



Mojek Resources Inc.

Gage Bitcoin Mine Power Plant

March 7, 2023

Alberta Utilities Commission
Decision 27527-D01-2023
Mojek Resources Inc.
Gage Bitcoin Mine Power Plant
Proceeding 27527
Application 27527-A001

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1 Decision summary

1. In this decision, the Alberta Utilities Commission denies an application from Mojek Resources Inc. to construct and operate a power plant designated as the Gage Bitcoin Mine Power Plant. Mojek’s application does not meet the participant involvement program requirements of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* and Mojek has not established that the proposed power plant is eligible for the Section 2(1)(b) exemption available under the *Electric Utilities Act*.

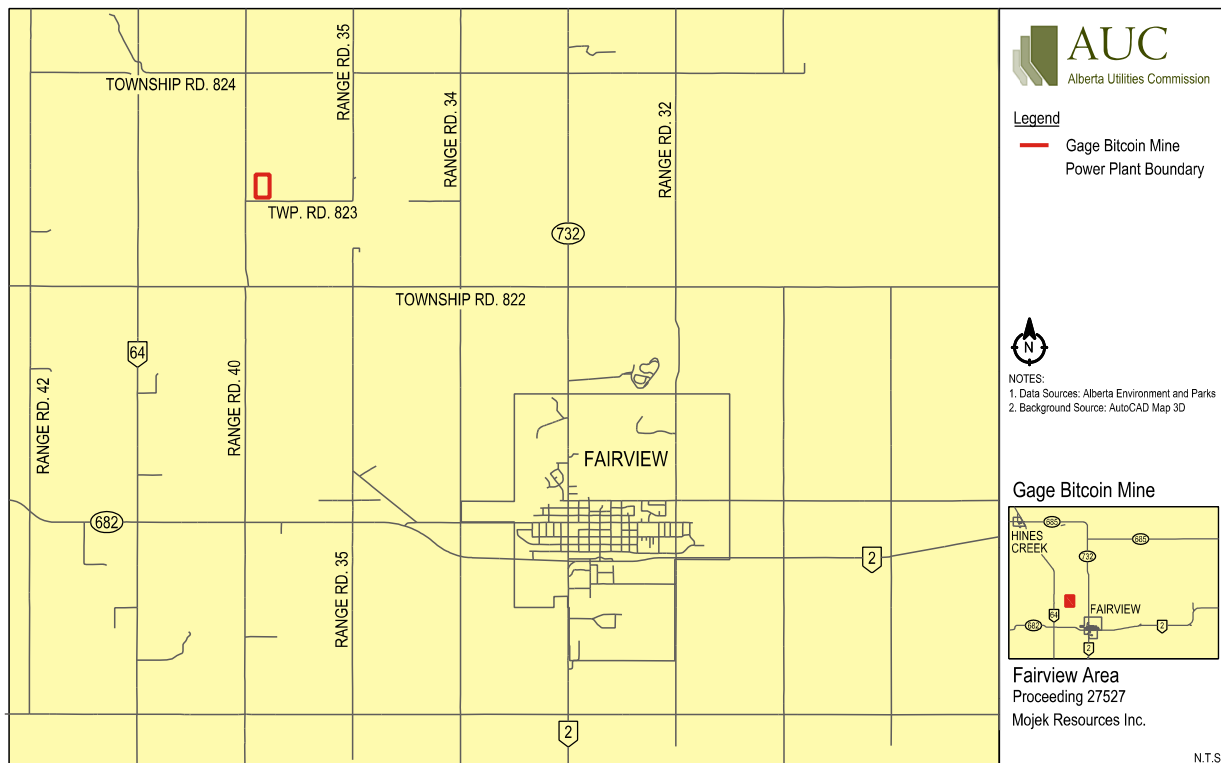
2 Introduction

2.1 Application

2. Mojek filed Application 27527-A001 with the Commission on July 19, 2022, for approval to construct and operate a 96-megawatt (MW) natural gas-fired power plant, designated as the Gage Bitcoin Mine Power Plant (the power plant).

3. The power plant would be located within the existing Gage battery site, in Legal Subdivision 13 of Section 18, Township 82, Range 3, west of the Sixth Meridian, in the Municipal District of Fairview No. 136 (Municipality). A map of the project area has been included below for reference (Figure 1).

Figure 1. Proposed Gage Bitcoin Mine Power Plant



4. The power plant would consist of 18 5.7-MW gas turbine generators, constructed over three phases and provide power to a bitcoin mining operation. Phases 1 and 2 would each consist of six generators to serve 24 bitcoin mining containers. Phase 3 would consist of six generators to serve 16 bitcoin mining containers. The total generating capability of the generators would be capped at 96 MW.

