AER Proceeding 427

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June 6, 2023

By email only

Cassels Brock & Blackwell LLP
Attention: Jeremy Barretto

Blake, Cassels & Graydon LLP
Attention: Lars Olthafer

Re: Reconsideration 1942203
Class IB Disposal Approval No. 13122A
Canadian Natural Resources Limited (Canadian Natural)
Greenfire Resources Operating Corporation (Greenfire)
Temporary Suspension Motion Decision

Dear Sirs:

The panel of Alberta Energy Regulator (AER) hearing commissioners presiding over this proceeding (the panel), writes to provide our decision on Canadian Natural's motion for the temporary suspension of Approval No. 13122A (Approval) issued to Greenfire (Motion). For the reasons set out below, we deny Canadian Natural's Motion.

Preliminary Note on Terminology

We note that Canadian Natural has framed its Motion in terms of seeking a "temporary suspension of the operation" of the Approval and refers to the three-part test the AER applies when considering whether to stay a decision as the test the AER applies when considering "whether to suspend the operation of a decision". Canadian Natural does not refer to specific factors the AER may consider when determining whether to issue a suspension order or otherwise require the suspension of an activity or decision pursuant to the provisions of the *Responsible Energy Development Act* (*REDA*), the energy resource enactments or specified enactments under which it exercises jurisdiction.

We understand from the submissions of the parties that Canadian Natural is seeking a stay of the Approval and that Canadian Natural's use of "suspension" and "suspend" may stem, at least in part, from the wording of section 42 of *REDA* in respect of the AER's legal power to reconsider its decisions. We do not understand that Canadian Natural is suggesting we issue an order to suspend the operations permitted by the Approval under the *Oil and Gas Conservation Act* (*OGCA*).

Although the outcome of a stay of the Approval, if granted, may effectively result in a pause or suspension of activities authorized by the Approval, given the confusion that may arise as "suspension" is defined in the *OGCA* and subject to further regulatory requirements, and also defined or used in other enactments under which the AER exercises jurisdiction, the panel has considered the submissions of Canadian Natural and Greenfire, and have made our decision in terms of whether to stay the Approval and not whether to suspend Greenfire's operations.

Background

On April 11, 2022, Greenfire filed application 1936402 (Application) to drill and operate its 100/02-15-084-11W4/0 well as a Class Ib disposal well into the Clearwater Sand aquifer, at its Hangingstone Expansion SAGD project. On July 19, 2022, the AER decided to issue the Approval, approving Greenfire's Application subject to several conditions. On February 22, 2023, the AER decided to hold a reconsideration of the Approval, with a hearing (Reconsideration).

On March 23, 2023, Canadian Natural submitted a potential schedule to consider a request for a stay in the context of the Reconsideration. Canadian Natural indicated Greenfire conditionally accepted the schedule provided that the AER proceeded with the Reconsideration hearing and the stay request did not raise material new evidence that could not be reasonably responded to in the timeframe provided. We confirmed this schedule on March 27, 2023.

On April 6, 2023, Canadian Natural submitted the Motion seeking an order from the panel to temporarily suspend the operation of the Approval under sections 14(1) and 42 of *REDA*. Canadian Natural stated that the same test the AER applies when considering whether to suspend the operation of a decision under section 45(5) of *REDA* also applies in the context of the Motion. Canadian Natural indicated that it satisfied each of the elements under the test in *RJR-MacDonald Inc v Canada (Attorney General*) (*RJR-MacDonald*),[1] from which the AER test for suspension was adapted.

On April 20, 2023, Greenfire requested an extension to June 2, 2023, to file its response submission to the Motion. On April 27, 2023, we granted Greenfire an extension until May 8, 2023. Similarly, we extended the date for Canadian Natural to file its reply submission by two weeks. On the same day, we sent a letter to Canadian Natural requiring more fulsome submissions on the legal authority for the panel to grant the requested suspension. Canadian Natural filed its submission on the AER's legal authority on May 2, 2023.

[1] [1994] 1 SCR 311

Greenfire filed its response submission to the motion on May 8, 2023, including its submissions on the AER's legal authority. On May 15, 2023, Canadian Natural filed its reply submission.

On May 17, 2023, Greenfire submitted requests for corrections to Canadian Natural's reply submission and requested that Canadian Natural provide copies of the "Transcript of Alberta Court of Appeal Hearing regarding Permission to Appeal No 2301-0019AC" (the transcripts) to the AER and Greenfire. On May 18, 2023, Canadian Natural responded to the correction requests to confirm the corrections Greenfire requested and committed to publicly filing the transcripts with the AER, if approved by the Court of Appeal.

On May 19, 2023, the panel accepted Canadian Natural's commitment to provide the transcripts and directed that no further submissions regarding the motion could be made, without permission from the panel.

On May 30, 2023, Canadian Natural filed the transcripts.

AER's Authority Regarding Stays

Party Submissions

Before the panel can determine whether the Approval should be stayed, we must be satisfied that we have the requisite authority to grant the relief for which Canadian Natural has applied. A summary of the parties' submissions on the AER's authority is provided below.

Canadian Natural submitted the AER has the jurisdiction to grant the stay. Canadian Natural submitted that the AER has broad authority under subsection 14(1) of *REDA* to grant a stay because a stay is necessary for and incidental to carrying out the duty or function of the AER to conduct reconsiderations under sections 42 to 44 of *REDA*. The combined application of the AER's mandate under *REDA* and section 4(c) of the *OGCA* require the AER to ensure the economic, orderly, efficient and responsible development of Alberta's oil and gas resources. Section 42 of *REDA* allows the AER, in its sole discretion, to confirm, vary, suspend or revoke a decision made by it. This section provides discretion to the AER when it comes to a reconsideration proceeding, corroborating the AER's authority to stay the Approval.

Canadian Natural also submitted the AER is the master of its own procedure and has authority over its own process, including the authority to grant Canadian Natural's Motion. Canadian Natural submitted that the Supreme Court of Canada has "stated that as a general rule tribunals are 'masters in their own house' and in the absence of specific rules laid down by statute or regulation 'they control their procedures,' subject to the rules of fairness and natural justice".[2] Canadian Natural stated the Supreme Court's jurisprudence

[2] *Prassad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560, para 8

confirms the AER's discretion to decide whether to grant the Motion pending the outcome of the Reconsideration.

