

March 15, 2021

Via Email only

Dorin Land & Oilfield Management Inc.

McLennan Ross LLP

Attention: Mark Dorin

Attention: JoAnn P. Jamieson

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

www.aer.ca

Dear Mr. Dorin and Ms. Jamieson:

**RE: Request for Regulatory Appeal, Reconsideration, Inquiry and Joint Proceeding by Gregory and Beverley Wieben
Of Extension of Licence No: Line 56457-107 issued to Canadian Natural Resources Limited on April 14, 2020
Location: NE and SE Quarter of Section 10-80-3 W6M**

On May 15, 2020 the Alberta Energy Regulator (AER) received a document entitled “Request for a Cooperative Regulatory Appeal Proceeding, Part 2, Division 3, Sections 36-41, and Section 18(1) Responsible Energy Development Act, SA 2012, c R17.3, Decision dated April 14, 2020 to Extend the Term of Pipeline Licence 56457-107 Dunvegan Field, Canadian Natural Resources Limited” (the Request) submitted on behalf of Gregory and Beverly Wieben (the Wiebens).

The Request covers a wide range of matters and requests a number of actions be taken by the AER; however, the core of the Request appears to be the following requests:

- That the AER grant the Wiebens a regulatory appeal of the April 13, 2020 extension of pipeline licence no. 56457 – 107 (the Extension);
- That the AER reconsider its decision to issue the April 14, 2020 Extension of pipeline licence no. 56457 – 107;
- That the AER conduct an inquiry into the issuance of the Extension; and,
- That the regulatory appeal be a cooperative proceeding with the Surface Rights Board.

Request for Regulatory Appeal

Section 38 of the *Responsible Energy and Development Act* (REDA) permits eligible persons to seek a regulatory appeal of an appealable decision of the AER. Requests for a regulatory appeal must be made in accordance with the *Alberta Energy Regulator Rules of Practice* (the Rules).

a. Late filing

In reviewing the Wiebens' request, the AER identified a preliminary issue with regard to the timing of the request for regulatory appeal. The Extension decision was issued on April 14, 2020. Pursuant to the Rules, a request for regulatory appeal must be filed within 30 days of notice of the decision being issued in relation to which the regulatory appeal is sought. The Request was filed with the AER on May 15, 2020, which is 31 days after the Extension was issued. Rather than rejecting the request for regulatory appeal, on May 22, 2020, the AER advised the Wiebens that they could request an extension of the deadline for filing the request for regulatory appeal and that if they chose to make such a request it should include the following information:

- Why the request was not filed within the required deadline; and,
- Any other information the Wiebens believed to be relevant to the request for an extension.

The Wiebens filed their response on June 1, 2020. In it they stated: “[n]o such extension request or explanation shall be forthcoming”. Canadian Natural Resources Limited (Canadian Natural) filed a submission requesting that the AER not permit the regulatory appeal request be filed and setting out the prejudice it will suffer if the request is filed. On June 10, 2020, the Wiebens filed a further submission in which they reiterated that they would not file a request for an extension of the time for filing a request for regulatory appeal and primarily discussed matters related to the Surface Rights Board's process.

Pursuant to section 41 of the Rules, the AER has discretion to vary a time limit specified or prescribed in the Rules or set by the AER, such as the deadline for filing a request for regulatory appeal. The AER's exercise of that discretion must have regard for established legal principles including procedural fairness. Accordingly, the AER extends the time for filing a regulatory appeal in limited cases, such as where circumstances indicate that an extension is warranted to protect procedural fairness for the parties concerned. As indicated in the AER's May 22, 2020 letter, the onus is on the person requesting an extension to demonstrate circumstances exist that support extending the filing deadline.

The Wiebens have not provided any reasons why their late submission should be accepted by the AER, despite being asked to provide such information. While they say they did not receive the Extension until April 17, 2020, they have not explained why this, or some other factor, may have prevented them from filing their request by May 14, 2020 and staying within the 30-day filing period. Instead, they have explicitly stated they will not engage in the AER process for

considering their submission, declining to request an extension and refusing to provide the information the AER requires to assess such a request.