5. The generators would be fuelled by sweet sales gas produced at the Gage battery facility¹ or by gas provided by a third party.² No off-site power connections would be required.

6. Mojek submitted that the power plant would not cause additional land disturbance because the generators and bitcoin mining containers would be located within the fenceline of the existing Gage battery facility.

7. Mojek outlined that the power plant would be commissioned and in-service in Q2 of 2023 and remain operational until 2028.³ Mojek advised that it had a security deposit in a trust account with the Alberta Energy Regulator to address decommission and reclamation requirements of the project lands.⁴

¹ Exhibit 27527-X0001, Thermal Power Plant Application, PDF page 4.

² Exhibit 27527-X0026, Mojek Response to information request round 2, PDF page 3.

³ Transcript, Volume 1, page 29, lines 4 to 9.

⁴ Exhibit 27527-X0026, Mojek Response to information request round 2, PDF page 1.

8. Mojek's application included the following:
- A corporate emergency response plan, developed for the existing oil battery facility located at the same site. Mojek submitted that this emergency response plan would also cover the operation of the power plant.⁵
 - An air quality assessment, prepared by Horizon Compliance Group Inc., which indicated that the power plant's emissions would comply with the *Alberta Ambient Air Quality Objectives*.⁶
 - A noise impact assessment, prepared by Patching Associates Acoustical Engineering Ltd., which confirmed that the power plant would comply with Rule 012: *Noise Control* with the implementation of noise control measures.⁷
 - An environmental protection plan, prepared by Integrated Sustainability, which described the environmental protection measures to be carried out by Mojek to ensure compliance with regulatory approvals, permits, commitments, and industry best practices.⁸
 - A copy of the *Historical Resources Act* application for the power plant.⁹
 - Details of Mojek's participant involvement program, including correspondence between Mojek and the Municipality¹⁰ and notification documents that were sent to project area stakeholders.¹¹

2.2 Interveners

9. On August 22, 2022, the Commission issued a notice of application. During the four-week notice period, the Commission received one statement of intent to participate from the Municipality.¹²

10. The Municipality raised concerns related to noise mitigation, the requirement to obtain a development permit and a road use agreement, and outstanding municipal taxes owed by Mojek. The Commission denied the Municipality standing for the reasons set out in its October 14, 2022 ruling, but allowed it to make a written submission outlining its concerns.¹³

11. The Commission issued a notice of hearing on November 25, 2022, and held a hearing on December 15, 2022. Mojek and its management consultant, Black Powder Inc., testified at the hearing and both Mojek and the Municipality provided argument.

⁵ Exhibit 27527-X0005, Corporate Emergency Response Plan.

⁶ Exhibit 27527-X0007, Air Quality Assessment.

⁷ Exhibit 27527-X0008, Noise Impact Assessment Report.

⁸ Exhibit 27527-X0009, Environmental Protection Plan.

⁹ Exhibit 27527-X0010, Historical Resource Clearance Application.

¹⁰ Exhibit 27527-X0012, Municipal District of Fairview No. 136 and Exhibit 27527-X0013, Municipal District Communication log.

¹¹ Exhibit 27527-X0014, Notification Letters; Exhibit 27527-X0015, Notification Package; and Exhibit 27527-X0020, Response to Information Request No. 1, PDF pages 13-28.

¹² Exhibit 27527-X0023, Letter to AUC Re. Intent to Participate.

¹³ Exhibit 27527-X0024, AUC ruling on standing.

3 Discussion and findings

12. The Commission considered the application pursuant to sections 11 and 19 of the *Hydro and Electric Energy Act*.

13. In accordance with Section 17 of the *Alberta Utilities Commission Act*, where the Commission conducts a hearing or other proceeding on an application to construct or operate a power plant under the *Hydro and Electric Energy Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing, give consideration to whether construction and operation of the proposed power plant is in the public interest, having regard to the social and economic effects of the power plant and the effects of the power plant on the environment.

14. The Commission has previously found that the public interest will be largely met if an application complies with existing regulatory standards, and the project's benefits to the public outweigh its negative impacts.¹⁴ The Commission must take into account the purposes of the *Hydro and Electric Energy Act* and the *Electric Utilities Act* and cannot consider the need for the project. The Commission must also determine whether an applicant has met the requirements of Rule 007 and Rule 012. An applicant must obtain all approvals required by other applicable provincial or federal legislation.

