

Via Email

December 11, 2019

Chinook Energy Inc.

Alberta Energy Regulator, Closure and
Liability

Attention: Tim Halpen

Attention: Alana Hall and Karen Lilly

Dear Sir/Mesdames,

**RE: Request for Regulatory Appeal by Chinook Energy Inc. (Chinook)
Alberta Energy Regulator – Closure and Liability (CL)
Order for Suspension and Abandonment
Well Licences: W0299553 and W0147650
Location: 04-29-109-06W6 and 02-08-107-07W6
Regulatory Appeal No.: 1923693 (Regulatory Appeal)**

Introduction

This is a regulatory appeal request under section 38 of the *Responsible Energy Development Act* (REDA) filed by Chinook of an order dated July 31, 2019 (Order) issued by the CL under sections 22, 25 and 27 of the *Oil and Gas Conservation Act* (OGCA).

For the reasons that follow, the AER has decided to dismiss the regulatory appeal.

The Law

The applicable provision of REDA with 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.

Section 36(a) of REDA defines an “appealable decision.” For the present purposes, the relevant definition is contained in section 36(a)(v). It says an appealable decision includes:

(iv) a decision of the Regulator that was made under an energy resources enactment, if that decision was made without a hearing.

The phrase “eligible person” is defined in section 36(b)(ii) of REDA to include:

A person who is directly and adversely affected by a decision referred to in clause (a)(iv).

The relevant provisions regarding the deadlines for filing a regulatory appeal of an order made under sections 22, 25 and 27 of the *Oil and Gas Conservation Act* (OGCA) are found in section 30(3) the *Alberta Energy Regulator Rules of Practice* (Rules):

30(3) A request for regulatory appeal must be filed with the Regulator in accordance with section 47 within the following time periods:

....
(j) in the case of a regulatory appeal in respect of an order issued under section 27, 30 or 44 of the *Oil and Gas Conservation Act*, no later than **7 calendar** days after the notice of order is issued;

....
(m) in the case of a regulatory appeal in respect of any other appealable decision, no later than **30 calendar days** after notice of the decision is issued. [Emphasis added.]

As a result, there are two deadlines applicable to filing a request for regulatory appeal in this case, namely 7 days for the decisions issued under section 27 of the OGCA and 30 days for the decisions issued under sections 22 and 25 of the OGCA.

Section 22 of the OGCA provides the AER with the authority to impose any terms or conditions on, *inter alia*, a licence holder if the AER has reasonable grounds to believe that there has been a contravention of any act, regulation or rules under the AER's jurisdiction or a direction or order of the AER in respect of the operations of the holder.

Section 25 of the OGCA provides the AER with the authority to suspend a licence if the AER determines "that a contravention of this Act, the regulations or rules or an order or direction of the Regulator has occurred with respect to the well or facility to which the licence or approval relates."

Section 27 mandates a licensee to abandon a well when directed by the AER, if the AER considers that it is necessary do so in order to protect the public or the environment.

Submissions of the Parties

Chinook Energy

In its request, Chinook stated that the reason for requesting the regulatory appeal is because Chinook is not a working interest participant with regard the subject licences as defined by the OGCA and, as a result, it should not to be subject to the Order. In support of its regulatory appeal, Chinook also submitted a copy of several documents: the Order; a well responsibility letter agreement with Raimount Energy Corp. dated

December 14, 2017; an AER letter dated October 13, 2016, granting an extension to Chinook to post the well subject to well licence number W0147650; an AER letter dated October 17, 2016, granting an extension to Chinook to post the well subject to well licence number W0299553; and, a confirmation of ownership letter dated March 16, 2017, to Craft Oli Inc.

