



ATCO Electric Ltd.

**Fort McMurray / Crow Lake Areas
240 kV Transmission Facilities Application**

**Dover to McMillan
Phase II – Part A Decision - Routing**

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2004-06: ATCO Electric Ltd.
Fort McMurray / Crow Lake Areas
240 kV Transmission Facilities Application
Dover to McMillan – Phase II, Part A Decision (Routing)
Application No.: 1284230

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO Electric Ltd.

Fort McMurray / Crow Lake Areas

240 kV Transmission Facilities Application

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Phase II – Part A Decision - Routing

Energy Cost Order 2004-06

Application No.: 1284230

File No. 8000-1284230-01

1 INTRODUCTION

On November 27, 2002, AE applied to the Alberta Energy and Utilities Board (the Board) for approval to construct and operate a 240 kilovolt (kV) transmission line and three associated 240 kV substations designated as Dover, McMillan and Charron. The proposed transmission line would originate at the Dover substation, north of Fort McMurray in Section 31, Township 92, Range 12 west of the 4th Meridian, and would end at the existing Deerland substation northeast of Fort Saskatchewan in Section 22, Township 56, Range 20, west of the 4th Meridian, a distance of approximately 420 kilometers.

On January 24, 2003, the Board issued a Notice of Pre-Hearing Conference to be held on February 11, 2003. The Notice was published in Calgary and Edmonton major daily newspapers on January 29, 2003. The purpose of the Pre-Hearing Conference was to provide interested parties with an opportunity to discuss procedural matters and other issues relating to the Transmission Administrator's (TA) role at the hearing, the schedule for filing of evidence and filing of alternative transmission line routing information, the appropriateness of a two phase proceeding, and any other relevant issues.

The Board also requested interested parties wishing to participate in the pre-hearing conference to provide written notice and an initial position on the issues outlined in the Notice of Pre-Hearing Conference no later than February 4, 2003.

On February 11, 2003, the pre-hearing conference was held at the Board's Edmonton offices before A. J. Berg, P. Eng. (Presiding Member) and J.I. Douglas, FCA (Board Member). On February 19, 2003, Board Decision [2003-017](#) was issued which set out the Board's views respecting the issues outlined in the Notice of Pre-Hearing Conference, new issues raised by parties at the pre-hearing conference, and the schedule for the subsequent proceedings.

The Board decided to hold a two-phase hearing. Phase I would deal with the need for the transmission facilities and Phase II would address the detailed routing of the proposed line and its potential specific impacts on landowners. As well, the Phase II hearing would be separated into Part A and Part B.

On April 1, 2003, the Board held the Phase I hearing at Smoky Lake before A.J. Berg, P. Eng. (Presiding Member), N. W. MacDonald, P. Eng. (Acting Board Member) and J.R. Nichol, P. Eng. (Board Member).

On April 23, 2003, Board Decision [2003-027](#) was issued which approved the need for a third 240 kV transmission line south from Fort McMurray to the Fort Saskatchewan area.

Following the Board's Decision 2003-027, AE advised, on May 15, 2003, that it would be amending its Application to include a McMillan to Whitefish routing alternative.

The Board, in Decision 2003-027, also approved the Dover to McMillan end points of AE's Application No. 1284230. The Board stated that the detailed routing of the Dover to McMillan transmission facilities would be dealt with in a Phase II – Part A proceeding since it was common to both the Dover to Deerland route and the Dover to Whitefish route.

On April 24, 2003 the Board published a Notice of Re-scheduling of the Phase II – Part A proceeding to consider the specific routing of the Dover to McMillan portion of the transmission line. AE, in its Application No. 1284230, proposed two routes for the Dover to McMillan transmission line. These two routes were referred to as the West Route and the East Route. The Board originally set down the Phase II – Part A Hearing for May 27, 2003 in Fort McMurray. The Board noted that all interveners to this proceeding must be present at the commencement of the hearing to register their appearance.

