

# **ALBERTA ENERGY AND UTILITIES BOARD**

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Calgary Alberta

**PRE-HEARING MEETING  
APPLICATION BY CARDINAL RIVER  
COALS LTD. AND TRANSALTA  
UTILITIES CORPORATION  
FOR THE CHEVIOT COAL PROJECT  
IN THE HINTON AREA**

**Memorandum of Decision  
Application Nos. 960313, 960314, and 960677**

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## **1 INTRODUCTION**

On 21 September 1996 the Alberta Energy and Utilities Board (the Board) set down the above applications for a public hearing scheduled for 25 November 1996. That notice also advised parties that the Board anticipated that a joint federal/provincial review panel would likely hear and decide on the applications made by Cardinal River Coals Ltd. (Cardinal). Subsequent to issuing that notice, the Board was made aware of concerns by various interested parties about the hearing process and the timing of the public hearing.

In order to address these concerns, a Pre-Hearing Meeting was held in Hinton, Alberta on 5 November 1996 before Board Members Dr. Brian Bietz and Mr. Gordon Miller. A list of those who registered at the Pre-Hearing Meeting is shown on the attached table.

## **2 ISSUES**

The Board believes that three issues arose from the meeting. These are:

- the timing of the public hearing,
- the availability of intervener funding, and
- the joint review panel process.

Each issue is discussed below.

### **2.1 Timing**

#### **2.1.1 Views of the Parties**

Cardinal stated that it was ready to proceed to a hearing on the scheduled date of 25 November 1996 and that to delay the hearing would be unfair. The company argued that it had carried out extensive public consultation and that the majority of its application had been available for public review since the summer of 1996. As a result, the applicant argued that anyone with an interest in the project had had more than enough time to prepare for the hearing. Cardinal also suggested that delays in the hearing could, assuming the Cheviot Coal Project was approved,

result in significant construction delays and both short and long term costs to the company and the community. Cardinal's position was supported by Canadian National Railway, the Hinton and Alberta Chambers of Commerce, the Town of Hinton, the United Mine Workers of America (Local 1656), Mr. Van Binsbergen, MLA and the Alexis First Nation. TransAlta Utilities Corporation, the Cadomin Environmental Protection Association, the Alberta Government and the Federal Government neither supported nor disputed the position of Cardinal but did advise the Board that they were also prepared to proceed on 25 November 1996.

The remaining parties generally disagreed with Cardinal's view that the hearing should proceed as scheduled. Suggested delays ranged from three weeks to several months, years or indefinitely. Reasons given for the need for a later hearing date included: the receipt of federal funding only in late October plus the receipt of significantly less federal funding than requested, resulting in problems in carrying out the review; difficulties in finding and retaining appropriate experts; some difficulties in receiving needed documentation; and the availability of significant portions of the application only since mid-September. A general view stated by several parties was that, given the size of the proposed development, the volume of material in the application and the number of issues to be addressed, it was reasonable for interveners to require a proportionate amount of time to adequately prepare for a hearing.

### **2.1.2 Views of the Board**

The Board accepts that a delay in the holding of a scheduled hearing creates a burden for an applicant, and that an overly long delay in scheduling a hearing is inherently unfair. Equally unfair, however, is expecting potentially affected individuals to prepare for a hearing in a very short period of time, particularly when an application is relatively large or complex. Clearly, a compromise between these two sets of needs is required to ensure fairness to both parties.

In this case, the Board is prepared to accept the views of interveners that some additional review time is needed. However, the Board also agrees with Cardinal that there has already been a significant amount of time available to prepare for a hearing. Therefore, the Board has rescheduled the hearing to 13 January 1997 and extended the intervention submission date to 7 January 1997.

## **2.2 Intervener Funding**

### **2.2.1 Views of the Parties**

Several interested parties commented on what they perceived as insufficient federal intervener funding. Others questioned what they referred to as the EUB process for granting funding and suggested that the existing EUB process for determining eligibility for intervener funding was inadequate.

### **2.2.2 Views of the Board**

The Board wishes to emphasize that the intervener funding process established by the Canadian

Environmental Assessment Act (CEAA) for joint review panels has clearly separated the federal funding process from the authority and responsibilities of this panel. Therefore, the Board is unable to comment on the adequacy of federal funding process.

With regard to the EUB funding process, the existing legislation sets out the tests that a Division of the Board must use in assessing eligibility for funding. The Division must make its funding decisions within the boundaries set out by those statutory requirements. The Board in this case is prepared to consider any costs application made and will make its decisions based on the merits of each claim, within the spirit and intent of the EUB legislation as well as the agreements constituting the joint review process. Parties who feel they may be eligible for costs are encouraged to obtain a copy of the Board's Guidelines for Intervener Funding.

