



**Calgary Energy Centre No. 2 Inc.**

**Calgary Energy Centre Expansion**

**June 30, 2016**

**Alberta Utilities Commission**

Decision 21126-D01-2016

Calgary Energy Centre No. 2 Inc.

Calgary Energy Centre Expansion

Proceeding 21126

Application 21126-A001

June 30, 2016

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Alberta Utilities Commission

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission must decide whether to approve an application from Calgary Energy Centre No. 2 Inc. (CEC2) to construct and operate a power plant designated as the Calgary Energy Centre Expansion. CEC2 is also requesting that a Class A2 ambient monitoring adjustment be applied to the basic sound levels at two receptor locations in the study area in accordance with Rule 012: *Noise Control*. CEC2 provided its noise impact assessment (NIA) with and without the applied-for Class A2 ambient monitoring adjustment. After consideration of the record of the proceeding, and for the reasons outlined in this decision, the Commission finds that the power plant is in the public interest and approves the power plant. However, a Class A2 adjustment for purposes of determining the permissible sound level under Rule 012 is denied.

## **2 Introduction**

2. CEC2, a subsidiary of ENMAX Generation Portfolio Inc., which is a subsidiary of ENMAX Energy Corporation (EEC), filed an application with the Commission for approval to construct and operate a 197-megawatt natural gas-fired power plant, in the Calgary area, pursuant to Section 11 of the *Hydro and Electric Energy Act*. This application was registered on December 4, 2015, as Application 21126-A001.

3. The Commission issued information requests to CEC2 on February 8, 2016. CEC2 responded to these information requests on March 11, 2016. On April 26, 2016, the Commission issued a second round of information requests to CEC2 regarding the noise and environmental effects of the project. CEC2 responded to these information requests on May 6, 2016. The Commission issued a third round of information requests on May 18, 2016 regarding environmental effects and mitigation measures. CEC2 responded to these information requests on May 31, 2016.

4. On March 17, 2016, the Commission issued a notice of application for Proceeding 21126. Submissions to the Commission in response to the notice were due on April 18, 2016. The notice was sent directly to landowners, agencies, and industry stakeholders within a minimum of 2,000 metres of the project location, as identified by CEC2. The notice was published in the Calgary Herald and the Calgary Sun on March 23, 2016. The notice was also published on the AUC website and notification was automatically emailed to eFiling System users that have chosen to be notified of notices of application issued by the Commission.

5. On April 1, 2016, Maxim Power Corp. (Maxim) filed a statement of intent to participate in the proceeding. Maxim submitted that it would be unfairly disadvantaged by approval of the

application, because ENMAX enjoys competitive advantages through its association with the City of Calgary.

6. CEC2 filed a response to Maxim's statement of intent to participate and argued that Maxim had raised this issue previously in the Shepard Energy Centre proceeding. CEC2 indicated that the Commission had denied Maxim standing in that proceeding, and this decision was upheld by the Alberta Court of Appeal. It further submitted that the relevant legislation has not changed in any material way since that decision.

7. The Commission issued a ruling on standing on April 25, 2016, in which it stated:

14. In relation to the first part of the standing test, the Commission is prepared to presume, without deciding that the right or interest asserted by Maxim is one that is recognized by law. However, the Commission is of the view that its decision on the application to construct and operate the proposed power plant expansion cannot directly and adversely affect the right or interest asserted. Maxim's interest in ensuring that there is a level playing field in Alberta is affected by the determination of the independent assessor and the authorization issued by the Minister under Section 95 of the *Electric Utilities Act*. Since EEC acknowledges that it must comply with Section 95 before it constructs and operates the proposed power plant expansion, and the Commission requires EEC to comply with that section before it issues an effective authorization to EEC, the interest of Maxim to a "level playing field" is not affected by the Commission's decision on the application.

15. For these reasons, the Commission finds that Maxim has not shown that its rights may be directly and adversely affected by a decision of the Commission on the application, and denies Maxim standing in this proceeding.

8. As a result of the Commission's ruling denying standing to Maxim, there were no persons with standing in this proceeding and the Commission did not hold a hearing on the application.

### **3 Role and authority of the Commission**

9. The Commission is responsible for regulating the construction and operation of power plants in Alberta. Section 11 of the *Hydro and Electric Energy Act* makes it clear that no person may construct or operate a power plant without prior approval from the Commission.

