



BA Energy Inc.

Prehearing Meeting
Application to Construct and Operate an Upgrader in
Strathcona County

December 21, 2004

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2004-110: BA Energy Inc., Prehearing Meeting—Application to Construct and Operate an Upgrader in Strathcona County

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

PREHEADING MEETING

BA ENERGY INC.

APPLICATION TO CONSTRUCT AND OPERATE

AN UPGRADER

STRATHCONA COUNTY

Decision 2004-110
Application No. 1347899

This decision report provides the Alberta Energy and Utilities Board's (EUB/Board) decisions arising out of a prehearing meeting held to obtain input from interested parties relating to an application by BA Energy Inc. to construct and operate an upgrader in Strathcona County.

1 INTRODUCTION

BA Energy Inc. (BA Energy) has applied to the EUB and Alberta Environment (AENV) for approval to construct and operate a 41 400 cubic metres per day (m³/d) upgrader and associated infrastructure in Strathcona County near Fort Saskatchewan, Alberta (south half of Section 10, Township 56, Range 21, West of the 4th Meridian). The upgrader is proposed to be developed in three equal phases, with the first phase scheduled for completion by late 2006.

In light of concerns expressed by residents and landowners in the vicinity of BA Energy's project and in response to a request by BA Energy, the Board held a prehearing meeting on December 14, 2004. Prior to the prehearing meeting, a draft agenda for the meeting and a draft of a possible schedule leading up to a hearing of BA Energy's application were issued to the applicant and interested parties. Participants to the prehearing meeting were requested to file submissions in advance outlining their positions on the agenda items and the possible schedule leading up to a hearing of BA Energy's application.

The prehearing meeting was held in Fort Saskatchewan, Alberta, on December 14, 2004, before Presiding Board Member A. J. Berg, P.Eng., and Board Members J. D. Dilay, P.Eng., and G. J. Miller. Those who spoke at the prehearing meeting on behalf of a group of interested parties or on their own behalf are listed in the appendix. The Board received input from participants on a number of issues, including the scope of a possible hearing, timing, procedures, participant roles, costs, and funding. The Board did not hear evidence, submissions, or arguments pertaining to the merits of the application or objections.

The Board's views on the issues raised at the prehearing meeting follow. The opinions expressed by the participants at the prehearing meeting are reflected in the parties' prefiled submissions and in the transcripts from the prehearing meeting. These transcripts and submissions are available for viewing at the EUB's Information Services office located on the main floor, 640 - 5th Avenue SW, Calgary, Alberta, on line at www.eub.gov.ab.ca, and the transcripts only on line at www.tscript.com.¹ The complete application is also available on the EUB's Web site.

¹ Look under Transcript Repository, then Alberta Energy and Utility Board, then the date of December 14, 2004.

2 ISSUES

It is the Board's view that the following issues are relevant for consideration at the upcoming public hearing:

- Technical process considerations
- Environmental impacts
 - Air
 - Ground and surface water
 - Soil
 - Wildlife
 - Vegetation
 - Noise
 - Cumulative effects
- Health and safety
 - Human health
 - Emergency response plans
 - Public safety
- Other impacts
 - Quality of life
 - Aesthetics
 - Property values
 - Socioeconomic impacts
- Public interest from the development

3 LOCAL INTERVENER COSTS

On December 7, 2004, a request for advance intervener funding was received from J. Klimek on behalf of her clients, the Northeast Strathcona County Residents (NESCR). The Board received BA Energy's comments on NESCR's advance funding application on December 8, 2004. The Board also invited the parties to comment on advance funding at the prehearing meeting on December 14, 2004. The Board has reviewed and considered the comments and responses filed.

When reviewing the applications for advance determination of local intervener status and advance funding, the Board takes into account subsection 28(6) of the *Energy Resources Conservation Act*, subsection 50(2) of the *Rules of Practice*, and the EUB's *Guide 31A: Guidelines for Energy Cost Claims*.

Section 28(6) of the *Energy Resources Conservation Act* establishes two distinct criteria for determining local intervener funding. To qualify as a local intervener, a person must establish that

- he or she possesses the necessary interest in land, and
- the land in question will or may be directly and adversely affected by the Board's decision on the proposed project.

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.

For the purpose of considering the advance costs claims in this proceeding, the Board has noted that BA Energy does not consider it necessary for the Board to rule on the standing of each member of NESCR at this time, since certain members of NESCR do have standing. However, the Board notes that BA Energy reserved the right to challenge the standing of any intervener in the event that the objections of certain members of NESCR who live in closer proximity to the proposed project are resolved. Having considered the submissions of BA Energy, the Board is of the view that certain members of NESCR qualify as local interveners for the purposes of advance costs and will consider the advance cost application on that basis. Accordingly, the Board has not made any determination on the standing of each member of NESCR at this time.

The advance funding requests of NESCR are set out in the following table and total \$303,214, including Goods and Services Tax (GST).

Upon reviewing the advance funding request, the Board notes the following:

- Notwithstanding the assurances made by counsel, the Board is concerned about the potential overlap and duplication of efforts by the consultants dealing with air issues and whether or not the designated consultants have the appropriate experience at the regional level to adequately complete the proposed scopes of work. The Board points out that NESCR's counsel should note the Board's questions as recorded in the prehearing meeting transcripts.
- NESCR submitted a request for advance intervener funding that included US dollar amounts. These US dollar amounts were converted to a Canadian equivalent pursuant to an e-mail dated December 16, 2004, from J. Klimek to the Board.
- Advance funding is denied for Werchler, Wallis, Adamowicz, and Davidson, as the Board is uncertain as to the utility of the consultants' proposed scopes of work.
- It is not clear if some of the applied-for costs are in excess of the Scale of Costs adopted by the Board. Any exemptions must be specifically applied for in the final cost application. Exemptions to the Scale of Costs adopted by the Board are rarely granted.

