

Via Email

August 24, 2021

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Carscallen LLP

Alberta Energy Regulator – Compliance and
Liability Managementwww.aer.ca**Attention: Glenn Blackett, Counsel****Attention: Candice Ross, Counsel**

Dear Sir and Madam:

**RE: Request for Regulatory Appeal by Mojek Resources Inc. (Mojek)
Alberta Energy Regulator – Compliance and Liability Management Branch (CLM)
Reasonable Care and Measures and Abandonment Order AD 2021-004
Request for Regulatory Appeal No.: 1932652**

The Alberta Energy Regulator (AER) has considered Mojek's request made pursuant to section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal (RRA) of the AER Compliance and Liability Management Branch's decision to issue Reasonable Care and Measures and Abandonment Order AD 2021-004, dated March 16, 2021, under sections 22, 25, 26.2, and 27 of the Oil and Gas Conservation Act (OGCA) and sections 12, 22.1 and 23 of the Pipeline Act (Abandonment Order). The AER has reviewed Mojek's submissions, and the submissions made by CLM.

For the reasons that follow, the AER grants the request for regulatory appeal in part.

Request History

Significant time has elapsed since the issuance of the Abandonment Order on March 16, 2021 and since Mojek filed its RRA and a request for a stay of the Abandonment Order on March 23, 2021.

On March 26, 2021, following receipt of the RRA and stay request, the AER issued correspondence to Mojek and CLM requesting further submissions on the stay request and setting out timelines for submissions on the RRA.

On March 30, 2021, the AER granted an extension to the submission timelines, requested by Mojek.

On April 8, 2021, the AER granted an additional extension to the timelines for submissions to be made on both the stay request and the RRA, requested by Mojek.

On May 14, 2021, the AER issued its decision on Mojek's stay request, granting Mojek a 90-day stay of the provisions of the Order that require abandonment of Mojek's sites, and directing that Mojek demonstrate to the AER by August 12, 2021, whether it had obtained funding equal to or greater to the estimate it had provided as what would be required to address an outstanding compliance and enforcement matter. Sufficient proof of funding would operate to automatically extend the stay until such time that the RRA was dismissed or withdrawn, or if a regulatory appeal hearing is conducted, until the hearing decision is issued.

On August 12, 2021, Mojek provided proof of funding to the AER. On August 16, 2021, CLM submitted correspondence to the AER stating that it is of view that the proof of funding submitted by Mojek met the criteria as set out in the AER's decision on Mojek's stay request.

Request for a Regulatory Appeal

The applicable provision of REDA in regard to a request for regulatory appeal 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. [emphasis added]

Subsection 36(a) of REDA defines an "appealable decision". For this matter, the relevant definition is found in subsection 36(a)(iv):

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

Subsection 1(1)(f) of REDA defines a "decision" of the Regulator:

(f) "decision" of the Regulator includes an approval, order, direction, declaration or notice of administrative penalty made or issued by the Regulator

The term "eligible person" is defined in subsection 36(b)(ii) of REDA to include:

36(b)(ii) a person who is directly and adversely affected by a decision [made under an energy resource enactment, if that decision was made without a hearing]...

Thus, only an "appealable decision" can be subject to a regulatory appeal and only an "eligible person" can request a regulatory appeal of such a decision.

However, even if the decision is an appealable decision and the regulatory appeal requester is an eligible person, subsection 39(4) of REDA provides:

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,
- (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.

Reasons for Decision

The Abandonment Order was issued under the OGCA and the *Pipeline Act*, both of which are "energy resource enactments", as are any regulations or rules enacted under them, and it was issued without a hearing.

The Abandonment Order was issued to Mojek, among others, and was issued against various well, facility and pipeline licences (collectively, the Mojek Licences) granted by the AER to Mojek. Mojek is the operator of the wells, facilities and pipelines associated with the Mojek Licences (the Mojek Sites). Mojek is directly and adversely affected by the decision to issue the Abandonment Order, as it requires among other things, the abandonment of Mojek's licensed wells, facilities, and pipelines, resulting in Mojek no longer being able to operate, produce, and generate revenue from these assets.

By operation of subsections 36(a)(i) and 36(b)(ii), the Abandonment Order is an appealable decision and Mojek is eligible to request a regulatory appeal of the decision. CLM did not suggest otherwise in its submission to the AER.

Should the Request for Regulatory Appeal be dismissed because it is frivolous, vexatious or without merit, or otherwise not properly before the AER?

CLM argues that Mojek's RRA should be dismissed pursuant to subsection 39(4)(a) or subsection 39(4)(c) as it is without merit, or not properly before the AER. Mojek disagrees.

CLM submits that Mojek's RRA is without merit because Mojek has no reasonable chance of success in the appeal. The basis for CLM's submissions on this matter is found in Mojek's lack of funding to fulfil its compliance obligations. Although it disputed details of its outstanding obligations, Mojek did not dispute that it did not have access to the funds necessary to fulfil its compliance obligations, as those obligations existed in March 2021.

However, in the intervening time period, the extent of Mojek's unaddressed compliance obligations has changed: provisions of the Abandonment Order directing that reasonable care and measures be provided to the Mojek Sites have been fulfilled by Whitecap Resources Inc. (Whitecap), a working interest participant in the Mojek Licences, and the Orphan Well Association (OWA), and, as of August 12, 2021, Mojek demonstrated to the AER that it has obtained funding equal to or greater to the estimate it had provided as what would be required to address an outstanding compliance and enforcement matter. Therefore, the AER does not consider Mojek's RRA to be without merit.

However, as stated, the provisions of the Abandonment Order directing that reasonable care and measures be provided at the Mojek Sites have been fulfilled by Whitecap and the OWA. The AER sees no merit in granting Mojek a regulatory appeal of those provisions of the Abandonment Order that have already been fulfilled by other parties. Accordingly, the AER does not grant Mojek's request for regulatory appeal for the provisions of the Abandonment Order that require that Mojek, Whitecap and the OWA provide reasonable care and measures to prevent impairment or damage at the Mojek Sites.

Additionally, CLM also submits that Mojek's RRA is not properly before the AER because it concerns Mojek's finances and business management, which are not proper grounds for an appeal, and are not matters within the AER's jurisdiction. Mojek argues that this is an improper attempt to fetter the discretion of the AER.

The AER is the lifecycle regulator for energy resource development in Alberta; the AER is not the regulator of corporate finances in Alberta. However, evidence and argument that relate to the ability of an operator, financial or otherwise, to fulfil the compliance obligations of its AER-licenced energy resource development activities is relevant and properly before the AER. Moreover, Mojek's financial concerns are directly connected to the abandonment requirements in the Abandonment Order, a consequence of which is that Mojek will no longer be able to operate, produce, and generate revenue from its wells, facilities and pipelines. This in turn would adversely affect Mojek and its ability to carry out its regulatory obligations. For this reason, the AER does not dismiss the RRA on these grounds.

Conclusion

For the reasons above, the AER grants Mojek's request for a regulatory appeal in part. The AER dismisses Mojek's request for regulatory appeal of the provisions of the Abandonment Order that require reasonable care and measures to be provided to prevent impairment and damage at the Mojek Sites. The AER grants

Mojek's request for regulatory appeal of the provisions of the Abandonment Order that require or relate to abandonment of Mojek's licensed wells, facilities, and pipelines.

Sincerely,

<Original signed by>

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Vice President, Law

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Elizabeth Grilo
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