

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings: June 13, 2002

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Mr. Blair Carmichael, with respect to Approval No. 18528-00-03 issued by the Director, Northern East Slopes Region, Regional Services, Alberta Environment to TransAlta Utilities Corporation and *Water Act* Licence Amendment No. 00037698-00-02 issued by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Carmichael v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment, re: TransAlta Utilities Corporation.*

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to TransAlta Utilities Corporation authorizing the construction, operation, and reclamation of a Class III potable water treatment plant constructed on the Sundance Power Plant Site at Lake Wabamun, Alberta. Alberta Environment also issued a Licence Amendment under the *Water Act* to TransAlta Utilities Corporation. The purpose of the plant is to mitigate the effects of TransAlta Utilities Corporation's other operations at the Lake.

Several appeals were filed in relation to the Approval and *Water Act* Licence Amendment, two of which were filed by Mr. Blair Carmichael.

The Board commenced the hearing of this matter on May 15, 2002, however the Board received an e-mail from Mr. Carmichael advising that he had reached an agreement with TransAlta Utilities Corporation and as a result is withdrawing his appeals.

The Board therefore closes its files in the matter of his appeal.

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I. BACKGROUND

[1] On July 30, 2001, the Director, Northern East Slopes Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 18528-00-03 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Act” or “EPEA”) to TransAlta Utilities Corporation (the “Approval Holder”), for the construction, operation, and reclamation of a Class III potable water treatment plant at the Sundance Power Plant site at N ½ 20-52-4-W5M and SE ¼ 29-52-4-W5M near Wabamun, Alberta.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Blair Carmichael (“Mr. Carmichael”), Mr. David Doull, Mr. Locke Boros on behalf of the Lake Wabamun Enhancement and Protection Association (“LWEPA”), Mr. Nick Zon¹ and Enron Canada Power Corporation (“Enron”)² (collectively the “Appellants”) on August 30, 2001.

[3] The Board acknowledged the Notices of Appeal and requested the Approval Holder and the Director respond to the request of two of the Appellants that the appeal of the Approval be held in abeyance pending a decision, by the Director, with respect to a Licence Amendment under the *Water Act*. In this same letter, the Board requested that the Director provide a copy of all correspondence, documents, and materials relevant to these appeals (the “Record”) by September 21, 2001.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both Boards responded in the negative.

[5] On September 5, 2001, the Board received a letter from the Director concurring with the requests to hold the appeals in abeyance pending the decision regarding the *Water Act* Licence Amendment. On September 7, 2001, the Board received a letter from the Approval

¹ The appeal filed by Mr. Zon was dismissed by the Board on May 31, 2002. *Zon v. Director, Northern East Slopes Region, Regional Services Alberta Environment*, re: *TransAlta Utilities Corporation* (May 31, 2002) EAB File No. 01-085.

² The appeal filed by Enron was dismissed by the Board on March 14, 2002 subsequent to a Preliminary Meeting held on February 15, 2002.

Holder also agreeing to the abeyance. The Board granted the abeyance and requested the parties provide status reports to the Board by October 10, 2001.

[6] On September 21, 2001, the Board received a copy of the Record related to the Approval from the Director and forwarded a copy to the parties to these appeals.

[7] On March 8, 2002, *Water Act* Licence Amendment No. 00037698-00-02 (the “Licence Amendment”) was issued to the Approval Holder for the diversion of water for industrial and water management purposes in relation to the Wabamun Lake water treatment plant. The Board subsequently received several Notices of Appeal with respect to the Licence Amendment on March 28, 2002. A Notice of Appeal with respect to the Licence Amendment was received from Mr. Blair Carmichael on May 28, 2002. The Director and Approval Holder were notified of the appeals, and the Board requested the Director forward a copy of all the documents related to the appeals of the Licence Amendment (the “Water Record”) to the Board.

