

Proceeding ID 374

May 10, 2019

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By email only

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Bennett Jones LLP

Matheson Farms Ltd.

Attention: Daron Naffin

Attention: Garry and Virginia Matheson

Re High Ground Energy Inc. (HGEI) Reconsideration Requests

Dear Sirs and Madam:

Introduction and Decision

I am writing to you on behalf of the panel of hearing commissioners (the panel) for this proceeding. On April 23, 2019, High Ground Energy Inc. (HGEI) submitted a letter requesting a reconsideration of the Alberta Energy Regulator's (AER) original decision to convene a hearing in respect of the applications to be considered in this proceeding. HGEI also requested a reconsideration of the decision to grant Matheson Farms and Garry and Virginia Matheson (the Mathesons) participation in the hearing and finally, asked to suspend the hearing process schedule pending the determination of the reconsideration requests.

On April 25, 2019, the panel issued a letter suspending the process schedule. The panel found that it does not have jurisdiction to reconsider the decision to hold a hearing since that decision was not made by this panel. The panel found that it does have the jurisdiction to reconsider the participation decision. The panel invited the Mathesons and HGEI to provide response and reply submissions.

After reviewing the parties' submissions, the panel has decided that the question it has to answer is whether, in light of the circumstances and the information on the record to date, is a hearing is still required. For the reasons set out below, the panel has decided that a hearing is no longer required.

Reasons

The panel has reviewed the Mathesons' response submission dated April 29, 2019, and HGEI's reply submission dated May 2, 2019, regarding HGEI's request to reconsider the Mathesons' hearing participation in proceeding 374.

HGEI originally filed two separate sets of applications for wells, pipelines and facilities. One set, the South Gathering System applications, concerned land owned and occupied by the Mathesons. The other set, the North Gathering System applications, (North applications) concerns land occupied by Rutledge Ranching (Wainwright) Ltd. (Rutledge). Wells in the North applications would be drilled from a surface location on Rutledge lands to target Viking formation oil under the Mathesons' land. HGEI withdrew the South Gathering System applications before the notice of hearing of the North applications was issued.

Rutledge filed a request to participate in the hearing of the North applications on the grounds that it may be directly and adversely affected. The panel found that Rutledge may be directly and adversely affected by decisions on the North applications and on that basis granted it full participation rights in the hearing.

The Mathesons also filed a request to participate in the hearing of the North applications. They submitted that they may be directly and adversely affected and raised concerns about potential effects on their water supply. The Mathesons said specifically in paragraph 7 of their request to participate that they did not object to HGEI drilling under their lands from the north surface locations "...other than we would still want our water wells tested."

Contrary to the Mathesons' reply submission to the HGEI reconsideration request, the panel did not find that the Mathesons may be directly and adversely affected by decisions on the North applications. In its March 7, 2019, letter the panel said the following:

The panel has considered your request to participate, HGEI's response and the additional written submissions described above. The panel finds that you have a tangible interest in the subject matter of the hearing because HGEI's wells will be drilled and completed under your lands and in reasonable proximity to your water wells. Your limited participation will materially assist the panel and will not unnecessarily delay the proceedings or result in duplicate evidence.

For the above reasons, the panel had decided to permit you to participate in the hearing of the north gathering system applications as a full participant, but solely on the issue of your concerns about HGEI's proposed testing of your water wells.

The reference to tangible interest and material assistance are direct references to section 9(2) (c) of the *Alberta Energy Regulator Rules of Practice*. That section gives the panel discretion to grant participation to a person who will not be directly and adversely affected but who may materially assist the panel in deciding the matter and who otherwise meets the criteria set out in those provisions.

In its submissions, HGEI asks the AER to revoke the decision granting the Mathesons participation in the hearing, cancel the hearing, and issue the applied-for licences. According to HGEI, the purpose of the

hearing has fundamentally changed and there is no longer any reasonable or supportable basis to hold a hearing because Rutledge has withdrawn its statement of concern and request to participate in the hearing of the North applications and HGEI had previously withdrawn the South Gathering System applications.

In their submission, the Mathesons reiterated their position that they have a tangible interest in the subject matter of the hearing and that a constant reliable water source is vital to their farming operation. They state it is imperative that their water wells be properly tested both pre-drill and post-drill. The Mathesons question whether, in the event of a failure of one or more of their water wells due to HGEI's activities, HGEI would commit to rectifying the situation by drilling a new water well(s) and how HGEI would ensure that it can supply water in sufficient quality and quantity to sustain the ranch under any circumstance until such time as a new replacement well(s) has been drilled and put into operation.

According to information both parties filed on the record of this proceeding, the Mathesons and HGEI have been involved in discussions about water well testing. That information demonstrates that HGEI committed to testing water wells on the Mathesons' lands within a certain distance of the surface location of the wells for which approval is sought before and after drilling. In addition, in response to a request from the panel for clarification about its intentions with respect to water well testing, HGEI responded by email on February 22, 2019, as attached at Appendix A. The email reiterates HGEI's commitment to testing and provides more specific parameters. It also sets out the particulars of HGEI's commitment "...In the event that the quality or quantity of water in the Matheson Wells is materially impacted...."

In the panel's view, the unresolved issues between the Mathesons and HGEI, as revealed by the hearing record to date, such as the contractor to be used to complete the testing and the interpretation of HGEI's commitments are private contractual matters that do not fall within the AER's mandate. Taking into account the limited scope of the Mathesons' participation, the panel agrees with HGEI that there is a need to assess whether holding a public hearing is the best way going forward. Through their statement of concern, their request to participate and submissions filed as a participant in this proceeding, the Mathesons have had the opportunity to make their case regarding water well testing.

With the withdrawal of Rutledge, the panel has considered the Mathesons' outstanding concerns and whether there are any gaps in the evidence or issues requiring further hearing process. The panel is not reconsidering its original decision granting participation, but rather determining how the North applications should be assessed going forward in light of the withdrawal of Rutledge. As a result, the panel has decided that a hearing is no longer required and directs authorized AER staff to disposition the North applications in light of all of the information available to them on the hearing record. Accordingly, the hearing for Proceeding ID 374 is cancelled.

Sincerely,

Tammy Turner
Hearing Coordinator

enc: [Appendix A]

cc: B. Kapel Holden, AER

K. Dumanovski, AER

T. Myers, Bennett Jones LLP