

Via Email

August 18, 2021

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

Kelvin Wright

Concourse Petroleum Inc.

www.aer.ca**Attention: Kelvin Wright****Attention: Tina Fu**

Dear Mr. Wright and Ms. Fu:

**RE: Requests for Regulatory Appeal by Kelvin Wright and Glenda Wright
Concourse Petroleum Inc.
Location.: 1-21-77-26 W5M
Application Nos.: 30831584 & 1932074; Licence Nos.: 61957 & F52200
Requests for Regulatory Appeal Nos.: 1932151 & 1932857**

The Alberta Energy Regulator (AER) has considered Kelvin Wright's and Glenda Wright's (collectively, the Wrights or the Landowners) requests under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decision to grant Pipeline Licence No. 61957 and Facility Licence No. F52200 (collectively, the Approvals) to Concourse Petroleum Inc. (Concourse). The AER has reviewed the Wrights' submissions and the submissions made by Concourse.

While the AER has decided that the Wrights are eligible to request a regulatory appeal of these matters, the fact that the AER cannot grant the Wrights' requested relief means that the request for regulatory appeal is without merit and must be dismissed.

The applicable provisions of *REDA* in regard to regulatory appeals state:

Eligibility to Request Regulatory Appeal

Section 38(1) of the *REDA* sets out the test for eligibility to request a regulatory appeal:

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**. [Emphasis added]

Conducting a regulatory appeal

39(4) The Regulator may dismiss all or part of a request for regulatory appeal

(a) if the Regulator considers the request to be frivolous, vexatious or without merit,

...

(c) if for any other reason the Regulator considers that the request for regulatory appeal is not properly before it.

Background

Pipeline Application

On November 6, 2020, Concourse submitted an application to the AER, under the provisions of the *Pipeline Act*, to construct and operate a pipeline carrying Oil-Well Effluent with 9 mol/kmol hydrogen sulphide (H₂S) (the Pipeline Application). On December 4, 2020, Kelvin Wright submitted a Statement of Concern (SOC) to the AER, against Concourse's Pipeline Application. Mr. Wright's SOC raised concerns related to housekeeping issues, weeds on-site, a camp that resided on-site for 7 months, builders liens placed on their land by creditors of Concourse, and a lack of timely communication with the landowner. On January 18, 2021, the AER dismissed Mr. Wright's SOC, and the Pipeline Application was approved, without a hearing, and the applied-for licence was granted to Concourse as Pipeline Licence Approval No. 61957 (the Pipeline Approval).

On January 25, 2021, the Wrights, filed a Request for Regulatory Appeal (RRA) of the AER's decision to grant the pipeline approval. On February 2, 2021, Pride Regulatory Service, on behalf of the Wrights, submitted an updated RRA.

Facility Licence

On January 27, 2021, Concourse filed its application with the AER to construct and operate a single or multi-well oil satellite with less than 1 tonne per day sulphur inlet (Facility Application). On February 24, 2021, the Wrights filed an SOC against the Facility Application raising the same concerns that were highlighted in the Wrights' previous SOC on the Pipeline Licence. On March 31, 2021, the AER dismissed Mr. Wright's SOC No. 31911, Concourse's Facility Application was approved and the Facility Licence No. F52200 was issued without a hearing (the Facility Approval).

On April 19, 2021, Mr. Wright filed an RRA, dated April 22, 2021, of the AER's decision to grant the Facility Approval.

Multiple Regulatory Appeal Requests & Stay Request

On March 12, 2021, the Wrights requested an abeyance to allow the parties to participate in AER led alternative dispute resolution (ADR) proceedings. The AER granted a series of abeyance requests until May 31, 2021.

On May 6, 2021, the Wrights filed a stay request related to the pipeline and facility licenses. The Stay Request reiterated their concerns raised regarding Concourse's conduct and the pending construction of the licences. After receiving submissions from both of the parties, the AER issued its decision dismissing the Wrights' Stay Request on May 20, 2021. The stay decision also decided that the Wrights' requests for regulatory appeals would be decided together, due to the similarity of issues.