[8] On March 26, 2002, the Board wrote to the parties advising of its decision to schedule a preliminary meeting on April 17 and 18, 2002 to decide the issues to be dealt with at the hearing of these appeals.

[9] The Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both Boards responded in the negative.

[10] On April 4, 2002, the Board wrote to the parties again outlining the procedures for the preliminary meeting scheduled for April 17, 2002 only and requesting that the parties provide written submissions.

[11] On April 5, 2002, the Board received an e-mail from Mr. Carmichael advising that he was unable to attend the preliminary meeting scheduled for April 17, 2002 as he would be out of town. During a telephone conversation with Board staff on April 9, 2002, Mr. Carmichael advised that he wanted the guidelines for pumping made conditions of the Approval and the Licence Amendment and that they be “intertwined” and “contingent upon each other.” This combined with Mr. Carmichael’s e-mail of April 5, 2002, was his written submission for the preliminary meeting.

[12] On April 10, 2002, the Board received a copy of the Water Record from the Director and forwarded a copy to the parties to these appeals.

[13] The preliminary meeting was held on April 17, 2002. On April 19, 2002, the Board wrote a letter to the parties advising of its decision with respect to the issues to be dealt with at the hearing on May 15 and 16, 2002.

[14] On April 25, 2002, the Board wrote to the parties advising of the procedures for the hearing scheduled for May 15 and 16, 2002.³

[15] On April 29, 2002, the Board received an e-mail from Mr. Carmichael. The e-mail stated:

“In reviewing all of the documentation in regard to the above noted appeals under the EPEA and the Water Act, I have come to the conclusion that I would be prepared to provide a ‘conditional withdrawal’ of my appeal if the board were to make it MANDATORY that TAU provide monthly, as well as annual reporting to all of the stakeholders...I trust you will advise me of the board’s decision...”

[16] The Board responded to Mr. Carmichael's e-mail on May 2, 2002, advising that he “...should contact TransAlta Utilities Corporation directly to discuss the reports...and his conditional withdrawal.”

[17] The hearing of these appeals commenced on May 15, 2002. However, in response to a preliminary motion raised by LWEPA, the hearing was adjourned. Mr. Carmichael did not file a written submission with the Board with respect to the hearing and only made a brief appearance at the hearing.

[18] On May 22, 2002, the Board wrote to Mr. Carmichael advising that it was considering dismissing his appeal as he did not file a written submission with respect to the May 15, 2002 hearing and as well, he only made a brief appearance at the hearing. The Board’s May 22, 2002 letter stated:

“The Board has not received a response from you to its letters of March 26, 2002 (advising of the date of the hearing), April 25, 2002 (confirming the date and time of the hearing and indicating that each of the parties were required to file a written

³ In its procedure letter the Board requested the parties provide the Board with written submissions by noon on May 8, 2002. Notice of Public Hearing advertisement was placed in the Edmonton Journal on April 18, 2002, the Stony Plain Reporter on April 19, 2002 and the Wabamun Community Voice on April 23, 2002, advising of a hearing to be held on May 15 and 16, 2002, in Edmonton and asked that if any person, other than the parties, wished to make representations before the Board, to advise the Board’s office by April 30, 2002. A news release was forwarded to the Public Affairs Bureau regarding the hearing and placed on the Alberta Government website on May 3, 2002. It was also distributed on the same day to 95 daily newspapers, radio stations and television stations within Alberta.

submission summarizing the evidence that they intend to present at the hearing by May 8, 2002), and May 9, 2002 (asking Mr. Carmichael and Mr. Zon to advise the Board whether they would be providing written submissions). To date, the Board has not received written submissions or a response to these letters from you. In addition to not receiving written submissions or a response to its letters from you, the Board noted that after your opening at the hearing on May 15, 2002, you left the hearing room, and to the Board's knowledge you did not return for the remainder of the hearing on May 15, 2002...Based on the foregoing, the Board is considering dismissing your appeal. The Board requests you advise the Board why you think the Board should not dismiss your appeal..."

