
ALBERTA
ENVIRONMENTAL APPEAL BOARD
DECISION

Date of Decision - September 22, 1997

IN THE MATTER OF Sections 84, 85, 86, 87 and 90 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Bill Lucey, Confederation of Regions Political Party (Federal) with respect to Approval No. 46545-00-00 issued to NOVA Gas Transmission Ltd., by Mr. Dennis Bratton, Acting Director, Land Reclamation Division, Department of Environmental Protection on July 14, 1997.

Cite as: Lucey v. Acting Director of Land Reclamation, Alberta Environmental Protection.

BACKGROUND

Mr. Bill Lucey, leader of the Confederation of Regions Political Party (CORE), filed a notice of appeal with the Environmental Appeal Board (Board) on August 11, 1997. Mr. Lucey objected to Approval No. 46545-00-00 issued to NOVA Gas Transmission Ltd. (NGTL) by Mr. Dennis Bratton, Acting Director, Land Reclamation, Department of Environmental Protection (Department) on July 14, 1997. The appeal was filed within the 30 day time limit prescribed by section 84(4)(c) of the *Environmental Protection and Enhancement Act* (Act).

The Approval issued to NGTL was for the construction and reclamation of the Western Alberta System Mainline Loop (North Creek).

On August 11, 1997, the Board informed NGTL that an appeal had been filed by Mr. Lucey and provided them with a copy of Mr. Lucey's appeal.

After receiving Mr. Lucey's written appeal, the Board, in a letter dated August 29, 1997, asked Mr. Lucey to respond to the following questions:

1. Explain how you are "directly affected" by the decision issued by the Director [regarding Approval No. 46545-00-00].
2. Explain in more detail the environmental concerns you have with the decision issued by the Director [regarding Approval No. 46545-00-00].
3. Explain in detail the purpose that a one year halt to this project would serve regarding impact on the environment, as well as how this halt would assist you in your information gathering, i.e. obtaining a listing of endangered species, etc.

The Board asked both the Department and Mr. Lucey to respond to the following:

1. In the event that the Board decides to proceed with this appeal, do you wish to have a mediation meeting under section 11 of the Environmental Appeal Board Regulation? If so, what would you contemplate to be the agenda for that meeting?
2. In your opinion, are there any other persons who have an interest in this matter?

A portion of this letter stressed the need to provide further information and to be as thorough as possible.¹

Responses were requested and received by all parties by September 12, 1997.

According to standard practice, on August 29, 1997, the Board also wrote to the Alberta Energy and Utilities Board (AEUB) and the Natural Resources Conservation Board (NRCB) requesting that both advise whether the matter was the subject of a public hearing or a review under either of their legislation. In a letter dated September 3, 1997, the NRCB advised that the appeal did not deal with a matter that had been the subject of any hearing or review under their Board. The AEUB advised, the Board, in a letter dated September 10, 1997, that they issued a permit for the North Creek portion of NGTL's Western Mainline System in June or July of this year, and that their Board received no objection to the application from Mr. Lucey, and neither was a public hearing held in respect of the matter.

ISSUES

The Board identifies the primary issue in this appeal to be whether Mr. Lucey or CORE is directly affected by the Acting Director's decision. A secondary issue is whether or not he responded adequately to the Board's written request for additional information.

¹ For example, the Board stated:

“You should be aware that the Board has the ability to dismiss an appeal if you do not provide us with all of the information which we need and which we seek at this time. Accordingly, please answer all of the questions as thoroughly as possible and send them to this office within the deadline. Failure to respond to this request may result in the Board's dismissal of your appeal.”

“The Board must decide whether there are issues raised in this matter which will be included in any hearing of the appeal. This is your opportunity to address that issue. A failure to address this issue adequately may result in the Board deciding, without further notice, that some or all of the issues raised will not be included in the appeal.”

THE BOARD'S CONSIDERATIONS

Is Mr. Lucey or CORE directly affected and therefore properly before the Board?