15. The Commission has considered the application having regard to the applicable legislative and regulatory framework described above and finds that the project is not in the public interest. Accordingly, the Commission denies Mojek's application to construct and operate the power plant for the following reasons:

- Mojek's application does not meet the participant involvement program requirements of Rule 007.
- Mojek has not established that the proposed power plant qualifies for the exemption available under Section 2(1)(b) of the *Electric Utilities Act*.

16. The Commission's consideration of the above matters is detailed in the subsections that follow.

3.1 Mojek's participant involvement program

17. Mojek submitted that no Indigenous consultation was undertaken because there are no First Nation reserves or Métis Settlements within two kilometres of the power plant and because the power plant would be located within an existing oil battery site that did not require any new land disturbances.

18. Table A1-1: *Electric facility application notification and consultation requirements* outlines who must be included in the applicant's participant involvement program.¹⁵ In accordance with Rule 007, Mojek was required to provide personal notification to stakeholders

¹⁴ Alberta Energy and Utilities Board Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation - 490-MW Coal-Fired Power Plant, Application 2001173, December 21, 2001, page 4.

¹⁵ AUC Rule 007, pages 123 to 129.

within 2,000 metres from the edge of the project and conduct personal consultation with stakeholders within 800 metres of the project.

19. Mojek initially provided notification to stakeholders within 1,500 metres of the proposed project site instead of the required 2,000 metres. Mojek later updated the notification area to the required 2,000 metres in response to a Commission information request. However, Mojek failed to conduct personal consultation with applicable stakeholders as required by Rule 007.

20. Personal consultation goes beyond personal notification and refers to meaningful engagement with individuals and groups about the project. This includes listening and responding to any objections to the project.¹⁶ The applicant is expected to conduct one-on-one consultation with applicable stakeholders in a method preferred by the stakeholders, which could include face-to-face meetings, phone, email, or other electronic media.¹⁷ Questions raised during personal discussions with stakeholders about the proposed project should alert the applicant to potential objections and the applicant should attempt to address concerns raised about the proposed project during consultation.¹⁸

21. At the hearing, the Black Powder representative provided evidence that he spoke with a few landowners around Mojek's proposed project, including the landowner that would be hosting the proposed facilities,¹⁹ however, when questioned, he clarified that these conversations were informal and not documented.²⁰ A proper consultation program consists of personal communication by phone, email or in-person, with each stakeholder within 800 metres of the power plant, which communication must all be documented.

22. With the exception of the Municipality, with whom Mojek engaged in phone and email correspondence to answer questions about its proposed project, Mojek failed to actively consult with any other potential stakeholders within 800 metres of its proposed project. Mojek advised that it provided the notification package to stakeholders within 800 metres but that no feedback was received in response to its participant involvement program materials.²¹ Mojek did not take any further steps to engage with and consult with the stakeholders residing within 800 metres of the proposed project as required by Rule 007.

23. In addition, Mojek's notification materials did not contain the minimum information prescribed by Rule 007 including comprehensive information about the general nature of potential impacts of the project, such as potential impacts on the environment, traffic and construction impacts, visual impacts, and noise impacts, information with respect to setbacks, and a description of proposed on-site equipment.²²

24. The Commission notes that one of Mojek's proposed noise mitigation measures is a 24 to 32-foot noise wall. When asked whether a stakeholder residing 660 metres from the proposed project was informed about the details of the noise wall, Mojek responded that the noise study was on the public record of this proceeding²³ and that it did not have any direct conversations

¹⁶ AUC Rule 007, page 123.

¹⁷ AUC Rule 007, page 133.

¹⁸ AUC Rule 007, page 133.

¹⁹ Transcript, Volume 1, page 69, line 23 to page 70, line 14.

²⁰ Transcript, Volume 1, page 84, line 17 to page 85, line 16.

²¹ Transcript, Volume 1, page 15, lines 3 to 5.

²² AUC Rule 007, pages 120 to 122.

²³ Exhibit 27527-X0026, Mojek Response to information request round 2, PDF page 1.

with this resident.²⁴ The public record of the proceeding is created after the applicant files its application. Rule 007 requires an applicant to provide comprehensive project information to stakeholders prior to filing its application. Referencing project information that is contained in the application does not, therefore, meet the minimum requirements contained in Rule 007.

25. At the hearing, evidence was provided that Mojek put an ad in the newspaper about the project, which included instructions on how to provide feedback on the power plant.²⁵ This ad was not filed as part of Mojek's application materials and the Commission is not aware of what information it contained.

