

Electronic Notification

December 8, 2011

To all interested parties EPS Proceeding ID No. 457

Requests by Strathcona County and James and Michelle Prins to review Decision 2011-436 Applications 1607924 and 1607942 – EPS Proceeding ID No. 1592
Request by Strathcona County to suspend the operation of Decision 2011-436 EPS Proceeding No. 1592

I. Introduction

1. The Alberta Utilities Commission (AUC or Commission) has received two requests to review its decision on the Heartland transmission project application (Decision 2011-436) and one request to suspend the operation of that decision. The Commission wrote to interested parties on November 29 and December 1, 2011, to explain the schedule and process for the consideration of those requests. The Commission has now received requests to amend that process and schedule.

2. The Commission has decided to amend its process and schedule for the consideration of the request to suspend the Heartland decision and the requests to review the Heartland decision. This letter explains the processes and schedules the Commission has established for the consideration of those requests.

II. Background

3. On November 1, 2011, the Commission issued Decision 2011-436 in which it approved, subject to conditions, the application by AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. for the Heartland transmission project.

4. On November 25, 2011, Strathcona County (the County) filed an application to review and vary Decision 2011-436. The County also asked the Commission to suspend the operation of Decision 2011-436 pending the outcome of its review request.

5. On November 30, 2011, the Commission received a second request to review and vary Decision 2011-436 from James and Michelle Prins.

6. In response to the two review requests the Commission established a filing schedule for the consideration of the two review and variance requests in a single proceeding. In accordance with that schedule, interested parties were required to submit comments on the review and variance request by Friday, December 16, 2011, and the review applicants (Strathcona County

and James and Michelle Prins) were required to respond to those submissions by no later than Monday, January 9, 2012.

III. Request for amended filing schedule for the review and variance requests

7. On December 2, 2011, the applicants for the Heartland project wrote to the Commission and proposed a revised schedule and process for the consideration of the two review and variance requests. The Heartland applicants pointed out that the deadline for applications to review and vary Decision 2011-436 is 60 days from the date of the decision, December 31, 2011. They proposed that the Commission schedule common filing deadlines after that date so that all the review and variance applications for the Heartland decision could be considered in a single proceeding. They argued that this would simplify the process and avoid a multiplicity of proceedings. The Heartland applicants also proposed that the filing schedule be modified so that those supporting the review and variance applications would file first, those opposing the applications would file second, and the review applicants would have the final right of reply.

8. On December 6, 2011, the County advised the Commission that it did not oppose the amendments to the filing process and schedule proposed by the Heartland applicants. The County renewed its request for a suspension of the operation of Decision 2011-436 on the basis that the Minister of Infrastructure had issued consents to the Heartland applicants and the Commission allowing for the construction of the Heartland transmission project within the Edmonton and Sherwood Park West Restricted Development Areas. The County observed that, with the issuance of the ministerial consents, the Commission could issue its permits and licenses for the project and construction could begin.

IV. Amended process to consider the request to suspend Decision 2011-436

9. The Commission will hear the County's request to suspend the operation of Decision 2011-436 on December 14, 2011, in the Commission's Edmonton hearing room which is located on the 12th floor of the Commission's offices at 10055 - 106 Street Edmonton, Alberta. The hearing will commence at 9:00 am on **Wednesday, December 14, 2011**.

10. **The Commission will only hear argument on the County's suspension request at this time.** The review and variance request will be considered in a separate hearing which is described below.

11. The Commission grants Strathcona County's request to dispense with the requirement to file an affidavit in support of its motion.

12. Any party to Decision 2011-436 who wishes to make a submission on the suspension request must file a written submission with the Commission by no later than **Monday, December 12, 2011**. A party to the decision is a party that participated in the Heartland hearing (Proceeding ID. 457). The submission must state the name of the party and explain the position that he or she is taking with respect to the County's suspension request. If the party intends to rely upon any authorities in support of their position those must be filed with the submission.

13. If the County intends to rely upon any additional authorities in support of its suspension request those authorities must also be filed by no later than **December 12, 2011**.

14. Those parties to the decision who file a submission will be given an opportunity to provide supplemental oral submissions to respond to the written submissions of others in the following order:

- Strathcona County;
- Parties to the decision that support the suspension request;
- Parties to the decision that oppose the suspension request with the Heartland applicants arguing last amongst this group; and
- Reply by Strathcona County.