10. When considering an application for a power plant, the Commission is guided by sections 2 and 3 of the *Hydro and Electric Energy Act* and Section 17 of the *Alberta Utilities Commission Act*.

11. Section 2 lists the purposes of the *Hydro and Electric Energy Act*. Those purposes include:

- To secure the observance of safe and efficient practices in the public interest in the generation of electric energy in Alberta.
- To assist the government in controlling pollution and ensuring environment conservation in the generation of electric energy in Alberta.

12. Section 3 of the *Hydro and Electric Energy Act* requires the Commission to have regard for the purposes of the *Electric Utilities Act* when assessing whether a proposed power plant is in the public interest. The purposes of that act include the development of an efficient electric industry structure and the development of an electric generation sector guided by competitive market forces. This section of the act further directs that the Commission shall not have regard to whether the proposed power plant “is an economic source of electric energy in Alberta or to whether there is a need for the electric energy to be produced by such a facility in meeting the requirements for electric energy in Alberta or outside of Alberta.”

13. Section 17 of the *Alberta Utilities Commission Act* states that the Commission shall:

...in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed... power plant... is in the public interest, having regard to the social and economic effects of the ...plant... and the effects of the ...plant... on the environment.

14. In reaching the determinations set out in this decision, the Commission has considered all relevant materials comprising the record of this proceeding. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission’s reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record as it relates to that matter.

15. Where the applicant for a power plant is a municipality or a subsidiary of a municipality as is the case for CEC2 in this application, CEC2 must also obtain an approval from the Minister of Energy to hold an interest in a power plant pursuant to Section 95 of the *Electric Utilities Act*. To issue an approval, the Minister must be satisfied, based upon a report prepared by an independent assessor, that the “arrangement under which the interest is held is structured in a manner that prevents any tax advantage, subsidy or financing advantage or any other direct or indirect benefit as a result of association with the municipality or subsidiary.”<sup>1</sup> Section 95 of the *Electric Utilities Act* is discussed further in Section 6 of this decision.

#### 4 Discussion

16. The proposed power plant would be located at the site of the existing Calgary Energy Centre, a 320-megawatt natural gas-fired power plant, in the northeast quarter of Section 35, Township 25, Range 29, west of the Fourth Meridian, adjacent to Stoney Trail and 68th Street N.E, in the Calgary area. CEC2 is the owner and operator of the Calgary Energy Centre pursuant to Approval U2012-302.<sup>2</sup>

17. In its application, CEC2 stated that the power plant would consist of three natural gas-fired generators that would have a maximum capability of 197 megawatts. It submitted that it had not confirmed the exact type or size of generator and that it was considering between the 45-megawatt GE LM6000 PF model, the 45-megawatt GE LM6000 PH model and the 66-megawatt Rolls-Royce Trent 60 model. It stated that the power plant would consist of three generators and would have a total capability between 135 megawatts and 197 megawatts. CEC2

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<sup>1</sup> See subsection 95 (10) of the *Electric Utilities Act*.

<sup>2</sup> Approval U2012-302: Calgary Energy Centre No. 2 Inc., Calgary Energy Centre Power Plant, Proceeding 1799, Application 1608275, June 28, 2012.

stated that all modelling and studies conducted for the application reflected the maximum impact based on the three-turbine 197-megawatt maximum total output configuration. However, CEC2 updated this information in response to information requests. It confirmed that the application was for a power plant consisting of three 66-megawatt generators. CEC2 acknowledged that in the event that the Commission issued an approval and CEC2 decided to use different generators with a different capability, that it would file an application to amend the power plant approval.<sup>3</sup>

18. CEC2 indicated that the power plant would be utilized as a peaking unit, designed to meet periods of high demand and that it would operate approximately 15 per cent to 45 per cent of the time.

19. CEC2 conducted a participant involvement program for the project. It stated that the purpose of the participant involvement program was to ensure parties had an opportunity to learn about the project and to discuss any concerns they had about the project. The participant involvement program included notifying occupants, residents and landowners within 2,000 metres of the project and conducting personal consultation with occupants, residents and landowners within 2,000 metres of the project. This exceeded the requirement of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*, which only requires personal consultation with parties within 800 metres of a project. An open house regarding the project was held in November 2014 in Balzac.