Canadian Natural noted it would be an absurd result if the AER has authority to grant approvals, but no authority to suspend operation of approvals that are causing or could cause serious harm, and consequently, defeat the purpose of the statute. It submitted the AER has jurisdiction to grant the stay as a result of the doctrine of jurisdiction by necessary implication. The nature and scope of this doctrine was explained in *Dow Chemical Canada Inc v Union Gas Ltd* as "when legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it". [3] The Supreme Court in *ATCO Gas* stated that pursuant to the doctrine, "the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured".[4]

In response, Greenfire submitted that the AER lacks jurisdiction to grant the stay pending the Reconsideration. It stated that neither subsection 14(1) nor section 42 of *REDA*, alone or in concert with or backed by any of the doctrines or "comments" cited by Canadian Natural, provides the AER jurisdiction to grant the Motion, particularly in light of the facts and previous decisions of the AER in this matter.

Greenfire noted that in *ATCO Gas*, the Supreme Court of Canada stated that "tribunals and boards obtain their jurisdiction over matters from two sources: 1) express grants of jurisdiction under the various statutes (explicit powers); and 2) the common law, by application of the doctrine of jurisdiction by necessary implication (implicit powers)".[5]

Greenfire noted that the reconsideration provisions in *REDA*, sections 42 to 44, do not expressly provide the AER with the ability to issue interim relief as requested by Canadian Natural. Section 42, read in conjunction with sections 43 and 44, sets out the actions that the AER may take upon the completion of the reconsideration, whether conducted with or without a hearing. Greenfire submitted that it makes no sense to suggest that the intent of section 42 includes enabling the AER to confirm, vary, suspend or revoke a decision before it conducts and completes a reconsideration in accordance with section 44, which requires a written decision be made "after the completion of a reconsideration".

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[3] 141 DLR (3d) 641, para 59; *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)* (*ATCO Gas*), [2006] 1 SCR 140, para 51

[4] *ATCO Gas*, para 51

[5] *Ibid*, para 38

Greenfire submitted that the absence of any express power to stay or suspend a decision pending the conduct and completion of a reconsideration are in contrast to the appeal mechanisms provided under *REDA*, where, in the case of a regulatory appeal, subsection 39(2) of *REDA* expressly authorizes the AER, upon request, to stay a decision that is sought to be appealed, and on appeal to the Court of Appeal, subsection 45(5) of *REDA* provides an applicant the ability to apply to the AER for a suspension of a decision. There is no express power provided to the AER under *REDA* to order a stay or suspension of a decision pending the completion of a reconsideration.

Greenfire submitted the fact that the reconsideration provisions do not provide the AER with the power to stay a decision pending a reconsideration is not cured by subsection 14(1) of *REDA*. Subsection 14(1) provides the AER with the authority to do all things that are "necessary for or incidental to" its legislated "duties and functions". Greenfire submitted that the powers, duties and functions the AER can exercise in carrying out its mandate include those explicitly provided by *REDA*, including the reconsideration powers, and that the Court of Appeal has confirmed that section 14 cannot grant the AER power to do things beyond its statutory mandate.[6]

Greenfire added there is a contrast between subsection 14(1) of *REDA* and subsection 14(2) of *REDA*. Under subsection 14(2), the AER may only act with the approval of the Lieutenant Governor in Council, and subsection 14(2) permits actions "necessary to carry out the mandate of the Regulator and the purposes of *REDA*". Subsection 14(1) permits the AER to act in relation to "carrying out … duties and functions imposed on it". Greenfire submitted that there is a distinction between "duties and functions" on the one hand and "mandate … and the purposes" on the other.

Greenfire argued that the reconsideration provisions do not explicitly impose a duty on the AER to consider a stay pending reconsideration or make it a function of the AER to do so, and in fact only provide the power to suspend a decision as a result of the reconsideration. Further, Greenfire submitted that an ability to grant a stay pending a reconsideration is also not necessary or incidental to the power to conduct a reconsideration. If the AER considers the ability to grant a stay pending a reconsideration is necessary to carry out its mandate and the purposes of *REDA* and energy resource enactments, it can request approval to do so from the Lieutenant Governor in Council.

Greenfire stated the AER has no implicit power to grant the stay as requested and that Canadian Natural's submission that tribunals are "masters in their own house" only applies in the absence of specific rules laid down by statute or regulation and subject to the rules of fairness and natural justice. Neither *REDA* nor the

[6] *Cymbaluk v TransAlta Corporation*, 2018 ABCA 429, para 36

requirements of the reconsideration process require the ability to grant a stay as sought in the Motion. In the reconsideration process, the AER is exercising a specific exceptional discretion with a unique process that is not subject to a limitation period and there is no reason the jurisdiction to grant interim relief is necessary for that process.

Greenfire responded that the AER has no legal authority to stay a decision as a result of the doctrine of necessary implication as the power to grant an interim stay pending a reconsideration is not necessary for the AER to exercise its authority to reconsider a decision. Were it deemed to be necessary, Greenfire submitted that the legislature could have made an explicit provision for such authority in the context of a reconsideration. Greenfire further submitted that, since a notice of hearing is required to be issued under the *Alberta Energy Regulator Rules of Practice* (*Rules*) and a decision issued only after the conclusion of the hearing, an interim suspension would constitute pre-emptive exercise of the AER's reconsideration powers which can only follow the conclusion of the hearing.

In its reply to Greenfire, Canadian Natural submitted that Greenfire provided an unreasonably narrow interpretation of *REDA* that would strip the AER and its hearing panel of much of their procedural discretion. It also submitted that Greenfire incorrectly relies on subsection 14(2) of *REDA* to argue that the panel must obtain Lieutenant Governor in Council approval to grant any sort of interim relief during the reconsideration process. Canadian Natural submitted that in light of the statutory scheme and legislative intent, subsection 14(1) and section 42 of *REDA* give the AER the authority to suspend its own approvals to prevent irreparable harm. Canadian Natural argued that the AER's power to grant interim relief in the reconsideration process is implicit in *REDA* and that Greenfire has provided little to support its claim that the doctrine of jurisdiction by necessary implication does not apply.

Canadian Natural submitted that under section 42 of *REDA*, the AER's powers to suspend a decision inherently include the power to temporarily stay a decision and that to interpret section 42 of *REDA* to exclude the AER's ability to temporarily "suspend" approvals would render the word "suspend" meaningless. The only procedural restriction under the reconsideration provisions is that the Regulator must make a written decision after completing the reconsideration, and therefore the AER has jurisdiction as long as a written decision is made following the reconsideration.

Canadian Natural submitted that since section 42 grants the AER the authority to effect an interim suspension of any prior decision without a hearing, it would be senseless if it could not also exercise this authority to suspend a decision pending a reconsideration hearing. This interpretation would give the AER fewer interim powers during a reconsideration than it has outside of a reconsideration. Canadian Natural submitted that an interpretation of section 42 of *REDA* to also confer the authority to suspend a decision pending a reconsideration hearing is consistent with the rest of *REDA*.