Taking all of the above in account, the Board awards 50 per cent of the costs claimed. The total advance award for NESCR is \$126,267, as shown in the following table.

NESCR Advance Funding Request

	NESCR Request (\$)	Board-Approved Advance Funding Awards (\$)
J. Klimek	78,750	39,375
Ms. Goodwin	25,750	12,875
Dr. Blake	41,489	20,745
Dr. Wingenter	13,780	6,890
Dr. Wilson	4,800	2,400
Dr. Nkemdirin	12,838	6,419
Mr. Nikiforuk	5,457	2,729
Mr. Farquharson	13,200	6,600
Mr. Dixon and Dr. Bertell	44,469	22,235
Mr. Werchler and Mr. Wallis	11,155	0
Dr. Adamowicz	6,000	0
Dr. Davidson	33,525	0
Mr. McCutcheon	12,000	6,000
Total	303,214	126,267

In granting the advance funding request, the Board makes no determination respecting the value of any intervener's participation. Any intervener organization that accepts advance funding pursuant to this decision accepts the risk that if its final cost award relating to the proceedings is less than the amount of the funding advanced pursuant to this decision, it will be required to repay the difference.

In making its final cost award, the Board expects to be satisfied that all fees and disbursements claimed relate to the proceedings and conform to the Scale of Costs adopted by the Board. The Board will also consider the effectiveness of the participation, its relevance to the issues, and whether the costs of the participation were necessary and reasonable. In making this determination, the Board will often decline cost awards to parties whose evidence was merely a duplication of evidence presented by other parties or where it finds unnecessary use of experts and/or counsel.

The Board directs BA Energy to pay the Board-approved interim refundable awards of \$126,267 to NESCR's counsel by January 7, 2005.

4 INFORMATION REQUEST PROCESS

The draft of a possible schedule leading up to a hearing of BA Energy's application presented two options based on whether an information request (IR) process would be held prior to the commencement of the hearing. The IR process allows for an exchange of information between the applicant and interested parties in an effort to resolve or better clarify issues.

It is the Board's view that an IR process will be of benefit to all parties and the Board has made allowance for incorporating the IR process into the hearing schedule as detailed below.

5 APPROPRIATE DISPUTE RESOLUTION (ADR)

The matter of pursuing ADR, with or without third-party mediation, is under discussion by the parties.

6 HEARING SCHEDULE

The Board has given regard to the commitment by BA Energy that parties can submit their IRs at any time commencing immediately and that BA Energy will respond as quickly as possible rather than waiting until the February 16, 2005 deadline.

Further, the Board has accelerated the timing of this prehearing decision and the award of advance funding in order to allow parties to begin their preparation earlier than previously scheduled.

Although the schedule below provides six weeks for the preparation of intervener hearing submissions after the deadline for IR responses, the Board considers that the effective time may be longer, given that BA Energy will respond earlier to any IRs it receives earlier than the February 7, 2005, deadline for submission of IRs. The Board encourages parties to submit any IRs earlier than the deadline if appropriate to do so.

In the event of material changes to the circumstances surrounding the application, the Board, as is its normal practice, will consider, on its own initiative or upon application from any party, whether changes to the schedule are warranted and appropriate.

The Board directs that the following schedule be followed:

Intervener submit IRs to BA Energy	February 7, 2005
BA Energy responds to intervener IRs	February 16, 2005
Interveners file hearing submissions	March 29, 2005
BA Energy responds to intervener hearing submissions	April 5, 2005
Hearing commences	April 12, 2005

The Board will issue a formal notice of hearing, as well as comments on procedural matters, including electronic filing instructions, in due course.

7 HEARING VENUE

The Board intends to hold the hearing in Fort Saskatchewan, Alberta.

8 SITE VISIT

The Board intends to visit the site of the proposed upgrader and the surrounding area prior to the hearing to assist it in better understanding participant concerns. The Board notes the positive

suggestions made by parties. The applicant and counsel for the interveners will be contacted in due course for suggestions on areas for viewing and the timing for the visit.

DATED at Calgary, Alberta, on December 21, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

A. J. Berg, P.Eng.
Presiding Member

<original signed by>

J. D. Dilay, P.Eng.
Board Member

<original signed by>

G. J. Miller
Board Member

APPENDIX PREHEARING MEETING PARTICIPANTS

Principals**(Abbreviations used in report)****Representatives**

BA Energy Inc. (BA Energy)

R. Neufeld

Northeast Strathcona County Residents
(NESCR)

J. Klimek

Astotin Creek Residents' Coalition

G. Fitch

Government of Alberta

J. Moore
D. Stepaniuk

Shell Canada

K. Lozynsky

Inter-Pipeline Fund

G. Gin

Strathcona County Taxpayers Association

G. Burns

Northwest Upgrading

D. Bertsch

J. Murray

Alberta Energy and Utilities Board staff

T. Bews, Board Counsel

R. Germain

T. Goodman
