

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – September 17, 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 Messrs. John, Steven,
Mses. Julie, and Leanne Jenkins regarding Application #2001113
to the Alberta Energy and Utilities Board by AES Calgary for a
Gas Fired Power Plant located west of Chestermere, Alberta.

Cite as: *Jenkins et al. v. Alberta Energy and Utilities Board, re: AES Calgary*

EXECUTIVE SUMMARY

The Environmental Appeal Board received a letter from Messrs. John and Steve and Meses. Julie and Leanne Jenkins regarding concerns with Application #2001113 by AES Calgary to the Alberta Energy and Utilities Board for a Gas Fired Power Plant located west of Chestermere, Alberta.

The Board decided to dismiss the appeal under section (87)(5)(b)(i) of the *Environmental Protection and Enhancement Act* given that a decision has not been made with respect to the Application that is currently before the Alberta Energy and Utilities Board.

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I. BACKGROUND

[1] On August 9, 2001, the Environmental Appeal Board (the “Board”) received a letter from Messrs. John and Steven and Mses. Julie and Leanne Jenkins (the “Appellants”) regarding the Gas Fired Power Plant located west of Chestermere, Alberta (Application #2001113) (the “Application”). The Appellants wrote to various provincial and municipal representatives from Edmonton and Calgary expressing serious concerns they had with the Application¹.

[2] On August 15, 2001, the Board replied to the Appellants’ letter received on August 9, 2001. The Board’s letter requested the Appellants clarify the purpose of their letter and outlined for the Appellants the function of the Board, additional information required, deadline for the additional information and information requested from the Department of Environment (the “Department”). The Board also assigned an appeal number to the file and attached a Notice of Appeal form and sections of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E.13-3 (“EPEA”) and *Water Act*, S.A. 1996 c.W-3.5, and information on the Board to the Appellants.

¹ On August 9, 2001, the Board received a letter addressed to Honourable Ralph Klein, Premier’s Office, Ms. Carol Haley, M.L.A., Honourable Murray Smith, Minister of Energy, Minister of Environment, Honourable Lorne Taylor, Minister of Sustainable Resource Development, Honourable Mike Cardinal, Mayor of Calgary, Mr. Al Duerr, and the Energy and Utilities Board, Mr. Keith Gladwyn. from Messrs. John, Steven and Mses. Julie and Leanne Jenkins stating:

“There are several serious concerns with application #200113 and we would appreciate responses to the following:

1. With government policy reductions regarding greenhouse gases, why would you entertain contributing more to the overall problem with a non-green power plant? Should you not be considering alternate power generating plants such as Wind Generators or Fuel Cell technologies?
2. Are Natural Gas Fired Power Plants that pollute 1.481 metric tons of NOx per day, 11.784 metric tons of CO per day, 1.452 metric tons of VOC per day, 0.282 metric tons of PM per day, 0.161 metric tons of SO2 per day, allowed to be built in [sic] U.S.A.? Polluting Canada is not allowed for the sake of a company in the U.S.A. profiting at our expense.
3. With identified serious health concerns of the by products pollutants from a Gas Fired Power Plant, no person should unwillingly be exposed to these harmful chemicals.

Until such time that an environmentally responsible Power Generating plant is proposed, we “do not” support the Heavy Industrial Polluter Gas Power Plant”

[3] On August 23, 2001, Board staff received a message from one of the Appellants advising that the Appellants sent in their appeal prematurely as a final decision regarding the Application has yet to be made by the Department.

[4] On August 24, 2001, the Board received a letter from legal counsel for the Department stating:

“...it appears that this matter relates specifically to an application by AEC [sic] Calgary...The Alberta Energy and Utilities Board (‘AEUB’) is currently holding a public hearing to determine whether the project is in the public interest. ...As you are aware, if the AEUB approves the project, then the Director will exercise his discretion regarding the EPEA approval having regard to the written decision of the AEUB respecting the project and they also consider any evidence that was before the AEUB in relation to its written decision.

...In light of the fact that Alberta Environment has not made a decision in this matter, I suggest that it is not a productive use of time to proceed with the Department’s production of documents....”

II. DECISION

[5] Section 87 (5)(a)(i.2) of EPEA states:

(87)(5) The Board

(a) may dismiss a notice of appeal if

(i.2) for any other reason the Board considers that the notice of appeal is not properly before it,

[6] In light of the fact that a decision has not been made with respect to the Application and that the matter is currently under review by the AEUB, the Board hereby exercises its discretion under section (87)(5)(a)(i.2) of EPEA and dismisses the appeal filed by Messrs. John and Steven and Mses. Julie and Leanne Jenkins.

Dated on September 17, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C., Chairman