

IN THE MATTER OF A COMPLAINT filed with the County of Paintearth No. 18 Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act*, being Chapter M-26 of the Revised Statutes of Alberta 2000

BETWEEN:

Alberta power 2000 Ltd. c/o AEC International Inc. (AEC) represented by Wilson Laycraft LLP  
– Complainant

-and-

County of Paintearth No. 18 (Paintearth) represented by Reynolds Mirth Richards & Farmer LLP  
– Respondent

BEFORE:

Paul Petry, Presiding Officer

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Staff:

T. Peach, Composite Assessment Review Board Clerk

A preliminary hearing was held on August 28, 2012 by conference call to consider procedural matters relating to a complaint about the assessment of the following property tax roll number:

720005980	Assessment	\$58,542,840
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#### **PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

[1] This appeal relates to a property assessment for buildings and structures. The Complaint has filed its complaint alleging 4 grounds of complaint.

#### **PART B: PROCEDURAL OR JURISDICTIONAL MATTERS**

[2] 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 to schedule the merit hearing and disclosure dates.

### **Position of the Complainant**

[3] The Complainant indicated that the parties have reached an agreement in relation to the hearing dates and resultant disclosure dates:

Complainant's Disclosure	December 17, 2012
Respondent's Disclosure	February 15, 2013
Complainant's Rebuttal	March 1, 2013
Hearing	March 11-20, 2013

[4] The CARB enquired as to why the hearing cannot be scheduled prior to the end of the calendar year as expected under section 468 (1) (b) of the Municipal Government Act (Act).

[5] The Complainant indicated that the "corrected" 2011 CARB decision has just been made available. This decision will have a significant impact of the direction and preparations for the 2012 complaint. Complainant is working on the evidence, but it is taking some time and the Complainant will be hard pressed to meet the proposed December 17, 2012 filing deadline. Further, the Complainant indicated that it is now generally accepted that the requirement for a hearing prior that end of the calendar year is directory and not mandatory. Finally, giving the Complainant until December to file its materials will allow time for the parties to determine if points can be refined or agreed upon, which will result in a saving of time in the hearing.

[6] In response to a question from the Respondent about whether the Complainant is still advancing a ground in relation to how the calculation of the items was done, the Complainant advised that it is attempting to have discussions with the assessor in relation to this and agreed to have those discussion early so that if it required the assistance of the CARB, there would be sufficient time to come to the CARB and the merit dates would not be affected. If there are procedural issues which require a preliminary hearing, they would likely not need disclosure.

[7] In relation to the allegation in the complaint about the "separation between the office of the Assessor and the Municipality", the Complainant indicated that it has no instructions to pursue this issue at the current time. However, if pursued, the allegation will relate to institutional independence and the structure of the CARB as required by the Bylaw. The Complainant indicated that if it gets instructions to pursue this argument, the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 provides that disclosure for a one member CARB hearing need take place only 7 days before the hearing. The Complainant suggested that it could notify the Respondent if this is an issue by September 27, 2012, file its materials on October 2, 2012 and the preliminary hearing on this matter could be October 9, 2012. Alternatively, the Complainant could file its materials with its disclosure on December 17, 2012 and the preliminary hearing on this matter could be heard at the end of January, 2013. In the end, it indicated that it would leave the scheduling of the matter with the CARB.

### **Position of the Respondent**

[8] The Respondent agreed with the schedule for disclosure and the merit hearing. The Respondent agreed that the prevailing authority is that the CARB does not lose jurisdiction at the end of the year to determine a complaint. The Respondent is aware of the CARB's desire to have

the matter proceed to a hearing expeditiously, but the overriding consideration is for a fair hearing, which includes witness and counsel availability. The Respondent is already looking at what witnesses it may require for the merit hearing. The parties are also having discussions, and may be able to reach an agreement on certain issues, for example, age life. In terms of counsel availability, counsel for the Complainant, the Respondent and the CARB are scheduled for a 6 week hearing set for October 15 – 23, 2012. Counsel for the Complainant and the Respondent have a 2 week linear hearing scheduled for the weeks of December 3 and 10 and they are also scheduled to be in another CARB hearing the week of December 10, 2012.