Parties' Submissions on the Pipeline and Facility Requests for Regulatory Appeal

From February through May, the parties made multiple submissions on the issues relating to these requests for regulatory appeals. The summary of the parties' positions is found in the discussion of the merits of the requests for regulatory appeals below.

Reasons for Decision – The Wrights are eligible persons, but their appeal is without merit, and not properly before the AER

Eligible Persons

Once again, the eligibility test to request a regulatory appeal is as follows:

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**. [Emphasis added]

Appealable Decision

The Licences are appealable decisions, as the Licences were issued under the *Oil and Gas Conservation Act* and the *Pipeline Act* without a hearing.

Eligible Person

The AER also finds that the Wrights are directly and adversely affected by the Licences. The Licences are located on their lands, and the construction of the infrastructure alone can directly and adversely affect the Wrights.

In Accordance with the Rules

While the Wrights' original request for regulatory appeal of the pipeline licence was missing a copy of the appealable decision, as required by s. 30(1)(a) of the *AER Rules of Practice* (the *Rules*), the AER's Regulatory Appeals Branch issued a deficiency letter to the Wrights, and the Wrights corrected the deficiency on February 2, 2021, well within their 30 days to appeal the issuance of the pipeline licence.

As there are no outstanding issues with the Wrights' Requests for Regulatory Appeals, the AER finds the Wrights submitted their requests in accordance with the rules.

Without Merit and Not Properly Before the AER

While the AER has concluded that the Wrights are eligible to request regulatory appeals of the licences, the AER must decide if the Wrights' requests should be dismissed pursuant to section 39(4). Section 39(4) of *REDA* provides the AER with discretion to dismiss all or part of a request for a regulatory appeal in the following circumstances:

- (a) if the Regulator considers the request to be frivolous, vexatious, or without merit,
- (b) if the request is in respect of a decision on an application and the eligible person did not file a statement of concern in respect of the application in accordance with the rules, or

- (c) if for any other reason the Regulator considers that the request for regulatory appeal is not properly before it.

[emphasis added]

Parties' Submissions

The Wrights through this process have indicated that they have a long list of concerns with Concourse's management of the wells already existing on the site, and they feel that these issues will be exacerbated with the pipeline and facility licenses. For example, the Wrights argued that Concourse is deficient with regards to its housekeeping, as garbage has blown off site; some of this garbage was the result of a work camp, which resided on site for seven months. During the time of the work site's presence, items were stolen from the Wrights.

The Wrights also reiterated that there was weed growth on their land, and that while a company was brought into spray the weeds, they neglected to spray all the areas of the lease where they were present. The Wrights are worried that the weeds will grow again in the future and cause damage to their land.

The Wrights' concerns are also financial, noting that Concourse has been in arrears to Pride Regulatory Services, the company which the Wrights and Concourse have been communicating through. Furthermore, two builders' liens had been placed on their land for approximately 5 months. These builders' liens led to a disruption in the relationship between the Wrights and their financial institutions.

The Wrights have also expressed several concerns regarding Concourse's communications with them. For example, there was a lack of timely communication with Concourse regarding a second rig that was brought into deepen the existing well. Additionally, several communications have not been responded to or addressed in a timely manner.

Finally, the Wrights were under the impression that when they signed the surface lease agreement, they there was going to be a pad site and an access road, *not* a pipeline and other facilities.

Concourse replied that all the operational issues referred to by the Wrights have been taken care of, including spraying the weeds, removing the garbage and the work site, and having the builders' liens taken off their lands. Concourse expressed their opinion that the reason the appeal is being brought is due to the landowner's dissatisfaction with the compensation that they have been offered. Concourse believes that the landowner should bring its discussions regarding compensation to the Surface Rights Board.

