

## 2020 ABAER 011

### Proceeding 385

### Shell Canada Limited

### Regulatory Appeal of Pipeline Licence 23800-99

#### Decision

[1] The Alberta Energy Regulator (AER) has discontinued the regulatory appeal of pipeline licence 23800-99 because the pipeline licence has expired and the approval holder filed an application to not construct the pipeline that was approved on November 16, 2020, leaving no issue on which the panel can render a decision.

#### Background

[2] On December 17, 2017, Shell Canada Limited (Shell) applied under the *Pipeline Act* to construct and operate a sour gas pipeline (application 159466). The pipeline was to be 638 metres long and would have carried 320 moles per kilomole of hydrogen sulphide from existing wells at Legal Subdivision (LSD) 10, Section 7, Township 6, Range 2, West of the 5th Meridian, to LSD 07-07-006-02W5M. On November 5, 2018, the application was approved.

[3] On November 27, 2018, M. Judd filed a request for a regulatory appeal under Division 3 of the *Responsible Energy Development Act* and Part 3 of the *Alberta Energy Regulator Rules of Practice (Rules of Practice)* of the AER's decision to approve pipeline application 159466. The AER granted the request for a regulatory appeal on May 21, 2019.

[4] The AER referred the appeal to a hearing on June 3, 2019, and a notice of hearing was issued on August 26, 2019. The purpose of the hearing was to determine whether the AER should confirm, vary, suspend, or revoke the decision to issue pipeline licence 23800-99.

[5] On September 4, 2019, Shell filed a motion to adjourn the proceeding *sine die* pursuant to section 46 of the *Rules of Practice*. At the time, Shell was in the process of applying for approval to transfer the pipeline licence to Pieridae Energy Ltd. (Pieridae) and Ikkuma Resources Corp. (a wholly owned subsidiary of Pieridae). The proposed licence transfer was part of a larger transfer of Shell's Foothills assets to Pieridae and Ikkuma.

[6] The AER offered Mr. Judd and AER Authorizations the opportunity to comment on the motion by September 11, 2019. Authorizations responded that it took no position on the motion and no response was received from Mr. Judd. The AER granted the adjournment until March 31, 2020.

[7] On March 26, 2020, Shell requested a further adjournment of the regulatory appeal until August 31, 2020, because the AER was still reviewing the application for licence transfer and Shell was dealing with business disruptions resulting from the COVID-19 public health crisis. The AER granted the request.

[8] On August 14, 2020, Shell advised that the AER had rejected all of the licence transfer applications of the Foothills assets, including the pipeline licence. It requested a further adjournment to August 31, 2021, to give it time to refile the licence transfer application. Mr. Judd and AER Regulatory Applications (formerly AER Authorizations) took no position on the request. The panel granted Shell's request but only to October 31, 2020, because the pipeline licence contained a condition that required construction to commence on or before November 5, 2020.

[9] On September 18, 2020, Shell asked the panel to grant a two-year licence extension and, if approved, a further extension of the regulatory appeal proceeding to August 31, 2021. On September 30, 2020, Shell withdrew the request.

[10] On October 9, 2020, Shell requested in a letter the discontinuation of the regulatory appeal of the pipeline licence. It advised that it had filed a pipeline licence amendment application for the not constructed pipeline, 30 days prior to the pipeline licence expiry, as required by *Directive 056: Energy Development Applications and Schedules*, and argued that that rendered the regulatory appeal of the pipeline licence moot.

[11] On October 15, 2020, Mr. Judd filed a response to Shell's October 9, 2020, letter requesting that Shell provide further submissions about why the regulatory appeal is moot and should be discontinued.

[12] On October 19, 2020, Shell submitted that the pipeline licence amendment application and expiry of the pipeline licence would have no impact on Mr. Judd's interests. As a result, the regulatory appeal should be discontinued because the regulatory appeal is moot.

[13] On October 23, 2020, the AER requested further clarification from AER Regulatory Applications regarding the licence amendment application and the subsequent notifications and effect on the status of the pipeline licence and licence expiry.

[14] On October 28, 2020, AER Regulatory Applications provided the following advice:

- The result of a Not Constructed Pipeline application, once approved, is that the licence is then amended to "Not Constructed" and the "applicant does not, then, have a licence to construct the line and must file a new application that meets all relevant requirements of *Directive 056, Energy Development Applications and Schedules*, if it wants to construct the line in the future.";
- That the 30-day notice period will expire November 7, 2020, and the responsible AER decision maker will be in a position to decide the application;

- The pipeline licence expires on November 5, 2020; and
- Notification of an approved change of status is provided to the applicant, but not to Mr. Judd.

[15] On October 30, 2020, the AER sent a letter to Mr. Judd outlining the probable changes to the status of the pipeline licence and suggested that he may withdraw his request for regulatory appeal to immediately discontinue the regulatory appeal or, alternatively, the panel may dismiss the appeal. A response was requested by November 2, 2020. No response was received, but because the panel was aware of Mr. Judd's involvement in another hearing, it communicated again with Mr. Judd, including the above advice from AER Regulatory Applications, and gave him until November 16, 2020, to respond. No response was received from Mr. Judd.

[16] On November 17, 2020, AER staff confirmed that the pipeline licence amendment had been approved and the pipeline licence is no longer valid.

### **Discussion**

[17] The licence was subject to a condition that required construction to commence on or before November 5, 2020.

[18] AER *Directive 056* requires pipeline licensees to “submit a licence amendment at least 30 days before the licence expiry date informing the AER that a pipeline will not be constructed.” Shell filed a licence amendment application for its not constructed pipeline dated October 7, 2020.

[19] Shell's licence amendment application was approved on November 16, 2020. Consequently, the applicant no longer has a licence to construct the relevant pipeline.

[20] Mr. Judd was given ample opportunity to provide submissions about discontinuing or dismissing the regulatory appeal.

[21] In light of the above, the panel is satisfied that there remain no justiciable issues before it.

### **Decision**

[22] The regulatory appeal that is proceeding 385 is discontinued.

[23] Accordingly, a public hearing will not be held.

Dated in Calgary, Alberta, on November 20, 2020.

### **Alberta Energy Regulator**

Cecilia Low, B.Sc., LL.B., LL.M.

Presiding Hearing Commissioner