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OUR FILE No. 125,635/KEB

YOUR FILE No.

July 6, 2010

**Via Fax: 780-422-0154**

**Via email: [doug.larder@auc.ab.ca](mailto:doug.larder@auc.ab.ca)**

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Regulatory Approval Centre  
9th Floor, 9820 - 106 Street  
Edmonton, AB T5K 2J6

Alberta Utilities Commission  
4<sup>th</sup> Floor, 425 – 1<sup>st</sup> Street SW  
Calgary, AB T2P 3L8

**Attention: Director of Central Region**

**Attention: Doug Larder, General Counsel**

Dear Sirs:

**Re: AENV Application No. 016-773  
AUC Application No. 1605976**

**Capital Power Generation Services Inc. application to remove requirements to offset  
Genesee 3's greenhouse gas emissions to a level equivalent to those of a Natural Gas  
Combined Cycle plant**

Please accept this letter as a Statement of Concern regarding application No. 016-773 and Notice of Objection to Application No. 1606976 on behalf of the Clean Energy Coalition and the Mewassin Community Council (collectively referred to as "CEC" in this letter).

The Clean Energy Coalition is comprised of landowners living near the Genesee Power Plant and environmental groups. The Mewassin Community Council was named the Mewassin Community Action Group as the time of 2001 hearing. Its members are landowners in the community of Mewassin. CEC was a directly affected intervener and active participant in the hearing of the application for approval of the Genesee 3 expansion (GP3) which led to AUC Approval No. U2002-158 and AENV Approval No. 773-02-01.

The CEC objects to the amendments that Capital Power Generation Services Inc. is seeking to its AENV Approval and its *Hydro and Electric Energy Act* (AUC) Approval. These amendments, if granted, would result in a significant increase in the greenhouse gas emissions (GHGs) from GP3.

## Background

In 2001 Capital Power's predecessor, EPCOR, applied to the Alberta Energy and Utilities Board (now the AUC) and Alberta Environment (AENV) for approval to construct and operate a 490 Megawatt expansion, (known as GP3) at its existing coal-fired Genesee Power Plant. In addition to various energy companies, the provincial and federal government, and the Capital Health Authority, several landowner groups and the Paul First Nation intervened and participated in the hearing.

EPCOR represented to the AUC, and the public at the hearing, that it would offset its greenhouse gas emissions such that the net emissions would match that of a more efficient natural gas combined cycle plant, which would result in a 53 percent net reduction of GHGs. It also supported a third party audit process to verify the offsets (EUB Decision 2001-111, p. 13).

EPCOR's commitment to the AUC for GP3 was not sufficient to meet its corporate commitment to reduce GHGs at the time. In 2000, it had publicly announced it would reduce its GHG total (mass not intensity) emissions by 6% below its 1990 levels (EPCOR 2000, EPCOR Voluntary Action Plan 1999, Updated November 8, 2000, p.1)

CEC objected to the expansion of the Power Plant for several reasons, including the amount of greenhouse gas emissions (GHGs) that would be emitted. CEC took into account EPCOR's offer to offset greenhouse gas emission to the equivalent of a natural gas combined cycle plant but submitted to the Board that GP3's GHG emissions should be offset entirely.

Alberta Environment strongly supported EPCOR's commitment to reduce GHGs. According to EUB Decision 2001-111:

AENV reported that it took Greenhouse gas reduction commitments very seriously. The use of voluntary emission offsets was supported, and AENV would require EPCOR to report its greenhouse gas emission annually. It also indicated that the subject of greenhouse gas emission objectives would be discussed with stakeholders as part of the consideration of post-2005 standards for coal fired power plants. (EUB Decision 2001-111 pg. 15)

The Board agreed with EPCOR's approach to GHG emissions and wisely decided to make EPCOR accountable. The Board made the reduction in GHGs a term and condition of its approval of GP3 and this condition was accepted by the Minister. The Board's decision in that regard states:

