MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

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In the Matter of the Application of
Montana Alberta Tie Ltd. and MATL LLP. to Amend their
Certificate of Compliance under the Major Facility Siting Act.

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On August 11, 2010 Montana Alberta Tie Ltd. and MATL LLP (collectively referred to as MATL) submitted an application to amend their Certificate of Compliance issued by the Department of Environmental Quality (the Department) on October 22, 2008. MATL's proposed amendment would change the language in the Certificate and Environmental Specifications to allow it to conduct construction activities in and within 50 feet of wetlands. Structures (poles and guy wires) would still be located outside wetlands. A 318 permit would still be required for work conducted within waters of the State. This permit is an authorization of a short-term narrative standard for turbidity related to construction activities in or near a stream or wetland.

On August 24, 2010 the Department issued an Environmental Assessment analyzing the proposed amendment (Proposed Action), two alternatives providing mitigation for wetland disturbances (Alternatives 1 and 2), and a No Action alternative (Alternative 3).

Under Alternative 1, MATL would delineate wetlands along the transmission line and submit the results of this survey along with road and structure drawings to the Department. Following review of this information and other pertinent information made available through the MFSA and MEPA processes, the State Inspector would determine the necessity of field reviews. Field reviews would assess whether there are reasonable alternatives to conducting construction activities in wetlands based on impacts and costs associated with each alternative. If reasonable alternatives cannot be identified, MATL would be authorized to conduct construction activities in delineated wetlands in designated areas during construction. MATL has agreed to provide compensatory mitigation in the form of a monetary payment to a recognized statewide wetland mitigation bank to offset impacts. Language in the Certificate and Environmental Specifications would be modified.

In addition to the wetland mitigations measured required under Alternative 1, Alternative 2 would widen the approved corridor for the transmission line in three areas to allow a location of the transmission line that would further avoid intermittent streams or wetlands.

Under Alternative 3, the No-Action Alternative, the language in the Certificate and Environmental Specifications would remain unchanged. In this case tall structures and special conductors may be necessary in certain areas to span wetlands. Longer off right-of-way access routes may result as wetland areas are avoided. Poles and guy wires would not be allowed to be placed in delineated wetlands. Additional construction and access disturbances could be located within cultivated fields in a manner that would interfere with farming practices. These roads and structures may interfere with existing land uses

and cultural resources to a greater degree than if construction in or within 50 feet of a wetland were allowed.

DEPARTMENT DECISION

Pursuant to Section 75-20-219(1), MCA, if the Department determines that the proposed change would result in a material increase in any environmental impact of the facility, the Department is required to grant, deny or modify the amendment with conditions it considers appropriate. Under Section 75-20-219(2), MCA, if the Department determines that the proposed change in the facility would not result in a material increase in any environmental impact, the Department is required to automatically grant the amendment either as applied for or upon terms or conditions that the Department considers appropriate. Therefore, whether or not there is a material increase, the Department has the authority to condition its approval. The Department has determined that, while it cannot determine definitively that there would or would not be a material increase in impacts to wetlands as a result of the proposed amendment, there would be no material or significant impact to wetlands with the conditions listed below.

The Department selects Alternative 1 with the following conditions:

- Permanent guy wire and structure placement would be prohibited in wetlands.
- MATL would be required to invite landowners to any on-site field inspections identified by the Department to evaluate whether there is a reasonable alternative to temporary construction activity in a delineated wetland.
- Upon completion of the field inspection, the Department's State Inspector, MATL and the landowner would each have 7 working days to make recommendations to the Department's director on whether there are any reasonable alternatives to temporary construction activity in a delineated wetland. The recommendations may consider but are not limited to the amount of vegetation and wildlife habitat that would be affected, land use, cultural resources, transportation, recreation, visual impacts, and the costs to avoid or otherwise mitigate wetland impacts. The director would make the final decision whether or not to allow temporary construction activity in a given wetland.

The Department concludes that Alternative 1, as conditioned, would not materially alter the findings that were the basis for granting the Certificate. Temporary construction activity in wetlands would be avoided unless there is no reasonable alternative to such temporary construction activity. MATL has agreed to provide compensatory payments to a wetland mitigation bank for the creation of permanent wetlands to offset remaining impacts associated with its temporary construction activities conducted in wetlands. No transmission structures (poles or guy wires) would be located in delineated wetlands. Alternative 1 allows for a uniform approach to wetland impacts and mitigation and would be applicable to all landowners.

Alternative 2 was not selected. Additional environmental analysis would be needed due to increasing the width of the approved location in three areas. The delay associated with the additional environmental analysis could jeopardize the funding of MATL and the

development of Naturener's connecting wind farm. Alternative 1, with the conditions described above, would result in no material increase or significant impacts.

Alternative 3 (No Action) was not selected based on clarification from the EPA that all practicable steps should be taken to avoid and minimize impacts to wetlands, that there could be remaining unavoidable impacts to wetlands, and that MATL would then have to mitigate remaining impacts through compensation in an effort to replace the functions and services lost in the unavoidably impacted wetlands. Thus, Alternative 1 is more consistent with EPA's position and the prohibition for all work in wetlands is unnecessary if appropriate minimization measures are implemented. In addition, selection of Alternative 3 would not address EPA's concern that the current Certificate does not specify who would determine, and how it would be determined, where wetland avoidance would be possible.