Regarding subsections 14(1) and 14(2) of *REDA*, Canadian Natural relied on the modern principle of statutory interpretation set out in the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd (RE),*[7] and submitted that the ordinary and grammatical sense of the wording of subsection 14(1) supports a grant of broad authority. Canadian Natural referred to the legislative intent of the Government of Alberta in drafting *REDA* and establishing the AER in support of the interpretation of subsection 14(1) as granting broad powers.

Canadian Natural submitted that it is in line with the modern principle of statutory interpretation to apply the mandate of the AER, as set out in section 2 of *REDA*, to the interpretation of subsection 14(1). Canadian Natural argued that the mandate of the AER informs the powers of the AER under subsection 14(1), and that, therefore, the ability to grant interim relief where necessary in a reconsideration proceeding falls squarely within the AER's mandate and powers.

Canadian Natural submitted that the Supreme Court of Canada has made it clear that statutes should not be interpreted in a way that produces absurd results and that it would be an absurd result if the AER had authority to grant approvals, but no authority until the conclusion of the reconsideration process to suspend approvals if the approved activities were causing or could cause serious and irreparable harm.

Decision on Legal Authority

We thank the parties for their thorough submissions on this issue. Having considered the submissions made by the parties, we are of the view that subsection 14(1) of *REDA* provides us with the legal authority to grant a stay of the Approval, should we determine it appropriate to do so.

Legislative Provisions

Section 14 of *REDA* provides the following powers of the AER:

> 14(1) The Regulator, in the carrying out of duties and functions imposed on it by this Act or any other enactment, may do all things that are necessary for or incidental to the carrying out of any of those duties or functions.
>
> (2) The Regulator, with the approval of the Lieutenant Governor in Council, may take any action and may make any orders and directions that the Regulator considers necessary to carry out the mandate of the Regulator and the purposes of this Act or any other enactment that are not otherwise specifically authorized by this Act or any other enactment.

The AER's mandate is set out in section 2 of *REDA*. Subsection 2(1) sets out that:

[7] [1998] 1 SCR 27

The mandate of the Regulator is

> a) to provide for the efficient, safe, orderly and environmentally responsible development of energy resources and mineral resources in Alberta through the Regulator's regulatory activities, and
>
> b) in respect of energy resource activities, to regulate
>
> i) the disposition and management of public lands,
>
> ii) the protection of the environment, and
>
> iii) the conservation and management of water, including the wise allocation and use of water,

in accordance with energy resource enactments and, pursuant to this Act and the regulations, in accordance with specified enactments.

Subsection 2(2) of *REDA* provides that the AER's mandate "is to be carried out through the exercise of its powers, duties and functions under the energy resources enactments and, pursuant to [*REDA*] and the regulations, under specified enactments, including, without limitation" numerous general powers, duties and functions, such as:

> a) to consider and decide applications and other matters under energy resource enactments in respect of pipelines, wells, processing plants, mines and other facilities and operations for the recovery and processing of energy resources and mineral resources; …
>
> f) to monitor and enforce safe and efficient practices in the exploration for and the recovery, storing, processing and transporting of energy resources and mineral resources; …
>
> i) to monitor energy resource activity site conditions and the effects of energy resource activities on the environment;

The *OGCA* is an energy resource enactment as defined in subsection 1(1)(j) of *REDA* and the enactment pursuant to which the Approval is issued.

The purposes of the *OGCA* are set out in section 4, and include:

- to effect the conservation of, and to prevent the waste of, the oil and gas resources of Alberta, in section 4(a);
- to secure the observance of safe and efficient practices in the locating, spacing, drilling, equipping, constructing, completing, reworking, testing, operating, maintenance, repair, suspension and abandonment of wells and facilities and in the operations for the production of oil and gas or the storage or disposal of substances, in section 4(b); and

- to provide for the economic, orderly, efficient and responsible development in the public interest of the oil and gas resources in Alberta, in section 4(c).

These purposes are in turn reflected in the various duties and functions set out in provisions of the *OGCA*.

Necessary For or Incidental To

The AER's mandate and its powers, duties and functions are linked: the AER's mandate is to be carried out through the exercise of its powers, duties and functions. Accordingly, we consider that the mandate of the AER and the purposes of the energy resource enactments or specified enactments relevant to a given matter must inform the decisions we make in exercising the powers, duties and functions of the AER.

Greenfire noted that the power set out in subsection 14(1) is in relation to the doing of all things necessary for or incidental to the AER's carrying out of duties and functions imposed on it by *REDA* or an energy resource or specified enactment, and not the carrying out of powers. Greenfire also noted that the power set out in subsection 14(2) is in relation to actions taken by or the issuance of orders or directions of the AER necessary to carry out the mandate of the AER and the purposes of *REDA* or any other enactment.

Greenfire submitted that the distinction between duties and functions, exclusive of powers, and the mandate of the AER should be given meaning, consistent with the principles of statutory interpretation. We agree. However, we do not accept Greenfire's argument that, absent a provision in *REDA* imposing a specific duty on the AER or making it a function of the AER to consider a stay pending the conclusion of a reconsideration, to do so pursuant to subsection 14(1) would render subsection 14(2) of *REDA* meaningless.

We agree with Greenfire that subsection 14(2) should not be rendered meaningless by a reading of subsection 14(1). We also agree with Canadian Natural that, equally, subsection 14(1) should not be rendered meaningless by a reading of 14(2), and that subsections 14(1) and 14(2) must be read together.

Subsection 14(1) provides the AER the specific power to do all things that are necessary for or incidental to the carrying out of any of the duties and functions imposed on it by *REDA* or any other enactment. In contrast, subsection 14(2) grants the AER the power to, with the approval of the Lieutenant Governor in Council, take any action and make any orders and directions that the AER considers necessary to carry out its mandate and the purposes of *REDA* or any other enactment that are not otherwise specifically authorized by *REDA* or any other enactment.

Read together, any action taken or order or direction made by the AER under the power granted by subsection 14(2) must be necessary to carry out the AER's mandate and the purposes of *REDA* or an energy resource or specified enactment, but not otherwise necessary for or incidental to an existing duty or function of the AER. To read subsection 14(2) as requiring that *REDA* and the energy resource and specified

enactments set out everything necessary for or incidental to the carrying out of the duties and functions they impose would render subsection 14(1) meaningless.

Conduct of a Reconsideration

Greenfire submitted that an ability to grant a stay pending reconsideration is not necessary or incidental to the power to conduct a reconsideration. However, section 42 of *REDA* does not provide the AER the power to conduct a reconsideration. Section 42 of *REDA* provides the AER's power to reconsider a previous decision, including the issuance of an approval. The conduct of a reconsideration, subject to the regulations and with or without a hearing, is a function imposed on the AER under section 43 of *REDA* for the carrying out of its power to reconsider. In this matter, the AER has chosen to conduct a reconsideration with a hearing, which is subject to further duties or functions imposed on the AER.