The Board notes that this application represents a significant source of greenhouse gases. The Board appreciates the position taken by AENV and the guidance it provides regarding the management of greenhouse gas emissions in the province. The EUB also encourages actions taken to reduce greenhouse gas emissions and supports the use of emission offsets. In this application, the Board notes that EPCOR has made significant efforts to offset greenhouse gas emissions. In the event this application were approved, the Board would also direct EPCOR to fulfill its voluntary commitment of offsetting greenhouse gas emissions, such that they are equivalent to those from a natural gas combined cycle plant. The Board also directs those offsets to be updated to correspond to any future changes in emissions standards for a coal-fired power plants or a corresponding gas fired power plant, as was the basis for the offsets. The Board notes AENV's intent to consider the introduction of emission objectives related to greenhouse gases as part of its post 2005 emission standards. Given the potential for disagreement on emission offset accounting, the Board recommends EPCOR and AENV use a third party audit process to verify the offsets. (EUB Decision 2001-111, p. 19)

Approval No. U2002-158 (dated April 24, 2002) states:

10) The Operator shall fulfill its voluntary commitment of offsetting greenhouse gas emissions, such that they are equivalent to those from a natural gas combined cycle plant. The Operator shall update the greenhouse gas emissions to correspond to any future changes in emission standards for coal-fired power plants or a corresponding gas-fired power plant.

This GHG requirement for GP3 is not unique. In 2002 the Board made its approval of TransAlta's application for expansion of the Keephills Coal-fired Power Plant (KH3) conditional upon the following term:

6) TransAlta has steadfastly committed to offset greenhouse gas emissions so that carbon dioxide emissions from Keephills 3 and 4 will be equivalent to emissions from a combined-cycle natural gas facility of the same capacity. The Board directs TransAlta to fulfill its commitment in that regard. The Board further directs these offsets to be adjusted so they correspond to any reasonable foreseeable future changes in emissions standards for a coal-fired power plants or a corresponding gas-fired power plant. (EUB Decision 2002-014 p. 69)

Since KH3 was approved, no further coal-fired power plants have been approved in Alberta.

Coal-fired power plants are the largest source of greenhouse gas emissions in Alberta. In 2008, the electricity sector, primarily made up of coal-fired power plants, contributed 44.1% percent of Alberta's total GHG emissions from large industrial facilities (those with emissions greater than

1000 tonnes). GP3 emits about 40% of the 8.4 Mt of GHGs produced by the Genesee power plant. (See Government of Alberta, "*Alberta Environment Report on 2008 Greenhouse Gas Emissions*")

On June 23, 2010, the Federal Minister of Environment announced that it is moving forward with new regulations to reduce greenhouse gas emissions from coal-fired power plants by the imposition of new standards that will "be based on parity with the emissions performance of high efficiency natural gas generation". Regulations will be published in the Gazette in 2011. (Canada: "*Backgrounder: Canada's Electricity Story*" and News Release: "*Government of Canada Regulates Emissions from Electricity Sector*", both dated June 23, 2010).

### **Reasons for CEC's objection and concern**

CEC objects to Capital Power's proposed amendments to its AENV approval and to its AUC *Hydro and Electric Energy Act* (HEEA) approval for the following reasons.

1. The GHG commitment was made voluntarily with full knowledge of the costs involved and in the face of regulatory uncertainty. Capital Power made this commitment in the context of securing approval for its expansion. The AUC and AENV relied upon this commitment and issued the requested approvals. Corporations who make public commitments to induce approvals ought to be held to those commitments. A change to this fundamental environmental condition of GP3's approvals ought not to be made in isolation; if the AUC is considering this change, we request the entire approval be reviewed and the environmental impacts of GP3 be reconsidered with input from the interveners.
2. There have been no substantial changes since the 2001 application for GP3. Regulatory uncertainty remains. The federal government has announced new regulations specifically targeted to coal-fired power plants and reducing their GHG in parity with natural gas fired electricity plants, which are expected in 2011. These new regulations are intended to apply to coal fired plants that come on line after 2015 so it appears GP3 requirements will be consistent with future coal fired power plants, as well as TransAlta's KH3.
3. Capital Power cites unfair competition as a result of its alleged additional costs for complying with its commitments. Its arguments are primarily economic. The economics of GP3 are not considerations within the AUC legal jurisdiction. Even if the AUC had jurisdiction, we note that Capital Power does not provide the economic analysis required to justify its stance. At the time that EPCOR made its commitment, it knew it was competing in an unregulated market with electricity generated by natural gas-fired power plants and hydro electricity. It knew the costs of compliance. These facts have not changed.