The Board received information from Mr. Lucey in two instalments: (1) his first written objection and a copy of an article published titled "Endangered Species Overkill - Ottawa's proposed wildlife grab threatens property owners with huge fines, years in jail, and loss of land, dated February 24, 1997 Alberta Report (the "first submission"); and (2) supplementary material provided to the Board on September 8, 1997 (the "second submission").

As noted above, the Board asked Mr. Lucey to respond to a number of questions that affect the Board's jurisdiction to hear appeals. These questions were, along with his reply:

EAB Q1. Explain how you are "directly affected" by the decision issued by the Director in the above noted approval.

Reply: "(A1) Although [sic] the "EU.B" has a mandate to protect us Albertans, we feel they cannot do their job, because of staff raids, by "Alberta Resource Corporations", eg. Esso, Shell, Amoco, ect. [sic] A prime example is "Swan Hills", where industry and the "E.U.B", have been monitoring for years, saying things are "OK", when infact there is an environmental disaster, which will cost Albertans, billions to clean up."

EAB Q2. Explain in more detail the environmental concerns you have with the decision issued by the Director in the above noted approval.

Reply: "(B2) for years powerful corporations have "walked", over the province of Alberta. (eg. Petroleum and Ranchmens Clubs, in Calgary. (This must end)"

EAB Q3. Explain in detail the purpose that a one year halt to this project would serve regarding impact on the environment, as well as how this halt would assist you in your information

gathering, ie. obtaining a listing of endangered species, etc.

Reply: "(C3) We have information that there is, plains pocket gophers and burrowing owls on this pipeline [sic] wright of way. We have to contact the land owners to arrange for an inspection during the spring of "98"."

EAB Q4. In the event that the Board decides to proceed with this appeal, do you wish to have a mediation meeting under section 11 of the Environmental Appeal Board Regulation? If so, what would you contemplate to be the agenda for that meeting?

Reply: "D1 - YES - AGENDA - LECTURE SERIES."

EAB Q5. In your opinion, are there any other persons who have an interest in this matter?

Reply: "E2 - ALL ALBERTANS, MANY CANADIAN, AND THE GENERAL WORLD POPULATION."

Considering Mr. Lucey's replies, which are all very general, the Board does not see how he or CORE are directly affected. On March 28, 1996, the Honourable Mr. Justice Marceau discussed the Board's test on directly affected:

"Two ideas emerge from this analysis about standing. First, the possibility that any given interest will suffice to confer standing diminishes as the causal connection between an approval and the effect on that interest becomes more remote. This first issue is a question of fact, i.e., the extent of the causal connection between the approval and how much it affects a person's interest. This is an important point; the Act requires that individual appellants demonstrate a personal interest that is directly impacted by the approval granted. This would require a discernible effect, i.e., some interest other than the abstract interest of all Albertans in generalized goals of environmental protection. 'Directly' means the person claiming to be 'affected' must show causation of the harm to her particular interest by the approval challenged on appeal. As a general rule, there must be an unbroken connection between one and the other."²

Mr. Lucey does not meet the first part of the test referred to by the court.

²

Martha Kostuch v. The Environmental Appeal Board and the Director of Air and Water Approvals Division, 35 Admin L.R. (2d) 160 (Q.B. March 28, 1996); the original decision is found at 17 C.E.L.R. (N.S.) 246 (EAB, August 23, 1995).

DECISION OF THE BOARD

Mr. Lucey's notice of appeal does not meet any of the criteria related to standing necessary for the Board to continue its jurisdiction. Mr. Lucey has not, to the Board's satisfaction, raised specific environmental matters related to NGTL's Approval -- true, he does talk about gophers and owls but his concerns with these wildlife are dependent on inspection programs in 1998 that may or may not take place; he has therefore failed to provide a written response to the Board that is specific enough to assist the Board in better understanding his complaint. In summary, he has not shown that either he or the Confederation of Regions Political Party (Federal) or any of its members are plausibly directly affected by the Acting Director's decision in the North Creek Loop approval.

CONCLUSION

This appeal is dismissed.

Dated on September 22, 1997 at Edmonton, Alberta.

Dr. William A. Tilleman