Accordingly, we find subsection 14(1) applicable to this issue. The question of whether we have the legal authority to issue a stay of the Approval, should we determine to do so, is subject to whether the deciding of a motion for a stay is necessary for or incidental to the carrying out of a reconsideration with a hearing.

Under the *Rules*, a hearing on a reconsideration is to be conducted in accordance with Part 2 of the *Rules*, entitled "Hearings on Applications". Other than specific requirements in respect of the notice of a hearing on reconsideration, the *Rules* speak no further to definitions or varied steps of the hearing process that apply to hearings on a reconsideration. The *Rules* do not contemplate a panel deciding whether to grant a stay; the *Rules* neither clearly authorize the granting of a stay nor prohibit it. This is unsurprising, given that a hearing on an application would not, generally, be held in respect of an application that had previously been decided and an approval issued. We note that, under section 42 of the *Rules*, were there a prohibition in this regard, we could dispense with, vary, or supplement that part of the *Rules*, were we satisfied the circumstances of the proceeding required it.

Regarding whether it is necessary for or incidental to the conduct of a reconsideration with a hearing to decide whether to grant a stay, a hearing before a panel of AER hearing commissioners is a quasi-judicial process that affords significant procedural rights to the parties to the hearing. Greenfire's Application was previously decided. The Reconsideration is being held on the basis of the new information that was not available to or considered by the AER at the time the AER decided Greenfire's Application and that, in the AER's view, may lead the AER to a different decision than it originally made. Given this, and as the Approval has been issued and the conduct of a reconsideration does not automatically stay the decision that will be reconsidered, we find that deciding whether or not to grant a stay is necessary for or incidental to the conduct of the reconsideration with a hearing. We are of the view that subsection 14(1) of *REDA* provides us with the legal authority to grant a stay of the Approval, should we determine it appropriate to do so.

Oil and Gas Conservation Act

We note that as the Approval was issued pursuant to the *OGCA*, whether we have the legal authority to grant a stay of the Approval may equally be necessary for or incidental to the AER's functions and duties under *REDA* in respect of energy resource activities, wells and operations, or under the *OGCA* in respect of its stated purposes. As such, we consider that being able to stay a disposal approval as a result of concerns around conservation of oil and gas resources or safe and efficient practices is necessary and incidental to those duties.

Temporary Relief

Regarding the parties' submissions concerning the availability of temporary or interim relief during a reconsideration process, we note that a reconsideration is not a form of a relief. The possible outcomes of a reconsideration, that the AER may confirm, vary, suspend or revoke the decision that is being reconsidered, are those available to the AER when making its final decision on a reconsideration. In this regard, on the basis of the record before it at that time, the AER's final decision when it holds a reconsideration may be to suspend the decision previously made by it, whether subject to conditions or not. There is not, however, a prohibition in *REDA* or the *Rules* against the granting of temporary or interim relief during the course of a reconsideration.

Equally, neither *REDA* nor the *Rules* preclude the AER from exercising regulatory oversight in respect of decisions it has previously made during the conduct of a reconsideration, including under the *OGCA*, pursuant to which the AER may amend a licence it has previously issued, or may require a licensee or other party to take various actions in respect of a well or facility, or may require the suspension or abandonment of a well or facility.

In this respect, we agree with Canadian Natural that it would not make sense for us not to have the authority to be able to stay an approval during the conduct of a reconsideration with a hearing, should we have significant concerns around the conservation of oil and gas resources or the safe and efficient practices of operations for the production of oil and gas or the storage or disposal of disposal fluids.

Test for a Stay

As noted in the background above, Canadian Natural submitted that the AER adopts the test from *RJR-MacDonald* when considering whether to suspend the operation of a decision under section 45(5) of *REDA*. Canadian Natural suggested this test should also apply to its Motion. Greenfire did not disagree that the test from *RJR-MacDonald* could be applied to the Motion.

When it considers a request for a stay, the AER applies the three-part test set out by the Supreme Court of Canada in *RJR-MacDonald,* adapted for matters before the AER and not a trial before a court. The three parts of the test are:

1. Is there a serious question to be tried?
2. Will the stay requestor suffer irreparable harm if the stay request is denied?
3. On a balance of convenience, which of the parties would suffer greater harm from the granting or denial of the stay request?

As the stay requestor, Canadian Natural bears the burden of satisfying each part of the test for the requested stay to be granted.

Is There a Serious Question to be Heard?

The first part of the test for a stay is whether there is a serious question to be tried, or heard, in the Reconsideration. This requires a preliminary assessment of the merits of the Reconsideration. The applicant must demonstrate that there is some basis on which to present an argument at the reconsideration hearing. This is a very low threshold and the applicant need only show that the Reconsideration is not frivolous or vexatious.

Party Submissions

Canadian Natural submitted that its Motion raises a serious issue to be tried. Canadian Natural's concerns include the potential for Greenfire's wastewater disposal operations to adversely affect its nearby sweet gas production by introducing hydrogen sulphide (H_2S) into the reservoir, which Canadian Natural submitted will contaminate the gas zone being produced by Canadian Natural or contribute to premature water breakthrough in its gas production wells, or both. To support its position, it referenced the AER's February 22, 2023, decision to hold a reconsideration, where the AER found that Canadian Natural's new information that was unavailable to the AER when it made its initial decision on Greenfire's Application and if considered during a reconsideration, may lead the AER to change its original decision were extraordinary circumstances and an exceptional and compelling ground that warranted a reconsideration.

Greenfire conceded that Canadian Natural had met the low bar set for the first part of the tripartite test, that there is a serious issue to be tried, given that the AER found Canadian Natural's arguments sufficiently well-founded to hold the Reconsideration.

Panel Findings and Conclusions

We are satisfied that Canadian Natural has met the first part of the test for a stay. The Approval allows Greenfire to dispose of wastewater containing up to 100 parts per million H_2S into the same geological reservoir from which Canadian Natural produces sweet natural gas with no H_2S. The closest of Canadian Natural's wells are located approximately 950 metres and 1950 metres from the disposal well. Further, the AER determined it would hold a reconsideration on the basis of new information provided by Canadian Natural that was not available to it when it made its decision on Greenfire's Application and if considered

during a reconsideration, may lead the AER to change its original decision. We find that this new information represents a serious question to be considered during the Reconsideration and is neither frivolous nor vexatious.

Will Canadian Natural Suffer Irreparable Harm if the Stay Request is Denied?

