1-mill access rate for independent generators wishing to wheel on BC Hydro's distribution system. This rate is available only to those who wish to wheel out of BC Hydro's system as opposed to into it. Recent decisions of the BCUC can be found at [www.bcuc.com](http://www.bcuc.com).

#### National Energy Board ("NEB")

**BC Gas Utility Ltd. ("BC Gas") application (RH-2-2001) to establish a new rate for deliveries from Kingsvale to Huntingdon on the Westcoast system denied.**

The NEB ruled on November 1, 2001 that BC Gas would have to continue to pay the full T South tariff of \$0.25/mcf on all shipments from Kingsvale to Huntingdon on the existing facilities of Westcoast but did reduce the toll which will be payable on the

portion of Westcoast's system if it expands its facilities to \$0.12/mcf. This decision resulted from a successful application by BC Gas to have the NEB reconsider its decision in RH - 2- 98.

#### BC Hydro Export Permits Reissued by the NEB.

On September 26, 2001, the NEB issued permits to BC Hydro to engage in electricity exports in the form of storage and equichange transfers until 2008. The permits had originally been issued in 1998 but were challenged in the Federal Court of Appeal, which directed the Board to reconsider the permits in light of any additional evidence relating to the effects of the proposed exports on the environment.

BC Hydro filed evidence intended to demonstrate that the proposed exports had negligible and unmeasurable impacts on the environment. A contrary view was expressed by the BC Wildlife Federation and the Athabasca Chipewyan First Nation. The Board accepted BC Hydro's position and reissued the permits on their original terms. No appeal has been taken from this Order.

**Georgia Strait Crossing ("GSX") Canada Pipeline Project.** The Joint Review Panel established under the *NEB Act* and the *Canadian Environmental Assessment Act* has established a timetable of public consultative hearings along the pipeline route in January, 2002 and a hearing to commence June 17, 2002 at unspecified B.C. locations.

Recent decisions of the NEB can be found at [www.neb-one.gc.ca](http://www.neb-one.gc.ca)

### ALBERTA

In August 2001 Alberta Energy (formerly the Alberta Department of Resource Development) introduced a program designed to encourage investment in cogeneration projects at gas processing plants. Under the program Alberta Energy will provide a royalty credit to owners of gas processing facilities who develop associated cogeneration at the



plants. The program provides a short-term incentive and is available until the end of April 2004. The program is implemented through the *Gas Plant Efficiency Assistance Regulation* (formerly the *Sulphur Emission Control Assistance Regulation*).

As part of the ongoing restructuring of the electric industry in Alberta, Alberta Energy is considering an electricity export policy. There is no public timeline for the announcement of this policy. As concerns about the demand /supply imbalance in Alberta have eased over the last year, an export policy could have a significant impact on decisions to invest in further new generation in Alberta.

## Regulatory Decisions

### Alberta Energy Utilities Board ("EUB")

**GCRR Methodology and Gas Rate Unbundling – 2001-75** - The retail natural gas market in Alberta is in transition from fully regulated utility service to competitive retail service. The EUB initiated the proceeding to deal with the allocation of costs between gas utilities' transportation and gas procurement functions. The purpose of the review was to ensure that independent gas marketing companies were provided a fair opportunity to provide alternative gas service to gas customers.

The Decision deals with many specific issues but is noteworthy for the EUB's finding that it has a mandate to ensure that, in the period of transition to a fully competitive market, the customers of utilities and utilities are treated fairly while, at the same time, there is sufficient flexibility for gas marketers to offer reasonable and economically viable choices for consumers. The EUB also found that its general supervisory power over utilities gave it the power to direct the framework for unbundling of gas utility services. The principles underlying the Board's decision could have application in both the electricity and natural gas transmission sectors which are currently in transition.

### Pre-hearing Meeting AES Calgary ULC – Memorandum of Decision 200111

The EUB confirmed its determination in Decision 2001-33 that the need for power is not a relevant issue in proceedings for approval of new electric power generation facilities in Alberta notwithstanding the fact that leave to appeal is being sought for Decision 2001-33. In that decision the EUB found that the unequivocal intent behind s.6(d) of the *Electric Utilities Act* is that in the deregulated electricity generation sector, pricing and investment decisions are to be determined by individual market participants rather than by the EUB through regulation.

### Proposed Licensee Liability Rating (LLR) Assessment Expanded Orphan Program Stakeholder Consultation - GB 2001-17

The Board has concluded its expedited consultation process regarding proposed changes to the licence transfer and corporate liability screening processes. The LLR still requires Board approval. It is expected that the Interim Directive 2000-11: *Energy Development Licence Transfer Requirements and Monthly Corporate Liability Rating* will be extended from January 1, 2002 until the LLR can be implemented. Implementation is currently expected to be in about May 2002 to allow for a transition period.

