

Via Email

May 22, 2020

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Tobinsnet Oil & Gas Ltd.

Alberta Energy Regulator - Closure &  
Liability Group

**Attention: Nemi Tobins  
Temple Tobins**

**Attention: Meighan LaCasse, Counsel**

Dear Sir et Mesdames:

**RE: Request for Regulatory Appeal by Tobinsnet Oil & Gas Ltd. (Tobinsnet)  
Alberta Energy Regulator – Closure & Liability (C&L)  
Application No.: 1923203;  
Locations: Three Hills, 06-24-032-23W4, 08-24-032-23W4  
Regulatory Appeal No.: 1925077 (Regulatory Appeal)**

## **I. INTRODUCTION**

This decision deals with a request for a regulatory appeal filed by Tobinsnet, under section 38 of the *Responsible Energy Development Act* (REDA), of the closure of Application No. 1923203 made by the AER on September 30, 2019, pursuant to the *Alberta Energy Regulator Rules of Practice* (Rules). For the reasons that follow, the AER has decided to dismiss the regulatory appeal request.

## **II. 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)(iv), which states that an appealable decision includes:

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

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

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

The applicable deadline in the circumstances for filing a request for regulatory appeal is provided in section 30(3) the *Alberta Energy Regulator Rules of Practice* (Rules):

(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.

Section 1(1)(f) of REDA states that a decision of the AER includes an approval, order, direction, declaration or notice of administrative penalty made or issued by the AER. And section 1(1)(b) specifies that an approval means “a permit, licence, registration, authorization, disposition, certificate, allocation, declaration or other instrument or form of approval, consent or relief under an energy resource enactment or a specified enactment.”

Section 3(4) of the Rules states the following:

- (4) If an application is not complete in the opinion of the Regulator, the Regulator may
- (a) notify the applicant in writing and request the information necessary to make the application complete, or
  - (b) return the application to the applicant as incomplete.

Section 27 of REDA provides the following:

**27** No action or proceeding may be brought against the Regulator, a director, a hearing commissioner, an officer or an employee of the Regulator, or a person engaged by the Regulator, in respect of any act or thing done or omitted to be done in good faith under this Act or any other enactment.

### III. SUBMISSIONS OF THE PARTIES

#### 1. *Tobinsnet*

Tobinsnet requested the following relief in its regulatory appeal request:

Firstly, to immediately approve the transfer of the two remaining Capital wells to Tobinsnet without any prerequisite as the entire process has been going on since 2018.

Secondly, to Compensate Tobinsnet for the four (4) Capital wells that was [*sic*] abandoned without Tobinsnet knowledge after agreeing for Tobinsnet to acquire all six (6) Capital wells. We were charge over \$120,000.00 with no invoice till [*sic*] date.

In its submissions in this regulatory appeal process, Tobinsnet expanded its relief initially sought to include a request to reverse the AER's decision dated June 17, 2019, which decision, according to Tobinsnet, imposed a substantial burden on the company to acquire current and future assets.<sup>1</sup>

In response to the AER's request for submissions from the parties, Tobinsnet submitted a series of emails that contain correspondence with C&L from October 2017 to October 2019, when Tobinsnet's transfer application was returned as incomplete. According to Tobinsnet, those emails prove that it has been treated unfairly by C&L during the transfer application process.

In reply to C&L's response, Tobinsnet reiterated that it has been treated unfairly during the licence transfer application process, which has adversely affected the company's ability to function.

In response to the AER's letter dated March 9, 2020 (Transfer Approval Letter) advising the parties that the transfer of the two well licences was approved on January 22, 2020 and asking for submissions on whether to close the regulatory appeal process, Tobinsnet acknowledged the transfer approval but stated that there are other remaining issues in the process and requested that the AER deal with those issues and not to close the regulatory appeal process.

## ***2. Closure and Liability***

In its response, C&L submitted that Tobinsnet's regulatory appeal request does not meet the requirements of section 30(1) of the Rules. More specifically, the request does not provide the information required in subsections 30(1)(b), (d) and (e) of the Rules. As a result, the request should be dismissed as deficient because it failed to show how Tobinsnet is eligible to request the regulatory appeal.

In response to the Transfer Approval Letter, C&L submitted that the request is frivolous, without merit and not properly before the AER as the first head of relief sought by Tobinsnet is no longer necessary because the transfer occurred on Jan. 22, 2020. An appeal that seeks relief that is moot and serves no purpose. The issues before the AER around the transfer have become academic and it is a misuse of the AER's hearing process and resources to hold a hearing when the transfer being requested has already occurred.

C&L also stated that the AER has no authority to grant the relief being requested by Tobinsnet with regard to the compensation for the four abandoned wells and that it is an improper use of the AER's resources to hold an appeal hearing in circumstances where the AER does not have the ability to grant the requested relief.