[9] In relation to the allegation of institutional independence, the Respondent indicated that if the Complainant provides its disclosure on September 27, 2012, it would give the Respondent three business days to review the submissions. This is insufficient time for such a serious matter. If the hearing were to occur in January 2013, the timing of the resulting decision would give the Municipality insufficient time to prepare any required changes to the Assessment Review Board Bylaw. The Respondent did not object to a hearing on October 9, 2012. It suggested that the Complainant's disclosure be September 24, 2012, the Respondent's disclosure one week later and the hearing October 9, 2012.

[10] The Respondent agreed that disclosure for other procedural issues one week before a preliminary hearing would be sufficient time.

## **DECISION AND REASONS**

### ***Merit hearing and Disclosure Dates***

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

Complainant's Disclosure	December 17, 2012
Respondent's Disclosure	February 15, 2013
Complainant's Rebuttal	March 1, 2013
Hearing	March 11-20, 2013

[12] The merit hearing will take place in Castor, Alberta. The hearing will commence on March 11, 2013 at 9 am.

### ***Notification by Parties of Need for Second Preliminary Hearing***

[13] No later than September 21, 2012, the Complainant must advise the CARB and the Respondent if it will be pursuing:

- a) Its argument in relation to institutional bias;
- b) Any other procedural or preliminary issues for which the CARB's direction is required prior to the Complainant's filing;
- c) Any other matter for the CARB to address.

[14] No later than September 21, 2012, the Respondent must advise the CARB and the Complainant if it will be pursuing:

- a) Any procedural or preliminary issues for which the CARB's direction is required prior to the Complainant's filing;
- b) Any other matter for the CARB to address.

***Disclosure and Hearing dates for Institutional Independence Preliminary Hearing***

[15] If the Complainant is advancing its argument in relation to institutional independence, the parties must comply with following timelines for the disclosure and hearing:

Complainant's Disclosure	September 24, 2012
Respondent's Disclosure	October 1, 2012
Preliminary Hearing	October 9, 2012 in Castor, Alberta Start Time: 10:00 am

***Disclosure and Hearing dates for other Procedural or Preliminary Issues***

[16] If the Complainant is not advancing its argument in relation to institutional independence, but if either of the parties have any procedural or preliminary issues for the CARB to address, the parties must comply with following timelines for the disclosure and hearing:

Disclosure of the Party making an application	October 2, 2012
Preliminary Hearing	October 9, 2012 Via Telephone Conference – call in details to be provided by the CARB Clerk Start Time: 9:00 am

***Disclosure and Hearing dates for Institutional Independence and Procedural or Preliminary Issues***

[17] Should the parties identify procedural or preliminary matters issues in addition to the issue relating to institutional independence, the filing dates are as set out above for the respective issues. However, if there are both procedural/preliminary issues and the issue in relation to institutional independence, the hearing will be held in Castor, in accordance with the timelines in paragraph 15.


[18] The CARB has heard the parties' rationale for the hearing occurring beyond the year end. While the CARB wishes the hearing to occur expeditiously, it wants to ensure a fair hearing for all parties. The CARB recognizes that its decision respecting the 2011 complaint has just been released and appreciates that the parties require some time to gauge the impact of this decision going forward.. Fair process in this case dictates that the parties' need to have time to prepare their cases and to have the hearing scheduled at a time when witnesses and counsel are available.

[19] The hearing and disclosure schedule will permit the parties time to consider the implications of the 2011 merit hearing, and to prepare their case for the 2012 appeal as they see fit. It will also permit them time to have discussions and possibly resolve some or all of the outstanding issues.

[20] Since the dates are set in 2013, the CARB wishes to take steps to ensure that any preliminary or procedural arguments, including ones of jurisdiction, are heard by the CARB sufficiently early so the merit hearing can proceed as scheduled.

It is so ordered.

Dated at the City of Lethbridge, in the Province of Alberta, this 31st day of August, 2012.



P. Petry, Presiding Officer

## APPENDIX 'A'

### ORAL REPRESENTATIONS

<u>PERSON APPEARING</u>	<u>CAPACITY</u>
1. B. Dell,	Counsel for the Complainant
2. C. Hall	Representative of the Complainant
3. R. Ford	Representative of the Complainant
5. C. M. Zukiwski	Counsel for the Respondent
6. B. Hepp	Representative of the Respondent
7. G. Glazier	Representative of the Respondent
8. W. Weber	Representative of the Respondent

For MGB Use Only

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