Concourse also noted that it has re-routed its proposed pipeline so that every aspect of the pipeline and facility will either exist on leased land for which they have a signed surface lease agreement or land not owned by the landowner.

Analysis

For this analysis, the AER primarily adopts its reasoning from the stay decision, when the AER determined that there was not a serious question to be tried:

First, the AER notes that several of the concerns raised by the Wrights have already been resolved, as the work camp is gone, the weeds have been sprayed, the garbage has been picked up, and the builder's liens have been removed. The AER also highlights that Concourse has committed to a more frequent schedule for monitoring and control of the weeds accordingly. Further, Concourse has a statutory obligation that at the end of the project's lifecycle they will be required to reclaim the site to equivalent land capability which includes the elimination of weeds.

Second, a majority of the Wrights' concerns do not relate directly to the pipeline or facility licences but are existing concerns with the wells Concourse has already constructed, pursuant to previous applications.

Most importantly however, the AER finds that many of the Wright's concerns are outside of its jurisdiction. The AER's duty is to ensure that licensees comply with its regulatory requirements for the safe and responsible development of energy resources in Alberta. However, the *Surface Rights Act*, RSA 2000, c S-24 clearly indicates that disputes regarding proper compensation, and damages, such as weeds, that occur because of surface lease activities, are to be resolved by the Surface Rights Board [for more information about the Surface Rights Board, please refer to the footnote below].¹ Further, the concern regarding future camps falls under the purview of the county or municipality in which the Wrights' lease is located.

Addressing the one matter that falls squarely within the AER's jurisdiction – the pipeline – it is highlighted that many of the details that the Wrights have requested are available in the pipeline license. Notably, the pipeline is currently approved for Oil-Well Effluent (OE), which only has a sour gas concentration of 9.0 mol/kmol H₂S; a concentration which is low enough that the pipeline does not require a setback. Further, considering the Wright's safety concerns, and the need for an Emergency Response Plan, the AER highlights that Concourse is required to comply with *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry*. Finally, the burial of the pipeline two metres deep is not an AER requirement, pursuant to section 20 of the *Pipeline Rules*.

In this specific case, the above findings of the stay decision are relevant to the request for a regulatory appeal hearing. The stay decision found that there was little to no chance of success on appeal as the Wrights' issues were either jurisdictional (outside of the AER's scope), or that Concourse had clearly met

¹ The Surface Rights Board (SRB) is now the Land and Property Rights Tribunal (<https://www.alberta.ca/land-and-property-rights-tribunal.aspx>). The Land and Property Rights Tribunal (formerly the SRB), in February 2020, described their mandate as follows:

The [Land and Property Rights Tribunal] conducts alternate dispute resolution proceedings and hearings when operators and landowners or occupants fail to agree on compensation an access related to resource activity and power transmission lines on privately owned lands or occupied crown lands. The primary matters before the SRB relate to applications for:

- right of entry for resource activity and power transmission lines and the setting of associated compensation;
- Review of annual compensation under a surface lease or compensation order;
- Damages related to disputes between operators and land owners or occupants who are parties to a surface lease or right of entry order; and
- Recovery of compensation where money payable under a compensation order or surface lease has not been paid on the due date for its payment has passed

the AER's requirements. These reasons are equally applicable to the request for regulatory appeal and we adopt them in their entirety.

Additionally, it should be noted that many of the issues raised by the Wrights were directly related to the existing wells; they were not particular challenges to the issuance of the pipeline or the facility licenses. As many of the issues the Wrights have presented are not able to be remedied by the AER, it is found that they are without merit, and not properly before the AER.

Conclusion

Accordingly, the AER dismisses the Wrights' Request. While the Wrights are eligible persons, their appeal is without merit, and not properly before the AER.

Sincerely,

<Original signed by>

Jeff Moore
Associate General Counsel

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Jennifer Zwarich
Senior Advisor, External Innovation & Industry
Performance

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Erik Kuleba
Director, Field Operations South, Compliance and
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