

Via Email

May 11, 2018

Mike Partsch

Dear Sir:

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca

**RE: Request for Regulatory Appeal by Mike Partsch
Tidewater Midstream (Tidewater)
Application Nos.: 1882589, 1882591, 1882653, 1884135, 1880354, & 1882581
Approval/Licence Nos.: 12203D, F48965, 59472, [486102, 486103, 486104, 486105, 486106,
486107 (Application 1882653)], 59473 and D051 Approval dated November 2, 2017
License Extension Application / Approval No.: A10064398
Location: 25-071-07W6M;
Request for Regulatory Appeal No.: 1903569**

The Alberta Energy Regulator (AER) has considered your request under section 38 of the Responsible Energy Development Act (REDA) for a regulatory appeal of the AER's decision to approve the Licences. The AER has reviewed your submissions and the submissions made by Tidewater.

For the reasons that follow, the AER has decided that you are not an 'eligible person' under REDA, and cannot request a regulatory appeal in this matter. Your request is therefore not properly before the AER. The AER has also decided that the request for regulatory appeal is vexatious. Accordingly, the request for a regulatory appeal is dismissed.

The applicable provision of REDA in regard to regulatory appeals, section 38, states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [emphasis added]

The term "eligible person" is defined in section 36(b)(ii) of REDA to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment]...

Section 39 (4)(a) of REDA provides that the AER may dismiss a request for regulatory appeal if it considers the request to be frivolous, vexatious, or without merit.

Reasons for Decision

Not an 'Eligible Person'

In your regulatory appeal requests, you have raised the following grounds relating to Tidewater's gas injection and storage operations:

- Safety in the event of an incident, including the following sub-issues;
 - location of Tidewater's gas injection and storage operations in relation to residential development;
 - Safety/suitability of the reservoir for gas injection;
 - Safety/suitability of existing gas injection wells and other wells in the reservoir; and
 - Impacts of fracturing and seismicity.

- Impacts on groundwater sources and water wells;
- Noise impacts;
- Air emissions;
- Impacts on your property value; and
- Notification and consultation by Tidewater about its gas storage project applications.

The concerns you have raised and the impacts you have alleged in your regulatory appeal request are substantially the same as those raised previously in the statements of concern (SOC) filed by you with respect to the initial subsurface, well, facility and pipeline applications filed by Tidewater which have now been approved and are the subject of your regulatory appeal requests (applications 1882589, 1882591, 1882653, 1884135, 1880354, & 1882581).

The new information in your submission is substantively similar to information you had previously provided, in that it relates generally to incidents or impacts from gas storage projects in other jurisdictions, and not specifically to any of the approvals you have appealed. Similarly, the June 2014 Policy Brief from the National Agricultural & Rural Development Policy Center addressing impacts from the underground natural gas storage does not relate to your property, Tidewater's gas storage project, or oil and gas development in Alberta.

In its October 31, 2017 written decision in response to your SOC's on the above captioned applications, the AER found that you would not be directly and adversely affected by the applications, which have now been approved and appealed by you. Detailed reasons were provided for this finding, and you have provided very little additional or new substantive information to support that you are directly and adversely affected by the approvals. For the reasons specified in the AER's October 31, 2017 decision letter, a copy of which is enclosed with this letter for your reference, the AER finds that you are not directly and adversely affected by the approvals and licenses you have appealed.

The only new matter raised in your regulatory appeal request is the AER's decision to extend the time by which Tidewater must start construction of its facility under Facility Licence F48965 (Approval A10064398). Your main concern is that you were not notified of the application for the extension. As per section 5.3.1 of Directive 056, the AER may extend the expiry date of a licence that has already been issued, on written request by the licensee. Directive 056 does not specify that an application is required in order to extend the licence expiry date. As no application is expressly required under Directive 056, Tidewater did not notify you of its extension request. However, the AER notes that an extension to the term of a licence constitutes an amendment to the licence. The AER's authority to approve a licence amendment is derived from section 26 of the *Oil and Gas Conservation Act* (OGCA), which contemplates an application being made by the licensee. The AER agrees that Tidewater should have given you notice of its application under section 26 of the OGCA. However, it is understandable why Tidewater did not do so, given that section 5.3.1 of Directive 056 does not contemplate an application process, and it is not the AER's typical business practice to require one. However, for greater clarity, the AER expects Tidewater to notify all persons with known concerns about Tidewater's gas storage project with respect to any future applications, including license extensions requests.