Capital Power specifically asks the AUC to consider "under the current circumstances, Genesee 3 will not be competing on a level playing field because it faces GHG compliance costs that are two to three times higher than its coal generation competitors."

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The substantial economic disadvantage of competing under such a costs distorting structure would not be overcome by the higher efficiency of the unit . . .”.

Capital Power’s Approval was issued pursuant to HEEA and specifically, section 11:

11. No person shall construct or operate a power plant unless the Commission, by order, has approved the construction and operation of the power plant.

Section 3 of HEEA states:

3(1) Where the Commission is considering:

(a) an application under section 11 for the construction or operation of a generating unit as defined in the *Electric Utilities Act*, or

(b) an application under section 18 for connection of a generating unit as defined in the *Electric Utilities Act*,

the Commission, for the purposes of the consideration required to be given by the Commission under section 17 of the Alberta Utilities Commission Act and in order to determine whether the purposes of this Act will be achieved,

(c) shall not have regard to whether the generating unit 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 facility in meeting the requirements for electric energy in Alberta or outside Alberta, and

(d) must have regard for the purposes of the Electric Utilities Act.

(2) Subsection (1)(c) applies to the consideration by the Commission of an application made after January 1, 1996. (*emphasis added*).

Accordingly, the Commission has no jurisdiction to take into account economic factors.

4. As the AUC has no jurisdiction to grant Capital Power’s request pursuant to HEEA, we submit the Application to amend the AENV Approval is unnecessary as the condition remains in the HEEA Approval, it must be complied with regardless of whether the same term appears in the AENV Approval. In addition, the AENV approval addresses environmental conditions, not economic conditions. Capital Power’s application does not provide any environmental reason or technical/operational reason for the requested amendment.

5. Capital Power's claim that it is disadvantaged by its commitment to reduce GHG because it creates an unequal playing field is without merit for other reasons. The playing field is not tilted against GP3. Coal is a cheaper fuel stock than natural gas. Capital Power is not on a 'level playing field' in terms of its input costs nor the amount of GHG it emits. With the benefits of using this cheaper but dirtier fuel stock come burdens, which may be higher costs to reduce the higher greenhouse gas emission created by coal combustion. All of these factors are relevant to considering the level of the playing field and equity.

Capital Power says large polluters should be treated equitably. We submit it is equitable that the largest GHG polluters take the steps necessary to achieve greater reductions. In any business, the more waste that is generated necessarily requires more waste management. The moral obligation to clean up one's waste is legally enshrined in the Alberta's law. The *Alberta Environmental Protection and Enhancement Act*, s. 2, states the purpose of this law is to support and promote the protection, enhancement and wise use of the environment while recognizing "the responsibility of polluters to pay for the costs of their actions" (s.2(j)).

The removal of Capital Power's GHG reduction requirements will not create a level playing field with all of Alberta's large industrial facilities, as alleged by Capital Power. Firstly, the Keephills Power Plant has the same requirements for KH3. Alberta decided to "grandfather" older plants, effectively creating two standards: one for older polluters and one for newer polluters. The only new industrial emitters in the coal-fired sector are GP3 and KH3, both of whom are subject to the same GHG requirements.