While the request for regulatory appeal does not act as a stay, Canadian Natural will incur time and resources in having to argue the merits of a request for regulatory appeal. This is a prejudice to Canadian Natural that it should not have to incur in circumstances where the Wiebens refuse to explain or justify their late filing and fully engage in the regulatory appeal process.

Section 30 (3) of the Rules clearly sets out that a request for regulatory appeal must be filed with the AER in accordance with the applicable time period. The applicable time period was 30 days (Section 30 (3)(m)) and the request was not filed within this period in accordance with the Rules as required by section 38(1) of the REDA. While the Rules allow the AER to extend filing timelines, there is no information to support the AER exercising its discretion to depart from the mandatory timelines in Rules. This is because the Wiebens have not provided sufficient grounds or identified circumstances that warrant an extension, but chose instead not to engage in the process available to them to seek an extension of the filing deadline for their regulatory appeal request.

Regulatory appeal requesters, particularly when represented by professional agents, are expected to know and follow regulatory appeal and other applicable processes under REDA and the Rules. When they wilfully refuse to follow or meaningfully engage in these processes, the AER will not exercise its discretion in their favour. As a result, the AER has decided not to extend the applicable timeline for filing the Wiebens' regulatory appeal request. Since the request is late, it is not filed in accordance with REDA and the Rules, is not properly before the AER, and is dismissed pursuant to section 39(4)(c) of the REDA.

b. Not eligible for a regulatory appeal

Even if the AER registered the Wiebens' request for regulatory appeal, the Wiebens would not be eligible for a regulatory appeal because they are not directly and adversely affected by the April 14, 2020 Extension. To be eligible, a regulatory appeal requester must demonstrate they may be directly and adversely affected by the decision they seek to appeal (sections 36 and 38 of REDA).

The impacts to the Wiebens from the subject pipeline (Line 107) have already been considered by the AER. The licence extended by the April 14, 2020 Extension, No. 56457-107, relates to a pipeline that was approved by decision 2019 ABAER 007 (the Hearing Decision). That decision was made by a panel of hearing commissioners that conducted an oral hearing to consider Line 107 and other related matters. The Wiebens fully participated in that hearing. The hearing

decision indicates that the Wiebens' concerns regarding Line 107 and impacts to them from approval of that pipeline were fully considered by the panel in the hearing.

The April 14, 2020 Extension was a correction of an administrative error by the AER. The application made by Canadian Natural that led to the issuance of licence 56457-107 pursuant to the Hearing Decision was Application No. 158722. That application requested a two-year expiry period for the requested pipeline licence. In this case, the hearing panel which approved Line 107 did not specify in the Hearing Decision that the approval of the pipeline associated with licence No. 56457-107 would have a shorter expiry period than what was requested by Canadian Natural. Therefore, the Hearing Decision of July 22, 2019 granted Canadian Natural a pipeline licence as requested in the application i.e. with a two-year licence term, expiring on July 22, 2021. The subsequent Extension decision of April 14, 2020 was merely a correction of the previous licence document to reflect the panel's approval decision. This was necessitated by the erroneous issuance of a licence with the same number, 56457-107, in 2018. While the procedure followed by the AER relating to the licence number and the Extension may be somewhat anomalous, the Extension was simply a correction of a clerical error and did not directly and adversely impact the Wiebens, nor did the procedure followed. There were no additional impacts to the Wiebens from the AER's issuance of the Extension which simply corrected the licence document to reflect the hearing panel's decision that Canadian Natural was granted a pipeline licence which expires on July 22, 2021.

In these circumstances, the Wiebens' are not eligible persons as required by REDA, and the request for regulatory appeal is therefore not properly before the AER and is dismissed pursuant to section 39(4)(c) of the REDA.