The regulatory appeal request process has provided you with the opportunity to bring your concerns before the AER, hence there is no impact to the procedural right to have your concerns heard and considered. To that end, the substantive concerns that you have raised on the license extension decision are the same as those you had previously raised in your SOC on Application 1823491 for the said facility and the subsequent regulatory appeal request you filed on the facility licence. The AER previously considered the concerns you had raised about the facility, dismissed your concerns in writing, and provided reasons for those decisions. It is the amendment to the term of the licence, and not the licence itself, which is the current subject of your regulatory appeal request. In that respect, the AER notes that you have not specifically identified how you might be impacted by the AER's decision to extend the term of licence F48965. Accordingly, the AER finds that you are not directly and adversely affected by the AER's approval of an extension to the licence term of facility licence F48965.

Vexatious Request

The AER may dismiss a request for regulatory appeal if it considers the request to be frivolous, vexatious, or without merit.

There is no definition of 'vexatious' in REDA or the AER's *Rules of Practice*. The AER is guided by section 23(2) of the *Judicature Act* of Alberta, which sets out a list of criteria for what constitutes a vexatious judicial proceeding, including:

- (2) For the purposes of this Part, instituting vexatious proceedings or conducting a proceeding in a vexatious manner includes, without limitation, any one or more of the following:
- a) persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction;
 - b) persistently bringing proceedings that cannot succeed or that have no reasonable expectation of providing relief;
 - c) persistently bringing proceedings for improper purposes;
 - d) persistently using previously raised grounds and issues in subsequent proceedings inappropriately;
 - e) persistently failing to pay the costs of unsuccessful proceedings on the part of the person who commenced those proceedings;
 - f) persistently taking unsuccessful appeals from judicial decisions;
 - g) persistently engaging in inappropriate courtroom behaviour.

In addition to the *Judicature Act* indicia, the Courts have also established that repeatedly making the same claim as a matter of practice or strategy, where grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, constitutes vexatious behavior by a litigant.

The factors above are non-exhaustive, and the Courts have indicated that the presence of any single factor may be a basis for finding a proceeding or litigant vexatious. While the AER is a quasi-judicial body and not a Court, it finds the above factors to be instructive in determining whether a request for regulatory appeal is vexatious.

Your present regulatory appeal request essentially repeats the same concerns, grounds, and issues you raised in a number of previous SOC's and regulatory appeal requests filed since 2015 regarding Tidewater's gas storage project. These concerns have been addressed and dismissed with reasons in AER decisions dated December 10, 2015 (SOC 29960), October 27, 2016 (SOC 30299), July 5, 2016 (SOC 30301), May 2, 2017 (SOC 30582), June 23, 2017 (Regulatory appeals 1849417, 1859627, 1879309) and most recently October 31, 2017 (SOCs 30715, 30593, 30718, and 30556) The repetition, generality, and at times inapplicability of your concerns, grounds or issues in relation to certain applications or approvals has been pointed out in a number of these decisions. You were advised in the AER's October 31, 2017 decision letter that your concerns have been previously dealt with or addressed by AER decisions on previous applications, and by decisions of the AER on regulatory appeal requests filed by you.

The most accurate description of your SOC and regulatory appeal requests is that the issues and grounds have been rolled forward into subsequent proceedings, repeated, and supplemented, which the courts have identified as vexatious behavior. Persistently raising the same grounds and issues in subsequent proceedings after those grounds and issues have been considered and dismissed by the AER also falls squarely within factors set forth in section 23(2)(a) as well as subsection (b) above, as there can be no reasonable expectation that the same grounds, concerns, and issues raised again in the current regulatory appeal request could lead the AER to a different decision. It is vexatious and a misuse of the AER's process to raise previous grounds and re-argue the same issues already wholly considered and decided in a number previous AER proceedings.

On several occasions, you have requested regulatory appeals or filed SOCs on applications or approvals which are administrative in nature, unrelated to the impacts cited in your SOC or regulatory appeal request, or which on their face will not give rise to any impacts. For example, in SOC 30714 and in the present request, you have appealed against an amendment to facility License F48965, the approval of which resulted in a decrease to the gas inlet rates, and the replacement of 3 licensed gas and 3 licensed electric compressors with 3 smaller gas and 2 smaller electric compressors. As indicated in the AER's October 31, 2017 decision letter to you, you have not indicated how this type of an amendment would impact you, and the concerns you have stated in your regulatory appeal request do not relate to the amendment of the approval. It is counterintuitive for you to have filed a regulatory appeal request on this approval given the amendment on its face does not result in additional impacts. It is the AER's task on a regulatory appeal to determine whether you are directly and adversely affected by an approval, and therefore eligible to request a regulatory appeal. Persistently and indiscriminately filing SOCs and appeals on substantially all AER decisions or approvals relating to Tidewater's gas storage project, based on substantially the same general grounds raised in previous proceedings, without any clear indication or link between a specific approval or application in question and whether or how you may actually be directly and adversely affected by it, is inappropriate, and constitutes vexatious conduct as contemplated under section 23(2)(d) of the *Judicature Act*.

