

NOT IN OUR BACKYARD!

A CONTROVERSIAL ELECTRICITY TRANSMISSION LINE AND CHARGES OF SPYING ZAP THE REPUTATION OF ALBERTA'S ENERGY REGULATOR

by Andrew Nikiforuk

In January 2006, Joe Anglin's life got short-circuited. The 52-year-old businessman, who owned a small brokerage firm at the time, attended a community meeting near his home in Rimbey, Alta., an hour's drive north of Red Deer. There, he found many of his neighbours in shock or in tears. The Alberta government had approved a new 500-kilovolt transmission line from Edmonton to Calgary. Not only would it run through their backyards—some of the most scenic and productive farmland in the province—but the landowners hadn't received so much as a public notice. Many already had two 240 kV lines crossing their property.

Having worked for 17 years as a senior technology manager for U.S. power and telephone companies, Anglin immediately understood the issues facing his neighbours. "I told them," he recalls, "you have no idea what you are up against here." Neither did Anglin. Or the government, for that matter.

Now, 21 months later, the square-jawed Anglin, spokesman for nearly 1,000 landowners and farmers, is in the middle of one of the most explosive political scandals in Alberta history. Three years of regulatory planning for a half-billion-dollar power project have been declared void, and the very reputation of Alberta's Energy and Utilities Board, arguably the most important regulator in Canada, lies in tatters.

And that's just half the story. Two independent investigators have condemned the EUB's "repulsive" practice of spying on ordinary citizens during legitimate legal proceedings, and one has accused it of violating the law. For the first time in its 70-

year history, the EUB, an agency sworn to impartiality, has also publicly admitted that, yes, "circumstances have accumulated into a reasonable apprehension of bias." And get this: a controversial new provincial bill to expedite transmission-line hearings may also get zapped, too.

Anglin calls the whole mess a shameful case of corruption, and says he's not finished yet. Next month, he and the Lavesta Area Group will take their case to Alberta's Court of Appeal in an attempt to expose just how biased regulatory proceedings have become in the province. "If we allow this to continue," he says, "Alberta will be nothing but a Third World country with a puppet government." Not surprisingly, friends and detractors alike call Anglin either a "scrapper" or a "pit bull."

The trouble largely began in May 2004, when Alberta's Electric System Operator (AESO), a non-profit provincial agency that plans the electrical grid, submitted 13 different plans for a new power line between Edmonton and Calgary. A transmission line hadn't been built in 20 years, and the province's booming economy needed more juice. AESO declared that its preferred option was a \$230-million project. (The price tag has since doubled.) The task of building it would go to AltaLink Management Ltd., a private firm that owns most of the province's transmission lines, and which, in turn, is largely owned by the engineering firm SNC-Lavalin Group Inc.

AESO took its case to the EUB, which oversees not only utilities but also billions of dollars' worth of energy projects, including the chaotic oilsands. Run by nine members politically

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COLIN WAY

appointed by the energy minister, the EUB has a mandate to regulate "in a manner that is fair, responsible and in the public interest." The board held a hearing on the need for an expansion, and approved what would become the AltaLink project on April 14, 2005—nearly five months past the government's own 180-day application deadline.

Two months later, Anglin's neighbours received letters from AltaLink that the power line would tower through their yards. The mailouts didn't mention the 500 kV line would expose them to electromagnetic fields greater than those shown to double leukemia rates in children. Shortly after, the Lavesta group elected Anglin as its spokesman because, as one local put it, "We don't know if he knows what he's talking about, but he sounds better than us."

Anglin's first order of business was to hire a competent lawyer for Stage 2 of the project, a "review and variance" hearing. But he realized he couldn't honour EUB deadlines without first asking the regulator to grant his group a brief adjournment to find counsel. "And that was my first warning flag that something was rotten," Anglin now says. When the EUB's lawyer, Rick McKee, failed to return his calls, Anglin phoned up then-chairman Neil McCrank, demanding a timely response to his group's request. ("I'm a pushy person," Anglin acknowledges.) McKee finally returned his calls and said he'd first have to extend the courtesy of asking AltaLink's lawyers for a delay. That amazed Anglin. "I've never dealt with a regulator before who consulted with industry before making a rule," he explains. "They were making the decision together." Anglin got one week to find a lawyer.