In its reply to CL's response, Chinook stated that it does not contest the facts outlined in the Order and that it is the licensee of the wells cited in the Order. However, and because Chinook is not a working interest participant as defined in OGCA, the Order should have been placed on the working interest participants instead of Chinook. More specifically, Chinook has requested the following relief:

a. transfer the Wells Licences ("Wells") (W0299553 and W0147650) to Raimount Energy Corp. ("Raimount") (BA:A7LW) under Section 24(6) of the OGCA. Raimount in the rightful Working Interest Participant in the wells and should be Licensee.

i. -and/or.

b. under Section 27 of the Act [OGCA], order the wells be abandoned by Raimount, the current Working Interest Participant.

i. Chinook provided correspondence from Raimount acknowledging their ownership of the Wells. Chinook has previously provided the AER the Purchase & Sale documents regarding these Wells and can produce them again for the benefit of this process if requested.

Chinook also acknowledged in its reply that, since the request for a regulatory appeal was provided 19 days following the issuance of the Order, it did not meet the 7-day timeline for filing the request. According to Chinook, even though the timeline was not specifically met, the AER should apply reasonableness in the circumstances since the Order was issued during the summer holidays and Chinook is operating with limited resources due to the current economic conditions.

Finally, Chinook disagrees with the assertion that the efforts made by CL to discuss the Order with Chinook and review its submissions should further preclude the regulatory appeal. Since Chinook received no meaningful correspondence from CL regarding the draft Order after the June 20th meeting and Chinook's June 26th submission until the Order was issued, there was no basis for Chinook to anticipate the timing of the issuance of the final Order.

AER Closure and Liability

CL submitted that, since the Order contains three separate decisions made under three different sections of the OGCA, Chinook's request may be viewed as one request in relation to three different issues or as three requests contained in the same document. Regardless of the way the request is viewed, CL stated that the request should be dismissed in its entirety, in accordance with section 31(1) of the Rules.

CL does not dispute that the decision was made under an energy resource enactment without a hearing, which makes the Order an appealable decision pursuant to section 36(a)(iv) of REDA. CL also does not dispute that Chinook is an eligible person pursuant to section 36(b)(ii) of REDA.

With regard to the deadlines, CL submitted that the regulatory appeal request of the decisions made under sections 22 and 25 of the OGCA was filed in the required form and manner, and within the prescribed 30-day deadline specified in section 30(3)(m) of the Rules.

The regulatory appeal request of the decision in the Order made under section 27 of the OGCA, however, was filed 19 days after the Order was issued. This is contrary to the requirements in section 30(3)(j) of the Rules that mandates the request to be filed no later than 7 calendar days, which in turn makes the request 12 days late. As a result, the AER should dismiss the request for a regulatory appeal of the decision in the Order made under section 27 of the OGCA as a decision being not properly before the AER, in accordance with section 39(4)(c) of REDA.

According to CL, there are no exceptional circumstances that would warrant accepting a late request since there was a process provided to Chinook to make submissions, which were considered by the statutory decision maker before the issuance of the Order. Chinook met with the decision maker on June 20, 2019. During that meeting, Chinook was presented with and made oral submissions on the draft order. Chinook also made written submissions on the Order on June 26, 2019.

With regard to the decisions made under sections 22 and 25 of the OGCA, CL submitted that Chinook has not requested any relief that is relevant to those sections. Chinook has not denied that it is the licensee and has not argued that any of the contraventions set out in the Order did not occur. Furthermore, Chinook has not requested that the Global Refer condition be lifted and it has not asked for a reinstatement of the suspended licences. Consequently, the regulatory appeal relation to sections 22 and 25 should be dismissed as without merit, in accordance with section 39(4)(a) of REDA.

Reasons for Decision

Chinook does not dispute the findings of fact made in the Order. Chinook also does not argue that it is not the licensee of the licences in relation to which the Order was issued. In addition, Chinook conceded that it missed the 7-day deadline for filing a request for a regulatory appeal of the decision in the Order made under section 27 of the OGCA.

Instead, Chinook claims that it was wrong to be named in the Order since it is not a working interest participant and that the Order should have been issued to Raimount, which, according to Chinook, is the working interest participant. Chinook also requested the AER to transfer the licences in question to Raimount under with section 24(6) of the OGCA and order Raimount to abandon the wells, in accordance with section 27 of the OGCA.