The Phase II – Part A hearing was held at the Board's Edmonton offices on May 27, 2003 before A.J. Berg, P.Eng. (Presiding Member), J.R. Nichol, P.Eng. (Member), and N.W. MacDonald, P. Eng. (Acting Member). The Board heard oral argument and reply on May 27, 2003. Accordingly, the Board considers the record of the Phase II – Part A proceeding to have closed on May 27, 2003. On June 3, 2003 the Board issued Decision [2003-043](#).

The Board received two cost applications. Suncor Energy Inc. submitted a claim totaling \$12,981.67 and TransCanada Energy Ltd. submitted a claim totaling \$8,371.74.

2 VIEWS OF THE BOARD – Authority to Award Costs

In determining local intervener costs, the Board is guided by its enabling legislation. In particular, by section 28 of the *Energy Resources Conservation Act* ([ERCA](#)) which reads as follows:

- 28(1) In this section, “local intervener” means a person or a group or association of persons who, in the opinion of the Board,
- (a) has an interest in, or
 - (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

It is the Board's position that a person claiming local intervener costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board's decision on the project in question.

When assessing costs, the Board will have reference to Part 5 of the *Rules of Practice* and to its *Scale of Costs*.

Section 55(1) of the *Rules of Practice* reads as follows:

Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:

- (a) the costs are reasonable and directly and necessarily related to the proceeding and;
- (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE BOARD – Assessment

3.1 Suncor Energy Inc. (Suncor)

It is the Board's view that Suncor has established that it has the requisite interest in land to qualify as a local intervener as required under section 28 of the ERCA. Accordingly, the Board finds that Suncor is entitled to claim costs.

The Board has reviewed Suncor's cost claim that consists of Lawson Lundell's legal fees of \$12,100.00 and disbursements of \$841.67 as well as Suncor's own expenses in the amount of \$40.00. The total amount being claimed by Suncor is \$12,981.67 as shown in Appendix "A" attached.

The Board finds that the objections raised to the application raised by Suncor were mostly related to who should be responsible for future line relocation costs. The Board decided that it was more appropriate to defer the consideration of line relocation costs to a point in time in the future, if and when it is required to move the transmission line.

The Board commented on the Agreement filed between AE and Suncor as follows:

The Board appreciates the efforts of AE and Suncor to attempt to resolve their differences by way of the Agreement prior to the Hearing. The Board encourages commercial agreements respecting relocation costs when they assist in resolving differences among parties respecting the routing of transmission lines. However, the Board views such commercial arrangements as third party agreements that would not normally be subject to Board approval. The Board observes that it is still open to AE and Suncor to continue their efforts to conclude a commercial agreement respecting potential relocation costs on the East Route.

The Board considers that it was not of assistance to require that Board approval of the East Route be tied to the provisions of the Agreement. **Rather than avoiding an oral hearing, this provision of the Agreement triggered the oral hearing.** Further, the Board considers that commercial arrangements do not have to be in place for the Board to properly consider additional costs, such as potential relocation costs, that may be associated with a particular route.¹ (emphasis added)

Based on the foregoing, the Board finds it appropriate to reduce the legal fees claimed by Suncor by 50%. As outlined in Appendix "A" attached, the Board awards legal fees in the amount of \$6,050.00 and overall disbursements in the amount of \$881.67 for a total award of \$6,931.67.

¹ Decision 2003-43 pg 14

3.2 TransCanada Energy Ltd. (TransCanada)

The Board has determined that for the purposes of this proceeding TransCanada does not qualify as a local intervener pursuant to section 28 of the ERCA and as such does not qualify for cost recovery. Accordingly, the Board denies TransCanada's claim in full.

4 ORDER

IT IS HEREBY ORDERED THAT:

- (1) ATCO Electric Ltd. shall pay intervener costs to Suncor Energy Inc. in the amount of \$6,931.67.
- (2) TransCanada Energy Ltd.'s cost claim is denied in full.

Dated in Calgary, Alberta on this 1st day of April , 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



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