20. CEC2 stated that the concerns identified in the participant involvement program generally related to visual, noise, air quality, and construction impacts. It submitted that it was able to satisfactorily address concerns that arose from the participant involvement program and that there are no outstanding issues or concerns.

21. CEC2 retained Stantec Consulting Ltd. (Stantec) to conduct a biophysical impact assessment. Stantec also assisted in filing an amendment application to Alberta Environment and Parks (AEP) under the *Environmental Protection and Enhancement Act*. CEC2 identified that the project has potential environmental impacts and has proposed mitigation measures.<sup>4</sup> It added that the project would also impact wetlands located on the site and that in the event it was unable to avoid these wetlands that it would work with AEP to determine any required wetland compensation.

22. CEC2 retained Millennium EMS Solutions Ltd. to provide an air quality assessment of the project. The report concluded that the power plant would comply with Alberta *Ambient Air Quality Objectives*. CEC2 also confirmed that the power plant would comply with the Alberta *Air Emission Standards for Electricity Generation*.

#### **4.1 Noise impact assessment**

23. CEC2 retained dBA Noise Consultants Ltd. (dBA Noise) to conduct an NIA and prepare an application for a Class A2 ambient monitoring adjustment at four residential receptor locations labelled R1, R2, R3, and R4 in the study area.

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<sup>3</sup> Exhibit 21126-X0014, EEC Responses to AUC IRs, AUC-EEC-2016FEB08-001, PDF page 1.

<sup>4</sup> Exhibit 21126-X0006, PDF pages 28 to 30, Exhibit 21126-X0025, PDF page 3, and Exhibit 21126-X0026.

24. The NIA for the proposed power plant was based on the continuous operation of three 66-megawatt Rolls-Royce Trent 60 natural-gas fired generators operating at 100 per cent capability.

25. dBA Noise described the area surrounding the proposed power plant as a commercial area in development, with several existing power related facilities, oil and gas related facilities, a concrete batch plant, a beef processing plant, distribution warehouses, and other commercial and industrial facilities. In addition, the study area is adjacent to a heavily travelled highway (Stoney Trail), a new residential development, as well as the Calgary International Airport flight path.<sup>5,6</sup> CEC2 provided the development plans for the area in response to an information request from the Commission regarding the approved and proposed developments in the area.<sup>7</sup>

26. dBA Noise described residence R1 as a two-storey dwelling and the closest residence to the proposed power plant, located east of 52th Street N.E. and west of the Calgary Energy Centre at a distance of approximately 1.4 kilometres.<sup>8,9</sup>

27. dBA Noise described residence R2 as being a one-storey dwelling located on the east side of 84th Street N.E., east of the Calgary Energy Centre at a distance of approximately 1.9 kilometres.<sup>10, 11</sup>

28. dBA Noise described residence R3 as being a one-storey dwelling located on the east side of 84th Street N.E., southeast of the Calgary Energy Centre at a distance of approximately two kilometres.<sup>12, 13</sup>

29. dBA Noise described residence R4 as being a two-storey dwelling located in a new subdivision development approximately 200 metres south of Stoney Trail and southwest of the Calgary Energy Centre at a distance of approximately 1.6 kilometres.<sup>14, 15</sup>

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<sup>5</sup> Exhibit 21126-X0002, PDF page 90.

<sup>6</sup> Exhibit 21126-X0002, PDF page 154.

<sup>7</sup> Exhibit 21126-X0014, 2016-03-11-EEC Responses to AUC IRs, AUC-EEC-2016FEB08-017, PDF pages 46-52.

<sup>8</sup> Exhibit 21126-X0002, PDF page 92.

<sup>9</sup> Exhibit 21126-X0002, PDF page 154.

<sup>10</sup> Exhibit 21126-X0002, PDF page 92.

<sup>11</sup> Exhibit 21126-X0002, PDF pages 154 and 155.

<sup>12</sup> Exhibit 21126-X0002, PDF page 92.

<sup>13</sup> Exhibit 21126-X0002, PDF page 155.

<sup>14</sup> Exhibit 21126-X0002, PDF page 92.

<sup>15</sup> Exhibit 21126-X0002, PDF page 155.