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<sup>1</sup> The June 17, 2019 decision restricted Tobinsnet's licence eligibility status from general to limited in accordance with *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* because the directors of Tobinsnet had demonstrated a lack of necessary experience and regulatory understanding required of responsible licence or approval holders. As such, Tobinsnet was expected to appoint an agent prior to transferring any assets.

#### IV. REASONS FOR DECISION

Tobinsnet, as the regulatory appeal requester, must file a request that meets the requirements of section 30(1) of the Rules. The request must contain, *inter alia*, the following: an explanation as to why it should be considered an eligible person under section 36 of REDA; a clear and concise statement of the facts relevant to the regulatory appeal; and the grounds on which the request for regulatory appeal is made. In its request, Tobinsnet has failed to provide any analysis to demonstrate why it is eligible to request a regulatory appeal of the application closure. Tobinsnet did not explain why the closure is an appealable decision and why Tobinsnet is an eligible person to request an appeal, as required by REDA and the Rules. Submitting a large number of emails containing previous correspondence with C&L without explaining how those emails are relevant to the applicable legal tests and the issues in this regulatory appeal process is not sufficient to meet the regulatory appeal requirements in the Rules or REDA. This approach was not helpful and has created inefficiencies in the regulatory process and unnecessary work for the AER.

The subject matter of this regulatory appeal is the closure of Tobinsnet's application for a transfer of two well licences from Capital Oil to Tobinsnet. C&L closed the application without prejudice as incomplete by a letter dated September 30, 2019, because the agent proposed by Tobinsnet did not meet regulatory requirements. The licences requested to be transferred in Tobinsnet's subject application, which was initially closed without prejudice on September 30, 2019, were approved and transferred to Tobinsnet in a subsequent application process on January 22, 2020. This makes this regulatory appeal request moot and gives the AER sufficient grounds to dismiss the regulatory appeal request. In addition, a closure of an application under the Rules is not an "appealable decision" as required by section 38(1) of the REDA<sup>2</sup> because the Rules are not an energy resource or specified enactment. Consequently, the application closure cannot be appealed. This is another ground that is sufficient for dismissing the regulatory appeal.

The above provide grounds to dismiss the regulatory appeal; however, since Tobinsnet has requested that the AER continue to assess the regulatory appeal request in the relation to the remainder of the requested relief, this decision will deal with it as well. As noted above, the only relief requested in the initial application was a transfer of two well licences. The regulatory appeal process contemplates a consideration of a decision that disposed of the initial application. Even if it is assumed that the application closure is an appealable decision, the regulatory appeal process may only be used to challenge the decision itself and not to expand the requested relief beyond what was initially requested in the application and what was denied in the decision subject to the regulatory appeal. What was decided in the appealable decision determines the scope of the regulatory appeal process at this stage. In its application that resulted in the closure, Tobinsnet requested an approval of a transfer of two licences and nothing else. Consequently, Tobinsnet cannot use the regulatory appeal process to expand its relief to request compensation for alleged damages that resulted from a prior AER regulatory action or to request a regulatory appeal of a prior AER decision, such as the June 17, 2019 decision. That decision should have

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<sup>2</sup> AER Disposition Letter Dismissing Request for Regulatory Appeal No. 1916371 by *Aqua Terra Water Management Inc.* (June 20, 2019).

been challenged at the time it was issued in accordance with the regulatory appeal deadlines applicable to that decision. Tobinsnet cannot use this process for a collateral attack of a different decision for which the challenge appeal deadline has long passed.

In any event, the AER has no authority to provide the compensatory financial relief sought through the Regulatory Appeal process, as the AER may only confirm, vary, or rescind its previous decision. Furthermore, in accordance with section 27 of REDA, no action or proceeding may be brought against the AER in respect of any act or thing done in good faith under REDA or any other enactment. This includes any costs that were incurred as a result of the orphan designation of the six Capital Oil wells and the subsequent abandonment of four out of those six wells. This section bars Tobinsnet from claiming compensation for the four Capital Oil wells that were allegedly abandoned without Tobinsnet's knowledge. In other words, the requested compensation is a relief that Tobinsnet cannot claim and the AER cannot grant.

## V. CONCLUSION

For the reasons above, the AER dismisses the request for regulatory appeal pursuant to section 39(4)(c) of the REDA as is not properly before it.

Sincerely,

*<Original signed by>*

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Sean Sexton  
Vice President, Law

*<Original signed by>*

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Paul Ferenowicz  
Sr. Advisor, Regulatory Enhancement Branch

*<Original signed by>*

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Steve Thomas  
Director, Oil & Gas Subsurface, Waste & Storage