## **2.3 Joint Review Panel Process**

### **2.3.1 Views of the Parties**

At the hearing it was argued by the Rocky Mountain Ecosystem Coalition (RMEC) that, in the absence of the federally nominated panel member, no joint review panel could be initiated and so the Pre-Hearing Meeting should be adjourned. RMEC noted that while two members of such a panel could constitute a quorum once the panel had been formed, the joint review panel itself did not yet exist and so it was not possible to create a quorum. RMEC also concluded that the agreement between the EUB and the Canadian Environmental Assessment Agency on behalf of the Federal Minister of Environment for a Joint Review Panel (signed 24 October 1996) may not be properly constituted since certain requirements, primarily hearing scope and panel terms of reference under the CEAA could not be delegated by the Minister. Cardinal disagreed with the views expressed by RMEC and argued that a joint review panel did exist, since both Board members had been appointed by the Federal Minister as members of a joint review panel.

Although they did not challenge the legal authority of the panel at the Pre-Hearing Meeting, a number of parties did express their concern over the absence of the federal appointee as a third panel member. A number of parties also indicated a preference for a panel made up of an equal number of federal and provincial nominees.

### **2.3.2 Views of the Board**

The Board notes that the 24 October 1996 agreement between the EUB and the Federal Minister of Environment to carry out a joint review was developed in accordance with the 1993 Canada/Alberta Agreement for Environmental Assessment Cooperation and the subsidiary agreement for establishing Joint Review Panels. The Board believes that these agreements recognize that for some projects both Canada and Alberta will have regulatory authority but that the degree of authority may differ. In this specific case, provincial regulatory authority is significant, requiring approval of all aspects of the proposed Cheviot Coal Project. Federal authority is somewhat more limited, and is related generally to the alteration or destruction of fish habitat. Notwithstanding the relative role of the two levels of government, the agreement recognizes that it is to the advantage of all parties, government, applicant and the public alike if a

single, combined review process can be achieved. However, the agreement also recognizes that such harmonization may not be possible in some cases. In those cases, the regulatory requirements of the two levels of government must still be met and so dual processes will occur.

The Board agrees that if a joint federal/provincial review eventually occurs, it will be preferable to have the complete joint review panel in place as soon as possible. It is certainly not the Board's intention to proceed to hearing until either the joint review panel has been put in place or alternatively, it is clearly determined that a joint review cannot be accomplished and each regulatory authority must meet its obligations independently.

However, in this case, the Board was faced with dealing in a timely fashion with concerns raised regarding the timing of an EUB hearing scheduled for 25 November 1996. The Board therefore determined that the public interest was best served by holding a Pre-Hearing Meeting under the authority granted by the Alberta Energy and Utilities Board Act. While the Board understands how this may have led to some confusion, the Board remains convinced that the public interest was best served by the holding of the Pre-Hearing Meeting prior to the proposed EUB submission and hearing date rather than delaying until the appointment of the third panel member for a proposed joint review panel could be accomplished.

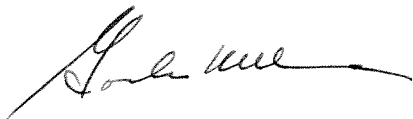
The Board agrees with the position of the RMEC that the joint federal/provincial review should not begin until all of the requirements under the 24 October 1996 agreement are in place. The Board does not accept the RMEC's argument that the Federal Minister of the Environment could not delegate his authority to enter into the 24 October 1996 agreement. Section 28 of the 1993 Canada-Alberta Agreement clearly contemplates such delegation.

Once the final member of the joint review panel has been appointed, it is the Board's view that the joint review panel is obliged to meet and either adopt and confirm the decisions which have been made to date solely under the EUB process or alternatively, publicly advise the interested parties as to the process the joint review panel intends to follow.

DATED at Calgary, Alberta on 27 November 1996.



Brian F. Bietz, Ph.D., P.Biol.  
Board Member



Gordon Miller  
Board Member

## **THOSE WHO APPEARED AT THE PRE-HEARING MEETING**

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### Participants

### Representatives

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Cardinal River Coals Ltd.

D. R. Thomas  
A. E. Domes  
N. A. Maydonik

TransAlta Utilities Corporation

D. Maxwell

Hinton Chamber of Commerce

B. Deal

Alberta Chamber of Commerce

N. Leach

United Mine Workers of America Local 1656

G. K. Randall

Town of Hinton

R. Risvold

Cadomin Environmental Protection Association

R. M. Kruhlak

Cadomin Environmental Protection Agency

J. Slavik

Department of Justice (Alberta)

S. Rutwind

Department of Justice (Canada)

S. Faulknor

Canadian National Railway Company

M. A. King

Alberta Wilderness Association and  
Jasper Environmental Society

D. Pachal

Mountain Park Environmental Protection  
and Heritage Association

M. Bracko

Alpine Club of Canada and Alberta  
Native Plant Council

A. Dinwoodie

Mother Earth Healing Society

L. Sinclair  
C. Hughes

MLA West Yellowhead

D. Van Binsbergen

Trout Unlimited

K. Brewin

**THOSE WHO APPEARED AT THE PRE-HEARING MEETING (cont'd)**

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Participants	Representatives
Pembina Institute	C. Baker
Western Canada Wilderness Committee	G. Jones
Peter O'Chiese	K. Cunningham Peter O'Chiese
Edmonton Chapter of Canadian Parks and Wilderness Society	S. Gunsch
Rocky Mountain Ecosystem Coalition	M. Sawyer
Alberta Energy and Utilities Board	D. Henderson R. Girvitz
Canadian Environmental Assessment Agency	M. Lascelles