30. dBA Noise determined the daytime and nighttime permissible sound levels (PSLs) for these receptor locations in accordance with Table 1 basic sound levels for nighttime in Rule 012 as follows:

Determined permissible sound levels for receptor locations					
ID	Description	Permissible Sound Level (dBA)		Assumed Ambient Sound Level (dBA)	
		Daytime (07:00-22:00)	Nighttime (22:00-07:00)	Daytime (07:00-22:00)	Nighttime (22:00-07:00)
R1	Dwelling 52nd Street NE	60	50	55	45
R2	Dwelling 84th Street NE (North)	50	40	45	35
R3	Dwelling 84th Street NE (South)	55	45	50	40
R4	136 Redstone Avenue	66	56	61	51

31. dBA Noise identified the major energy-related facilities in the study area as being: the Calgary Energy Centre, ENMAX No. 162S Substation, the Balzac Power Station, AltaLink 391S Substation, the Nexen fresh water booster station (LSD 01-02-26-29 W4M), TransCanada Metering Station East Calgary B, East Calgary B Interconnect Station, the ATCO Odoring East Calgary B, the ATCO Calgary Energy Centre (LSD 12-35-25-29-W4M) and Calgary Energy Centre Backpressure Station (backpressure under construction) and an unidentified high pressure station, northwest of McDonald Lake, among others.<sup>16</sup>

32. The Calgary Energy Centre, the Balzac Power Station, ENMAX No. 162S Substation, AltaLink 391S Substation, the East Calgary B Interconnect Station and the ATCO Calgary Energy Centre and Backpressure Station were considered in calculating the contribution of energy-related industry at the receptor locations in the study.<sup>17</sup>

33. Short-term measurements were conducted at the selected energy-related facilities in order to calculate the sound power levels of these facilities. The noise contribution from the proposed power plant and energy-related industries were then predicted at each of the receptor locations and added to measured sound levels at the receptors.

34. dBA Noise stated that it used the modelling software Predictor Type 7810 to predict the cumulative sound levels at the receptor locations from the project, and from the existing energy-related facilities in the area. dBA Noise also stated that the algorithms used by the model are consistent with international standards, including ISO 9613-2:1996 Acoustics -- Attenuation

<sup>16</sup> Exhibit 21126-X0002, PDF pages 156 and 158.

<sup>17</sup> Exhibit 21126-X0002, PDF page 169.



of sound during propagation outdoors -- Part 2: General method of calculation (ISO 1996 with an accuracy of  $\pm 3$  dB for distances between source and receiver of up to one kilometre.<sup>18</sup>

35. dBA Noise determined that R1 is the closest dwelling to the proposed power plant and that R2 would be the dwelling most impacted by the proposed power plant.<sup>19</sup> dBA Noise determined the daytime and nighttime predicted cumulative sound levels for the receptor locations as follows:<sup>20</sup>

Predicted cumulative sound levels and permissible sound for receptor locations R1 and R2 for the daytime period (07:00- 22:00)						
ID	Description	Predicted Sound Levels (dBA)		Assumed Ambient Sound Level (dBA)	Cumulative Sound Level (dBA)	Permissible Sound Level (dBA)
		Project Only	Other Energy Facilities			
R1	Dwelling 52nd Street NE	38	40	55	55	60
R2	Dwelling 84th Street NE (North)	34	36	45	46	50
Predicted cumulative sound levels and permissible sound levels for receptor locations R1 and R2 for the nighttime period (22:00- 07:00)						
ID	Description	Predicted Sound Levels (dBA)		Assumed Ambient Sound Level (dBA)	Cumulative Sound Level (dBA)	Permissible Sound Level (dBA)
		Project Only	Other Energy Facilities			
R1	Dwelling 52nd Street NE	38	40	45	47	50
R2	Dwelling 84th Street NE (North)	34	36	35	40	40

36. dBA Noise stated that the results indicate that the project only noise levels are below the noise levels caused by the existing energy-related industry during both the daytime and the nighttime period.<sup>21</sup>

<sup>18</sup> Exhibit 21126-X0002, PDF page 171.

<sup>19</sup> Exhibit 21126-X0002, PDF page 115.

<sup>20</sup> Exhibit 21126-X0002, PDF pages 117 and 118.

<sup>21</sup> Exhibit 21126-X0002, PDF page 119.

