LAWSON LUNDELL LLP

BARRISTERS & SOLICITORS

ENERGY LAW NEWSLETTER

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WESTERN CANADIAN BUSINESS LAW

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INTRODUCTION

This is Lawson Lundell LLP's energy law newsletter, a quarterly publication meant to inform readers of energy developments in Western and Northern Canada. Drawing on our firm's experience in advising clients in the energy sector, it focuses on new and evolving legal and regulatory issues. For more information about Lawson Lundell LLP's energy law practice please contact Chris Sanderson at (604) 631-9183 (Vancouver); Jerry Schramm at (403) 781-9475 (Calgary), or Geoffrey Wiest at (867) 669 5544 (Yellowknife). Back copies of this newsletter may be found at www.lawsonlundell.com in the Energy Law Practice Group section.

REGIONAL

Trans Mountain Pipeline

The Trans Mountain pipeline system transports crude oil and refined products from Edmonton, Alberta to marketing terminals and refineries in the Greater Vancouver area and Puget Sound in Washington State. Terasen Pipelines (Trans Mountain) Inc. owns the assets and holds all outstanding regulatory approvals for the Trans Mountain pipeline system. Kinder Morgan Canada Inc. (formerly Terasen Pipelines Inc.) operates the Trans Mountain pipeline system. The system has experienced apportionment periodically since 2003, which has led to several recent developments.

TMX Anchor Loop Expansion: Kinder Morgan applied to the National Energy Board (NEB) on February 17, 2006 to expand the capacity of the Trans Mountain pipeline by 40,000 bpd which, in conjunction with the recently approved Trans Mountain Pump Station Expansion Project, would increase the total Trans Mountain system capacity to 300,000 bpd by the third quarter of 2008. The NEB has scheduled a public hearing on the application commencing August 8, 2006.

Tariff Revisions: On March 8, 2006, Kinder Morgan applied to the NEB to amend the tariff governing the Trans Mountain pipeline. Part of the amendment was to adjust the capacity allocation between three existing categories of shipments to the following: 1. Westridge Dock (3,600^{m3}/day); 2. Domestic (54.5% of the remainder); and 3. Export (45.5% of the remainder).

Priority Destination Designation Application Settled: The tariff revisions led to the withdrawal of two applications for orders providing Chevron Canada Limited's refinery at Burnaby, British Columbia with unapportioned deliveries on the Trans Mountain pipeline system. These applications had been brought pursuant to provisions in the Trans Mountain tariff that permit the NEB to designate a refinery or marketing terminal as a "priority destination" by reason that it is not capable of being supplied economically from alternative sources.

Allocation of Dock Pipeline Capacity to the Highest Bidder: The Westridge Dock capacity of 3,600^{m3}/day is roughly equivalent to two tanker cargoes per month. Previously, nominations for Dock capacity were received monthly and, when nominations for more than two cargoes were received in any given month, capacity was allocated amongst shippers by a lottery system that involved all shippers who had nominated a cargo drawing lots to determine who would get the two available cargoes. In March 2006, 37 cargoes were nominated for 2 available spots.

Kinder Morgan's March 8 filing proposed allocating Westridge Dock capacity to the highest bidder. This proved to be a controversial proposal, given the pipeline's status as a common carrier. Following a hearing, the NEB approved the change on April 14 for a three month trial period, thereby permitting the pipeline to allocate capacity to the shipper prepared to pay the highest premium. Kinder Morgan is to report back to the NEB before the expiry of the three-month trial period to advise whether the premium-bid system ought to be maintained or modified.

ALBERTA

Gas Over Bitumen Battle Expands Beyond Athabasca Oil Sands Area

On April 4, 2006 the Alberta Energy and Utilities Board (AEUB) established a regulatory process to hear three additional applications related to bitumen conservation in north east Alberta. In response to the filing of several applications for permanent shut in of gas from the Bluesky-Gething zone in the Peace River Oil Sands Area and Clearwater gas in the Cold Lake Oil Sands Area, the AEUB sought stakeholder input on the regulatory process that should be used to deal with the applications and the possible need for a broader bitumen conservation strategy for the province. Last November, the AEUB concluded a lengthy proceeding into bitumen conservation in the Athabasca Oil Sands Area by ordering the final shut-in of approximately 920 natural gas wells producing from certain Wabiskaw-McMurray gas zones in the Athabasca Oil Sands Area.

