

1994 BILL 15

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

ALBERTA ENERGY AND UTILITIES BOARD ACT

MR. SMITH

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill 15
Mr. Smith

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ALBERTA ENERGY AND UTILITIES BOARD ACT

(Assented to , 1994)

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

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| Definitions | <p>1 In this Act,</p> <p>(a) “Board” means the Alberta Energy and Utilities Board established under section 2;</p> <p>(b) “Chair” means the Chair of the Board;</p> <p>(c) “ERCB” means the Energy Resources Conservation Board;</p> <p>(d) “PUB” means the Public Utilities Board.</p> |
| Establishment of the Board | <p>2 The Alberta Energy and Utilities Board is established as a corporation consisting of its members.</p> |
| Membership of the Board | <p>3(1) The Board shall consist of</p> <p>(a) the members of the ERCB, and</p> <p>(b) the members of the PUB.</p> <p>(2) The Lieutenant Governor in Council shall appoint from among the members of the Board the Chair of the Board.</p> |
| Chair | <p>4(1) The Chair may act for and in the name of the Board in the execution, performance and carrying out of any act, matter or thing that is within the power of the Board, subject only to any express directions or decisions given or made by a resolution of the Board.</p> <p>(2) The Chair may designate one or more members of the Board to act in the Chair’s place at any time during which the Chair is absent or is for any reason incapable of exercising the Chair’s powers or performing the Chair’s duties and when so acting in the Chair’s place that member has and may exercise the powers and perform the duties conferred or imposed on the Chair by this or any other enactment.</p> |
| Divisions of the Board | <p>5(1) The Chair may designate any 3 or more members of the Board to sit as a division of the Board and may direct that division to conduct any hearing, inquiry, investigation or other proceeding that the Board could conduct under this or any other enactment.</p> <p>(2) A majority of the members designated to sit as a division of the Board constitutes a quorum at any hearing, inquiry, investigation or other proceeding conducted by that division.</p> |

(3) Any decision made or other action taken at a hearing, inquiry, investigation or other proceeding conducted by a division of the Board is the decision or action of the Board.

(4) A division of the Board may exercise the powers and perform the duties of the Board under this or any other enactment with respect to the hearing, inquiry, investigation or other proceeding it is directed to conduct, and for that purpose any reference in this or any other enactment to the Board, the ERCB or the PUB is deemed to be also a reference to a division of the Board.

(5) The Chair may designate a member of a division of the Board to preside at any sitting of the division.

(6) Two or more divisions of the Board may sit at the same time.

**Absent Board
members**

6 When a hearing, inquiry, investigation or other proceeding is conducted by the Board and a member or members of the Board for any reason do not attend on any day or part of a day, the other member or members who are sitting at the hearing, inquiry, investigation or other proceeding may, if they constitute a quorum, continue the hearing, inquiry, investigation or other proceeding as fully and effectively as though the absent member or members were present.

**Protection
from action**

7(1) No action or proceeding in respect of any act or thing done or purported to be done under this or any other enactment or under an order or direction of the Board may be brought against any of the following:

- (a) the Board;
- (b) the ERCB;
- (c) the PUB;
- (d) any member of a board referred to in clauses (a) to (c);
- (e) any officer or employee of a board referred to in clauses (a) to (c).

(2) No action or proceeding in respect of any act or thing done or purported to be done under any enactment by the ERCB or the PUB or under an order or direction of the ERCB or the PUB may be brought against any of the following:

- (a) the Board;
- (b) any member of the Board;

(c) any officer or employee of the Board.

Jurisdiction **8(1)** All matters that may be dealt with by the ERCB or the PUB under any enactment or as otherwise provided by law shall be dealt with by the Board and are within the exclusive jurisdiction of the Board.

(2) If on the coming into force of this Act any matter is before the ERCB or the PUB,

(a) the matter shall be continued before or by the Board, and

(b) the members of the ERCB and the PUB dealing with the matter shall continue to deal with it in their capacity as members of the Board.

Reference of application to the Board **9** The Minister of Energy may refer an application for a permit for a pipeline for the transmission of gas under Part 4 of the *Pipeline Act* to the Board for its advice on any matter in connection with the proposed pipeline.

