

# ALBERTA ENVIRONMENTAL APPEAL BOARD

## Discontinuance of Proceedings

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Date of Discontinuance of Proceedings – December 27, 2001

**IN THE MATTER OF** Sections 84, 85 and 87 of the  
*Environmental Protection and Enhancement Act*, S.A. 1992, c. E-  
13.3;

**-and-**

**IN THE MATTER OF** an appeal filed by the Metis Nation of  
Alberta Zone II Regional Council, Mr. Henry Desjarlais, Mr. Gabe  
Cardinal, Mr. Gus Cardinal and Mr. Sam Dumais, with respect to  
Amending Approval No. 136570-00-01 issued by the Director,  
Bow Region, Environmental Service, Alberta Environment, to  
AEC Pipelines Ltd. for the Foster Creek Pipeline Project.

Cite as: *Metis Nation of Alberta Zone II Regional Council et al. v. Director, Bow Region,  
Environmental Service, Alberta Environment re: AEC Pipelines Ltd.*

## **EXECUTIVE SUMMARY**

Alberta Environment issued an Amending Approval to AEC Pipelines Ltd. for the construction and reclamation of the Foster Creek pipeline. On February 16, 2001, the Board received a Notice of Appeal from the Metis Nation of Alberta Zone II Regional Council and a number of its members appealing the Amending Approval.

Before proceeding to a hearing of the appeal the Board first had to deal with the directly affected status of the Metis Nation of Alberta Zone II Regional Council and also their participation in a process before the Alberta Energy and Utilities Board.

The Board set a submission process to deal with the issue of the participation of the Metis Nation of Alberta Zone II Regional Council in the Alberta Energy and Utilities Board process, however, before the submission process was complete, the appeal was withdrawn. Consequently, the Board is closing its file.

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## **I. BACKGROUND**

[1] On January 18, 2001, the Director, Bow Region, Environmental Service, Alberta Environment (the “Director”) issued Amending Approval No. 136570-00-01 (the “Amending Approval”), under the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, to AEC Pipelines Ltd. (the “Approval Holder”). The Amending Approval is an amendment to Approval No. 136570-00-00 (the “Original Approval”) for the construction and reclamation of a pipeline known as the Foster Creek Pipeline Project.

[2] On February 16, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from the Metis Nation of Alberta Zone II Regional Council, Mr. Henry Desjarlais, Mr. Gabe Cardinal, Mr. Gus Cardinal and Mr. Sam Dumais (the “Appellants”), appealing the Amending Approval for substantially altering the route of the Foster Creek Pipeline.

[3] The Board acknowledged the Notice of Appeal on February 20, 2001, notified the Approval Holder that the appeal had been filed, and requested the Director provide a copy of its Record (the “Record”) in this matter.

[4] According to standard practice on February 20, 2001, 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.

[5] On February 28, 2001, the Board received a letter from the Director requesting the appeal be held in abeyance until the Board had rendered a decision in EAB 00-073<sup>1</sup>, an appeal also filed by the Appellants, regarding the issuance of the Original Approval to the Approval Holder, as the issues in both appeals are similar.

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<sup>1</sup> *Metis Nation of Alberta Zone II Regional Council. v. Director, Bow Region, Environmental Service, Alberta Environment re: AEC Pipelines Ltd.* (March 20, 2001) EAB 00-073-D.

[6] On March 2, 2001, the Board received a letter from the Approval Holder also requesting the appeal be held in abeyance pending the Board's decision regarding the appeal of the Original Approval.

[7] On March 2, 2001, the Board acknowledged the letters of the Director and Approval Holder and granted the request to hold the appeal in abeyance, provided there were no objections from the Appellants.

[8] On March 5, 2001, the Board received a letter from the Appellants objecting to the abeyance and requesting a Stay. The letter stated:

“...construction is proceeding at an extremely rapid pace. There appears to be a considerable risk that construction will be complete before either the EAB or AEUB can review the approvals for this project...”

[9] On March 7, 2001, the Board received a letter from the Approval Holder requesting the Board deal with the matter of the Stay via written submissions. On February 8, 2001, and in consultation with the parties to the appeal, the Board set the written submission process to deal with the matter of the Stay application.

[10] On March 12, 2001, the Director advised that he takes no position with regard to the Stay application. An initial submission was received from the Appellants on March 16, 2001, and on March 23, 2001 the Board received a letter from the Appellants withdrawing their Stay application.

[11] On March 27, 2001, the Board again wrote to the AEUB requesting a response to its February 20, 2001 letter.

[12] On April 10, 2001, the Board received a letter from the Approval Holder requesting the Board dismiss the appeal as the Appellants are not directly affected by the Director's decision to issue an Amending Approval in respect of the construction and reclamation approval for the pipeline. On April 23, 2001, the Board wrote to the parties setting a schedule for written submissions to address the Approval Holder's request for the dismissal of the appeal.

[13] On April 23, 2001, the Board received a copy of the Record from the Director, and forwarded it to the parties on April 26, 2001.

[14] On April 25, 2001, the Board received a response dated March 30, 2001, from the AEUB advising that an Approval for the Foster Creek Pipeline had been routinely processed by the AEUB and as such no hearing or proceeding was ever held. Further, they advised, notice of the application was not provided. The letter went on to advise however, that they had received a request from the Appellants for a review of the AEUB Approval and advised that a decision was yet to be made with respect to the review request.

[15] On May 4, 2001, the Board received a letter from the Appellants requesting a site visit and an oral hearing, in place of written submissions, in order to provide them with a full and fair hearing. On May 11, 2001, the Board received a letter from the Director taking no position on the request for an oral hearing and submitting that with regard to the site visit "...how can the Metis Nation Zone 2 be directly affected by a pipeline route that they don't even have access to..."

[16] On May 11, 2001, the Board acknowledged the letters from the Director and the Approval Holder. The Board, in deciding to postpone the written submission process, requested the parties provide their comments with respect to the Appellants' request for a site visit and oral hearing, advising that once responses had been received, the Board would decide whether to proceed to an oral hearing or whether to establish a new written submission process.

[17] Comments were received and acknowledged and the parties were advised that the Board would render a decision regarding a site visit and oral hearing versus a written submission process. On September 28, 2001, the Board wrote to the parties advising that prior to deciding the directly affected status of the Appellants, the Board would like to receive comments from the parties with respect to the Appellants' request currently before the AEUB for a review of the AEUB Approval. Comments were received from the parties.

[18] Further information was received from the AEUB regarding the review request of the Appellants. This information was provided to the parties and the Board set a written submission process on the following issue:

"Pursuant to section 87(5)(b)(i) of *the Environmental Protection and Enhancement Act*, did the Metis Nation of Alberta Association Zone II receive notice of, participate in or have an opportunity to participate before the AEUB

with respect to Amending Approval No. 136570-00-01, at which all of the matters included in the Notice of Appeal were adequately dealt with?”

[19] Initial and response submissions were subsequently received. However, in place of a rebuttal submission from the Appellants, the Board received a letter from the Appellants on December 21, 2001 advising that they were withdrawing their appeal.

## **II. DECISION**

[20] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on the Appellants’ letter of December 21, 2001, the Board discontinues its proceedings in Appeal No. 01-035 and is closing its file.

Dated on December 27, 2001, at Edmonton, Alberta.

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William A. Tilleman, Q.C.