Decisions of the AEUB can be found at [www.eub.gov.ab.ca](http://www.eub.gov.ab.ca)

## Industry

TransCanada Pipelines Ltd. recently released its Nova Gas Transmission Ltd. (NGTL) Cost of Service Study. The objectives of the study are to: improve industry's understanding of NGTL's cost structure; provide a clearer definition of costs associated with different functions or services; and provide information to facilitate the development of future principles as agreed to in NGTL's 2001 Rate Settlement. The latter point relates specifically to NGTL's commitment to work to develop and implement services that will provide operational and contractual flexibility and a rate structure that is fair and efficient for and between intra-Alberta and ex-Alberta customers.

On November 16, 2001, the Transmission Administrator for Alberta filed its *Congestion Management Principles and Recommendations* with the EUB for approval. A priority issue for the TA and stakeholders is congestion management. The TA has been holding discussions with stakeholders about congestion management within the Alberta electric transmission system and between the Alberta system and neighbouring systems. The TA is proposing, among other things, that incremental costs identified as necessary to support import and export transactions will be allocated directly to those parties. Transmission system expansion costs using a zero export assumption will be rolled into the rate base and recovered on a postage stamp basis. The EUB has established a process to consider the filing with a hearing scheduled for March 2002.

The Canadian Association Of Petroleum Landmen (CAPL) released the Property Transfer Procedure (PTR) in June 2001. The PTR is meant to provide the oil and gas industry with a "standard form" of sale agreement for oil and gas acquisitions and divestitures. The PTR is the result of drafting efforts of over 50 oil and gas companies, the CAPL, the legal profession and other industry organizations. The PTR will undoubtedly be used by industry personnel in the "standard" transaction, however, it may not be appropriate in all circumstances. Before utilizing the PTR, as either a buyer or seller of oil and gas properties, a complete understanding of the provisions of the PTR and their legal effect, is essential.

## THE NORTHWEST TERRITORIES

Northern Pipeline -A producers group – Imperial Oil Resources Limited, Conoco Canada Limited, Shell Canada Limited and Exxon Mobil Canada – is expected to complete a feasibility study of developing their onshore natural gas interests in the Mackenzie Delta in the Northwest Territories by year-end. The focus of the feasibility study is a stand-alone natural gas pipeline down the Mackenzie Valley to transport the natural gas to southern markets.



On October 15, 2001 the producers group signed a Memorandum of Understanding (“MOU”) with the Mackenzie Valley Aboriginal Pipeline Corporation (“MVAPC”). The MOU has the support of a majority of the aboriginal groups in the NWT, although several communities in the Deh Cho region have indicated they are not prepared to support the MOU.

### Northwest Territories Power Corporation General Rate Application

The Northwest Territories Power Corporation has filed a General Rate Application (“GRA”), the first in four years, seeking a substantial increase in the utility’s revenue requirement (Phase 1) and rate increases sufficient to cover the increased revenue requirement (Phase 2). Phase 1 of the GRA will be considered by the Northwest Territories’ Public Utilities Board at a hearing in Hay River on November 27 and 28, 2001. Following the decision of the Public Utilities Board on Phase 1 of the GRA, a hearing process will be established to consider Phase 2.

### Hydro Electric Potential in the Northwest Territories

In the spring of 2001, the Government of the NWT began a process of seeking public input on the desirability of developing the hydroelectric potential of several rivers in the NWT. The Minister of Energy and Hydro Secretariats, Joe Handley, indicated that the major projects reviewed to date suggest that the NWT has 12,000 megawatt of run-of-river hydro electric potential. Four of these dams on the Mackenzie River account for the majority of the potential generation capacity and could create as much as 10,500 megawatts of power. These projects and various smaller projects under consideration are all run-of-river dams.

The GNWT is seeking the input of residents and aboriginal groups in the NWT in order to determine whether to proceed with the next steps of a development proposal. The GNWT is looking to the private sector to build and operate the dams under long terms leases. The concept remains at the discussion stage only and has not yet received the endorsement to make it an official part of government policy or development strategy.

## THE YUKON

### Devolution

Under a devolution agreement signed October 29, 2001 between Canada and the Yukon, responsibilities for land management, water rights management, forestry and mining will be transferred from the Department of Indian Affairs and Northern Development to the Yukon. (Responsibility for oil and gas resources was previously transferred in 1998.) The Yukon will exercise provincial-type legislative and administrative controls over those resources, and will be able to collect royalties and other revenues associated with them. As part of the devolution process, the federal government has introduced a new *Yukon Act* in Parliament, Bill C-39, to ensure that the Yukon government will have the legal powers needed to take on the new responsibilities. The target date for the transfer is April 1, 2003.

### Proposed Yukon Environmental and Socio-Economic Assessment Act

This proposed project review process is set out in a complex, 80-page piece of legislation, and is intended to implement the provisions of land claims agreements with Yukon First Nations which require the establishment of a new development assessment process for all projects in the Yukon.

### 8<sup>th</sup> Yukon First Nation Final Agreement

The final agreement amongst the Ta’an Kwach’an Council, the Yukon and Canada has been ratified by the Ta’an Kwach’an and is in the process of ratification by the other two levels of government.

More information on these changes to the Yukon’s legal regime is available on Lawson Lundell’s website, at [www.lawsonlundell.com](http://www.lawsonlundell.com). Click on News, Resources and Publications, choose Newsletters and choose the newsletter entitled Aboriginal Law Update.

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