

Special Areas Board Composite Assessment Review Board

CITATION: ATCO Power Canada Ltd. v. Special Areas Board 2013 CARB

Assessment Roll Number:	207149
Address/Legal:	Pt 29-28-13-4
Assessment Year:	2012
Tax Year:	2013

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 January 14, and continued on January 22, 2014 in respect to procedural matters arising from a complaint filed by the Complainant in 2013. 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.

[2] 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 Parties

[3] At the first portion of the preliminary hearing, the Complainant expressed a desire for the merit hearing to be delayed until at least after the leave application had been heard in relation to the 2012 tax year decision.

[4] At the first portion of the hearing, the Respondent expressed its desire that merit hearing dates be set and disclosure timelines established. The Respondent also indicated that if the matter was to be heard in the fall of 2014, there should be a variance from the strict deadlines set out in the regulations for disclosure dates.

[5] As of the first portion of the hearing, the parties had not yet had discussions about possible mutually convenient dates.

[6] The hearing was adjourned one week to permit the parties the opportunity to discuss hearing dates and disclosure dates.

[7] At the continuation of the merit hearing, the parties presented to the CARB a joint recommendation regarding merit hearing dates and disclosure dates of the following:

Complainant's Disclosure	September 10, 2014
Respondent's Disclosure	November 19, 2014
Complainant's Rebuttal	November 28, 2014
Hearing	December 8-12, 2014 and December 15-17, 2014

[8] The parties did not have any strong preference for a hearing location and had no objection to a direction from the CARB regarding the sharing of costs for a transcript.

[9] In response to questions from the CARB, the parties indicated a willingness to explore an agreed statement of facts, which might assist in decreasing the amount of time required for a merit hearing.

DECISION AND REASONS

Merit hearing and Disclosure Dates

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

Complainant's Disclosure	September 10, 2014
Respondent's Disclosure	November 19, 2014
Complainant's Rebuttal	November 28, 2014
Hearing	December 8-12, 2014 and December 15-17, 2014

[11] The merit hearing will take place in Edmonton, Alberta at the MGB offices. The hearing will commence on December 8, 2014 at 9:30 am for the first day and 9:00 am for subsequent days of the hearing.

[12] 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 2 hard copies to the CARB Clerk in Hanna (address: 115 Palliser Trail, Hanna AB), and three hard copies directly to CARB counsel in Edmonton. The parties are requested to provide their submissions on 3 USB drives, 2 of which should accompany the materials to Hanna, and 1 of which should be sent to CARB counsel in Edmonton.

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

[14] 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.

[15] The parties are directed to work towards an agreed statement of facts and issues. A second preliminary hearing will be conducted June 18, 2014 for the parties to advise the CARB about the status of the agreed statement of fact and issues.

[16] The parties are directed to consider if there is a need for a confidentiality agreement, and if so, they are directed to work to establishing the terms of that confidentiality agreement prior to the merit hearing. If further direction from the CARB is required, the parties may contact the CARB Clerk for another preliminary hearing.

Reasons

[17] The CARB is pleased to note that the parties have been able to reach an agreement in relation to the disclosure and hearing dates of this matter and encourages them to continue their discussions. In light of the agreement between the parties, the CARB is prepared to accept the joint recommendation for hearing dates and disclosure dates.

[18] The CARB notes that the parties have requested 8 hearing days and has granted that request. However, the CARB has directed that the parties work to preparing an agreed statement of fact and issues. The purpose of the agreed statement of facts and issues is to possibly decrease the hearing time and to assist the parties and the CARB to focus on the matters which are in dispute in the hearing. The CARB has set June 18, 2014 as the date for the parties to report to the CARB on their progress, so that if further direction from the CARB is required, there will be sufficient time, prior to the Complainant's filing dates.

[19] In light of the long period of time until the merit hearing, the CARB is prepared to alter the disclosure times to provide an increased time for the Respondent to prepare its responses. This provides fairness to both parties.

[20] The CARB notes that the parties expressed no decided preference for a hearing location. In light of the fact that the hearing is scheduled for December and members of the CARB would otherwise need to travel on winter highways, the CARB believes that the hearing should be in Edmonton. The hearing location in Edmonton will permit the parties and the CARB to be in one location, and limit travel on possibly icy, winter roads.

[21] The CARB is aware of the obligation to provide a fair hearing for the parties, which includes the consideration of both witnesses and counsel for the parties. In light of the other commitments of counsel for the parties, including the CARB's counsel, the CARB finds the disclosure and hearing schedule reasonable.

[22] The CARB notes that in the hearing for the 2012 tax year, the Complainant required a confidentiality agreement from the Respondent's witnesses. If such a requirement is necessary in the 2013 tax year hearing, the CARB requests that the parties address their minds to the issue in advance of the hearing, so that it can be resolved prior to the merit hearing, so as to make the hearing run smoothly. In the same vein, if the parties have no objection to the qualifications of any expert presented by the opposing party, the CARB expects that the parties will indicate that the qualifications are not in dispute, so that there will not need to be a lengthy discussion of uncontested witness qualifications. The CARB is not making this an order, but commends this to the parties.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 23rd day of January, 2014.



L. Patrick, Presiding Officer

APPENDIX 'A'

ORAL REPRESENTATIONS

<u>PERSON APPEARING</u>	<u>CAPACITY</u>
1. B. Dell,	Counsel for the Complainant
2. C. Killick-Dzenick	Counsel for the Respondent
3. B. Wiebe	CARB Clerk
4. G. Stewart-Palmer	CARB Counsel

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