Powers of the Board **10(1)** For the purposes of carrying out its functions, the Board has all the powers, rights and privileges of the ERCB and the PUB that are granted or provided for by any enactment or by law.

(2) In any case where the ERCB or the PUB may act in response to an application, complaint, direction, referral or request, the Board may act on its own initiative or motion.

(3) Without restricting subsection (1), the Board may do all or any of the following:

(a) make any order that the ERCB or the PUB may make under any enactment;

(b) with the approval of the Lieutenant Governor in Council, make any order that the ERCB may, with the approval of the Lieutenant Governor in Council, make under any enactment;

(c) with the approval of the Lieutenant Governor in Council, make any order that the PUB may, with the approval of the Lieutenant Governor in Council, make under any enactment;

(d) with respect to an order made by the Board, the ERCB or the PUB in respect of matters referred to in clauses (a) to (c), make any further order and impose any additional

conditions that the Board considers necessary in the public interest;

- (e) make an order granting the whole or part only of the relief applied for;
- (f) where it appears to the Board to be just and proper, grant partial, further or other relief in addition to, or in substitution for, that applied for as fully and in all respects as if the application or matter had been for that partial, further or other relief.

Enforcement of orders

11 Any order or direction made by the Board shall be enforced by the ERCB or the PUB or both of them in the same manner as an order or direction made by the ERCB or the PUB pursuant to any enactment may be enforced.

Delegation of power

12 The Board may delegate any of the powers and duties conferred or imposed on it under this or any other enactment to officials or employees of the ERCB or the PUB unless the regulations prohibit the delegation.

Protection re evidence

13(1) No person shall be excused from testifying or from producing, when ordered to do so by the Board, any book, document or paper in a hearing, investigation, inquiry or other proceeding conducted by the Board on the ground that the testimony, book, document or paper might tend to incriminate the person or subject the person to penalty or forfeiture.

(2) A witness who testifies or produces documents at a hearing, investigation, inquiry or other proceeding under subsection (1) has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

Witnesses at hearing

14(1) In the case of the failure or refusal by a person to comply with a notice to attend issued by the Board, or to produce a book, document or paper when ordered to do so by the Board, the Court of Queen's Bench, on the application of the Board, may issue a bench warrant requiring the attendance of the person before the Board or the production by the person of the book, document or paper.

(2) In the case of a refusal by a witness to give evidence or to answer to any matter regarding which the witness is questioned before the Board, or to produce a book, document or paper when

ordered to do so by the Board, the Court of Queen's Bench, on the application of the Board, may commit the witness for contempt.

**Rules of
practice**

15 The Board is not bound in the conduct of its hearings by the rules of law concerning evidence that are applicable to judicial proceedings.

Meetings

16(1) Meetings of the Board shall be held at the call of the Chair at the place or places and on the notice that the Chair considers appropriate.

(2) The Chair shall call a meeting of the Board immediately on being requested in writing to do so by 2 members of the Board.

(3) Subject to section 5(2), a majority of the members of the Board constitutes a quorum at a hearing, inquiry, investigation or other proceeding conducted by the Board.

**Signing of
Board
documents**

17 Subject to section 12, the Chair or a Board member shall sign all notices, orders, directions or other documents issued by the Board.

**Proof of Board
orders**

18(1) A notice, order, direction or other document purporting to be issued by authority of the Board, when signed by the Chair or a Board member, shall be admitted in evidence to prove the contents of it without any proof of the signature or of the authority of the Chair or Board member, as the case may be, to sign the document or of that person's appointment.

(2) A copy of a notice, order, direction or other document purporting to be issued under the authority of the Board, when certified as a true copy by a solicitor acting on behalf of the Board, shall be admitted in evidence to prove the notice, order, direction or other document and its contents without any proof of the authority of the member by whom the notice, order, direction or document purports to be signed and without any proof of the signature or of the authority of the solicitor or of the solicitor's appointment.

(3) An order or direction of the Board need not show on its face that

(a) any proceeding was conducted or notice was given, or

(b) any circumstances necessary to give the Board jurisdiction to make the order or direction existed.

Records as evidence

19(1) The minutes, accounts and records of the Board are admissible in evidence by the production of them by a member of the Board or by any person who is authorized by the Board to produce them.

