

Central Alberta

Regional Assessment Review Board

PREC 4640 778/2016

Complaint ID 778

Roll No. 207149

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: September 16, 2016

PRESIDING OFFICER: J. Krysa

In the matter of a complaint filed with the Central Alberta Regional Assessment Review Board as provided by the *Municipal Government Act*, Revised Statutes of Alberta 2000, Chapter M-26 (the Act),

between:

ATCO POWER CANADA LTD.
(as represented by **AEC Property Tax Inc.**)

Complainant

and

SPECIAL AREAS BOARD

Respondent

in respect an assessment prepared by the Assessor of the Special Areas Board (SAB), and entered into the 2015 assessment roll for taxation in 2016, with regard to the following property:

Roll Number: **207149**
Legal Land Description: **Plan 8311445**

This matter was heard via teleconference by a one-member Composite Assessment Review Board at 1:12 p.m. on the 16th day of September 2016, with the following parties participating:

On behalf of the Complainant:

Cameron Hall, AEC Property Tax Inc., Agent
Charles Johnson, AEC Property Tax Inc., Agent
Susan Trylinski, Christopher Davis Law, Counsel

On behalf of the Respondent:

Tally Quaschnick, Assessor
Trent Caskey, SAB Administration
Carol Zukiwski, Reynolds Mirth Richards & Farmer LLP, Counsel

PART A: JURISDICTION

- [1] The Composite Assessment Review Board derives its authority to make decisions under Part 11 of the *Act*.
- [2] The Central Alberta Regional Assessment Review Board [the Board] has been established in accordance with section 456 of the *Act* and Special Areas Board Order No. 11/16.
- [3] The single member CARB panel has been established in accordance with s. 454.2(3) of the *Act*, and the jurisdiction of the one-member CARB panel is provided by s. 36(2)(b) of *Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)*, relating to procedural matters including scheduling of a hearing and disclosure of evidence.
- [4] The parties did not have any objection to this matter being heard by a one-member panel of the Board, or to the assigned CARB member.

PART B: PROPERTY DESCRIPTION AND BACKGROUND

- [5] The subject property is the Sheerness Generating Station, located within the Special Areas of the province of Alberta.
- [6] The complaint was filed on July 19, 2016. Confirmation of receipt of complaint and Notice of Hearing scheduled for November 21 to 30, 2016 was sent to the parties on August 23, 2016. Notice of this Preliminary Hearing scheduled for September 16, 2016 was also sent to the parties on August 23, 2016.
- [7] Prior to the hearing, the parties were in communication with each other, coming to agreement on some matters and proposing options on other matters in relation to the hearing of the merits of the complaint. The Board was provided with copies of the parties' emails in this regard in advance of the hearing.
- [8] During the course of the hearing, the parties discussed the following matters:
 - a) Date, duration and location of the merit hearing;
 - b) Disclosure exchange dates;
 - c) Cost of a court reporter;
 - d) Subsequent preliminary hearings.

PART C: ISSUES

- [9] The Board determined the following issues to be addressed in this decision:
 - a) Should the scheduled merit hearing be postponed and re-scheduled to a later date?
 - b) If the matter is postponed, what are the appropriate evidence disclosure dates?

PART D: LEGISLATION

The Board's jurisdiction to postpone a hearing is set out in section 15 of *MRAC*:

- 15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.
- (2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.
- (3) Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.

PART E: POSITION OF THE PARTIES

- [10] The parties ask that due to the availability of witnesses and the complexity of the matter, the merit hearing currently scheduled to be heard on November 21 – 30, 2016, be rescheduled to a future date.
- [11] The parties agree that the duration of the merit hearing should be a period of 10 days and that subsequent preliminary hearings should be scheduled approximately one week after each of the parties' initial disclosures are made to address any issues that may arise.
- [12] The parties further agree that the cost of a court reporter would be shared equally between the complainant and the respondent.
- [13] In email correspondence, the complainant proposed three time periods for the merit hearing:
- September 18-29, 2017; October 16-31, 2017; or November 27-December 8, 2017.
- [14] The respondent indicated its preference would be the October and November proposed dates over the September proposed date. At the hearing, the complainant stated that the November time frame would be preferable over the October time frame.
- [15] In email correspondence the respondent proposed the following 2017 disclosure dates, noting that the proposed dates would provide the complainant with at least 10 months to prepare its evidence, and the respondent with 2 ½ to 3 months to prepare its response.

<i>Merit Hearing (Start):</i>	<i>September 18</i>	<i>October 16</i>	<i>November 27</i>
Rebuttal	September 8	October 6	November 14
Response	August 25	September 22	October 31
Submission	May 31	June 23	August 4

[16] In response, the complainant provided the following proposed disclosure dates for a merit hearing commencing on November 27, 2017:

	<i>Respondent's Proposal</i>	<i>Complainant's Request</i>
Merit Hearing (Start):	November 27	OK
Rebuttal	November 14	November 20
Response	October 31	OK
Submission	August 04	August 06

[17] At the hearing, the complainant noted that August 6, 2017 is a Sunday; therefore the correct disclosure date for the complainant's initial submission would be August 07, 2017. The respondent noted that August 7, 2017 is a statutory holiday; therefore the complainant's initial disclosure would correctly be due on August 8, 2017.