The second question requires us to decide whether Canadian Natural would suffer irreparable harm if the stay it requests was not granted. Irreparable harm will occur if a stay applicant will be adversely affected by the conduct the stay would prevent if the applicant prevails in the Reconsideration. The test for irreparable harm has a high threshold and only relates to harm suffered by the party seeking the stay.[8] The type of harm and not the size of the harm must be considered. The harm must not be of the sort that could be remedied through damages (i.e., in monetary terms). As noted by the Court of Appeal of Alberta, irreparable harm is "of such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the [stay] would be a denial of justice."[9]

The burden is on the party seeking the stay to address clear and non-speculative evidence that irreparable harm will follow if their stay request is denied.[10] It is not enough for a party seeking a stay to show that irreparable harm may arguably result if the stay is not granted and allegations of harm that are merely hypothetical will not suffice. Rather, the burden is on the party seeking the stay to show that irreparable harm will result.[11]

Party Submissions

Canadian Natural stated that it and the Province of Alberta will suffer damages that are irreparable or incurable by a damages payment if the Approval is sustained. Canadian Natural submitted that the Approval will negatively impact several of Canadian Natural's wells, ultimately leading to their sterilization, pose safety risks to Canadian Natural's personnel and contractors, impact Alberta's non-renewable energy resources in a manner that is inefficient and environmentally irresponsible, and result in financial losses to the Province of Alberta. It argued that under this element of the *RJR-MacDonald* test, parties are not required to prove absolute certainty of harm, but the proper approach is to assess whether it is probable that irreparable harm will be suffered. It further argued that any health issues caused to Canadian Natural's personnel and contractors because of the disposal approval could not be quantified in monetary terms and, therefore, a damages award would not be adequate. Canadian Natural filed affidavit evidence from

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[8] *Dreco Energy Services Ltd.* v *Wenzel*, 2008 ABCA 290, para 33

[9] *Ominayak v Norcen Energy Resources*, 1985 ABCA 12, para 31

[10] *Aventis Pharma SA* v *Novopharm Ltd* 2005 FC 815, para 59

[11] *Canada (Attorney General) v Amnesty International Canada*, 2009 FC 426, paras 29 and 30

Cassandra Lai, a Canadian Natural employee, and Dr. Brent Thomas, an external consultant, in support of its Motion.

Canadian Natural stated that it has 25 producing gas wells completed in the same Clearwater Zone as Greenfire's disposal well and that it has been monitoring for the presence of H_2S in six of its gas wells in the Clearwater Zone located adjacent to the disposal well since December 13, 2022. Canadian Natural submitted that until March 20, 2023, the testing did not detect the presence of H_2S in these wells. On March 21, 2023, the analyses from the two gas wells closest to the disposal well (the 06-14-084-11W4 [06-14] well located 950 metres away and the 05-13-084-11W4 [05-13] well located 1950 metres away) showed ~0.2 ppm H_2S. The other four wells tested negative for H_2S. Canadian Natural attributes the presence of H_2S in its wells to the wastewater injected by the Greenfire disposal well.

The 25 Canadian Natural wells in the Clearwater Zone currently produce at a rate of 2.3 million cubic feet per day raw gas (2.04 million cubic feet per day sales gas). In addition, Canadian Natural has another 17 wells located adjacent to the Clearwater Zone producing 1.0 million cubic feet per day of raw gas (0.9 million cubic feet per day sales gas). While these 17 wells are not completed in the Clearwater Zone, the gas is currently producing to the same production facility at 11-10-084-10W4 as the 25 wells, which Canadian Natural stated would be impacted if the Clearwater Zone sours. Canadian Natural submitted that if the impacted wells sour, its sales gas production from these wells will not meet specification and will be unsuitable for process handling at its 11-10-084-10W4 facility, which is currently designed to manage sweet gas production. The costs associated with infrastructure changes needed to adapt to souring (i.e., changes to produce, treat or process, and transport the gas), would render the gas production at that facility uneconomical, ultimately leaving Canadian Natural with no alternative other than shutting-in these wells.

Canadian Natural stated that at 8-10 ppm H_2S it would be required to replace all of its facility equipment because it is not designed to handle high concentrations of H_2S; at 10 ppm H_2S it would be required to relicense its facilities as "sour," for compliance with *Alberta Energy Regulator Directive 056: Energy Development Applications and Schedules*; and at 15 ppm H_2S its gas would no longer meet gas sales specifications and the entire field production at its Hangingstone facility would need to be shut-in.

Canadian Natural further stated that shutting down the impacted wells, which produce 2.94 million cubic feet per day in sales gas, would result in financial losses to Canadian Natural of approximately $4,500,000 yearly ($4/GJ) before royalty and operating costs and that the Province of Alberta would sustain a financial loss of approximately $270,000 yearly. The total amount of losses resulting from souring the facility, however, could be much larger.

Canadian Natural also stated concerns regarding what it perceives to be high sulphate content in Greenfire's disposal well. It is concerned that the high sulphate content in the water may increase the growth of sulphate-reducing bacteria, thus fouling Canadian Natural's sweet gas resources and infrastructure. Canadian Natural also stated concerns regarding the potential for in-situ H_2S generation from the continual disposal of Greenfire's sour water into the Clearwater aquifer.

Canadian Natural stated that based on the positive H_2S results, it anticipates a high rate of H_2S growth, potentially reaching 0.025 ppm/day or higher. This 0.025 ppm/day rate is derived from the observed rate change from 0.1 ppm to 0.15 ppm within two days (March 23 to March 25, 2023). Canadian Natural acknowledged that based on the limited data available to date, it was not able to predict with certainty the H_2S rate growth or whether the H_2S rate growth would trend linearly or exponentially. Canadian Natural therefore presented several possible scenarios, ranging from 0.5 times to two times the 0.025 ppm/day to account for the uncertainty of H_2S prediction with the passage of time. Assuming a linear growth rate, Canadian Natural predicted H_2S levels could reach between 3.6 and 14.0 ppm H_2S in the wells by the end of 2023. It predicted that its sales gas could reach 8 ppm H_2S in late 2024, if H_2S increased at a rate of 0.050 ppm/day, or in mid 2026 if the growth rate were 0.0125 ppm/day. Canadian Natural noted that the H_2S levels could be much higher sooner if an exponential growth rate is assumed.

Canadian Natural also submitted concerns about premature water breakthrough at its gas production wells. Canadian Natural reported that, as of January 31, 2023, Greenfire had injected a cumulative total of 1,306,072 barrels of wastewater and the approval maximum injection rate is 5,000 m^3/d (31,465 barrels of water per day). Canadian Natural stated that at this disposal rate, which is considerably higher than Canadian Natural's daily injection rate of 51 m^3/d, it is concerned that premature water breakthrough may occur at its two wells closest to the disposal well and ultimately at the remaining wells in the pools. Canadian Natural submitted that pressure data from observation and production wells demonstrate that there is a pressure gradient from the disposal well towards the gas wells and that pressures are increasing as a result of wastewater injection.