26. It is clear from both Mojek's participant involvement program materials and evidence provided at the hearing that Mojek did not provide stakeholders with comprehensive information about the nature of potential impacts of the project or potential mitigations that would be implemented to address those impacts in accordance with Rule 007. Accordingly, stakeholders were not afforded a meaningful opportunity to understand the potential impacts of the project and to raise any concerns they may have in respect of the project.

3.2 Section 2(1)(b) of the Electric Utilities Act

27. Section 2(1)(b) of the *Electric Utilities Act* provides an exemption from the act for "electric energy produced on property of which a person is the owner or a tenant, and consumed solely by that person and solely on that property." Section 2(3) of the *Electric Utilities Act* specifies that "[t]he exemption under subsection (1)(b) applies whether or not the owner or tenant is the owner of the generating unit producing the electric energy." Accordingly, the exemption for electric energy set out in Section 2(1)(b), applies if the owner or tenant consumes all of the electric energy produced on the property regardless of whether the owner or tenant owns the associated power plant.²⁶

28. If the conditions of Section 2(1)(b) are not met, the owner of the bitcoin mine is obliged to take electricity from the Alberta Interconnected Electric System and the owner of the power plant is obliged to exchange the electric energy through the power pool.²⁷

29. In its application materials, Mojek advised the Commission that the power plant would not be connected to the Alberta Interconnected Electric System²⁸ and that Mojek would be both the owner and operator of the proposed power plant, and the bitcoin mine.²⁹ This information suggested that Mojek met the requirements of Section 2(1)(b), such that the *Electric Utilities Act* would not apply to electric energy produced by the power plant.

30. At the hearing, Mojek provided evidence that the electric energy produced by the power plant would be consumed solely by Mojek and solely on Mojek's property.³⁰ However, the Black Powder representative provided contradictory evidence that the owner and operator of the planned bitcoin mining operation would be consuming the electric energy produced by

²⁴ Transcript, Volume 1, page 18, lines 13 to 20.

²⁵ Transcript, Volume 1, page 82, line 23 to page 83, line 7.

²⁶ Please refer to Decision 23418-D01-2019, PDF pages 18-22 for additional discussion on Section 2(1)(b) of the *Electric Utilities Act*.

²⁷ *Electric Utilities Act*, SA 2003, c E-5.1 at sections 18(2) and 101.

²⁸ Exhibit 27527-X0001, Thermal Power Plant Application, PDF page 4.

²⁹ Exhibit 27527-X0001, Thermal Power Plant Application, PDF page 6.

³⁰ Transcript, Volume 1, page 16, lines 8 to 20.

Mojek.³¹ Upon further questioning in relation to the ownership of the bitcoin mine, Mojek confirmed the information provided by the Black Powder representative that a third party would own and operate the bitcoin mine at the power plant site and consume the electric energy produced by Mojek.³²

31. The Section 2(1)(b) exemption in the *Electric Utilities Act* applies only if the electric energy produced on a property is consumed by the property owner or a tenant of that property. Mojek has not established that the consumer of electric energy produced by Mojek's proposed power plant, the bitcoin mining operator, is an owner or tenant of the property. In the absence of evidence demonstrating such an arrangement, the bitcoin mine is obliged to take electricity from the Alberta Interconnected Electric System and Mojek is obliged to exchange the electric energy produced by the proposed power plant through the power pool.

3.3 Municipal District of Fairview No. 136 submissions

32. The Municipality requested that, if the Commission was to approve Mojek's application, the Commission should impose conditions on the approval to address concerns in a number of areas. In particular, the Municipality asked that the Commission impose conditions relating to noise mitigation, road and stormwater management, weed control and emergency management, outstanding taxes owed to the Municipality by Mojek, and reclamation of the power plant.³³

33. As Mojek's application is being denied the Commission does not consider it necessary to address the Municipality's request for the Commission to impose conditions on an approval.

34. With respect to outstanding tax owed to the Municipality, the Commission notes that at the time of the oral hearing, the balance outstanding to the Municipality by Mojek was significant, representing five per cent of the Municipality's revenue and that Mojek had made no payments since 2018.³⁴ Mojek entered into a Municipal Tax Payment Plan³⁵ in October 2022 to address its arrears with the Municipality. Pursuant to that agreement payments were scheduled to start in January 2023 and finish in December 2023. The Commission acknowledges Mojek's intent to repay its taxes owing; however, the Commission has no evidence of Mojek's financial ability to repay the taxes or of payments being made to the Municipality pursuant to the Municipal Tax Payment Plan.