[18] The respondent objected to the complainant's proposed November 20 date for the complainant's rebuttal evidence, noting that it would provide the respondent only 4 working days to review the materials and prepare its response for the hearing.

[19] The complainant maintains that it has a similar concern in that the two week period between the respondent's October 31 disclosure date and the proposed November 14 rebuttal date provides the complainant with a preciously short amount of time to prepare its rebuttal evidence. The complainant submits that the legislated rebuttal disclosure date set out in *MRAC*, being 7 days prior to the hearing, would allow the complainant 3 weeks to prepare its rebuttal evidence.

[20] In response, the respondent proposed the following disclosure dates for a merit hearing commencing on November 27, 2017, which were agreeable to the complainant:

Complainant's Rebuttal	November 15, 2017
Respondent's Submission	October 30, 2017
Complainant's Submission	August 08, 2017

[21] The parties also addressed the issue of the location of the hearing. Both parties agreed the facility should be large enough to accommodate a court reporter and a minimum of three tables for each of the parties, as well as individual "breakout" rooms for the parties. The complainant's preference is that the hearing be held in Calgary, Alberta, with the respondent's preference that the cost of the facility be nominal, whether it is held in Calgary or in Edmonton.

PART F: DECISION

[22] The merit hearing scheduled on November 21 to 30, 2016 is cancelled.

[23] The hearing of the merits of the complaint is re-scheduled to commence at **9:00 am on Monday, November 27th, 2017**. The hearing will continue on consecutive weekdays to, and including December 8th, 2017.

[24] The Board hearing the matter will determine the duration of each hearing day, as required.

- [25] The location of the merit hearing will be determined by the Clerk of the Central Alberta Regional Assessment Review Board, and details will be provided to the parties in advance of the merit hearing. The Board notes the complainant's preference is that the hearing be held in Calgary, Alberta, with the respondent's preference that the cost of the facility is nominal, whether in Calgary or Edmonton. The Board also notes both parties' concerns that the facility be sufficiently sized to accommodate a court reporter and a minimum of three tables for each of the parties, as well as comprise individual breakout rooms.
- [26] The Board directs that the parties will disclose their evidence and written argument to each other **and** to the Clerk of the Central Alberta Regional Assessment Review Board **no later than 4:30 p.m.** on the following dates:
- | | |
|------------------------------------|----------------------------------|
| Complainant's Disclosure: | Tuesday, July 4, 2017 |
| Respondent's Disclosure: | Monday, October 2, 2017 |
| Complainant's Rebuttal: | Monday, November 6, 2017 |
| Respondent's Surrebuttal: (if any) | Monday, November 20, 2017 |
- [27] The disclosures may be made electronically to the opposing party and to the Clerk of the Central Alberta Regional Assessment Review Board at RegionalARB@reddeer.ca on the dates set out above, with paper copies of the materials due on or before 4:30 pm the following day.
- [28] The parties must send 6 paper copies of their submissions to the Clerk of the Central Alberta Regional Assessment Review Board at 4914 - 48th Avenue, Red Deer, Alberta T4N 3T4. The Board would appreciate receiving from the parties, an electronic copy of their submissions on USB drives (1 USB per disclosure), which can be sent to the Clerk along with the 6 paper copies.
- [29] Excluding the prescribed dates of disclosure, the parties' disclosures must meet the requirements set out in section 8 of *MRAC*. The Board reminds the parties that they are to disclose all evidence upon which they wish to rely, including any Power Point presentations, graphs, charts, tables, diagrams, etc.
- [30] The submissions for each party must have consecutive page numbers, starting at page 1 at the beginning of the report, then increasing for each page to the end of the report, including any tabs. For greater clarity, each page of every submission must have a unique page number. Failure to comply with this direction may result in the Board directing the party who fails to file appropriately numbered materials to reproduce its materials to the satisfaction of the Board.
- [31] The Board also directs that any charts or tables which are contained within any witness report must be of a sufficient font size to be legible without the need for reading aides, such as magnifying glasses, etc. The Board recommends a font size of at least 8 point. This may require that tables be reproduced on paper larger than 8 1/2" x 11". Failure to comply with this direction may result in the Board directing the party who fails to file legible materials to reproduce its materials to the satisfaction of the Board.

APPENDIX

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>
A1	<p>Hearing Materials cover page and documents provided by Clerk (9 pages), containing the following items:</p> <ul style="list-style-type: none">- Complaint Form with attached "Reasons for Complaint"- Agent Form identifying AEC Property Tax Inc. as Agent- Notice of Preliminary Hearing- Notice of Hearing

This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at www.albertacourts.ab.ca.