

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 June 24 and 26, 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.

[2] The merit hearing had been scheduled for June 24-28, 2013. Due to the flooding in Calgary on June 20 and forwards, the Complainant's counsel requested a postponement of the hearing.

Legislation

[3] 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;

[4] 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

[5] The Complainant advised that due to the flooding in Calgary and lack of power in Calgary's downtown, it could not access its materials for the hearing. As of June 26, 2013, the Complainant's counsel was advised that there may not be power to its building for another 2 weeks.

[6] The Complainant and the Respondent canvassed possible alternative dates. The Complainant and its witnesses are available during the week of September 9-13, 2012.

[7] The Respondent and its witnesses are available for the week of September 9-13, 2013.

[8] The plant will be in shutdown during that week, so there are no hotel rooms in Hanna for the week of September 9-13, 2013. Both the Complainant and the Respondent are prepared to move the location of the hearing in order to ensure that the hearing occurs during the above week. The Respondent indicated that its preference is that any hearing room is to have reasonable space at a good price.

DECISION AND REASONS

[9] The CARB directs the hearing will be held as follows:

Hearing for 5 days

September 9 - 13, 2013

[10] The merit hearing will take place at the MGB offices in Edmonton, Alberta. The hearing will start at 9 am.

Reasons

[11] The flooding which occurred in Calgary is an exceptional circumstance and its impact on the Complainant justifies the postponement of the hearing. The CARB commends the parties for working together to come up with alternative dates in the near future for the hearing.

[12] Although Hanna is the preferred location for the hearing, if the hearing were held in Hanna, all parties and their witnesses would have to travel at least 45 minutes each way to the nearest hotel facilities. The CARB is of the view that it makes more sense to move the hearing location to a place where the parties can obtain accommodations. The CARB noted the comments of the Complainant that there might be room at the MGB offices in Calgary. The CARB contacted the MGB and was advised that those offices had been take over for flood recovery work and would not be available. The CARB attempted to obtain space in Red Deer, but could not get facilities which would meet the needs of the hearing for that week. The CARB located space at the MGB offices in Edmonton for the week of the hearing. The CARB recognizes that the Complainant will have to travel to Edmonton and stay in hotels for the week, but the lack of availability of alternative space and the need to preserve the hearing dates has lead to this being the only viable option for the location of the hearing.

[13] Given the exceptional circumstances, the consent of the parties and the lack of prejudice to the parties, the CARB finds the hearing dates and location reasonable.

[14] It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 27th day of June, 2013.



L. Patrick, Presiding Officer

APPENDIX 'A'

WRITTEN REPRESENTATIONS

<u>PERSON APPEARING</u>	<u>CAPACITY</u>
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|----|--------------------|-----------------------------|
| 1. | B. Dell, | Counsel for the Complainant |
| 2. | C. M. Zukiwski | Counsel for the Respondent |
| 3. | C. Killick-Dzenick | 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)