4 Conclusion

35. As discussed above, the Commission has found that Mojek's participant involvement program did not meet Rule 007 requirements. Further, as discussed in Section 3.2 of this decision, Mojek has not established that the electric energy produced from the power plant is eligible for the exemption in Section 2(1)(b) of the *Electric Utilities Act*. In the absence of evidence establishing eligibility for such an exemption, Mojek and the third-party bitcoin mine operator that would otherwise be consuming the electricity generated by the proposed power plant are subject to the requirements of the *Electric Utilities Act*. This would include a requirement for the owner of the bitcoin mine to take electricity from the Alberta Interconnected

³¹ Transcript, Volume 1, page 57, line 6 to page 58, line 10, page 58, lines 19 to 24.

³² Transcript, Volume 1, page 74, lines 18 to 22.

³³ Exhibit 27527-X0028, Letter to AUC – Municipality's Written Submissions, PDF pages 7 and 8.

³⁴ Transcript, Volume 1, page 102.

³⁵ Transcript, Volume 1, page 125, lines 2-8.

Electric System and for Mojek, as the owner of the power plant, to exchange the electric energy produced by the power plant through the power pool.

36. In addition to the Commission's concerns with Mojek's tax arrears with the Municipality described above, the Commission also has concerns with Mojek's non-compliance history with the Alberta Energy Regulator (AER). Mojek has a long record of non-compliance incidents with the AER which resulted in the AER taking over Mojek's assets. In this proceeding, Mojek asserted that it will have addressed the issues with the AER by the end of 2022. Mojek also indicated that it hired a consultant to address the existing compliance issues.³⁶ Mojek testified that it conducted an in-house review and strategy session to identify and address compliance issues more quickly.³⁷ While the Commission acknowledges Mojek's efforts to address its compliance issues, in the absence of evidence demonstrating that Mojek has the ability to avoid, in the first instance, and to effectively mitigate any non-compliance issues with regulatory bodies such as the AER, the Commission remains concerned with Mojek's non-compliance history. In considering whether the current power plant application met the public interest test articulated in Section 17 of the *Alberta Utilities Commission Act*, the Commission would have benefitted from evidence from Mojek establishing a stronger track record of proactively addressing both its tax liability with the Municipality and its non-compliance history with the AER.

37. Finally, in order for the Commission to properly understand a proponent's proposed project, it is critical that the evidence in support of the project is complete, clear, and consistent. The Commission made several attempts through information requests and at the oral hearing to better understand Mojek's proposed project and related evidence; however, inconsistencies and gaps in evidence remained. The Commission would have benefitted from greater clarity in Mojek's evidence with respect to its participant involvement program, noise mitigation plans, ownership interests and relationships between all parties that would be producing and consuming electric energy at the project site, as well as Mojek's plans for sourcing natural gas for the proposed power plant.³⁸

38. The Commission's denial is without prejudice to any future application in which Mojek proposes to construct and operate the power plant, provided it meets the requirements of the applicable legislation, regulations, and rules.

³⁶ Transcript, Volume 1, pages 48 and 49.

³⁷ Transcript, Volume 1, pages 49 and 50.

³⁸ There were a number of instances where information provided in the application, in information request responses, and at the hearing were contradictory. For example, at the hearing, the Commission heard conflicting testimony about the level of personal consultation taken, the implementation of noise mitigation, and the owner and operator of the bitcoin mining operation. The adequacy of available on-site gas to supply the power plant stated at the hearing does not appear to align with evidence filed on the record.

5 Decision

39. For the reasons set out in this decision, the Commission finds that approval of the power plant application is not in the public interest. In accordance with sections 11 and 19 of the *Hydro and Electric Energy Act*, the Commission denies the power plant application.

Dated on March 7, 2023.

Alberta Utilities Commission

(original signed by)

Renée Marx
Panel Chair

(original signed by)

Kristi Sebalj
Vice-Chair

Appendix A – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Mojek Resources Inc. Jane Eruchalu
Municipal District of Fairview No. 136 Jeneane Grundberg, K.C. Lyndsey Lawrence
Alberta Utilities Commission Commission panel Renée Marx, Panel Chair Kristi Sebalj, Vice-Chair Commission staff Parvez Khan (Commission counsel) Navreet Bal (Commission counsel) Victor Choy

Appendix B – Oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative	Witnesses
Mojek Resources Inc.	Jane Eruchalu Myers Agamini Ron Voogel Ken Emshey
Municipal District of Fairview No. 136 Jeneane Grundberg, K.C.	