15. **The purpose of the oral submissions is to allow parties to respond to the written submissions of others; participants are not to review or repeat the arguments made in their written submissions.** The Commission may establish time limits for oral submissions and will advise participants of this in due course.

16. The Commission will give its decision on the suspension request as soon as practicable after hearing the submissions of the parties.

V. Amended process for the requests to review Decision 2011-436

17. The Commission's authority to review, vary, rescind or confirm its own decisions is found in section 10 of the *Alberta Utilities Commission Act*. Section 10 also states that the Commission may make rules respecting the review of its own decisions. The Commission has made rules governing its review of its own decisions and those rules are found in AUC Rule 016: *Review and Variance of Commission Decisions*. A copy of AUC Rule 016 is attached to this letter.

18. The Commission's process for reviewing its own decisions has two stages. In the first stage, the Commission decides whether there are grounds to review its own decision. AUC Rule 016 states that for a decision on a transmission line the grounds for review may be based on an error of law, fact or jurisdiction or on the existence of new facts, a change in circumstances, or facts not previously placed in evidence as the facts were not known to the applicant at the time of the hearing. Section 8 of AUC Rule 016 describes what information must be contained in an application to review a decision of the Commission. During the first stage of the review process the Commission considers argument on whether to review the decision. The Commission does not consider evidence from witnesses when making this decision.

19. If the Commission decides that there are grounds to review the decision, it moves to the second stage of the review process where it holds a hearing to decide whether to confirm, vary or rescind the original decision. During the second stage the Commission may hear evidence from witnesses in support of the positions being advanced.

20. The Commission has received two requests to review the Heartland decision. In accordance with the two-stage process described above, the Commission must first decide whether there are grounds to review the Heartland decision. The Commission has established the following amended process for its first stage consideration of such requests. This amended process takes into account the fact that the deadline for requests to review and vary Decision 2011-436 is January 2, 2011.

Friday January 13, 2012 Deadline for the filing of submissions for those that support or oppose the requests to review and vary Decision 2011-436.

Friday January 20, 2012 Deadline for all review applicants to reply to the submissions supporting or opposing their submissions.

Wednesday January 25, 2012 Commission hearing to consider supplemental oral submissions on the first stage review requests and submissions.

21. The hearing to consider the stage one review request will commence at 9:00 am on **Wednesday January 25, 2012**, at a location to be determined. The Commission will advise parties of the location for the hearing in due course.

22. All submissions filed in support or opposition of the request to review Decision 2011-436 must state the name of the party and explain the position that he or she is taking with respect to the review requests. Any authorities relied upon by a party in support of his or her position must be filed with the submission. The review applicants must file any additional authorities not filed with their review requests with their January 20, 2012, reply submissions.

23. Only parties that have filed written submissions in accordance with the above schedule may participate in the oral hearing on January 25, 2012. **The purpose of the supplemental oral submissions is to allow parties to respond to the written submissions of others; it is not an opportunity for parties to review or repeat the arguments made in their written submissions.** The Commission may establish time limits for oral submissions and will advise participants of this in due course.

24. The commission will hear supplementary oral submissions in the following order:

- The review applicants;
- Parties that support the review and variance requests;
- Parties that oppose the review and variance requests with the Heartland applicants arguing last amongst this group; and
- Reply by the review applicants.

Please contact me if you have any questions about the Commission's process or schedule for the consideration of the County of Strathcona's suspension request or for the requests to review Decision 2011-436.

Regards,

<original signed by>

JP Mousseau
Commission Counsel

Encls.

Rule 016

Review and Variance of Commission Decisions

The Alberta Utilities Commission (AUC/Commission) has approved this rule on January 2, 2008.

Definitions

- 1 In these rules:
- (a) “Act” means the *Alberta Utilities Commission Act*;
 - (b) “Commission” means the Alberta Utilities Commission;
 - (c) “decision” includes an order, a licence or an administrative penalty issued by the Commission, under the Act or any enactment under the jurisdiction of the Commission.

Commission Review on its Own Motion

- 2 The Commission may, at any time, review a decision on its own motion.

Review on Error of Law, Fact or Jurisdiction

3(1) Subject to these rules, the Commission may review a decision on an application for review filed, within 60 days of the issuance of the decision, by a party to the decision, in a case where the applicant alleges that the decision contains an error of fact or law or jurisdiction.

- (2) This section applies to a decision on a needs identification document.

