

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision: May 31, 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 an appeal filed by Mr. Nick Zon, with respect to Approval No. 18528-00-03 issued by the Director, Northern East Slopes Region, Regional Services, Alberta Environment to TransAlta Utilities Corporation.

Cite as: *Zon v. Director, Northern East Slopes 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, one of which was filed by Mr. Nick Zon.

The Board commenced the Hearing of this matter on May 15, 2002. Mr. Zon did not attend the hearing, nor did he file any written submissions with the Board as is required by the Environmental Appeal Board Regulation. The Board also wrote to him prior to the hearing to ask if he would be filing a written submission. He did not respond.

Pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, for failing to comply with a written notice and pursuant to section 32 of the Board's Rules of Practice for failing to attend a proceeding, the Board dismisses Mr. Zon's 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 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Approval”) 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. David Doull, Mr. Locke Boros on behalf of the Lake Wabamun Enhancement and Protection Association (“LWEPA”), Mr. Nick Zon (“Mr. Zon”) and Enron Canada Power Corporation (“Enron”) (collectively the “Appellants”) on August 30, 2001¹.

[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 until a pending Licence under the *Water Act* had been issued. 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 finalization of the *Water Act* Licence. On September 7, 2001, the Board received a letter from the Approval 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.

¹ The appeal filed by Enron was dismissed by the Board on March 14, 2002 subsequent to a Preliminary Meeting held on February 15, 2002.

[7] On March 8, 2002, the *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 not received from Mr. Zon. 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 to the Board by April 11, 2002.

[11] On April 4, 2002, the Board received a letter dated April 2, 2002 and various attachments in relation to this matter from Mr. Zon. In his letter, Mr. Zon also advised that he had decided not to participate in any of the appeals.

[12] The Board confirmed its understanding in a telephone conversation with Mr. Zon and a letter dated April 10, 2002, that Mr. Zon’s letter of April 4, 2002 was his submission for the preliminary meeting.

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

[14] The preliminary meeting was held on April 17, 2002. Mr. Zon did not attend the preliminary meeting. 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.

[15] On April 25, 2002, the Board wrote to the parties advising of the procedures for the hearing scheduled for May 15 and 16, 2002.²

[16] The Board did not receive a written submission from Mr. Zon on May 8, 2002, and on May 9, 2002 the Board wrote again to the parties including Mr. Zon asking Mr. Zon to advise the Board whether he would be providing a written submission. The Board did not receive a written submission or a response from Mr. Zon.

[17] The hearing of these appeals commenced on May 15, 2002. Mr. Zon did not attend. In response to a preliminary motion, the hearing was adjourned.

II. Decision

[18] Pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, for failing to comply with a written notice and pursuant to section 32 of the Board's Rules of Practice for failing to attend a proceeding, the Board dismisses Mr. Zon's appeal and closes its file in this matter.

Dated May 31, 2002 at Edmonton, Alberta.

"original signed by"

William A. Tilleman, Q.C.

Chair

² 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.