



### TABLE OF CONTENTS

Introduction	1
Regional	1
British Columbia	2
Alberta	3

### INTRODUCTION

This is Lawson Lundell LLP's energy law newsletter, our quarterly publication dedicated to keeping readers informed about developments in the energy sector in Western Canada. We trust you will find it topical and informative. For more information about the articles in this newsletter please contact Jeff Christian at 604-631-9115. For more information about Lawson Lundell LLP's energy law practice please contact Chris Sanderson at 604-631-9183. Back copies of this newsletter may be found on our web-site at [www.lawsonlundell.com](http://www.lawsonlundell.com) in the Energy Law Practice Group section.

### REGIONAL

#### Federal Government Participant Role in NEB Processes

In 2003, the National Energy Board (NEB) launched an initiative to improve coordination and working relationships with other federal departments involved in environmental assessments carried out within NEB processes.

The NEB has used the results of the initiative to create a so called "Federal Government Participant" (FGP) role within the NEB hearing process. The intention of the new role is to support all federal authorities in meeting their respective Canadian Environmental Assessment Act responsibilities, while protecting the integrity of the NEB process, with a view to improving federal agency understanding of, and participation in, NEB hearings.

In addition to the new FGP role, federal agencies will continue to have the letter of comment, oral statement (where applicable), and full intervention participation options available to them. The NEB has indicated that further details regarding the new FGP role will be provided in future NEB Hearing Orders, and that the effectiveness of the new FGP role will be assessed based on post-hearing feedback.

#### FERC Issues Rules for Alaska Pipeline Project

On February 9, 2005, the US Federal Energy Regulatory Commission (FERC) amended its Regulations to establish requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects. Issuing these rules fulfilled FERC's responsibilities under section 103 of the Alaska Natural Gas Pipeline Act, enacted on October 13, 2004. The Regulations (1) include the criteria for and timing of any open season, (2) promote competition in the exploration, development, and production of Alaska natural gas, and (3) provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thompson units. The rules became effective 90 days after publication.

The Alaska gas pipeline project is projected to carry 4 billion cubic feet of gas a day from Alaska's North Slope. As we reported in a previous newsletter, the US Congress, in October 2004, passed a military construction appropriation bill, which included a package of loan guarantees and other provisions intended to ease the Alaskan pipeline

permitting and construction process. The rules approved by FERC are intended to encourage expansion beyond the anticipated 4 to 6 billion cubic feet capacity that the pipeline's initial construction and additional compressor stations are expected to handle.

Notably, the FERC rules favour "rolled-in" rates for Alaska pipeline expansions, which means that expansion costs will be averaged among all shippers on the line. FERC Chairman Pat Wood stated that it was important for FERC to decide the expansion policy matter now, even though actual decisions on expansion may be 20 years off, so that market participants know what to expect. FERC will permit "pre-subscriptions" for "anchor" shippers for capacity. This refers to the few shippers that hold significant volumes of natural gas that will financially support the initial designing costs of the project.

No company has declared firm plans to build an Alaska natural gas pipeline, but should a company or companies do so, the FERC rules on who can use the pipeline and at what cost will be critical. Some oil companies have estimated the cost of a pipeline from the North Slope of Alaska to the US Midwest at \$20 billion.

## BRITISH COLUMBIA

### BC Election: Liberal, NDP and Green Party Energy Platforms

With the BC election just two weeks away, all the major parties have put forward policy platforms setting out their visions for sustainable development of the Province's energy sector. The Liberals commit to continue the initiatives outlined in the government's Energy Plan of 2002, which are generally designed to increase investment in the energy sector in an environmentally responsible way and to maintain low-cost electricity and public ownership of the core assets of BC Hydro. The Liberals would promote alternative energy in wind, tidal, solar, fuel cell and run-of-the-river power projects, working with the new Alternative Energy and Power Technology Task Force. Exploration of new oil and gas fields would be encouraged, particularly in the Bowser and Nechako Basins, as would environmentally sound coalbed methane extraction.