Canadian Natural stated it is concerned that the H_2S contamination of its sweet gas production will cause health and safety risks for Canadian Natural's personnel and contractors when the sour water reaches the Canadian Natural wells. Canadian Natural referenced *Workplace Health and Safety Bulletin CH029* issued by the Government of Alberta, summarizing the detrimental health effects resulting from short-term (acute) exposure to H_2S. Canadian Natural noted that exposure to as little as 1 ppm of H_2S concentration can cause health effects to its field employees and contractors. Canadian Natural also referenced section 16 of the

Occupational Health and Safety Code (*Code*),[12] which requires employers to ensure its workers' exposure to certain substances, including H_2S, is kept as low as reasonably achievable and does not exceed the *Code*'s prescribed occupational exposure limits. Canadian Natural further submitted that the *Code* provides that workers must not be exposed to H_2S at a concentration exceeding the *Code*'s prescribed ceiling limit at any time. The *Code* prescribes that during an 8-hour work shift, the occupational exposure limit for H_2S is 10 ppm and the ceiling occupational exposure limit is 15 ppm. Canadian Natural submitted that if the Greenfire disposal well continues to inject water as allowed by the Approval, Canadian Natural will be required to incur significant costs to ensure the safety of its personnel and contractors, and compliance with the *Code*. These costs will shorten the wells' economic life and will likely render all Canadian Natural wells tied into the associated infrastructure uneconomical.

Greenfire disputed Canadian Natural's view that irreparable harm would occur if the stay was not granted. Greenfire submitted that there was no reliable evidence of actual or reasonably projected material risk to personnel safety, infrastructure integrity, or marketability of Canadian Natural's produced gas. Greenfire argued that there was merely conjecture and speculation that such harms might occur, to one degree or another. Greenfire argued that Canadian Natural's claims of impacts rest on a foundation of unscientific and unsupported projections of prospective material souring of the Clearwater gas production beyond minute or trace levels of H_2S. Greenfire noted that Canadian Natural's reported ongoing monitoring and testing of its produced gas will further ensure that there is no prospective safety issue that cannot be readily managed in accordance with good oilfield practice. Greenfire provided affidavit evidence from Adrian Ilincuta, a consultant to Greenfire, Harold F. Thimm, an external consultant, and Robert B. Logan, President and Chief Executive Officer of Greenfire.

Greenfire submitted that Canadian Natural's claimed thresholds for needing to upgrade its gas production infrastructure were questionable and, in any event, were unlikely to be reached because of Greenfire's water disposal operations. Greenfire observed that the H_2S monitoring conducted by Canadian Natural were done with Gastec stain tubes which were read as indicating H_2S concentrations at the lower detection limit of between 0.1 ppm to 0.2 ppm at the Canadian Natural 06-14 and 05-13 wells. Based on these readings, Canadian Natural extrapolated a high rate of H_2S growth, potentially reaching 0.025 ppm/day or higher, to assert that the limits will be exceeded in various timeframes of months and years such that significant expenses will have to be incurred by Canadian Natural.

Greenfire argued that there were significant problems with the test results relied on by Canadian Natural as evidence of potential souring of its wells. Greenfire submitted that "stain tube" results are subject to false

[12] Alta Reg 191/2021

readings and are at best semi-quantitative. As such, slight variations in readings, as reported by Canadian Natural and from which it projects a rapid increase in H_2S content of the gas, should be treated as essentially identical. Further, Greenfire also observed that the results which Canadian Natural has drawn from the stain tube tests are not apparent from the photos of those stain tubes which it presented. Greenfire further submitted that the stain tube readings are contradicted by the much more reliable and quantitative AGAT Laboratories gas analyses commissioned by Canadian Natural which showed no, not even trace levels, of H_2S in the gas samples. Greenfire therefore argued there was no reliable evidence of a rapid increase or any discernible presence of H_2S in Canadian Natural wells at all. At most, there is a potential suggestion of trace levels of H_2S that are not of material concern.

Greenfire stated that even if Canadian Natural's field stain tube test readings at the Canadian Natural 06-14 and 05-13 wells are presumed to be roughly accurate, Canadian Natural's extrapolation of those results to potentially impactful levels of H_2S contamination are deeply flawed. All of Canadian Natural's analyses are based on the assumption that Greenfire's disposal operations have an H_2S content of 100 ppm, being the top of the set AER minimum H_2S range (i.e., 0 – 100 ppm) that Greenfire could select when applying for the disposal approval. Instead, Greenfire's disposal water has a measured content of 29 ppm. Additionally, Greenfire submitted that Canadian Natural's H_2S content projection evidence is inconsistent, by orders of magnitude, with previous evidence submitted by Canadian Natural and does not explain why or how the reported H_2S at the Canadian Natural 05-13 well is higher than at the Canadian Natural 06-14 well, despite the latter well being closer to the disposal well.

The affidavit evidence of Dr. Thimm included a quantitative analysis that Greenfire submitted demonstrating that the field stain tube readings reported by Canadian Natural, even if taken at face value, fall within the 0.03 ppm to 1.3 ppm range of H_2S content in the gas that might be expected as a result of contamination from the Greenfire water disposal operation, including an improbable worst-case scenario that assumes displacement of the Clearwater formation water such that the H_2S content of the water at the nearest Canadian Natural well is 29 ppm. Greenfire submitted that the mathematical analysis conducted by Dr. Thimm demonstrates that the H_2S content is not expected to increase from the calculated levels over time. Further, mixing and dispersal of Greenfire's disposal fluid with the Clearwater formation water, rather than displacement and direct flow between Greenfire's disposal well and Canadian Natural's nearest producing wells, is the more likely and realistic scenario. Greenfire submitted that according to the modelling conducted by Dr. Thimm, even if Greenfire exhausted the limits of the approval (i.e., injection at 5000 m^3/d and with an artificially high H_2S content of 100 ppm), the maximum extent of souring would not likely exceed 0.37 ppm. Greenfire submitted that none of these calculated levels would materially impact Canadian Natural's wells and production infrastructure, the safety of its employees or contractors, or the ability to market Canadian Natural's produced gas.

With respect to Canadian Natural's concern about potential souring caused by the growth of sulphur reducing bacteria, Greenfire submitted that Canadian Natural has consistently misunderstood or misconstrued the sulphate content data underlying this concern. Greenfire clarified that the data that Canadian Natural claims show elevated sulphate content in Greenfire's disposal water in fact shows elevated and variable levels of sulphate in the Clearwater formation. More recent analysis of Greenfire's disposal water shows that its sulphate content is within the range of the sulphate content of Canadian Natural's own produced water analysis results. Greenfire submitted that there is no evidence that H_2S generation by sulphur reducing bacteria is a valid concern in the Clearwater formation or that Greenfire's water disposal operations are contributing to such an issue.