(2) A copy of any record, document, plan, book, paper, minute or account belonging to or deposited with the Board and attested to under the signature of a member of the Board or a person authorized for the purpose by the Board is admissible in evidence in all proceedings in which the original record, document, plan, book, paper, minute or account would be admissible in evidence.

Appeals

20(1) Subject to subsection (2), an appeal lies from the Board to the Court of Appeal on a question of jurisdiction or on a question of law.

(2) Leave to appeal may be obtained from a judge of the Court of Appeal only on an application made

- (a)** within 30 days from the day that the order, decision or direction sought to be appealed from was made, or
- (b)** within a further period of time as granted by the judge where the judge is of the opinion that the circumstances warrant the granting of that further period of time.

(3) Notice of the appeal must be given to the parties affected by the appeal and to the Board.

(4) An order or direction of the Board takes effect at the time prescribed by the order or direction, and the operation of the order or direction is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.

(5) Notwithstanding subsection (4), where the Board thinks fit, the Board may, with respect to an order or direction of the Board, the ERCB or the PUB that is being appealed, suspend the operation of the order or direction until

- (a)** the decision of the Court hearing the appeal is rendered or the time for appeal to the Supreme Court of Canada has expired, or
- (b)** the appeal has been abandoned.

(6) Within 30 days from the day that the leave to appeal is obtained, the Board must forward to the Registrar of the Court of Appeal the transcript and record of the hearing, its findings and reasons for the order or direction.

(7) On receipt of the transcript, record, findings and reasons from the Board, the Registrar of the Court of Appeal must set the appeal down for hearing at the next sittings of the Court, but the hearing must not commence until at least 2 weeks has elapsed from the day that the appeal is so set down.

(8) After the appeal has been set down by the Registrar of the Court of Appeal, the party appealing must give to the parties affected by the appeal, or to the solicitors by whom those persons were represented before the Board, and to the Board, notice in writing that the appeal has been so set down for hearing.

(9) The Court of Appeal must hear an appeal made under this section as speedily as practicable.

(10) On the hearing of the appeal,

(a) no evidence may be admitted other than the evidence that was submitted to the Board on the making of the order or direction that is being appealed from;

(b) the Court of Appeal may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law, as the case may be, and must certify its opinion to the Board;

(c) the Court of Appeal must proceed either to confirm, vacate or give directions to vary the order or direction that is being appealed, and where the Court vacates or gives directions to vary the order or direction, the Court must refer the matter back to the Board for further consideration and redetermination.

(11) The Board is entitled to be represented, by counsel or otherwise, on the argument of an appeal.

(12) Neither the Board nor any member of the Board is in any case liable for costs by reason or in respect of an appeal or application.

(13) If an order or direction is vacated or a variation is directed, the matter must be reconsidered and redetermined by the Board, and the Board shall vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.

Exclusion of
prerogative
writs

21 Subject to section 20, every action, order, ruling or decision of the Board or the person exercising the powers or performing the duties of the Board is final and shall not be questioned, reviewed

or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

Assistance to
the Board

22(1) For the purposes of exercising the powers and performing the duties imposed or conferred on it by or under this Act and the regulations, the Board may avail itself of the services of any officer or other employee of the ERCB or the PUB.

(2) Each officer and employee of the ERCB and of the PUB shall give to the Board the service, assistance and information that the person is able to give and that the Board requires.

Regulations

23(1) The Lieutenant Governor in Council may make regulations

(a) governing the transition from the ERCB and the PUB to the Board of the functions and duties carried out by the ERCB and the PUB pursuant to any enactment or as otherwise provided by law;

(b) prohibiting the delegation of any powers and duties of the Board under section 12.

(2) The Board may make any regulations that the ERCB or the PUB may make under any enactment.

(3) The Board may make regulations prescribing rules of practice governing the Board's procedure and hearings.

Amends RSA
1980 c.G-4

24 *The following provisions of the Gas Utilities Act are repealed:*

section 52;
section 53;
section 54;
section 55;
section 56;
section 57.

Amends RSA
1980 c.P-8

25 *The Pipeline Act is amended by repealing section 10 and substituting the following:*

Changes by
Board

10 The Board may, on its own initiative, make any changes and alterations in the plans and specifications of a pipeline that the Board considers expedient.

Coming into
force

26 *This Act comes into force on Proclamation. - Feb. 15/95*