

Special Areas Composite Assessment Review Board (Board)

Citation: ATCO Power Canada Ltd. v Special Areas Board 2012 CARB Preliminary

Assessment Roll Number:	207149
Address/Legal:	Pt 29-28-13-4
Assessment Year:	2012
Assessment Type:	Annual

Between:

ATCO Power Canada Ltd. – Complainant

and

Special Areas Board – Respondent

Decision of
Lynn Patrick, Presiding Officer

Background:

[1] A preliminary hearing was conducted by conference call on September 26, 2012 in respect to procedural matters arising from a complaint filed by the Complainant on July 13, 2012. The complaint relates to the assessment by the Respondent of a power generating owned by the Complainant located on a Pt 29-28-13-4 and the subject of roll number 207149. The parties did not have any objection to the matter being heard by a single member CARB panel as established by council pursuant to s. 454.2(3) of the *Municipal Government Act* (Act). The jurisdiction of the CARB panel is provided by s. 36(2)(b) of the *Matters Relating to Assessment and Taxation Regulation 310/2009* (Regulation) relating to procedural matters regarding the scheduling of a hearing and the disclosure of evidence.

Legislation

Municipal Government Act

454.2(3) Despite subsections (1) and (2) but subject to the conditions prescribed by the regulations, a council may establish a composite assessment review board consisting of only a provincial member appointed by the Minister.

Matters Relating to Assessment and Taxation Regulation 310/2009

36(2) A one-member composite assessment review board may hear and decide one or more of the following matters:

(b) a procedural matter, including, without limitation, the scheduling of a hearing, the granting or refusal of a postponement or adjournment, an expansion of time and an issue involving the disclosure of evidence;

Position of the Complainant

[2] The Complainant related to the Board the circumstances surrounding the difficulties encountered in the scheduling of the hearing of the six matters set forth in the complaint. It is expected the hearing will require more than one week and will thus require cooperation on the part of the parties to come to agreement on dates for the hearing and exchanges of evidentiary matters. The parties are presently also involved with two other power generating plant complaints and the hearings have been scheduled for CARBs in the County of Paintearth No. 18 for mid March 2013 and the Municipal District of Greenview No. 16 for mid April 2013. There is some commonality of issues in all three of these complaints and thus there is a limitation of availability of witnesses that will be necessarily common to the hearing. The parties have through their cooperative efforts agreed that the hearing should be scheduled for June 19 to 28, 2013 inclusive.

[3] The remaining issues not yet agreed upon but put forth by the Complainant are the dates for disclosure of the matters set forth in s. 8 of the Regulation. The dates proposed by the Complainant for disclosure are as follows:

S. 8(2)(a) Complainant's disclosure	April 23, 2013
S. 8(2)(b) Respondent's disclosure	May 29, 2013
S. 8(2)(c) Complainant's rebuttal	June 10, 2013.

[4] There are two major matters for consideration in setting dates for the hearing and exchanges into the future and they are firstly that there have been considerable discussions taken place between the parties in an effort to resolve issues at the time period being suggested will allow those efforts to continue. The second matter is an ongoing complaint which will consume time and could interfere with the cooperative efforts. Those hearings commence October 15, 2012 for six weeks and December 3 for three weeks respectively.

[5] The Complainant submits that it has now been established that the requirement to have this matter heard by year end is not mandatory and therefore the CARB does not lose jurisdiction if it is scheduled beyond year end. The Complainant requests the CARB consider the forgoing dates be established by Board Order.

Position of the Respondent

[6] The Respondent acknowledges that presently there is cooperation occurring between the parties and confirms that the parties have a substantial calendar of hearings and exchanges already scheduled. That requires the hearing of this complaint to be set down post the current agenda.

[7] The Respondent preferred an earlier disclosure date than requested for the Complainant but is prepared to agree to the schedule as now proposed to the Board by the Complainant. Adhering to that schedule is dependent upon continued cooperation including such matters as sharing existing engineering drawings at the earliest occasion.

[8] The Respondent notes that a lack of cooperation going forward might result in other remedies being sought in respect to disclosure.

[9] The Respondent concurs in the opinion that the CARB will not lose jurisdiction respecting this complaint in the event that the provisions of s. 468 of the Act are not met on the basis they are directing and not mandatory.

Decision

[10] The hearing and disclosure dates are as follows:

Complainant's disclosure	April 23, 2013
Respondent's disclosure	May 29, 2013
Complainant's rebuttal	June 10, 2013
Hearing	June 19 to 28, 2013.

[11] The hearing of the complaint will take place at Hanna, Alberta commencing at 9:00 a.m. local time on June 19, 2013. The Board finds that following such a schedule will not result in a loss of jurisdiction by the CARB of the complaint in this matter. If the parties or either of them elect to have a court reporter during the hearing then the costs of the reporter shall be shared to ensure transcripts are obtained by the parties concurrently. A copy of the transcript, if any, is to be supplied to the CARB at no cost.

Disclosure Particulars

[12] All submissions in respect to required disclosure shall be made electronically by each party to the other parties. Hard copies may be supplied by each party to the other party the next day following the electronic transmission; however, four hard copies must be supplied to the CARB Clerk at 113 Palliser Trail, Hanna, Alberta and one hard copy must be supplied to the CARB counsel at Edmonton, Alberta or such other place as CARB counsel may direct.

[13] All pages of disclosure material including exhibits, schedules or like documents shall be numbered.

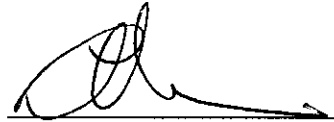
Reasons

[14] The Board finds that the requirement to hold a full and fair hearing will be met by the establishment of this hearing schedule. In view of the agreement by the parties to such a schedule the Board grants substantial deference to the proposed agreed scheduled the hearing and disclosure dates as set out herein to be those dates applicable in this matter.

[15] The support for this order found in the cooperation by the parties is encouraged by the Board and further cooperation is encouraged. The Board notes that in the event that cooperation should not continue then it remains open to the parties to avail themselves of further direction by the Board in additional preliminary hearings.

And it is so ordered.

Dated at the City of Edmonton, in the Province of Alberta this 5th day of October 2012.



Lynn Patrick Presiding Officer

Appendix "A"

Oral Representations

Person Appearing Capacity

- | | | |
|----|-----------------|---|
| 1. | B. Dell | Counsel for the Complainant |
| 2. | C. Hall | Representative of the Complainant |
| 3. | C.M. Zukiwski | Counsel for the Respondent |
| 4. | R. Fortin | Assessor for the Respondent |
| 5. | H. Schmidt | Assessor for the Respondent |
| 6. | J. Christianson | Director, Property Administration for the Special Areas Board |
| 7. | T. Jacobsen | Municipal Assessor for the Special Areas Board |
| 8. | D. Major | Project Advisor for the Special Areas Board |

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Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Electronic power plant	Generating system	Prelim. Scheduling	468(1)(b)