Next, the former New Hampshire policeman purchased EUB transcripts for the original needs hearing—and found more surprises. For starters, Alberta Energy, the province's energy ministry, supported "a comprehensive consultation process" for utility lines. Yet at the original hearing, when asked about the thoroughness of consultation, one lawyer replied: "I honestly don't believe it was a ringing success." In fact, not one landowner group appeared at the hearing. Nor did the province's Utilities Consumer Advocate.

The proposed line also didn't appear to Anglin to be solely about keeping lights on in Calgary, as AltaLink often argued. One document identified the line as critical to boosting electricity exports to California from coal-fired generation plants outside Edmonton. Even the EUB reported that three-quarters of the power from the AltaLink line, or 750 megawatts, will "increase export capability" and advance "the import/export



HIGH VOLTAGE

The route of the electrical transmission line that has left some Albertans shocked with the Energy and Utilities Board

requirements" of transmission regulations. (AltaLink says the line will just have a "tertiary effect" of freeing up power for both import and export.) Even though the provincial energy ministry says, "Albertans will not subsidize electricity exports," the EUB still ruled that ordinary ratepayers would cover the cost of the line. That didn't sound legal to Anglin.

Anglin says he then discovered that the board had ignored cheaper and better technology options. AESO proposed a traditional alternating current (AC) line with large buzzing towers and an ugly land footprint. But both industry and government documents suggested that new direct current (DC) lines might cost slightly less—and conserve more power. (An AC line typically loses between 10% to 30% of its juice; in contrast, DC lines disturb less land, can be plowed underground, and come with a smaller carbon footprint.) "I couldn't believe it," Anglin says.

Last but not least, Anglin discovered that Alberta Energy, the EUB's boss, played an unorthodox role in the hearing. Kellan Fluckiger, executive director of Alberta Energy's electricity division, testified during the 2004 hearing that if AESO recommended one option like AltaLink's 500 kV line, then the regulator should simply accept it under a new policy called "presumption of correctness." At the time, Fluckiger just happened to be married to Zora Lazic, AltaLink's executive vice-president of regulatory affairs. According to Leigh Clarke, AltaLink's senior vice-president of law and public affairs, Alberta Energy was aware of the relationship and found no conflict of interest. (The couple is now divorcing.)

Anglin says he also found a damning January 2006 letter from the board to Fluckiger. In it, he points out, the executive manager of the EUB utilities branch vehemently argued that the "presumption of correctness" credo gave "no opportunity for the EUB to do a full or complete review" and suggested its role as an electrical regulator be eliminated altogether. The letter noted that the new mandate made it almost impossible for stakeholders to question the need for transmission lines.

Canadian Business took Anglin's findings to an independent electricity consultant, who confirmed them all. The high-level independent observer, who requested anonymity—"This government is vindictive"—first noted that Alberta Energy introduced a new two-stage hearing process for utility approvals in a deregulated market in 2004, and that not one player, including the EUB, really understood the new rules. The government's intervention as an advocate for the AltaLink line, the source

adds, clearly raised "a perception of bias" in the hearings. As well, Fluckiger and Lazic's relationship looked bad in "a regulatory process." The EUB also failed to satisfactorily address power exports or who should pay for them.

In April 2006, the EUB finally agreed to give some 1,500 aggrieved landowners a forum. The board reasoned that "a significant number of Albertans with serious concerns with respect to the selection of the west corridor [the AltaLink line] did not participate in the [2004] hearing, there-by denying the Board the benefit of their evidence and submissions." The EUB ruled, however, that landowners couldn't discuss the need for the project, but only things such as agricultural impacts or population density. "We now had a review of the needs hearing but weren't allowed to talk about the need," recalls Anglin. "It was Alice in Wonderland."