With respect to premature water breakthrough, Greenfire submitted that its water disposal operations under the Approval are unlikely to materially affect the remaining life of Canadian Natural's wells. Greenfire stated that prior to making the Application, Greenfire conducted a detailed assessment of the potential impacts of its disposal operations to ensure that there were no material impacts to Canadian Natural's gas assets in the vicinity of its proposed disposal operations. Greenfire stated that the Clearwater sand unit reservoir, that is utilized by both Greenfire and Canadian Natural, is approximately the size of Lake Athabasca and the amounts which Greenfire can annually inject under the Approval constitute approximately 3 per cent of the Clearwater sand unit gas zone pore volume. According to Greenfire, this injection volume would only cause a few centimetres of water level rise in the gas zone per year which, given the gas zone typical thickness, was immaterial. Further, Greenfire confirmed it has monitored pressure sensors in the Clearwater since 2017, which have shown no change in the pressure decline rate in the roughly ten months of Greenfire's injection operations. Greenfire submitted that this lack of change in the pressure decline rate directly contradicts Canadian Natural's assumed rate of water level rise on which it bases its projections of premature water breakthrough at its nearby producing wells. Greenfire also noted that Canadian Natural has dramatically increased the production rate from its 06-14 well in recent months, which does not align with its claimed concern about potential premature water breakthrough.

With respect to Canadian Natural's submissions regarding potential harm to the public interest, Greenfire submitted that the harm to the public interest is dependent on the harms to Canadian Natural's wells, production infrastructure, and gas marketability, and that Canadian Natural had not demonstrated any real prospect of such harms. Further, Greenfire noted that the value of Greenfire's bitumen production vastly exceeds, both in energy and dollar terms, the value of Canadian Natural's gas resource and that the Energy

Utilities Board previously found that preferring the production of bitumen, with a higher potential economic value[13] and a higher resource value,[14] over gas was in the public interest.

In its reply submission, Canadian Natural rejected Greenfire's assertion that there was no reliable evidence of actual or reasonably projected material risk to personnel safety or to Canadian Natural's wells. Canadian Natural reiterated that the *RJR-MacDonald* test does not require proof of actual or absolute certainty of harm, but whether irreparable harm is probable. It submitted that its evidence of harm was not speculative and has been corroborated by the field testing results, which show the presence of H_2S in its wells for the first time.

Canadian Natural submitted that Greenfire's generalization about its field tests were misguided and noted that since March 21, 2023, when its 06-14 and 05-13 wells first started testing positive for H_2S, these wells have been consistently testing positive, corroborating the reliability of the field test results even when measuring a lower H_2S concentration rate. Canadian Natural stated that the stain tubes utilized for the field results were AGAT Laboratory Draeger tube No. 4HP, not the Gastec No. 4LT hydrogen sulphide detector tubes referenced by Greenfire. Canadian Natural therefore submitted that Greenfire's claims about interference with the H_2S readings from the field results was inaccurate. Canadian Natural said that the AGAT tubes used for the field results have considerably less potential for interfering agents than the type of stain tubes referenced by Greenfire, refuting Greenfire's claims of a false positive.

Canadian Natural stated that it has no visibility or input into how Greenfire conducts its operations and cannot simply rely on Greenfire's claim that the 29 ppm H_2S concentration, which is the reported data available in the short period of time the disposal well has been operating, will remain constant throughout the disposal well's life cycle. Canadian Natural submitted that it must act on the assumption that the disposal well may operate at the limit of H_2S disposal authorized in the Approval.

Canadian Natural submitted that Dr. Thimm's calculations were based on a number of erroneous assumptions and, therefore, his projection of 0.37 ppm maximum level of concentration was invalid.

In response to Greenfire's May 17, 2023, request for corrections to Canadian Natural's reply submission, Canadian Natural confirmed that AGAT Laboratories had used Gastec No. 4LT test tubes for their field H_2S tests rather than the Draeger No. 4HP tubes that Canadian Natural had stated were used. To address Greenfire's concern regarding potential false results due to interfering substances, Canadian Natural

[13] EUB Decision 2000-22, Gulf Canada Resources Limited, Request for the Shut-in of Associated Gas Surmont Area, March 2000, p 101

[14] EUB Decision 2000-22, pp 6-7

provided the trace gas analysis conducted on the same samples that tested positive for H_2S (0.1 ppm detected) on March 27, 2023.

Panel Findings and Conclusions

The onus is on Canadian Natural to establish that irreparable harm will occur. Canadian Natural must prove that irreparable harm is probable or likely, on a balance of probabilities. We will address each of Canadian Natural's claims in turn.

Based on the parties' submissions, including affidavit evidence, we find that Canadian Natural's claims of irreparable harm due to souring of the Clearwater reservoir and the resultant loss of gas production due to H_2S contamination of its wells to be speculative at this point. While the 05-13 and 06-14 wells closest to the disposal well have recently tested positive for H_2S, it does not necessarily follow that the H_2S levels in the gas wells will increase as quickly or reach the levels predicted by Canadian Natural or result in a loss of production.

Canadian Natural admitted that it cannot predict with certainty the H_2S rate growth or whether the H_2S rate growth will trend linearly or exponentially. The growth rates predicted by Canadian Natural are based on an extrapolation of very limited data, that is, analyses from one well, two days apart. Further, the test results are near the lower limit of detection of the Gastec stain tube technology used for the analyses and the technology has some known limitations in this range, as outlined in Greenfire's submissions, including being semi-quantitative and having the potential for false positive readings. While Canadian Natural provided additional laboratory results in its response to questions from Greenfire that confirm the presence of H_2S in the two wells, these laboratory results are in the same range as the values derived from the Gastec tubes (0.1 ppm versus the 0.2 ppm derived from the Gastec stain tubes) and at the detection limit of the laboratory analysis method. In addition, there is significant uncertainty and conflicting views about the degree to which H_2S in the wastewater or aquifer will migrate into the gas phase in the reservoir. We find that there is significant uncertainty about the degree to which souring of the gas reservoir may occur and the length of time this may take. These are complex issues and the reconsideration hearing is a more appropriate venue for testing the evidence of the parties on these matters. If Canadian Natural has additional evidence to support the magnitude and rate of increasing H_2S levels in its gas wells, it will have the opportunity to present that evidence in the hearing.

