

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – January 22, 2004

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 Brent Kelland, Susan Scott, Colleen Praud and Jill Kelland, with respect to Approval No. 192173-00-00 issued under the *Environmental Protection and Enhancement Act* to Hunt Power Company of Canada Inc. by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Kelland et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Hunt Power Company of Canada Inc.* (22 January 2004), Appeal No. 03-139-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued Approval No. 192173-00-00 to Hunt Power Corporation of Canada Inc. for the construction, operation and reclamation of the Crossfield Thermal Electric Plant in Crossfield, Alberta.

The Environmental Appeals Board received a Notice of Appeal from Mr. Brent Kelland on behalf of Mr. Brent Kelland, Ms. Susan Scott, Ms. Colleen Praud and Ms. Jill Kelland appealing the Approval.

The Board scheduled a Hearing. Several weeks before the Hearing however, the Appellants withdrew their appeal. The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On August 26, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 192173-00-00 (the “Approval”) under the *Environmental Protection and Enhancement Act* to Hunt Power Company of Canada Inc. (the “Approval Holder”) for the construction, operation and reclamation of the Crossfield Thermal Electric Power Plant in Crossfield, Alberta.

[2] On October 7, 2003 the Environmental Appeals Board (the “Board”) received a Notice of Appeal, dated October 6, 2003 from Mr. Brent Kelland, on behalf of Mr. Brent Kelland, Ms. Susan Scott, Ms. Colleen Praud and Ms. Jill Kelland (the “Appellants”) appealing the Approval.

[3] On October 8, 2003, the Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a mediation meeting or hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. The NRCB responded in the negative. On November 17, 2003, the Board received a letter from the AEUB advising that they were reviewing an application from the Approval Holder for approval to construct and operate its proposed Thermal Electric Power Plant at Crossfield, Alberta (the “Application”). The AEUB also advised that they had received an objection from the Appellants with respect to the Application. The Board wrote again to the AEUB on November 10, 2003, inquiring as to the length of time it would take the AEUB to complete its review.

[5] On October 30, 2003, the Board received a letter dated October 29, 2003 from the Director, which included a copy of the Record. The Director requested the Board put the appeal into abeyance until the conclusion of the AEUB’s review of the Application as the project

required both the AEUB approval and Alberta Environment's Approval. On November 10, 2003, the Board forwarded a copy of the Record to the Appellant and the Approval Holder.

[6] On November 17, 2003 the Board responded to the Director's October 29, 2003 letter. The Board requested the Parties provide their comments to the Board regarding the request by the Director for an abeyance until the AEUB completed its review, taking into account section 95(5)(b)(i) of *the Environmental Protection and Enhancement Act*¹.

[7] On November 17, 2003 the Board received a letter dated November 13, 2003 from the AEUB advising that they were unable to provide a timeline for the conclusion of their review into the Application. The AEUB also provided a copy of the Appellants' objection to the Board.

[8] On November 20, 2003, the Board received letters from the Appellants and the Approval Holder. The Appellants advised that they were not agreeable to holding the appeal in abeyance and requested an expedited hearing "...to have the Board address whether the approval should have been granted and what the Director did with respect to the EMF being emitted from the plant". The Approval Holder advised that he agreed with the appeal being held in abeyance.

[9] The Board responded to the Parties on November 26, 2003. The Board's letter stated:

"For the purposes of the Board's decision respecting the abeyance request, the facts are that an approval has been issued by Alberta Environment, an appeal has been filed, the Appellants have requested an expedited hearing, there is currently no decision by the AEUB for the Board to consider, and the AEUB is unable to speculate as to when it may make a decision. Based on these facts, it is the Board's view that at this point in time, section 95(5)(b)(i) of EPEA is inapplicable. As a result, vis-a-vis that issue, the Board has a valid appeal in front

¹

95(5) The Board
(b) shall dismiss a notice of appeal if in the Board's opinion

(i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under Part 2 of the *Agricultural Operation Practices Act*, under the *Natural Resources Conservation Board Act*, or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were adequately dealt with.

of it...Therefore, the Board has decided to grant the Appellant's request for an expedited hearing and has scheduled a hearing in this matter for December 19, 2003."

[10] The Board placed a Notice of Public Hearing in the Airdrie Echo on December 3, 2003, the Crossfield Irricana Five Village Weekly on December 2, 2003, the Calgary Sun on November 28, 2003 and the Cochrane Times on December 3, 2003, regarding the December 19, 2003 Hearing. The advertisement contained a deadline of December 5, 2003 for intervenor requests.

[11] On December 2, 2003, the Board received a letter from the Approval Holder requesting the December 19, 2003 Hearing be adjourned. The Approval Holder advised that the Project Manager for Hunt Power would be out of the country and therefore not available for the December 19, 2003 Hearing. The Approval Holder also indicated that they were prepared to meet with the Appellants to discuss the concerns raised in their appeal and attempt to resolve this matter.

[12] The Board requested the Director and the Appellants provide their response to the Approval Holder's request to put the Hearing into abeyance, by December 4, 2003. The Appellants responded on December 3, 2003 advising that they were opposed to an adjournment as the granting of the adjournment could prejudice them. The Appellants' letter stated:

"...This Board currently has jurisdiction and should the AEUB process go ahead, this Board will lose jurisdiction..."

[13] The Board responded by letter dated December 5, 2003. The Board's letter stated:

"With respect, the concerns of the Appellants are speculative in that, as indicated in the Board's November 26, 2003 letter, it is uncertain when the AEUB will make its decision. Further, even if the AEUB does make a decision, it is by no means certain that the Board will lose jurisdiction...Finally, even if the Board does lose jurisdiction, it will be as a result of an operation of law pursuant to the Board's governing legislation. Therefore, the Board does not believe that an adjournment will deny the Appellants natural justice or procedural fairness...In contrast, however, the Board is concerned that the potential effect of the adjournment could deny the Approval Holder natural justice or procedural fairness. The concern that the Approval Holder has is that they may not be able to adequately respond to the case against them. As is trite law, the fundamental elements of natural justice are the right to know the case against you and the right

to respond to that case. Therefore, on balance, the Board is of the view that it is appropriate to adjourn the hearing scheduled for December 19, 2003...”

The Board requested the Parties provide their available dates for a Hearing for January 2004.

[14] In consultation with the Parties, the Board re-scheduled the Hearing for January 29, 2004, in Airdrie, Alberta. The Board placed a Notice of Re-Scheduling of Public Hearing in the Airdrie Echo on January 7, 2004, the Crossfield Irricana Five Village Weekly on January 6, 2004, the Calgary Sun on December 30, 2003, and the Cochrane Times on January 7, 2004. The advertisement contained a deadline of January 16, 2004 for intervenor requests. No intervenor requests were received by the Board.

[15] On January 16, 2004, the Board received a letter from the Appellants withdrawing their appeal.

II. DECISION

[16] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act* R.S.A. 2000, c. W-3, and based upon the withdrawal of the appeal by the Appellants, the Board hereby discontinues its proceedings in Appeal No. 03-139 and closes its file.

Dated on January 22, 2004, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chairman