The legal team assembled by Anglin and the Lavesta Area Group decided to focus on the needs issue as well as the board's legal authority. AltaLink had already got a taste of landowner wrath at several information meetings. "It wasn't until we hit the beaches at Normandy and the machine guns came out that it all came to light," says Leigh Clarke of AltaLink.

The next skirmish took place in July and August of 2006 during the "review and variance" hearing in Red Deer. Julian Bodnar, Lavesta's lead counsel, gave the EUB, AESO and AltaLink a chance to avoid a bloodied outcome. He suggested the whole application be cancelled and a proper needs hearing be held—"and we'll be done in six months." Both AESO and AltaLink refused. "Well, you have your answer, Mr. Bodnar. Nice try," declared then EUB panel chair Brad McManus.

And then, says Anglin, "the fight started." Bodnar began with a motion of bias, questioning the board's makeup. He noted two of three panel members who approved the project in 2005—Brad McManus and Gerald DeSorcy—were reviewing their own decision in 2006. The board adjourned and replaced DeSorcy with another member who had also been involved in the 2005 hearing. Bodnar then made one motion after another to adjourn the hearing or rescind the EUB's approval for AltaLink because "justice had gone off the rails."

His persistence rattled McManus. A lawyer with the Queen's Counsel designation, McManus asked Bodnar an unusual question: "Sir, have you ever been to Philadelphia?"

Bodnar: "I haven't, no."

McManus: "So it wouldn't be fair to describe you as a Philadelphia lawyer?" (A Philadelphia lawyer is commonly said to be someone who can twist anything to his client's favour.)

Bodnar: "I take professional offence with your comment, sir."



Lawyer William Tilleman has taken over a bit of a mess

ALBERTA'S ENERGY AND UTILITIES BOARD HAS BEEN ROCKED BY SCANDAL

AltaLink line was still "suitable," they marched to the Alberta Court of Appeal, where they argued the EUB had failed to uphold the Transmission Regulation, the Electric Utilities Act, the Hydro and Electric Energy Act—and its own mandate to be impartial.

While Anglin waited for a ruling from the court, another public battle erupted at a hearing to address the siting of the actual transmission line. On April 16, more than 300 landowners crowded into the Frontier Room of Red Deer's Prairie and Stockmens Pavilion, where emotions ran high. The EUB again ruled that it would brook no discussion of need—and added that no motions would be entertained unless written and submitted two days in advance. The rule change prompted jeers and catcalls. When one landowner protested, officials turned off his microphone. A scuffle then took place between a 70-year-old woman with cancer and an EUB lawyer.

According to eyewitness Jessica Ernst, a businesswoman and landowner, the board lawyer pushed the woman when she raised her hand to him after he repeatedly ignored and "taunted" her. As the woman's husband ran to her defence, security guards interfered. "It was horrid watching an EUB lawyer push a senior," Ernst wrote in a letter to the *Edmonton Journal*. After a brief recess, the board agreed to hear all the objections to the rule change. No police were called, and scores of citizens lined up at the microphone to have their say.

The next day, the board quietly heard more motions to adjourn the hearing until the Alberta Court of Appeal had addressed some of the legal irregularities. Gavin Fitch, a lawyer for one of several landowner groups, told the *Red Deer Advocate* that emotions had boiled over due to the dysfunctional nature of the process. "To be blunt, the majority of the people in this room don't accept the legitimacy of this proceeding," he said.

And on it went.

McManus also targeted Anglin's character. He accused the combative businessman of writing an article "about how the Lavesta Group was going to try to obstruct and derail the process." Anglin, who after the hearing did pen a piece comparing the EUB to a "kangaroo court," demanded McManus retract his comments or produce the offending pieces. McManus did neither.

In the end, the board rejected 74 motions by Anglin, Bodnar and other landowner groups. In the course of dismissing one "technical argument," McManus pointedly told Bodnar that "you can add that to the list of things you may want to take to the Court of Appeal."