In addition, of the 166 pages you have filed as part of your regulatory appeal request, at least 83 pages relate specifically to previous Tidewater applications or approvals that are not the subject of the present regulatory appeal requests. At least 28 pages in your submission are duplicates (i.e. they are provided more than once in different locations of your submission). This has resulted in unnecessary but significant additional use of AER time and resources to process and review your regulatory appeal request, and is not a proper use of the regulatory appeal process.

For these reasons, the AER also dismisses your regulatory appeal request on the basis that it is vexatious, pursuant to section 39(4)(a) of REDA.

Sincerely,

<original signed by>

Andrew MacPherson
Director, Pipelines, Environment & Operational Performance

<original signed by>

Alanda Allum
Director, Oil and Gas, Environment & Operational Performance

Cc: Tidewater Midstream - Clark Dickson
Enclosed

BY E-MAIL ONLY

October 31, 2017

Mike Partsch and Faye Partsch

**TIDEWATER MIDSTREAM AND INFRASTRUCTURE
SUBSURFACE APPLICATIONS NO. 1880354, 1882581
INFRASTRUCTURE APPLICATIONS NO. 1882589, 1882591, 1882653, 1884135
ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT (EPEA)
APPLICATION NO. 002-00360116
STATEMENTS OF CONCERN NO. 30715, 30593, 30718, and 30556.**

Dear Mike Partsch and Faye Partsch:

You are receiving this letter because you filed a statement of concern about the above applications. The Alberta Energy Regulator (AER) has reviewed your statements of concern, along with the applications, the applicable requirements, and other submissions or information about the applications. The AER has decided that a hearing is not required under an enactment, or necessary, to consider the concerns outlined in your statements of concern.

In its review of your concerns, the AER considered the following:

EPEA Application No. 002-00360116

- The above-captioned application proposes to transfer existing EPEA approval No. 00360110-00-00 associated with the Dimsdale mainline pipeline (license #57708 segments 001 and 002) to Tidewater from the original project proponent Terado. This is an administrative application, and there are no proposed changes to the existing approval that would result upon transfer.
- In your statement of concern, you raise concerns about Tidewater's gas storage facility, a well drilled in December 2016, and with emergency incidents that occurred outside of Alberta. These concerns are unrelated to, or relate to a matter beyond the scope of the application.
- You have not indicated in your statement of concern how you will be impacted by the transfer of the approval from one operator to another.

Directive 051 Injector Well & Subsurface Applications – 1880354 & 1882581

- The above captioned applications relate to the use of a previously licensed well (Licence # 0480964), for subsurface injection into the Paddy Dimsdale A Pool.
- The Dimsdale Paddy A reservoir into which sweet natural gas will be injected is approximately 1,300 meters below the surface. It is an approximately 10 m thick porous rock formation. Gas is injected and stored within the porous rock. Prior to being used for injection, natural gas had been produced from the reservoir. Prior to being depleted due to production, the original reservoir pressure was 10,485 kPa. Tidewater's existing storage approval (12203C) prohibits the average reservoir pressure from exceeding the initial reservoir pressure, and limits the volume of gas that can be injected. The well meets all *Directive 051* requirements for injection operations, including requirements for well integrity. Further, injection at a well must not exceed the maximum wellhead injection pressure prescribed in Tidewater's scheme approval, determined through the application process. The amendment that is required to add this well will not result in any changes to the approved operating conditions of Scheme Approval No. 12203C.
- In addition, Tidewater has committed to testing and inspecting all wells all storage and observation wells in the approval area of their disposal scheme, and assessing the integrity of existing wells that penetrate the storage zone. Tidewater has indicated that this will include working with third party owners of these wells to ensure proper inspection and required remediation takes place.
- The AER's has numerous requirements with which Tidewater must comply to ensure that groundwater sources are protected. Tidewater has gone beyond AER requirements by committing to perform baseline and follow-up tests of your water. Given the nature and depth of the reservoir into which injection will occur, and the AER's numerous requirements which are protective of groundwater sources, it is very unlikely that your well water will be impacted.
- The decision to approve an energy activity, including injection of gas into an underground formation, assumes operational compliance with all AER requirements and approval conditions. Tidewater must operate in accordance with the terms and conditions of its approval as well as all AER operating requirements. It is a contravention of AER requirements to impact ground water sources due to energy activities. Any such contravention would be subject to AER enforcement action, which may include suspension of operations and other remedial action. To report any impacts to your well water which may be caused by energy resource activity, please call the AER's Energy and Environmental 24-hour Response Line at 1-800-222-6514.
- The examples of incidents you have provided are the same as provided in previous applications relating to Tidewater's Gas Storage Project. As indicated in previous AER decisions, these are not relevant to the AER's consideration of whether you may be impacted by Tidewater's storage scheme and related facilities because these incidents relate to different operators in separate jurisdictions, operating under different requirements.