Second, GP3's effective GHG intensity is .418 t/MWh, taking into account its offset requirements<sup>1</sup>. In comparison, a new natural gas power plant will have an emissions intensity of about .365 t/MWh, and would be required to reduce this by 2% in its 4<sup>th</sup> year of operation and 12% by its ninth year of operation - with an eventual intensity of .32 t/MWh, pursuant to the *SGER*. Thus the 'playing field' favours GP3 (and Capital Power's other units). If Alberta Environment treats the *SGER* intensity reduction requirements as additional to the offset requirements, then the effective GHG emission intensity of GP3 would be .37 t/MWh; which approximates the standard for new gas fired power plants. And this reduction only applies to one of Capital Power's units so the emission intensity of the entire Genesee plant remains much worse than other non-coal plants. (see CASA, "*Report of the Electricity Project Team, Greenhouse Gas Allocation Subgroup*").

Third, the announced new federal regulations will impose similar offset requirements on new coal fired plants in Canada.

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<sup>1</sup> Capital Power approval requirements are based on a calculation of the emission intensity of a combined cycle natural gas plant as including the GHG emissions at the burner tip plus all associated upstream production emissions for the fuel.

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6. The *Specified Gas Emitters Regulation* does not require the amendments nor justify them.
  - a. This regulation sets minimum requirements for emission intensity reductions, not maximum GHG reductions. It contemplates additional emission reductions can be achieved by large industrial emitters.
  - b. Capital Power cites the fact that its AUC and AENV Approvals permit different types of offsets than the SGER. Capital Power is not compelled by the terms of its regulatory approvals to use certain offsets – it only requires that offsets be verifiable by independent audit.
  - c. In the AUC decision, cited above, the Board said in relation to its GHG offset requirement: "The Board also directs *those offsets* to be updated to correspond to any future changes in emissions standards for a coal-fired power plant or a corresponding gas fired power plant, as was the basis for the offsets. . . ." The Board is clearly contemplating that the "offsets" described earlier in the paragraph will continue and perhaps the amount of them be increased. The offsets are tied not only to coal-fired power plants but also to gas-fired power plants. GP3's GHG emissions are currently greater than new combined cycle natural gas power plants but could be reduced by offsets to match them. Considering that the power pool price is set by combined cycle natural gas power plants most of the time, it is reasonable to compare coal fired to gas fired plants.
7. The GHG requirements for GP3 are also consistent with Alberta climate change policy. Alberta's 2008 *Climate Change Strategy* specifically acknowledged that Alberta must "achieve real reduction in the amount of GHG emissions" from the province and states that "real reductions for Alberta in the short, medium and long term are necessary and reflect the recent advice from the intergovernmental panel on climate change" (Alberta's 2008 *Climate Change Strategy: Responsibility/Leadership/Action*). In contrast, if Capital Power's amendments are granted, GP3 will increase its GHG emissions, contrary to government policy and good environmental policy.
8. Capital Power cites the provincial Climate Change Strategy "principles" in support of its Application, primarily "fair treatment" *vis a vis* its level playing field argument. It states that GP3 is being treated uniquely. This is not the case (see Keephills Approval). Equitable treatment would require that the inordinately high amount of greenhouse gases emitted by Genesee 3 be reduced to a level comparable to other electrical producers. It has a shared responsibility for making "real reductions" in Alberta's GHG emission. It is 'equitable' that the responsibility for reductions be greater for the largest emitters of greenhouse gases. Finally, Alberta's Strategy also envisions working collaboratively. This is exactly what Capital Power (EPCOR) did with its voluntary commitment.

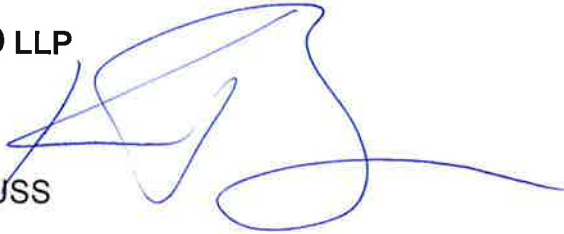
For the reasons stated above, CEC requests both of Capital Power's applications be denied.

Yours truly,

**ACKROYD LLP**

Per:

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