



## **Grande Cache Coal Corporation**

**Application for an Exemption under Section 24 and  
Connection under Section 18 of the  
Hydro and Electric Energy Act – Part 2**

**January 6, 2012**

**The Alberta Utilities Commission**

Decision 2012-002: Grande Cache Coal Corporation

Application for an Exemption under Section 24 and

Connection under Section 18 of the Hydro and Electric Energy Act – Part 2

Application No. 1607927

Proceeding ID No. 1594

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## **1 Introduction and background**

1. On November 25, 2011, Grande Cache Coal Corporation (GCC) filed Application No. 1607927 with the Alberta Utilities Commission (AUC or the Commission) pursuant to sections 18 and 24 of the *Hydro and Electric Energy Act* requesting an exemption to own and operate a distribution line on its lands, and a connection order to connect this distribution line to ATCO Electric Ltd.'s (ATCO) distribution facilities.

2. ATCO is the incumbent distribution utility in the distribution service area where GCC's mining operations are located. As such, ATCO has exclusive rights to distribute electrical energy within its distribution service area, except where an exemption has been provided.<sup>1</sup> An exemption to this exclusive right to serve can be found in Section 24 of the *Hydro and Electric Energy Act*.

3. In 2009, GCC filed Application No. 1605319 with the AUC requesting similar relief to construct, own and operate the distribution line. At that time, GCC sought approval to construct a new distribution line to serve its mining operations. The new proposed distribution line would connect to an ATCO distribution line north of Highway 40, but not cross Highway 40.

4. In 2009, ATCO opposed Application No. 1605319. The Commission held a written proceeding to determine whether GCC met the requirements for an exemption pursuant to Section 24(1)(a) of the *Hydro and Electric Energy Act*.

5. On March 15, 2010, the Commission released Decision [2010-115](#)<sup>2</sup> in which they denied Application No. 1605319. The Commission reached this determination on the basis that the new distribution line would cross the Beaverdam Road, which the Commission had found to be a public highway under the *Hydro and Electric Energy Act*. As such, the new distribution line could not meet the requirements for an exemption as set out in Section 24(1)(a) of the *Hydro and Electric Energy Act*.

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<sup>1</sup> Section 101 of the *Electric Utilities Act*.

<sup>2</sup> Decision 2010-115: Grande Cache Coal Corporation – Application for an Exemption Under Section 24 and a Connection Under Section 18 of the *Hydro and Electric Energy Act*, Application No. 1605319, Proceeding ID No. 238, March 15, 2010.

6. The new distribution line has been constructed and is complete except for the portion of line that will be connected to ATCO's distribution facilities.<sup>3</sup>

7. On December 1, 2011, the Commission issued a series of information requests to GCC in order to clarify aspects of the application. GCC replied to the Commission's information requests, in part, on December 5, 2011. On December 14, 2011, GCC responded to the remaining requests.

8. On December 20, 2011, a notice of application was issued by the Commission with a submission deadline of January 5, 2012. On January 5, 2012, ATCO filed a statement of intention to participate, in response to the notice and stated that ATCO takes "no position on the granting of this Application at this time."<sup>4</sup>

## 2 Discussion

9. In its application, GCC requested an expedited response from the Commission to ensure a smooth transition from its existing No. 7 mine, which is coming to the end of its life, to the new No. 12B2 underground mine, which commenced production in August 2011, and for which the new distribution line would be required.<sup>5</sup>

10. The focus of this application addressed the changed status of Beaverdam Road.

11. On November 25, 2011, ATCO filed a letter with the Commission in which it advised that it did not object to "... GCC's ownership, operation and maintenance of the Mine 12 Line as it is currently proposed."<sup>6</sup>

12. In addition, the Commission also received a letter of non-objection from the Aseniwuche Winewak Nation of Canada.<sup>7</sup>

## 3 Findings

### 3.1 Section 24 of the Hydro and Electric Energy Act - exemption

13. The key legislative provision respecting whether GCC may be permitted to own and operate its distribution facility is Section 24(1)(a) of the *Hydro and Electric Energy Act*.

14. Section 24 of the *Hydro and Electric Energy Act* provides an exemption from the requirement for a "person wishing to obtain electricity for use on property" to "make arrangements for the purchase of electric distribution service from the owner of the electric distribution system in whose service area the property is located" as required by Section 101 of the *Electric Utilities Act*.