Reconsideration request

In addition to requesting a regulatory appeal, the Wiebens have asked the AER to reconsider the April 14, 2020 Extension.

The AER has authority to reconsider its decisions pursuant to section 42 of REDA. That section states:

The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision.

Section 42 makes clear that the AER has sole discretion to reconsider a decision made by it. That section does not provide an appeal mechanism to be utilized by industry or members of the public; other provisions of REDA, specifically section 38, are available for that purpose.

As described above, section 38 of REDA allows eligible persons, those who are directly and adversely affected by an appealable decision of the AER, to seek a regulatory appeal of the appealable decision. Additionally, section 45 of REDA describes the opportunity to seek an appeal of some AER decisions to the Court of Appeal of Alberta. These two appeal mechanisms provide an opportunity for persons who qualify to have AER decisions reviewed.

In this matter, the Wiebens failed to properly utilize the process for requesting a regulatory appeal under section 38 of REDA. Reconsiderations are not a backstop procedure for those who want to challenge an AER decision, but fail to pursue a regulatory appeal in accordance with the Rules and AER processes.

We note that the Wiebens have already asked the AER for a reconsideration regarding the subject pipeline and the hearing decision. That request was rejected on December 11, 2019. The Wiebens did not pursue a review of the AER's decision to approve the application for Line 107 by seeking the permission of the Court of Appeal to appeal the hearing panel's decision as contemplated by section 45 of REDA.

We further note that the Request lists as an issue it seeks to have considered by the AER:

Did the AER commit multiple errors in deciding matters related to Proceeding 375 by acting contrary to law, beyond its jurisdiction, or by acting unjustly or unfairly, or by making errors of fact, and if so are such errors commonplace, whereby these are matters of central importance to the legal system as a whole?

The Wiebens raised similar issues regarding perceived errors made by the hearing panel in their previous reconsideration request, which was considered and rejected as indicated above. Repeatedly raising the same issues in circumstances where those issues have already been considered and decided by the AER in the previous reconsideration decision or the hearing commissioners' decision of July 22, 2019 amounts to a collateral attack and is an abuse of the AER's process.

Given the express wording in section 42 of REDA that the AER has sole discretion to reconsider a decision and given the need for finality and certainty in the AER's decision making, the AER reconsiders its decisions only in extraordinary circumstances where it is satisfied that there are exceptional and compelling reasons to do so.

The Request does not provide information to suggest that there are exceptional or compelling grounds to reconsider the April 14, 2020 Extension. This is particularly so given that the Wiebens are not directly and adversely affected by the Extension. Accordingly, the AER has decided not to reconsider the Extension under section 42 of the REDA.

Inquiry into the issuance of the April 14, 2020 Extension

Section 17 of REDA relates to inquiries. It states that the AER may on its own initiative or shall at the request of the Lieutenant Governor in Council conduct inquiries and prepare studies and reports in respect of any matter relating to energy resources or the injection of substances into underground formation. Where the AER does conduct an inquiry, it may make recommendations to the Lieutenant Governor in Council related to the matter into which the AER inquired.

It is clear that inquiries, as described in section 17, are not the means by which individuals may challenge AER decisions. Sections 38 and 45 of REDA provide for such challenges.

Joint Proceeding with the Surface Rights Board

Section 18 of the REDA provides that that AER may consider an application or conduct a regulatory appeal, reconsideration, or inquiry jointly with another agency. As the application has been decided and the AER will not be conducting a regulatory appeal, reconsideration or inquiry related to the April 14, 2020 Extension, there is no need to consider the request for a joint proceeding with the Surface Rights Board.

Conclusion

For the above reasons, the requests for regulatory appeal, reconsideration and an inquiry into the issuance of the April 14, 2020 Extension of Licence No. 56457-107 are dismissed.

Sincerely,

<Original signed by>

Sean Sexton
Vice President, Law

<Original signed by>

Evan Knox
Senior Advisor, Regulatory Integration

Cc: Skylar Duff, SRB