Key aspects of the NDP platform are continued public ownership of BC Hydro, lifting the restrictions on BC Hydro to allow it to develop new, sustainable generating capacity (also an aspect of the Green Party's platform), and using the strengths of BC Hydro to assist small, green electricity projects.

The Green Party's energy platform emphasizes conservation and efficiency. They would offer tax

credits for energy conservation, with further fiscal incentives for investment in renewable energy. Fossil fuel subsidies would be eliminated, and royalties and taxes on natural resources would be based on the market value of the resources. The Green Party would raise the Energy Plan's 50% new renewable energy target to 100%, and make it mandatory. They would also prohibit the private export of electricity, and require that BC's short- and long-term energy needs are fully met first before foreign energy sales take place.

The three parties have also taken positions on the offshore oil and gas moratorium. The Liberals would continue to pursue opportunities in offshore oil and gas, based on solid science and responsible environmental stewardship. Both the NDP and the Green Party would keep the moratorium in place. The Green Party would also establish a moratorium on coalbed methane projects and major oil & gas pipelines.

Implementation of the Kyoto Protocol is another area of difference. The Liberal Party's climate change plan outlines 40 actions to reduce greenhouse gas emissions, and generally focuses on clean energy production, energy efficiency, high performance buildings and infrastructure, and forest management. The NDP would work with businesses, labour, communities and the federal government to develop a strong



Kyoto plan with measurable goals and targets, and 'best practices' in energy efficiency. The Green Party would pass legislation binding BC to meet its share of Canada's Kyoto commitment, which means reducing BC's current annual consumption of fossil fuels by 30 percent. To meet this goal the Green Party would require all new electricity generation to be from clean, renewable sources; prohibit new fossil fuel-fired electricity plants (and phase-out existing ones); and require reduced emissions from buildings, vehicles and industry.

#### **BC Oil and Gas Commission Service Plan**

On January 27, 2005 the Oil and Gas Commission (OGC) released its 2005/06 to 2007/08 Service Plan.

Of greatest interest to industry is likely the OGC's Service Plan goal to broaden its permitting authority. The objective of the OGC is to improve its legislative and regulatory framework to approach "single-window" service to industry. In 1998/99, when the OGC was first created, companies advancing oil and gas applications had to work with approximately six government agencies. Currently, industry clients of the OGC still have to work with three government agencies on many applications – the OGC, Ministry of Water, Land and Air Protection (for flaring) and Agricultural Land Commission (for some issues not covered in an MOU between ALC and OGC). The target is to reduce this to a single agency (which will presumably be the OGC) by 2007/08.

#### **BC Hydro Files Application for Stepped Rate / Time-of-Use Rate / Retail Access**

On March 10, 2005, BC Hydro applied to the BC Utilities Commission (BCUC) for a new stepped rate, time-of-use rate and retail access, for large industrial and commercial customers that currently take service on BC Hydro Rate Schedule 1821 (with the exception of the City of New Westminster and UBC). Under the proposed structure these customers will have the option of choosing one of the two new rate categories. The proposed stepped rate is meant to encourage energy conservation by offering increased cost savings to customers that reduce their annual energy consumption by up to 10% compared to their historical use. The time-of-use rate will allow customers to reduce their bills by shifting consumption to lower-priced off-peak periods. Retail access allows these customers to buy some or all of their electricity from electricity suppliers other than BC Hydro.

The Application has its genesis in the provincial government's 2002 Energy Plan, which described the basis for new rate structures for large industrial and commercial customers as providing better price signals to encourage conservation and energy efficiency, as well as an incentive to purchase from private-sector power generators, or to self-generate, when customers can do so less expensively than BC Hydro's cost of new supply.

The BCUC has established a workshop and negotiated settlement process on May 16, 2005 for review of the Application.