37. dBA Noise stated that the potential for low frequency noise can be considered low. It submitted that the predicted difference between the combined energy-related facilities noise levels in dBC and dBA is less than 20 dB.<sup>22</sup>

38. dBA Noise concluded that the operation of the power plant is not expected to result in a noticeable change in noise impact to surrounding dwellings. It stated that the predicted noise impact is expected to be fully compliant with the PSL.<sup>23</sup>

#### 4.1.1 Class A2 ambient monitoring adjustment

39. dBA Noise stated that the assumed ambient sound level (AASL) may not be representative of the existing soundscape and conducted ambient sound surveys to measure the “real” ambient sound level, the measured ambient sound level (MASL). These measurements may be used to calculate an adjustment to the basic sound level referred to as the Class A2 ambient monitoring adjustment.<sup>24</sup>

40. The dwellings described above as R1, R2, R3 and R4 were selected for the ambient monitoring study. R1 was selected as the location to set up an ambient monitoring study to represent five area dwellings interspersed with commercial operations that have a similar acoustic environment. The sound level meter was set up at Carmacks Construction at 13930, 52nd St N.E. and not at the dwelling. R2 was selected as the location to set up an ambient monitoring study to represent three area dwellings that have a similar acoustic environment. R3 was selected as another location to set up an ambient monitoring study. R4 was selected as the location to set up an ambient monitoring study to represent multiple dwellings that have a similar acoustic environment.

41. dBA Noise conducted a baseline noise monitoring study at four receptor locations from September 11 to 12, 2015 at receptor locations R2 and R3 and from September 14 to 15, 2015 at receptor locations R1 and R4 to assess whether the AASL, as indicated by Rule 012, accurately represents the actual soundscape at the four dwellings, located within approximately two kilometres of the Calgary Energy Centre.

42. Sound levels were monitored near each of the four receptor locations for at least 24 hours using NTI Audio XL2 Type 1 sound level meters, equipped with a Microtech Gefell outdoor microphone. The microphones were equipped with 175-millimetre ACO Pacific WS 7-80T windscreens. The sound level meters were set up to collect the following parameters in one minute intervals: dBA  $L_{eq}$ , dBC  $L_{eq}$ , one-third octave band  $L_{eq}$  values in dB,  $L_{max}$ , and  $L_{90}$  in dBA. Continuous sound recordings were recorded and downloaded to a computer to identify noise sources during data analysis.

43. dBA Noise stated the sound level meters were calibrated using a Larson Davis Cal-200 Type 1 Calibrator. The calibration level was checked immediately before and after the monitoring period for each receptor location.

44. dBA Noise stated that an Onset weather station equipped with a R.M. Young anemometer was set up at receptor location R2 to represent the weather conditions at each of the

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<sup>22</sup> Exhibit 21126-X0002, PDF pages 119 and 121.

<sup>23</sup> Exhibit 21126-X0002, PDF page 84.

<sup>24</sup> Exhibit 21126-X0002, PDF page 161 and PDF page 99.

four receptor locations in the study. The weather station was set at a height of two metres to record in five-minute intervals wind speed and direction, temperature and relative humidity, atmospheric pressure and rainfall. The collected data was used in isolation analysis to extract non-representative samples and identify the valid data.

45. dBA Noise identified the four receptor locations in the NIA where ambient sound level measurements were conducted in its application for a Class A2 ambient monitoring adjustment.

46. dBA Noise stated it calculated the Class A2 ambient monitoring adjustment based on the results of the noise studies, and was calculated following the procedure outlined in Section 2.1 under items 7 and 11 and described in Section 2.2.2 of Rule 012, but assuming the daytime adjustment was already included in the daytime MASL. dBA Noise presented results that indicated the Class A2 adjusted PSL is from -3 to 10 dB higher than the unadjusted PSL during daytime hours and from -2 to 10 dB higher during nighttime hours.

47. The results of the ambient sound level survey and determination of the Class A2 ambient monitoring adjustment are presented in the following table.

The following summary table was adapted from Table 35: A2 adjusted PSL Calculation.