In light of the different bitumen recovery processes involved and the different areas affected by the current bitumen conservation applications, the AEUB has determined that two separate hearings will be conducted. Similar to the Athabasca proceeding, the AEUB intends to invite all interested parties to participate by contributing technical evidence related to the effect of gas production on bitumen recovery by cyclic steam stimulation and on primary bitumen production. Pre hearing meetings to determine the hearing schedules and scope (including the role of parties not directly affected by the applications) are expected to be convened later this spring.

AESO Applies to Further Reinforce Alberta Transmission System

On March 7, 2006 the Alberta Electric System Operator (AESO) applied for approval to reinforce the transmission system in northwest Alberta. The region represents approximately one third of the total area of the province, and is severely transmission deficient. It relies heavily on transmission must-run (TMR) agreements with area generators to serve load and provide voltage support. The proposed enhancement is divided into two parts. Phase I seeks to add about $33 million in new transformers and capacitor banks by 2007 and four new transmission lines and associated equipment by 2009. Phase II, currently consisting of an additional 240kV line and capacitors, has an anticipated in-service date of 2014. The AESO is applying for approval of Phase I only, with one exception. Given the long lead times associated with right of way acquisition, the AESO is seeking approval now to begin acquiring the rights of way necessary to accommodate Phase II of the proposed enhancements. Total cost of both phases is expected to amount to about $300 million.

AEUB Grants Request For Review of Transmission Corridor Decision

The AEUB recently announced that it would hold a hearing to review part of its previous decision approving a proposed 500kV transmission line between Edmonton and Calgary. On April 14, 2005, the AEUB issued Decision 2005-031 approving an AESO application to expand and enhance the existing North-South transmission system between Edmonton and Calgary. In that decision the Board agreed with the AESO that expansion and enhancement of the existing corridor system was required to alleviate system constraints and to improve system efficiency. In the proceeding leading to that decision, the AESO presented 13 alternatives/concepts within three corridors, designated as the West, Centre and East Corridors. The AESO's preferred option based on technical performance, routing considerations and economics was through the West Corridor. The AEUB determined that the AESO's preferred option was superior in all respects.

Upon receiving several review and variance applications from parties that reside in the West Corridor, the AEUB has determined to hold a hearing to revisit the selection of the West Corridor as the preferred route.

DOE Contemplates Changes to Implementing Agencies Roles and Responsibilities

On November 28, 2005 the Alberta Department of Energy (DOE) issued a document to Alberta stakeholders outlining planned amendments to various regulations governing the electric industry. Titled "*Role and Mandate Refinements for Alberta Electric Industry Implementing Agencies*" (the Paper), the Paper sets out proposed changes to the mandates of each of Alberta's four implementing agencies – the Independent System Operator (ISO), the Market Surveillance Administrator (MSA), the Balancing Pool, and the Alberta Energy and Utilities Board (AEUB).

The changes proposed are significant and extensive, and contemplate increased authority for the ISO and the MSA and a diminished role for the AEUB. Specifically, the Paper proposes that the AEUB must defer to the ISO in relation to the determination of need for new transmission in the province. While the DOE did not invite comments on the Paper, several stakeholders, including the AEUB, have expressed "deep disappointment" that they were not afforded an opportunity to provide input before the Paper was circulated. The DOE is currently reviewing the feedback received in response to the Paper. Amendments to the regulations are not expected before the summer.

BRITISH COLUMBIA

Vancouver Island Transmission Projects

The oral phase of concurrent CPCN hearings before the BC Utilities Commission (BCUC) for the Vancouver Island transmission projects concluded on March 23, 2006. Twenty-five witness panels took the stand during the 33-day hearing. For background information on the projects please see our Fall 2005 and Winter 2006 newsletters.