Similarly, we find Canadian Natural's claims of irreparable harm due to premature water breakthrough in its gas production wells to also be speculative at this point. Canadian Natural's claims are based on observed pressure changes in the reservoir, however, Canadian Natural and Greenfire presented conflicting views on the significance and implications of these pressure changes. Based on the limited evidence provided, we

find that there is significant uncertainty at this time about the magnitude and rate of change in water levels that might occur in the vicinity of Canadian Natural's wells.

Canadian Natural argued that the damages related to souring of the Clearwater Zone, premature water breakthrough, or both in its wells and the associated loss of gas production would be irreparable or incurable by a damages payment. We disagree. If the claimed damages were to occur, it would be possible to quantify the amount of production lost and gas reserves sterilized, and seek a claim for financial compensation.

Harms resulting from exposure of Canadian Natural personnel or contractors to H_2S may not be curable by a damages payment. However, we find that these harms are speculative at this point in time based on the evidence presented by the parties and we are not persuaded that they are likely to occur.

Canadian Natural's claims that not granting the stay will cause irreparable harm to Alberta's non-renewable energy resources and result in financial losses to the Province of Alberta are premised on its claims of irreparable harm to Canadian Natural's gas production operations. As we have determined that these harms are speculative at this point, we find that the claims of irreparable harm to Alberta are also speculative.

Based on the above, we find that Canadian Natural has not demonstrated that it will suffer irreparable harm if the stay is not granted. Therefore, the second part of the test for a stay has not been met.

Which of the Parties Would Suffer Greater Harm From the Grant or Refusal of the Requested Stay?

The requester of a stay must satisfy each part of the three-part test for the stay to be granted. Having determined that Canadian Natural has not met the second part of the test, we do not need to decide whether it has met the third part of the test. However, we still considered the parties' submissions on this part of the test.

The balance of convenience involves examining which party will suffer more harm from granting or refusing the stay. We must weigh the burden the stay would impose on one party against the benefit the other party would receive from a stay. This requires that we consider significant factors and not just perform a cost-benefit analysis. As with the other parts of the test, Canadian Natural bears the burden of satisfying this part.

Party Submissions

Canadian Natural submitted that if its Motion is not granted, it and the Province of Alberta stand to suffer irreparable harm. Canadian Natural submitted that its "personnel are at risk due to the high H_2S contamination occurring in its wells and associated infrastructure from the disposal of sour produced water into a sweet aquifer overlying, active gas resources", and that the disposal well threatens to sterilize Canadian Natural's impacted wells. In contrast, Canadian Natural submitted that, if the Motion is granted, then pending the decision on the Reconsideration, Greenfire must only maintain the status quo. Canadian

Natural submitted that granting the motion would not prejudice Greenfire, but in contrast Canadian Natural would suffer substantive prejudice in its ability to safely carry out operations.

Greenfire disagreed that granting the motion would only require it to maintain the status quo and would not prejudice Greenfire. Greenfire submitted that there is no reliable evidentiary support for Canadian Natural's claim of irreparable harm and the lack of evidentiary support shifts the balance of convenience strongly against granting the motion.

Greenfire stated that there were no alternative disposal options available to Greenfire that are economically viable or that are without significant technical feasibility, environmental, regulatory and other disruption risks should the Motion be granted. Greenfire stated it was uncertain whether utilizing the disposal well at its Hangingstone Demonstration Project was technically feasible and that it would require construction of a six-kilometre (km) pipeline. Greenfire stated that it also considered the alternative of trucking, but that alternative was rejected "as it would entail a 380 km round trip, round the clock, 125 truckload per day operation (i.e., one truckload every 12 minutes) that would impose $102,000,000 of additional annual operating costs." Greenfire submitted it had comprehensively considered alternatives before making its Application and that "any alternative would take substantial time and resources to implement and be subject to regulatory risk such that suspension of the Approval would result in significant financial losses to Greenfire and the province."

Greenfire stated that the lack of an alternative disposal option would require it to shut in approximately 2000 barrels per day of bitumen production. This would result in revenue losses to Greenfire of approximately $56,000,000 yearly before royalty and operating costs, and losses to the Province of Alberta of approximately $4,750,000 yearly. Greenfire explained that this meant a loss to Greenfire of approximately $153,424 for each day it is not permitted to use its Approval. Greenfire outlined additional potential financial impacts resulting from the loss of the ability to expand production at the Greenfire Hangingstone Expansion Facility and additional compliance costs under Alberta's *Technology Innovation and Emissions Reduction Regulation.*

Canadian Natural challenged Greenfire's position that no alternative disposal options were available and the lack of supporting detail for the claimed financial impact to Greenfire should the Motion be granted. Canadian Natural also argued that the interim relief sought through the Motion would not lead to a loss of potential future revenue, as the bitumen that would have been produced during the suspension period is not depleted or otherwise wasted.

Panel Findings and Conclusions

We find the balance of convenience favours not granting the stay. Canadian Natural has not demonstrated that, if we did not grant the stay, this would likely result in immediate and significant impacts to Canadian Natural. Specifically, we find that the rate and magnitude of H_2S growth in the Clearwater gas reservoir, and its potential impacts on Canadian Natural's wells, infrastructure, gas marketability, and personnel, were uncertain and speculative at this point. In contrast, Greenfire has demonstrated that granting the stay would likely result in immediate and significant impacts to Greenfire.

We accept that it would be difficult and potentially costly for Greenfire to develop a temporary disposal alternative in the short term to replace the lost disposal capacity should the Motion be granted. Given the volumes of wastewater involved, trucking appears impractical and costly. Designing and constructing a pipeline to Greenfire's disposal well at its Hangingstone Demonstration Project would take time, incur costs that could prove to be unnecessary, and is not without technical and regulatory risks.

We understand that the loss of wastewater disposal capacity would necessitate the shut-in of some bitumen production, estimated by Greenfire to be approximately 2000 barrels per day. In the short term, we accept that this would have a significant financial impact on Greenfire and result in a significant loss of royalties to the province. However, we share Canadian Natural's views that the value of the resource may not be lost, just deferred, and that some of the potential financial impacts claimed by Greenfire related to future activities (after the decision on the Reconsideration) are not relevant for the purposes of deciding whether to grant the stay. That said, we find that granting the Motion would impose significant costs and risk on Greenfire.

Canadian Natural has not satisfied the third part of the test.

Decision on the Motion

While Canadian Natural has established that there is a serious question to be heard in this Reconsideration, it has not satisfied the irreparable harm or balance of convenience parts of the test for a stay. Given the reasons set out above, we deny Canadian Natural's Motion.

Notwithstanding that we have decided not to grant Canadian Natural's Motion, the serious nature of the concerns raised by Canadian Natural indicate the need for a timely hearing and decision on the Reconsideration.

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