

Special Areas Board Composite Assessment Review Board

CITATION: ATCO Power Canada Ltd. v. Special Areas Board 2013 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 on April 17, 2013 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 station 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 ss. 15 and 36(2)(b) of the *Matters Relating to Assessment Complaints Regulation*, 310/2009 (Regulation) relating to procedural matters regarding the scheduling of a hearing and the disclosure of evidence.

Legislation

[2] The following legislation is relevant:

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 Complaints Regulation 310/2009

15(1) *Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.*

(2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.

(3) Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.

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;

[3] The CARB derives its authority to make decisions under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c.M-26 ("MGA"). The Complainant has filed its complaint and the CARB convened a hearing in September 2012 to schedule the merit hearing and disclosure dates. A single member CARB panel which has jurisdiction pursuant to section 41 to alter dates for evidence disclosure and pursuant to section 15 has jurisdiction in the face of exceptional circumstances to delay a hearing. In the face of that jurisdiction, the CARB has heard and considered the application for delaying the hearing dates

Position of the Parties

[4] The Complainant advised that due to the personal circumstances of its chief witness, it wished to delay the filing of its evidence and argument. Further, the issues between the parties have been crystalized and the parties believe that the entire hearing can be completed in 5 days and not the currently scheduled 8 days. It proposed that the following timing for disclosure of evidence and argument and for the hearing be approved by the CARB.

Complainant files evidence and argument	Friday, May 3 rd , 2013
Respondent files evidence and argument	Friday, June 7 th , 2013
Complainant files evidentiary rebuttal	Friday, June 14 th , 2013
legal rebuttal, if any	June 20 th , 2013
Hearing for 5 days	June 24 – June 28 th , 2013 (Monday to Friday)

[5] The Respondent advised the CARB of its consent to the above proposal.

DECISION AND REASONS

Merit hearing and Disclosure Dates

[6] The CARB directs the following schedule for filing of evidence, argument and the hearing:

Complainant files evidence and argument	Friday, May 3 rd , 2013
Respondent files evidence and argument	Friday, June 7 th , 2013
Complainant files evidentiary rebuttal	Friday, June 14 th , 2013
legal rebuttal, if any	June 20 th , 2013
 Hearing for 5 days	 June 24 – June 28 th , 2013 (Monday to Friday)

[7] The merit hearing will take place in Hanna, Alberta. The hearing will commence on June 24, 2013 at 9 am.

[8] Each party must provide its submissions electronically to the other parties and to the CARB by no later than 4:30 pm of the required date. Hard copies may follow on the following day. The parties are requested to send 4 hard copies to the CARB Clerk in Hanna (address: 115 Palliser Trail, Hanna AB), and one hard copy directly to CARB counsel in Edmonton.

[9] The CARB directs that the parties page number each page of the submission, including any materials contained as exhibits or tabs.

[10] The parties should arrange for a court reporter to be present during the hearing with the cost to be shared between the parties, and a copy of the transcript provided to the CARB at no cost.

Reasons

[11] The CARB is pleased to note that the parties have been able to reach an agreement in relation to the adjournment request for disclosure of evidence and argument and for the hearing dates of this matter and encourages them to continue their discussions. The board notes that the parties have indicated that they will require less time than originally scheduled for this hearing, having resolved some issues, and the Board is of the opinion that it is appropriate to delay the starting date of the hearing to the Monday, to prevent the parties and their counsel and witnesses from travel to Hanna twice in two weeks, particularly when the hearing can be completed in one full calendar week.

[12] Given the exceptional circumstances, the consent of the parties and the lack of prejudice to the parties, the CARB finds the disclosure and hearing schedule reasonable.

[13] The CARB is aware of the obligation to provide a fair hearing for the parties, which includes the availability of witnesses for the parties.

[14] It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 17th day of April, 2013.



L. Patrick, Presiding Officer

APPENDIX 'A'

WRITTEN REPRESENTATIONS

PERSON APPEARING CAPACITY

- | | | |
|----|----------------|-----------------------------|
| 1. | B. Dell, | Counsel for the Complainant |
| 2. | C. M. Zukiwski | Counsel for the Respondent |

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Subject	Type	Sub-type	Issue	Sub-issue
CARB	electric power plant	generating system	Prelim. Scheduling	468 (1) (b)