[19] The Board received an e-mail from Mr. Carmichael on May 24, 2002 advising that he had a conflicting meeting on the day of the hearing that was "urgent". Mr. Carmichael also reiterated:

"...I am willing to withdraw my appeal on the condition that the board makes reporting by TransAlta and the Department to me and the other appellants a condition of these approvals..."

[20] The Board responded to Mr. Carmichael's e-mail on May 24, 2002. The letter stated in part:

"...with respect to Mr. Carmichael's 'offer' in his e-mail of April 29, 2002, the Board acknowledged receipt of that e-mail on May 2, 2002. A copy of the letter and the referenced e-mails is attached and the Board has confirmed that the Board's letter of May 2, 2002 was delivered to Mr. Carmichael by courier. The Board's letter of May 2, 2002 advised:

'Mr. Carmichael should contact TransAlta Utilities Corporation and Alberta Environment directly to discuss the reports referred to in his e-mail of April 29, 2002 and his conditional withdrawal.'

Mr. Carmichael's e-mail of April 29, 2002 advised: '...I would be prepared to provide a conditional withdrawal of my appeal if the board were to make it MANDATORY that TAU provide monthly, as well as annual reporting to all stakeholders.' The e-mail went on to outline a number of other conditions.

While the Board encourages the parties to every appeal to work together towards mutually agreeable solutions, and the Board would be fully prepared to take into account an agreement reached jointly between Mr. Carmichael, TransAlta, and Alberta Environment (this was the reason the Board suggested Mr. Carmichael contact TransAlta and Alberta Environment), the Board does not "strike deals" on its own as suggested by Mr. Carmichael's e-mail.

The Board notes that at the May 15, 2002 motion, Mr. Kruhlak on behalf of TransAlta, indicated that while they were prepared to discuss Mr. Carmichael's proposal with him, there remained a number of differences of opinion. The Board would again encourage Mr. Carmichael to speak to TransAlta and Alberta

Environment about his proposal, and if these parties are able to reach an agreement, the Board would certainly be prepared to consider the agreement when the hearing resumes in September...”

[21] On May 30, 2002, the Board received a copy of a letter from the Approval Holder addressed to Mr. Carmichael. The letter stated:

“...I confirm our advice that TransAlta has agreed to provide the following information:

1. monthly lake levels;
2. monthly water production;
3. monthly production versus licence requirements; and
4. progress on historical debt.

As you are aware, TransAlta proposes to have this information posted on their website. However, as you have requested a paper copy, they would be prepared to forward this to you and we understand that this may now conclude your appeal.”

[22] The Board acknowledged receipt of the Approval Holder’s letter on May 30, 2002, and requested Mr. Carmichael advise, by June 3, 2002, if he was withdrawing his appeal.

[23] On June 3, 2002, the Board received and acknowledged a copy of an e-mail sent to the Approval Holder from Mr. Carmichael. Mr. Carmichael advised that he was prepared to withdraw his appeal if the information he had requested was also supplied in paper form to all of the original statement of concern filers. In response, the Board requested Mr. Carmichael and the Approval Holder provide a status report to the Board by June 5, 2002.

[24] On June 5, 2002, the Board received an e-mail from Mr. Carmichael advising that the Approval Holder had given him a verbal agreement to his requests, and that a letter confirming that agreement was being provided. The Board requested Mr. Carmichael provide a status report to the Board by June 11, 2002.

[25] On June 10, 2002, the Board received a further e-mail from Mr. Carmichael withdrawing his appeal: The e-mail stated:

“This is to advise you that TAU and I have come to an agreement in regards to them reporting to myself and the other appellants. As a result I am withdrawing my appeal regarding the approvals...”

II. Decision

[26] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the e-mail of June 10, 2002 from Mr. Carmichael, the Board discontinues its proceedings in Appeals 01-080 and 01-134 and closes its files.

Dated June 13, 2002 at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chair