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

- The applications are part of the Dimsdale Gas Storage project, which was approved in January, 2014. The applications are in compliance with AER directives and regulations that ensure the components of the project (wells, pipelines, facility) may be constructed and operated with minimal risk to residents and the environment.
- There is no fracturing associated with any of Tidewater’s applications. To the extent that your concerns relate to the fracturing operations of other operators, such operations must comply with the requirements of AER *Directive 083: Hydraulic Fracturing – Subsurface Integrity* including requiring operators to take steps to minimize the chance of communication with offset wellbores. The AER is not aware of any instances of induced seismic events occurring in the Dimsdale Paddy A reservoir, or this same formation elsewhere in Alberta.
- As to your concerns regarding possible effects on your water well, the decision to approve an energy activity, including injection and storage of gas into an underground formation, assumes operational compliance with all AER requirements and approval conditions. Tidewater must operate in accordance with the terms and conditions of its approvals as well as all AER operating requirements. It is a contravention of AER requirements to impact ground water sources due to energy activities. Any such contravention would be subject to AER enforcement action, which may include suspension of operations and other remedial action. Given the nature and depth of the reservoir into which injection will occur, and the AER’s numerous requirements which are protective of groundwater sources, it is very unlikely that your well water will be impacted.

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Infrastructure Applications No. 1882589, 1882591, 1882653, 1884135

- The above captioned applications are for pipeline, well and facility infrastructure associated with Tidewater’s gas storage project.
- You do not own the lands on which the infrastructure proposed in the above applications is located. Your lands are located about 1.1 km west of the lease boundary of the proposed wells (Application 1882653), which are the nearest part of the project. There is existing oil and gas infrastructure in and around the project area and your lands.
- Regarding Application 1882589, this is an amendment to a previously approved facility licence, and will result in a decrease to the gas inlet rates and will replace the 3 licensed gas and 3 licensed electric compressors with 3 smaller gas and 2 smaller electric compressors. No further land will be disturbed and no additional emissions would result from the approval of the application.
- The concerns raised in your statement of concern on Application 1882589 relate generally to Tidewater’s gas storage project, are outside the scope of and do not relate specifically to the facility amendment application. You have not indicated whether or how you will be impacted by this application.
- Further to your concerns about impacts to air quality, odours and emissions, Tidewater must comply with the requirements of *Directive 060: Upstream Petroleum Industry Flaring, Incinerating and Venting*, and *Alberta Ambient Air Quality*

Objectives (AAAQO). Moreover, Tidewater has committed to completing a baseline air quality test and post-operational follow-up, with results made available to residents. If you have any concerns regarding odours or emissions once the project is in operation, please contact the AER's 24 hour Response line at 1-800-222-6514.

- In relation to your concerns about noise, the AER notes that drilling and construction are temporary activities. Tidewater has committed to installing continuous noise monitoring equipment when the facility is operational, and will share data with residents. Tidewater is also required to meet the requirements of AER *Directive 038: Noise* in its production and injection operations. Any concerns about noise once the project is operating should be communicated to the AER's 24 hour response line.
- As there is no H₂S associated with Tidewater's project, a site specific ERP is not required. Tidewater must have a Corporate ERP that meets the requirement of AER *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry*. A corporate ERP must be in place to respond to incident, and ensure that there is an effective level of preparedness, and capability of personnel and equipment for an effective emergency response.
- Tidewater has met the *Directive 056* consultation and notification requirements for the infrastructure applications, and must continue to notify all persons with known concerns on future applications. The infrastructure and subsurface applications are being considered as a project in its entirety.
- The concerns raised in your statements of concern about previous Tidewater applications, approved infrastructure, injection tests at other wells, and vandalism at Tidewater's site do not relate to and are outside the scope of the current applications.
- The concerns you have raised in your statement of concern have also been previously raised by you and adequately dealt with or addressed by AER decisions on previous applications, and by decisions of the AER on regulatory appeal requests filed by you in relation to those applications. For example, you have re-stated your concerns about impacts to property value but have provided no new information that might support your claim of impacts to your property value. The AER reiterates that you are approximately 1.1 km away from the nearest proposed infrastructure, and there is pre-existing oil and gas infrastructure located in similar proximity to your lands.

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Based on the above, you have not demonstrated that you may be directly and adversely affected by approval of the applications or that the AER should hold a hearing before making its decision on the applications. The AER has issued the applied-for approvals, and this is your notice of that decision. Copies of the approvals are attached. Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website, <http://www.aer.ca/applications-and-notices/appeals>.

If you have any questions, contact Lonny Olsen at 403-297-3513 or e-mail
Lonny.Olsen@aer.ca.

Sincerely,

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

Lane Peterson
Director, Pipeline Authorizations

Enclosure (7): **(3 approvals, 4 licences)**

cc: Clark Dickson, Tidewater
AER SOC Coordinator,
AER Grande Prairie Field Centre