Receptor	Assumed Ambient Sound Level	Basic Sound Level		MASL without energy-related Facilities		Basic Sound Level minus Measured Ambient Sound Level		A2 Adjustment		PSL with A2 adjustment		PSL without A2 adjustment			
		Day	Night	Day	Night	Day	Night	Day	Night	Day	Night	Day	Night		
R1	Dwelling 52nd Street NE	55	45	60	50	54.6	51.3	5.4	-1.3	0	6	60	56	60	50
R2	Dwelling 84th Street NE (North)	45	35	50	40	50.9	44.7	-0.9	-4.7	6	10	56	50	50	40
R3	Dwelling 84th Street NE (South)	50	40	55	45	60.2	57.4	-5.2	-12.4	10	10	65	55	55	45
R4	136 Redstone Avenue	61	51	66	56	58.3	48.7	7.7	7.3	-3	-2	63	54	66	56

48. dBA Noise concluded that "[t]he current soundscape is dominated by noise from vehicular traffic, aircraft flyovers and, more locally, by contributions from construction and non-

energy-related industry”.<sup>25</sup> dBA Noise submitted that the noise contribution from energy-related facilities is negligible and that it could not be heard near the dwellings. dBA Noise stated that the MASL already frequently exceeds the values for the non-adjusted PSL and that this situation will continue if an A2 adjustment is not applied to the PSL to correct for the encountered difference between the MASL and the AASL.<sup>26</sup>

49. In response to an information request, CEC2 clarified that it is only applying for a Class A2 ambient monitoring adjustment at the closest and most impacted dwellings, represented by receptor locations R1 and R2 respectively.<sup>27</sup>

## 5 Findings

50. The Commission is satisfied that the application meets the information requirements stipulated in Rule 007.

51. The Commission observes that CEC2 notified and consulted with persons within a 2,000 metre radius of the proposed power plant. After reviewing the information submitted, the Commission finds that CEC2 conducted its participant involvement program in accordance with Rule 007.

52. The Commission is satisfied that the potential environmental impacts at the proposed site will be limited because the proposed power plant will be constructed at the site of the existing Calgary Energy Centre. Further, CEC2 will implement the environmental mitigation measures set out in its application and information responses. The Commission recognizes that CEC2 will work with AEP to mitigate any impacts to wetlands and to provide compensation for any wetlands, if it is unable to avoid them. The Commission accepts the CEC2 submissions that the air emissions from the proposed power plant will comply with the *Alberta Ambient Air Quality Objectives*.

53. The Commission finds that the noise impact assessment submitted by CEC2 meets the requirements of Rule 012 and accepts the CEC2 submissions that the power plant will not exceed the permissible sound levels even without a Class A2 ambient monitoring adjustment.

54. Further, the Commission is satisfied that the potential for low frequency noise is not a concern since the predicted difference between the combined energy-related facilities noise level dBC minus dBA is less than 20 dB.

55. For the above reasons, the Commission is satisfied that there are no outstanding technical or environmental concerns associated with the project, and that no party demonstrated that they would be directly and adversely affected. Accordingly, the Commission considers the project to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*.

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<sup>25</sup> Exhibit 21126-X0002, PDF page 214.

<sup>26</sup> Exhibit 21126-X0002, PDF page 214.

<sup>27</sup> Exhibit 21126-X0014, EEC Responses to AUC IRs, AUC-EEC-2016FEB08-019, PDF page 55.

## 5.1 Class A2 ambient monitoring adjustment

56. Based on dBA Noise's description and monitoring site photographs, and the placement of the microphones, the Commission finds that the monitoring locations satisfy the requirements of Section 4.1(2) of Rule 012.

57. The Commission further finds that the sound level meter and calibrator used in the noise study meet the requirements of Rule 012 and the sound level meter was field-calibrated both before and after the measurement period, in accordance with the rule.

58. The Commission considers that the short-term measurements at the existing energy-related facilities and the calculation of the sound power levels followed acceptable acoustical practices.

59. With respect to the application for a Class A2 adjustment for receptor locations R1 and R2, the Commission considers that the study area surrounding the project is in a stage of commercial and residential development, has several existing energy-related facilities and non-regulated facilities, and that the assumed ambient sound level may not represent the existing ambient sound levels. However, the Commission is of the view that the sound environment is expected to change during this period of development and construction and that it has not stabilized or normalized to the point where the residences can be considered to have similar acoustic environments for purposes of the Class A2 ambient monitoring adjustment for receptor locations R1 and R2.<sup>28</sup> Further, the measurements in question were conducted during a time when development and construction activities were underway. Additionally, the Commission notes that the ambient monitoring conducted at receptor location R1 was conducted at a commercial establishment (Carmacks Construction), which may not be representative of the five area dwellings.

