



## **City of Grande Prairie**

**Decision on Application for Review and Variance  
of Decision 27276-D02-2022**

**City of Grande Prairie  
Eastlink Centre Power Plant**

**January 9, 2023**

**Alberta Utilities Commission**

Decision 27841-D01-2023

City of Grande Prairie

Decision on Application for Review and Variance  
of Decision 27276-D02-2022

City of Grande Prairie

Eastlink Centre Power Plant

Proceeding 27841

Application 27841-A001

January 9, 2023

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## **1 Decision**

1. The Alberta Utilities Commission grants the City of Grande Prairie’s application to review and vary Commission Decision 27276-D02-2022.<sup>1</sup>

## **2 Background**

2. The Commission panel considering the review application is the same panel which made the original decision in Proceeding 27276.<sup>2</sup>

3. Decision 27276-D02-2022 (the Decision) related to an application by the City of Grande Prairie (the City) to operate a power plant designated as the Eastlink Centre Power Plant. In the Decision, we approved the City’s application conditional upon it implementing additional noise mitigation at the power plant to reduce sound levels at the most impacted receptor by a minimum of five A-weighted decibels (dBA) and eliminate the high-pitched noise from the power plant. The approval included a number of conditions including the following conditions that are material to the review application:

- Submit a summary of proposed mitigations and an implementation timeline within 90 days of this decision that would reduce the current noise levels, as indicated in Table 4 of the noise impact assessment, by at least five dBA at the most affected receptor, R14. For further clarity, the nighttime noise level at Receptor R14 must be reduced from 50.6 dBA to 45.6 dBA or less. The mitigations must also eliminate the high-pitched noise.
- Fully implement noise mitigation measures to reduce the current noise levels by at least five dBA at the most affected receptor, R14, by May 1, 2023.
- Complete a post-mitigation sound survey to confirm that the noise mitigation measures reduce the noise level by at least five dBA at the most affected receptor, R14. The results of the sound survey must be submitted to the Commission by June 1, 2023.

4. The City filed its application to review and vary the Decision pursuant to Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions*. The Commission designated the review application as Proceeding 27841. The City identified

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<sup>1</sup> Decision 27276-D02-2022: City of Grande Prairie, Eastlink Centre Power Plant, Proceeding 27276, November 7, 2022.

<sup>2</sup> Proceeding 27276, City of Grande Prairie Eastlink Centre Power Plant.

concerns regarding the difficulty of meeting the conditions imposed in the Decision. The City explained that it required more time to complete the timing conditions because of procurement obligations and argued that we erred in imposing a condition to eliminate the high pitched noise.

5. The Commission issued a filing announcement for the review application and established a deadline for statements of intent to participate and any comments on the City's application for review and variance. Bill and Patricia Broderick and Roger Durnford submitted comments on the City's review application. These individuals objected to the requested extension to implement the noise mitigation and stated that they would continue to be subject to noise from the power plant, including through another summer. They suggested that the power plant be shut down, either entirely or intermittently, or operated at a reduced capacity until the noise mitigation is completed.

6. The City rejected the suggestion that the power plant be shut down or operated at a reduced capacity until the noise mitigation is completed. It argued that such a requirement would be unjustly harsh, erode the public interest benefits associated with the project and have financial and operational impacts. The City also advised that it can commit to completing construction of a noise barrier by June 30, 2023.

7. We consider the record for this proceeding to have closed on December 23, 2022, the date the City responded to intervener comments in this proceeding.

8. We have also reviewed the entire record in coming to this decision; lack of reference to a matter addressed in a party's submission does not mean that it was not considered.

### **3 The Commission's review process**

9. The Commission's authority to review its own decisions is discretionary and is found in Section 10 of the *Alberta Utilities Commission Act*. Rule 016 sets out the process for considering an application for review.

10. Usually, the review process has two stages. In the first stage, a review panel decides if there are grounds to review the original decision (the preliminary question). If the review panel decides to review the decision, it moves to the second stage where it decides whether to confirm, vary, or rescind the original decision (the variance question). In this proceeding, we heard the preliminary question and the variance question in a single proceeding pursuant to Section 6(2) of Rule 016.

11. We understand the City has grounded its review application on sections 5(1)(a) and 5(1)(b) of Rule 016. It argues that the Commission made a material error in imposing the condition that the City eliminate the high-pitched noise. The City also submitted that it will require more time to fulfill the conditions to implement further noise mitigation due to procurement obligations applicable to it as a procuring entity under international trade agreements. It considered information related to its procurement obligations to be previously unavailable facts material to the Decision which existed before the Decision was issued but not placed in evidence in the original proceeding because the City had no way of knowing it would be relevant.

## 4 Findings

### 4.1 Decision on the preliminary question

12. The City has demonstrated that we erred by imposing the condition that the City eliminate the high-pitched noise from the Eastlink Centre Power Plant. This error is material to the Decision and exists on a balance of probabilities. We are satisfied that the evidence before us in the original proceeding was that the high-pitched noise can be alleviated or attenuated, rather than eliminated as specified in the condition. This distinction is evident through the testimony given by Steven Bilawchuk, the City's noise consultant, during the hearing.<sup>3,4,5</sup> Accordingly, the City's request for a review on this ground is allowed.