#### **ALBERTA**

##### **Final Gas over Bitumen Hearing Set**

The Alberta Energy and Utilities Board (AEUB) has set the date for the final public hearing under Phase 3 of its Bitumen Conservation proceedings. As reported in our previous newsletters, the AEUB initiated Bitumen Conservation proceedings early in 2003 to address the risk posed by associated gas production to the ultimate recovery of bitumen in the Wabiskaw-McMurray area. Effective July 1, 2004, the AEUB shut-in 1021 Wabiskaw-McMurray natural gas wells on an interim basis. The final hearing is scheduled to commence June 14, 2005 and is expected to finally determine the impact of gas production in the Athabasca Oil Sands Area on the recoverability of underlying bitumen.

##### **AEUB Approves Transmission System Upgrade**

On April 14, 2005 the AEUB issued Decision 2005-031 approving the need for expansion and enhancement of the existing North-South transmission corridor between Edmonton and Calgary. The Board agreed with the Alberta Electric System Operator (AESO) that strengthening what is considered to be the backbone of Alberta's transmission grid is needed



to improve system efficiency and reliability, alleviate system constraints and line losses, and facilitate development of new power generation in the province. The \$340 million project has two components. The first phase, anticipated to be in service by 2007, will see the operating voltage of two existing transmission lines upgraded from 240kV to 500kV. The second phase will see a new 330km 500kV transmission line built from Genesee to the Langdon substation east of Calgary. It is claimed that the power saved because of the more efficient line will be approximately equal to the amount of power used by a city the size of Lethbridge. The anticipated in-service date for the new line is 2009. The project will be direct assigned by the AESO to a transmission facility operator (TFO) for implementation. The TFO will develop detailed specifications and cost estimates, and apply directly to the AEUB for facility and routing approval in advance of construction.

## Alberta Court of Appeal Clarifies Test for Intervention before the AEUB

The Alberta Court of Appeal recently confirmed the test for standing before the AEUB. The Dene Tha' First Nation (First Nation) sought to appeal the AEUB's 2003 decision that it could not intervene in Penn West Petroleum Limited's (Penn West) application for certain well licences. The First Nation had applied in January 2003 to intervene before the Board in respect of Penn West's applications to drill a number of wells and build ancillary access roads on Crown land neighbouring the First Nation. The AEUB denied the First Nation standing

because it could not demonstrate that its rights may be directly or adversely affected by the proposed project. In April 2003, on reconsideration at the request of the First Nation, the Board affirmed its decision to deny standing. The First Nation appealed this decision to the Court of Appeal. In *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68 issued February 16, 2005, the Court confirmed that the test for standing has two branches, the first being a legal test and the second being a factual one. The legal test asks whether the right or interest being asserted is a legally-recognized interest. The factual test then asks whether the application before the Board may directly or adversely affect those interests or rights. In denying the First Nation's appeal, the Court concluded that the factual assessment to establish standing is entirely within the Board's authority, and the Court could not interfere with the Board's decision to deny standing on that basis. Emphasizing that some degree of connection must be established between the project proposed and the rights asserted, the Court confirmed that even if it had the authority to review the Board's decision, it would not interfere with the determination.

### VANCOUVER

1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
Canada V6C 3L2  
Telephone 604.685.3456  
Facsimile 604.669.1620

### CALGARY

3700, 205 – 5<sup>th</sup> Avenue SW  
Bow Valley Square 2  
Calgary, Alberta  
Canada T2P 2V7  
Telephone 403.269.6900  
Facsimile 403.269.9494

### YELLOWKNIFE

P.O. Box 818  
4908 - 49th Street  
Yellowknife, NWT  
Canada X1A 2N6  
Telephone 867.669.5500  
Toll Free 1.888.465.7608  
Facsimile 867.920.2206

The information provided in this newsletter is for general information purposes only and should not be relied on as legal advice or opinion. If you require legal advice on the information contained in this newsletter, we encourage you to contact any member of the Lawson Lundell LLP Energy Law Team.

To be removed from this mailing list, please contact Lawson Lundell LLP's Marketing Manager at 604.685.3456 or [genmail@lawsonlundell.com](mailto:genmail@lawsonlundell.com).

© Lawson Lundell LLP, 2005.  
All rights reserved.

Lawson Lundell LLP is a British Columbia Limited Liability Partnership.