

Via Email only

November 1, 2021

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

Martin Kaup

Bennett Jones LLP

www.aer.ca

Attention: Martin Kaup

Attention: Keely Cameron

Dear Sir and Madam:

**RE: Request for Regulatory Appeal filed by Martin Kaup
MAGA Energy Ltd. (MAGA)
Sinopec Daylight Energy Ltd. (Sinopec)
Application No.: 1933227
Approval Nos.: 62547, 62548, 62549, 62550, 62551 and 62552 (Transfer Approvals)
Location: 3-1-54-26-W4M**

Background

On September 29, 2021, the Alberta Energy Regulator (AER) received a request for a regulatory appeal (RRA) from Martin Kaup, of the Licence Transfer Approvals issued to MAGA on August 10, 2021. In his request, Mr. Kaup indicated that he had not received notice of the application nor was he provided with an opportunity to file a Statement of Concern (SOC), and that he had been advised on September 29, 2021, that a transfer had been approved.

During its review of the RRA, the AER identified that the RRA was filed outside of the 30-day filing deadline set in subsection 30(3)(m) of the *Alberta Energy Regulator Rules of Practice* (Rules) and concluded that there was enough information provided in the request to consider it a request for an extension of the 30-day deadline to file a request for regulatory appeal.

On October 1, 2021, the AER requested submissions from the parties on whether there are special circumstances that would warrant allowing Mr. Kaup to file the late request for regulatory appeal. MAGA filed its response on October 12, 2021, and Mr. Kaup filed his reply on October 20, 2021.

Conclusion

The AER has reviewed the submissions from the parties regarding the late regulatory appeal request and has determined that a time extension is warranted.

Analysis

The AER has discretion under section 41 of the Rules to extend the time within which a person may request a regulatory appeal. The AER's exercise of that discretion must have regard for established legal principles. The AER uses its authority to extend the time for filing a regulatory appeal in limited cases,

where circumstances indicate that an extension is warranted to protect procedural fairness for all the parties concerned.

The chronology of relevant events is as follows:

- Between February and March 2021, Mr. Kaup exchanged communications with Sinopec relating to the abandonment of a pipeline running through Mr. Kaup's land. On March 1, 2021, Mr. Kaup emailed Sinopec asking to be informed of when a field inspection would be scheduled – Mr. Kaup did not receive a response;
- On August 10, 2021, the licence transfer between Sinopec and MAGA was approved;
- On September 1, 2021, Mr. Kaup followed-up with Sinopec inquiring as to why they had not gotten back to him about a field inspection;
- On September 8, 2021, Sinopec emailed Mr. Kaup explaining that they were still looking into his inquiry;
- On September 9, 2021, the deadline to file a request for regulatory appeal passed;
- On September 22, 2021, Mr. Kaup received a letter from Sinopec stating that Sinopec had assigned their interest in their entire piece of Land to MAGA;
- After a couple of unanswered calls to Sinopec, on September 24, 2021, Mr. Kaup called the AER to inquire about the licence transfer;
- On September 29, 2021, the AER advised Mr. Kaup that a licence transfer between Sinopec and MAGA occurred several weeks prior. Upon learning of the licence transfer, Mr. Kaup filed a request for regulatory appeal, also on September 29, 2021.

Based on the timeline above, Mr. Kaup acted expeditiously; filing a request for regulatory appeal within a week of finding out that an interest had been assigned from Sinopec to MAGA. There is little question that if Mr. Kaup had found out about the licence transfer on August 10, 2021, that he would have filed his request for regulatory appeal within the required 30 days.

Further, while the AER posts all transfer applications on the public “notice of application” page on the AER's website for a period of 30 days, the AER notes that there would have been no cause for Mr. Kaup to check the website; Sinopec had explicitly told Mr. Kaup that they were intending on abandoning the pipeline on his land, not transferring the asset. Sinopec did not even dispel this impression on Mr. Kaup 29 days *after* the licence had already been transferred to MAGA.

When weighing the potential prejudice that would be suffered by the parties if a time extension were granted, the AER finds that the potential prejudice suffered by Mr. Kaup would be greater than the prejudice suffered by MAGA.¹ If the AER does not grant the extension, Mr. Kaup's issues would not be considered, even summarily. This would be contrary to s. 15 of the *Responsible Energy Development Act* and s. 3 of the *Responsible Energy Development Act General Regulation*, which requires the AER to

¹ Dean Smith Appeal Filing Extension Request, April 26, 2018
https://www.aer.ca/documents/decisions/Participatory_Procedural/1909839_20180426.pdf

consider the interests of landowners and the impacts upon them from energy resource activities. Conversely, if an extension is granted, MAGA can still argue that the test for a regulatory appeal is not met.

Consequently, the AER has decided to accept Mr. Kaup's request for a regulatory appeal and accordingly exercises its discretion under section 41 of the Rules to extend the time within which Mr. Kaup was permitted to file his request for regulatory appeal to September 29, 2021. Further correspondence will be directed to the parties regarding written submissions on the request for regulatory appeal.

Sincerely,

<Original signed by>

Sean Sexton
Vice President, Law