13. Regarding the timelines for completing further noise mitigation, we accept that information related to the City's procurement obligations are previously unavailable facts that existed before the Decision was issued but not placed into evidence because the City's position at the time of the hearing was that no additional mitigation was required and therefore it did not know this information would be relevant. While we consider this to substantially meet the requirements of Section 5(1)(b) for a review, we are also prepared to review the timeline associated with the conditions on the basis of Section 2(1) of Rule 016 which permits the Commission to "review a decision, in whole or in part, on its own motion at any time for any reason." The procurement obligations the City is bound by preclude it from fulfilling the timing conditions we imposed within the specified timeframe. A review is granted on this basis.

### 4.2 Decision on the variance question

14. Having decided that the first stage of the review and variance application is met, we have proceeded to the second stage of deciding whether to confirm, vary or rescind the conditions of the Decision.

15. We have decided to grant the City's request to vary the requirement to implement mitigation measures that will eliminate the high-pitched noise from the power plant to a requirement to implement mitigation measures that will alleviate or attenuate the high-pitched noise. This change is consistent with the evidence before us in the original proceeding, including evidence from the City's noise consultant, S. Bilawchuk. We find that varying this condition as proposed will address the noise-related impacts facing area residents as a result of the power plant's operation, including the high-pitched noise, and therefore uphold the public interest. This is supported by the City's decision to build a five-metre high wall and install sound absorption on the rear wall of the Eastlink Centre, which is predicted to reduce noise levels by approximately 12 dBA at the nearest receptor (R14) and predicated on S. Bilawchuk's evidence that "the most effective and reasonable means of noise mitigation is to construct a noise barrier surrounding the entire Project site."<sup>6</sup>

<sup>3</sup> Proceeding 27276, Transcript Vol 1, PDF pages 34-35.

<sup>4</sup> Proceeding 27276, Transcript Vol 1, PDF page 73.

<sup>5</sup> Proceeding 27276, Transcript Vol 1, PDF pages 82-83.

<sup>6</sup> Exhibit 27276-X0038, Grande Prairie, Response to Information Request City-AUC-2022JUL04-001(b), PDF page 16.

16. We have also decided to grant the City’s request to vary the timelines for completing further noise mitigation. The completion date was set for May 1, 2023, in the Decision. However, the City is a “procuring entity” under various international trade agreements and as a result, it is subject to certain obligations, including the requirement to post a project on the province’s designated tendering system when it contemplates a procurement at or above a certain threshold. Given that the estimated cost to build a noise barrier exceeds this threshold,<sup>7</sup> the project must be posted on the province’s tendering system for a minimum of three weeks; however, before being able to tender the bid, the City must retain an engineering firm to design the wall.

17. In its review application, the City had initially sought an extension from May 1, 2023, to July 30, 2023. We accept that as a result of these procurement related obligations, the timelines imposed in the Decision for completing further noise mitigation are unrealistic. While residents living in close proximity to the power plant will continue to be subject to noise from the power plant until mitigation is completed, the City has advised that the work will be finished by June 30, 2023, just over one week into summer. We are satisfied that this strikes an appropriate balance between the realities facing the City and the interveners’ need for the timely implementation of additional noise mitigation. Accordingly, placing additional restrictions on the power plant’s operation until the City fully implements additional noise mitigation is unwarranted, particularly in light of the associated financial and operational impacts which would ultimately detract from the public interest benefits of the project.

## 5 Decision

18. We hereby vary the Decision by deleting the bulleted list in paragraph 53 and replacing it with the following:

- The City of Grande Prairie must submit a summary of proposed mitigations and an implementation timeline by February 21, 2023, that would reduce the current noise levels, as calculated in Table 4 of the noise impact assessment,<sup>8</sup> by at least five dBA at the most affected receptor, R14. For further clarity, the nighttime noise level at Receptor R14 must be reduced from 50.6 dBA to 45.6 dBA or less. The mitigation must also alleviate the high-pitched noise.
- The City of Grande Prairie must fully implement noise mitigation measures to reduce the current noise levels by at least five dBA at the most affected receptor, R14, by June 30, 2023.
- The City of Grande Prairie must complete a post-mitigation sound survey to confirm that the noise mitigation measures have reduced the noise level by at least five dBA at the most affected receptor, R14. The results of the sound survey, including the impact that

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<sup>7</sup> While the City has since advised that it plans to construct a five-meter high noise barrier and install sound absorption on the rear wall of the Eastlink Centre, in its application it estimated the cost to build a four-meter high wall at \$420,000.

<sup>8</sup> Exhibit 27276-X0002, Grande Prairie, Environmental Noise Impact Assessment, PDF page 17.

mitigation efforts have on the high pitched noise, must be submitted to the Commission by October 9, 2023.

19. Prior references in the Decision to the implementation of additional sound mitigation and elimination of high-pitched noise shall be superseded by the revised conditions set out in the paragraph above.

20. Conditions three to five of Approval 27276-D03-2022 are also replaced with the revised conditions set out above.

Dated on January 9, 2023.

**Alberta Utilities Commission**

*(original signed by)*

Douglas A. Larder, KC  
Vice-Chair

*(original signed by)*

Vincent Kostas  
Acting Commission Member