60. The Commission notes that the proposed power plant is not predicted to result in a noticeable change in noise impact to surrounding dwellings and is predicted to be fully compliant with the PSL without the Class A2 ambient monitoring adjustment. Further, the Commission considers that the purpose of Rule 012 is to be protective of the public and that CEC2 has not satisfied the Commission that a Class A2 adjusted nighttime permissible sound level of 56 dBA  $L_{eq}$  and 50 dBA  $L_{eq}$  at receptor locations R1 and R2 respectively, is warranted in these circumstances.

61. For the above reasons, the Commission denies the applied for Class A2 ambient monitoring adjustment.

## 6 Ministerial authorization under Section 95 of the Electric Utilities Act

62. As discussed in paragraph 15, pursuant to Section 95 of the *Electric Utilities Act*, CEC2 requires an authorization from the Minister of Energy to hold an interest in a generating unit. Before issuing an authorization the Minister must obtain an independent assessment which concludes that the "arrangement under which the interest is held is structured in a manner that prevents any tax advantage, subsidy or financing advantage or any other direct or indirect benefit as a result of association with the municipality or subsidiary."

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<sup>28</sup> Exhibit 21126-X0014, 2016-03-11-EEC Responses to AUC IRs, AUC-EEC-2016FEB08-017, PDF pages 46-52.

63. Rule 007 describes information that must be included in an application for a power plant. Section 3.2, item PP41 of that rule requires municipal applicants to provide “documentation confirming compliance” with Section 95 of the *Electric Utilities Act* in their power plant applications.

64. On July 5, 2010, the Court of Appeal ruled that the Commission lacks jurisdiction over level playing field issues other than to ensure that the Minister’s authorization has been issued under Section 95 of the *Electric Utilities Act*. The Court of Appeal found as follows:

...this interpretation does not undercut the prescriptive language of section 3(1) of the Hydro and Electric Energy Act, which requires the Commission to “have regard for the purposes of the Electric Utilities Act” when considering an application for the construction of a generating unit. The Commission can do so by ensuring there has been compliance with section 95, which is accomplished by Rule 007. This interpretation does not, as contended by Maxim, lead to an absurd result. It does not detract from the Commission’s overall responsibility to determine the public interest and the other purposes set out in the Electric Utilities Act and the Hydro and Electric Energy Act. This can be achieved after the Minister has examined level playing field issues. The Commission must consider all other aspects of the public interest...

65. For the reasons stated herein, the Commission is of the view that approval of the Calgary Energy Centre Expansion is in the public interest, having regard to all its attributes except for the Section 95 level playing field issue. With respect to this one outstanding issue, the Court of Appeal has made it clear that the Commission can fulfill its mandate to have regard for the purposes of the *Electric Utilities Act* by ensuring that CEC2 has complied with Section 95 of that act. In the Commission’s view, CEC2 must provide the Commission with evidence that the Minister has authorized it to hold an interest in the Calgary Energy Centre Expansion in order to demonstrate compliance with that section. This conclusion is consistent with the past practices of the Alberta Energy and Utilities Board and the Commission, the ruling from this application on standing, the Court of Appeal’s decision, and the views of CEC2 itself.

66. As of the date of this decision, CEC2 has not provided the Commission with the Minister’s authorization. Absent this missing evidence, the Commission is not prepared to issue an approval to construct and operate the power plant. Accordingly, the Commission directs CEC2 to file the Minister’s authorization pursuant to Section 95 of the *Electric Utilities Act* with the Commission following its receipt of that document. The Commission will then issue an approval for the project.

## 7 Decision

67. Pursuant to Section 11 of the *Hydro and Electric Energy Act*, the Commission approves the application. As stated in Section 6, the Commission is not prepared to issue an approval for the Calgary Energy Centre Expansion until such time as CEC2 demonstrates compliance with Section 95 of the *Electric Utilities Act* by filing with the Commission the Minister's authorization pursuant to Section 95. Should the Commission receive that authorization, it is prepared to issue an approval to CEC2 to construct and operate the Calgary Energy Centre Expansion, pursuant to sections 11 and 19 of the *Hydro and Electric Energy Act*.

68. Based on the above, the Commission denies the application for a Class A2 ambient monitoring adjustment and accepts the noise impact assessment without the Class A2 adjustment for the proposed power plant.

Dated on June 30, 2016.

### Alberta Utilities Commission

*(original signed by)*

Neil Jamieson  
Commission Member