Section 16(1) of the OGCA sets out the entitlement for a well licence and states the following:

“16(1) **No person shall** apply for or **hold a licence for a well**

(a) for the recovery of oil, gas or crude bitumen, or

(b) for any other authorized purpose

unless that person is a working interest participant and is entitled to the right to produce the oil, gas or crude bitumen from the well or to the right to drill or operate the well for the other authorized purpose, as the case may be.” [Emphasis added.]

The explicit language in section 16 (1) of the OGCA is clear that a licensee must also be a working interest participant with regard to the wells for which the licences were issued. There is no evidence on the record in this proceeding that explains the circumstances surrounding whether and, if yes, when and how Chinook ceased to be a working interest participant, which is contrary to the OGCA. However, even if it were the case that Chinook is no longer a working interest participant, that would put Chinook in non-compliance with section 16 (1) of the OGCA. Being in breach of the relevant provisions of the OGCA regarding the working interest participant mandatory requirements is not a proper ground upon which Chinook can seek relief through the regulatory appeal process.

In addition, section 3.012(a) of the *Oil and gas Conservation Rules* (OGCR) requires a licensee to abandon a well or facility on the termination of the mineral lease, surface lease or right of entry. The mineral lease for the wells in question expired on May 6, 2015, which is not disputed by Chinook. Consequently, Chinook, as the licensee of record, must abandon those wells as per the OGCR, regardless of its position that Raimount is the ‘rightful working interest participant’ in the wells. In addition, once Chinook has abandoned the wells, it can apply to the AER under section 30 of the OGCR to allocate abandonment costs in accordance with each working interest participant’s proportionate interest in the wells.

Furthermore, section 10 of Appendix 2 of *Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process* (D6) specifies that the licensee of record remains responsible to comply with all applicable regulatory requirements for any well, facility or pipeline until the AER approves any transfer applications. Agreements for the purchase and sale of AER-licensed wells, facilities and pipelines do not effect a transfer of the associated licences unless and until the AER approves the related licence transfer application (section 1 of Appendix 2 of D6). The AER cannot approve a licence transfer for wells for which the mineral lease has expired and the licensee is not entitled to the right to produce from the well (section 16(1) of the OGCA). As a result, the AER cannot grant the relief requested by Chinook to transfer the licences with expired mineral leases to Raimount.

Considering that Chinook is not disputing the findings of fact made in the Order, it has acknowledged that it is the licensee, and the clear regulatory requirements contained in the OGCA, OGCR and D6 which directly contradict Chinook’s grounds for requesting a regulatory appeal and the relief sought, the AER finds that the request for regulatory appeal of the Order lacks a legal basis and has no reasonable chance of success. Having regard to the record and the issues in this regulatory appeal, the AER also finds that the

facts, the record and the law do not reveal a genuine issue that would require a hearing. Consequently, the regulatory appeal request is dismissed as frivolous¹ and without merit.²

In the light of the finding made above, there is no need to address the issues with regard to the different deadlines for filing the regulatory appeal request of the decisions in the Order made under sections 22, 25 and 27, for which the Rules prescribe different deadlines.

Sincerely,

<Original signed by>

Sean Sexton
VP, Law

<Original signed by>

Paul Ferenowicz
Sr. Advisor, Strategic Delivery

<Original signed by>

Steve Thomas, P. Eng.
Director, Mining & In Situ, Closure & Liability

¹ The Court in *W. (G.J.), Re*, 2003 ABQB 763, at para. 18, held the following: "Frivolous" is defined in the law, it seems to me, in relation to the simple absence of an air of reality to a position, or the simple lack of any threshold basis on which to put forward an argument. In other words, an argument is frivolous if in fact it simply has no chance or no reasonable chance of success."

² *Weir-Jones Technical Services Incorporated v. Purolator Courier Ltd.* 2019 ABCA 49, at para. 47.