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<sup>3</sup> Application, page 5.

<sup>4</sup> Exhibit 8, ATCO's Statement of Intent to Participate.

<sup>5</sup> Application, page 4.

<sup>6</sup> Application, Letter of Support for ATCO, dated November 25, 2011.

<sup>7</sup> Application, Letter from Aseniwuche Winewak Nation of Canada, dated August 29, 2011.

15. The exemption found in the *Hydro and Electric Energy Act* states:

**Exemption from Part 3**

**24(1)** A person distributing or proposing to distribute electric energy solely on land of which the person is the owner or tenant for use on that land and

- (a) not across a public highway, or
- (b) across a public highway if the voltage level of the distribution is 750 volts or less

is not subject to this Part unless the Commission otherwise directs.

16. To the extent that this provision in the *Hydro and Electric Energy Act* conflicts with the provisions of Section 101 of the *Electric Utilities Act*, Section 24 of the *Hydro and Electric Energy Act* prevails.

17. The Commission's jurisdiction to approve the construction, ownership, connection and operation of electric distribution facilities is based upon the legislation applicable to the development of electric distribution facilities in Alberta.

18. In this regard, the Commission is mindful of the purpose and relationship between the *Electric Utilities Act* and the *Hydro and Electric Energy Act* insofar as those acts establish a comprehensive system for the regulation of electricity in Alberta.

19. The purposes of the *Electric Utilities Act* are set out in Section 5 of the *Electric Utilities Act* and generally focus upon the efficient development and operation of the electricity market. In comparison, the *Hydro and Electric Energy Act* establishes the regulatory framework for the construction and operation of electric-related infrastructure and facilities in Alberta. The *Electric Utilities Act* and the *Hydro and Electric Energy Act* may be considered partner legislation through which the former establishes the regulatory framework for utility matters, such as a utility's right to provide service to customers in its service area,<sup>8</sup> while the latter regulates the construction and operation of electrical infrastructure. Given this inter-relationship, the overlapping considerations in the *Hydro and Electric Energy Act* and the *Electric Utilities Act*, and the mutual reference in the two pieces of legislation, specific provisions of the *Hydro and Electric Energy Act* must be read with regard to the *Electric Utilities Act*.

20. The purpose of the exemption granted under Section 24(1)(a) of the *Hydro and Electric Energy Act* is to ensure that development was restricted to private property only. Consequently, the Commission must consider whether the new distribution facility falls within the parameters set out in Section 24(1)(a). If the answer to this question is yes, the Commission will then consider whether it would be in the public interest to grant the exemption. If the answer to this question is no, that is the end of the inquiry.

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<sup>8</sup> Section 101 of the *Electric Utilities Act*.

21. There are multiple components to the exemption found in Section 24(1)(a). First, a party seeking to avail itself of this exemption must demonstrate that it is proposing to distribute electric energy solely on land of which the person is the owner or tenant for use on that land. Second, the person must not be seeking to distribute electric energy across a public highway.

22. The Commission has addressed each of these requirements and notes that both requirements must be met in order to qualify for an exemption.

### **3.1.1 Sole possession of the land**

23. In Decision 2010-115, the Commission found that the evidence of GCC clearly demonstrated that it has a tenancy within the lease area where the proposed distribution facility would be located. The lands identified in the application are the same lands identified in Decision 2010-115. The Commission has no evidence before it that would require the Commission to revise its previous finding. As such, the Commission considers GCC to have met the first component of the Section 24(1)(a) requirement.

### **3.1.2 Does not cross a public highway**

24. The new distribution line crosses the Beaverdam Road. In Decision 2010-115, the Commission determined that the Beaverdam Road was a “public highway” within the meaning of Section 1(1) of the *Hydro and Electric Energy Act* and as such, GCC was unable to meet the second requirement for an exemption under Section 24(1)(a) of the *Hydro and Electric Energy Act*.<sup>9</sup>

25. Section 1(1) of the *Hydro and Electric Energy Act* defines a “public highway” as follows:

- (1) “public highway” means any land owned by the Crown or local authority that is used or surveyed for use as a public highway, road, street or lane, or other public way;

26. At the time that the Commission issued Decision 2010-115, the Beaverdam Road was under the jurisdiction of Alberta Transportation. Further, the Commission found that the public was entitled to use the Beaverdam Road, without access restriction, to reach certain scenic destinations.