Part way through the joint hearing, Sea Breeze Victoria Converter Corporation (Sea Breeze) withdrew its CPCN application for an underground, HVDC light project (VIC Project) that was competing against the British Columbia Transmission Corporation's (BCTC) proposed transmission reinforcement project. Sea Breeze continued to participate in the hearing as an intervenor and to promote, as a solution to Vancouver Island's needs, its Juan de Fuca project and a "VIC like" project. The "VIC like" project is essentially Sea Breeze's VIC Project (same route and technology, for example) but without Sea Breeze as the proponent. The Juan de Fuca project is a merchant transmission line that Sea Breeze is proposing to build between the Olympic Peninsula in Washington State and Vancouver Island. Final written submissions in respect of BCTC's project, the only one to survive the gruelling BCUC hearing, will conclude this month.

Meanwhile, the NEB's oral public hearing in respect of the Juan de Fuca project was to commence in front of the NEB on May 1, 2006. However, as a result of Sea Breeze filing additional evidence one week prior to the start of the hearing, it was postponed until June 2006. The NEB determined that additional procedural steps had to be undertaken before Sea Breeze's application for its Juan de Fuca project could proceed to oral hearing.

BC Hydro Files Integrated Electricity Plan and Long Term Acquisition Plan

On March 29, 2006 BC Hydro filed its 2006 Integrated Electricity Plan (2006 IEP) and its Long Term Acquisition Plan (LTAP) with the BCUC. The 2006 IEP sets out the planning context for demand-side management (DSM) programs, upgrades to existing BC Hydro generation facilities, and acquisition of electricity from independent power producers or from US markets, to fill the predicted supply-demand gap over the next twenty years. The LTAP sets out the actions BC Hydro plans to take over the next ten years to fill the gap, and was filed with the BCUC pursuant to section 45(6.1) of the *Utilities Commission Act*.

BC Hydro's last IEP, which was produced in 2004, was a contextual planning document that did not include specific actions or expenditures. The BCUC determined in an October 29, 2004 decision that the 2004 IEP was not susceptible to meaningful regulatory review. Since that decision, many of the parties that typically intervene in BC Hydro's regulatory proceedings have expressed dissatisfaction with the regulatory process for review of BC Hydro's energy acquisition, DSM and capital plans. To address these concerns, the 2006 IEP and LTAP filing includes new proposals regarding regulatory review of BC Hydro's long- and short-term plans.

BCTC Files Application for Network Economy Terms and Conditions

On March 1, 2006 BCTC filed an application with the BCUC for approval of tariff terms and conditions relating to the use of "network economy" service under its open access transmission tariff (OATT). Under BCTC's OATT, customers who take network integration transmission service (NITS) are entitled to deliver electricity on the transmission system from non designated resources to load at no additional charge (hence the name "network economy") at a priority higher than other non firm services. NITS is an electricity transmission service offered under FERC Order 888 style tariffs (such as the OATT) that allows for multiple loads and resources of a customer to be served in the aggregate rather than through individual point to point deliveries. It is typically used by load serving entities that require significant flexibility and priority to meet their obligation to serve.

In a BCUC hearing into the OATT in 2005, Alberta parties argued unsuccessfully that the network economy provisions of the OATT ought to be eliminated or curtailed to allow greater access through the BCTC transmission system for power deliveries between Alberta and the U.S. Pacific Northwest. The BCUC determined that network economy service is a fundamental component of NITS, and the OATT generally. It did however order an enquiry into the past use of network economy service by BC Hydro. That enquiry concluded in November 2005 with an order to BCTC to bring forward new terms and conditions regarding the use of network economy service. The current network economy application is BCTC's response to that order.

Under BCTC's proposal BC Hydro would be precluded from using network economy service to serve its domestic load in hours where its cost of energy, taking account of the opportunity cost of water in BC Hydro reservoirs, is less than wholesale market prices. Both the principle and its implementation will be challenging because of the inherent difficulties in assessing BC Hydro's cost of energy and a meaningful market price. A useful measure of the latter will be particularly difficult to determine given the different market structures in Alberta, where prices are set after the fact through a power pool, and the U.S. Pacific Northwest, where prices are set bi laterally in advance and made available through market indices.

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