In conclusion, the Department approves MATL's application to amend its Certificate of Compliance as provided by Alternative 1 with the conditions set forth above. Specifically, the terms and conditions of the Certificate of Compliance and Environmental Specifications are modified as follows (additional provisions are underlined, deleted provisions are interlined):

A. *Certificate, Paragraph 3.G.), the fourth sentence of first full paragraph on page 9, would be amended as follows:*

No ~~construction~~ permanent poles or guy wires would be ~~allowed~~ placed within ~~50 feet of a~~ a stream or a delineated wetland and no temporary construction activity would take place within a delineated wetland without prior approval of DEQ. MATL would delineate wetlands within the previously approved 500 foot wide location. Following the MATL submission of wetland delineation maps and design drawings to DEQ showing structure and preliminary access road or trail locations, the State Inspector would review the information and determine whether field inspections would be needed to determine if reasonable alternatives exist that would avoid the need for temporary construction activity in a wetland.

If a field review is necessary to evaluate whether there is a reasonable alternative to temporary construction activity in a delineated wetland, the State Inspector would invite MATL (or MATL's appointee) to attend the review. MATL would be required to invite landowner(s) to any field review identified by the State Inspector, and would be allowed to invite a representative of any other agency having jurisdiction over wetlands. Upon completion of the field review, the State Inspector, MATL, and the landowner(s) would each have 7 working days to make recommendations to the Department's director on whether there are any reasonable alternatives to temporary construction activity in a delineated wetland. The recommendations may consider but are not limited to the amount of vegetation and wildlife habitat that would be affected, land use, cultural resources, transportation, recreation, visual impacts, whether the wetlands would be dry at the time of construction, and the costs to avoid or otherwise mitigate wetland impacts.

The director would make the final decision whether or not to allow temporary construction activity in wetlands.

After consideration of these factors (with or without a field review) the director may identify alternative locations for access routes, alternative sites for temporary construction disturbances, or alternative construction timing (e.g. winter construction when the ground is frozen) if the alternative construction timing does not result in a delay or increase in costs in the construction of the transmission line that is disproportionate to the impacts that would be avoided.. If there is no reasonable alternative to temporary construction activities in wetlands, MATL has agreed to provide compensatory mitigation for the wetland acreage affected by making a monetary contribution to a recognized wetland mitigation bank as prescribed below to offset impacts to wetlands.

Compensatory mitigation as a result of temporary construction activities would be calculated at a rate of 0.2 acres for each acre of remaining wetland impact as determined by the State Inspector two years after construction. In coordination with the reclamation and revegetation monitoring commitments outlined in Attachment 2, Appendix K to the Certificate, MATL will provide a report to the Department on wetland restoration efforts at the end of the five-year monitoring period. MATL agrees to provide compensatory mitigation for wetland impacts remaining at the end of the five-year monitoring period of 1.5 acres of mitigation for each wetland acre impacted. Such compensatory mitigation would not relieve MATL of its reclamation and revegetation responsibility under ARM 17.20.1902(10).

B. Certificate Paragraph 12 (p.13-14), would be amended as follows:

~~Construction and operation of the transmission line does not require any air or water quality decision, opinion.~~ Prior to the start of construction in or across any wetland, MATL shall obtain all necessary state water quality decisions, opinions, or orders. Construction and operation of the transmission line does not require any air quality decision, opinion, or order.

C. Certificate, Attachment 2, Section 2.11.17, would be deleted as follows:

~~2.11.17 To reduce the amount of sediment entering streams a strip of undisturbed ground or vegetation will be provided for 50 feet between areas of disturbance (such as road construction or tower construction) and wetland, stream courses, and around first order or larger streams that have a well-defined stream course or aquatic or riparian vegetation, unless otherwise required by the LANDOWNER or authorized by the STATE INSPECTOR and managing agency. Buffer strip width is measured from the high waterline of a channel or wetland and will be determined by the STATE INSPECTOR. When braided streams with more than one discernable channel (ephemeral or permanent) are encountered, the high waterline of the outermost channel shall be used. In the event that vegetation cannot be left undisturbed, structural sediment containment approved by the STATE INSPECTOR, must be substituted before soil-disturbing activity commences.~~

A. *Certificate, Attachment 2, Appendix A, the section labeled "Wetlands", would be amended as follows:*

~~Wetlands~~

MATL would delineate wetlands within the previously approved 500 foot wide location, and would submit this information to the State Inspector prior to requesting approval to begin temporary construction activity in a delineated wetland. ~~would not be allowed within 50 feet of wetlands.~~

Certificate, page 9, first full paragraph would be amended as follows:

This impact would be mitigated by avoiding disturbances of water and riparian areas and by implementing a Storm Water Pollution Prevention Plan to reduce sediment transport. ~~No construction would be allowed within 50 feet of a stream or wetland.~~ MATL is required to submit a bond to ensure that areas disturbed during construction are reclaimed.

Certificate, page 10, paragraph one would be amended as follows:

The line would cross a portion of one standing water body greater than 20 acres in size, Hay Lake. The area would be spanned by conductors and overhead ground wires and no poles or guy wires would be located in the wetland. ~~construction would be allowed within 50 feet of the wetland.~~

All other provisions of MATL's Certificate of Compliance including the Environmental Specifications and selected location remain in effect, unless they conflict with this Amendment.

A person aggrieved by the final decision of the Department on an application for amendment of a certificate may within 15 days appeal the decision to the Board of Environmental Review as provided in Section 75-20-223(2), MCA.

Dated this 22nd day of September, 2010.

Richard H. Opper
Director
Montana Department of Environmental Quality