Review of Facility Decision

4(1) The Commission may review a decision relating to a hydro development, power plant, transmission line or gas utility pipeline, on an application for review filed within 30 days of the issuance of the decision, by a person directly and adversely affected by the decision, in a case where the decision was made without a hearing or other proceeding or a hearing was held and direct notice was not given to that person.

- (2) The Commission may review a decision relating to a hydro development, power plant, transmission line or gas utility pipeline, on an application for review filed within 60 days of the issuance of the decision by a person directly and adversely affected by the decision in a case where the applicant alleges the existence of new facts, a change in circumstances, or facts not

previously placed in evidence as the facts were not known to the applicant at the time of the hearing.

Review of Costs Order

5 The Commission may review a decision relating to a costs order made under section 21 or 22 of the Act, on an application for review filed within 30 days of the issuance of the costs order, by a party to the costs order.

Review of Electric Utility Tariff Decision

6 The Commission may review a decision approving a tariff under the *Electric Utilities Act* on an application for review filed by a person affected by the decision

- (a) if the terms or conditions provided by the tariff for discontinuing the rates have been met and the decision provides for a review in those circumstances;
- (b) if the owner of the electric utility or the Independent System Operator has breached a term or condition of the tariff in a material manner; or
- (c) if, since the date of the decision, circumstances have changed in a substantial and unforeseen manner that renders the continuation of the tariff unjust and unreasonable.

Review of Gas Utility Rates Decision or Water Utility Rates Decision

7 The Commission may review a decision fixing rates, tolls or charges for a gas utility, under section 36 of the *Gas Utilities Act*, or a decision fixing rates, tolls or charges for a water utility under the *Public Utilities Act* on an application for review filed by a person affected by the decision

- (a) if the terms or conditions for discontinuing the rates, tolls or charges have been met and the decision provides for a review in those circumstances;
- (b) if the owner of the gas utility has breached a term or condition of the rates, tolls or charges in a material manner; or
- (c) if, since the date of the decision, circumstances have changed in a substantial and unforeseen manner that renders the continuation of the tariff unjust and unreasonable.

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8 An application for a review under these rules must be in writing, be no longer than 10 pages double spaced and include the following:

- (a) a clear and concise statement of facts relevant to the application;
- (b) the grounds on which the application is made;

- (c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the decision;
- (d) a brief description of the remedy sought;
- (e) the applicant's name, address in Alberta, telephone number, fax number and, if available, e-mail address;
- (f) if the applicant is represented by a representative, the representative's name, address in Alberta, telephone number, fax number and, if available, e-mail address.

Service of Application for Review

9 An application for a review must be filed and served on the parties to the hearing or other proceeding for which the decision was made.

Application for Review of Facility Decision

10 Here an application for review is made under section 4(1), the application must contain a clear and concise statement describing the right the applicant for review has and the manner in which the applicant's right may be directly and adversely affected by the decision on the initial application.

Determination of Preliminary Question

11 The Commission shall decide, with or without a hearing, the preliminary question of whether the decision made by it should be reviewed as requested in the application for review.

Granting of Review

12 The Commission shall grant an application for review,

- (a) with respect to a review of a decision, other than a review under section 4(1), if the Commission determines that;
 - (i) in the case where the applicant has alleged an error of law or jurisdiction or an error of fact, in the Commission's opinion, the applicant has raised a substantial doubt as to the correctness of the decision, or,
 - (ii) in the case where the applicant has alleged new facts, a change in circumstances or facts not previously placed in evidence, in the Commission's opinion, the applicant has raised a reasonable possibility that new facts, a change in circumstances or facts not previously placed in evidence as the evidence was not known, as the case may be, could lead the Commission to materially vary or rescind the decision,

or

- (b) with respect to a review under section 4(1), if the Commission determines that, in the Commission's opinion, the applicant has shown that the decision made by it on the initial application may directly and adversely affect the applicant's right.

Notice of Review

13 If the Commission grants the application for review in accordance with section 12, it shall issue a notice of review, and a new hearing or other proceeding must be held in accordance with the Commission's Rules of Practice.

Transitional

14 In the case where the Alberta Energy and Utilities Board rendered a decision in 2007 respecting a matter under the jurisdiction of the Commission and the statutory review period, as it existed prior to the coming into force of the Act, has not expired, the review period will be calculated in accordance with the review period as it existed but no longer than 90 days from the issuance of the decision or no later than March 31, 2008, if no review period was specified.