Anglin and Bodnar did just that. After the EUB predictably ruled in December 2006 that the

On April 18, the board abruptly cancelled the hearing, citing "concerns about safety and security." A month later, it reconvened at the Rimbey Court House, where all submissions had to be made in writing. Affected landowners now watched the process in front of a TV screen at a nearby community centre. According to more than 60 documents and e-mails later released under the Freedom of Information Act, the board also hired four private investigators to mingle with landowners to provide "a covert security presence" and "intelligence gathering."

The spies, many of whom pretended to be upset landowners, listened in on conference calls, requested documents and eavesdropped on conversations. But it didn't take long for Anglin, a former cop, to spot ex-RCMP types sitting among six to seven grandmothers. "They were the guys eating all the cookies," he says.

Anglin alerted Bodnar. The lawyer, confined to a wheelchair, cornered one of the spies. "Who are you?" he demanded. The man admitted, as legally obliged, that he was a private investigator. "I appreciate your candour," Bodnar replied.

The spying scandal pretty much dominated Alberta headlines this summer. In July, Energy Minister Mel Knight reluctantly ordered a limited investigation into the "allegations" because he was concerned "about the violence and the threats of violence." At first, Premier Ed Stelmach excused the scandal by explaining the spies were just some "people to ensure there wasn't any harm done to the members of the EUB." He later admitted he found the incident troubling.

In September, an investigation by Alberta's privacy commissioner found that the EUB had violated two sections of the Freedom of Information and Protection of Privacy Act by using private eyes to collect information on private citizens. The commissioner also found that the investigators were not "necessary for the provision of a safe environment."

Because the EUB spies had also monitored conversations with people in Montana concerned the line might enter their state, Ken Toole, Montana's public service commissioner, read the report with disbelief. "They [the EUB] should be a neutral, fact-finding agency, right?" he told the *Edmonton Journal*.

Another study by former Court of Queen's Bench Justice Del Perras ordered by Alberta Energy echoed similar concerns. It chastised the government for its confusing regulations and declared, "The idea of an approved EUB security personnel listening in to landowners' phone conferences is repulsive."

By now, Anglin had received a judgment by Court of Appeals Justice Carole Conrad. On June 8, she granted the Lavesta Area Group the right to appeal every jurisdictional and legal



Raging Grannies outside the EUB hearing in Red Deer

THE BOARD HIRED PRIVATE INVESTIGATORS TO SPY ON OPPONENTS

Tilleman next issued an unprecedented decision on Sept. 30. The EUB declared a "mistrial" on the 500 kV power line, cancelling the AltaLink application and the two hearings. It recommended a new hearing with a high degree of judicial experience, as well as "engineering expertise and familiarity with relevant issues affecting persons over whose lands such development would pass."

AltaLink's president, Scott Thon, responded to the announcement: "We're very disappointed that these procedural issues have overshadowed the critical electricity needs for the more than 1.5 million Albertans who live south of Edmonton." Thon warned of blackouts and called for the passage of controversial electricity legislation (Bill 46) to split the functions of the EUB and create the Alberta Utilities Commission.

The bill, introduced in June, is now the centre of a public storm as boisterous as the AltaLink hearings. According to the Environmental Law Centre—an Edmonton-based non-profit—and other critics, the legislation not only gives the new utilities commission the power to limit public participation, but also legalizes "presumption of correctness." It will be retroactive to June 1, 2003.

Anglin sees Bill 46 as a threat to democracy and a "white-wash to circumvent the courts." The province's largest commercial power users, the Industrial Power Consumers Association of Alberta, agree, and have also joined the opposition. "We have a major concern about this presumption of correctness...because I, as a lawyer, know what the effect of that is," says IPCAA president Dan Macnamara.

All parties now say they are more committed than ever to ensuring fairness. But Anglin, who says he lost his brokerage firm and "a small fortune" fighting the EUB, swears he's not about to shut up until the province has a just, smart and accountable electrical system. "This isn't over by a long shot." ■

JEFF STOKOE