27. The evidence filed in this application, including the responses to information requests posed by the Commission to GCC, reveals that the “Municipality of Greenview 16 has relinquished its interest in the Beaverdam Road, north of the GCC Haul Road, with the result that this portion of Beaverdam Road is no longer the responsibility of the Municipality of Greenview 16, nor Alberta Transportation”<sup>10</sup> and the portion of the road over which the line crosses is closed to the public.<sup>11</sup>

28. Given these changes, the Commission finds that the portion of the Beaverdam Road within the GCC mining operations area is no longer a public highway as defined in the *Hydro and Electric Energy Act*.

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<sup>9</sup> Decision 2010-115, paragraph 79.

<sup>10</sup> Application, page 4 and Attachment 1.

<sup>11</sup> Application, page 4, Attachments 2 to 6, and Exhibit 6 – GCC Information Responses Round 1 to AUC.

### 3.1.3 Public interest

29. Having determined that GCC is proposing to distribute electricity over private lands that do not cross a public highway, the Commission must then determine whether it is in the public interest to grant the exemption under Section 24(1)(a) of the *Hydro and Electric Energy Act*.

30. GCC has outlined its operational needs in the application including the requirement for GCC to have the ability to isolate or interrupt service to the distribution line due to the operating requirements of the line. GCC stated that it “requires operation control of all distribution facilities which it uses for its mining operations in order to ensure worker safety as well as economic, orderly and efficient coal mining operations.”<sup>12</sup>

31. ATCO has advised that it does not object to GCC owning and operating the new distribution line.

32. The Commission finds that it is in the public interest for GCC to own and operate the proposed distribution line and approves GCC’s application for an exemption pursuant to Section 24(1)(a) of the *Hydro and Electric Energy Act*.

### 3.2 Connection order

33. GCC has advised in the application that the proposed distribution line will be connected to ATCO’s facilities at a point in Section 16, Township 58, Range 8, west of the Sixth Meridian as indicated in Application No. 1605319. In addition, in response to information request AUC.GCC-3, GCC provided a letter from its engineering contractor, Arrow Installations Limited, that stated that the distribution line “has been designed to be in compliance with the Alberta Electrical Regulations, the CSA standards (both C22.3 Overhead Systems and C22.1 Electrical Code), as well as good utility practices.”<sup>13</sup>

34. ATCO stated in its letter of support dated November 25, 2011,<sup>14</sup> that it does not object to GCC’s ownership, operation and maintenance of the distribution line as it is currently proposed.

35. GCC has also advised that it has an operating agreement and an electric service agreement in place with ATCO governing the interconnection between GCC’s distribution system and ATCO’s distribution system.<sup>15</sup> GCC stated that “it is understood that ATCO Electric will execute the attached Operating Agreement upon receipt of a Section 18 Interconnection Order granted by the Alberta Utilities Commission”.<sup>16</sup>

36. Given the above, the Commission grants a connection order to GCC pursuant to Section 18 of the *Hydro and Electric Energy Act* to connection GCC’s 25-kilovolt (kV) distribution line with ATCO’s facilities.

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<sup>12</sup> Application, pages 2 to 3.

<sup>13</sup> Exhibit 6.07, Attachment F to Information Response AUC-GCC-3.

<sup>14</sup> Grande Cache letter of support from ATCO, dated November 25, 2011.

<sup>15</sup> Exhibit 6.08, Information Response AUC-GCC-3.

<sup>16</sup> Exhibit 6.08, Information Response AUC-GCC-3.

#### 4           **Decision**

37. Pursuant to Section 24 of the *Hydro and Electric Act*, the Commission approves the application and grants GCC an exemption to own and operate the 25-kV distribution line and pursuant to Section 18 of the *Hydro and Electric Act*, grants the connection order set out in Appendix 1 – Grande Cache Coal 25-kV distribution line – Order No. U2012-3 – January 6, 2012. (Appendix 1 will be distributed separately).

Dated on January 6, 2012.

#### **The Alberta Utilities Commission**

*(original signed by)*

Tudor Beattie, QC  
Commission Member