

By email only

February 28, 2022

Bennett Jones LLP

Martin Kaup

www.aer.ca

Attention: Keely Cameron, Counsel

Attention: Martin Kaup, Counsel

Sinopec Daylight Energy Ltd.

Attention: Matthew Simpson, Counsel

Dear Sirs:

**Re: Request for Regulatory Appeal filed by Martin Kaup
MAGA Energy Ltd.
Sinopec Daylight Energy Ltd.
Application No.: 1933227
Approval Nos.: 62547, 62548, 62549, 62550, 62551 and 62552
Location: 3-1-54-26-W4M
Request for Regulatory Appeal No.: 1934774**

The Alberta Energy Regulator (AER) has considered Martin Kaup's request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve licence transfer application No. 1933227 on August 10, 2021 (the Decision). The AER has reviewed Martin Kaup's submissions and the submissions made by Sinopec and MAGA, respectively.

For the reasons that follow, the AER has decided that Martin Kaup is not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

Background

On June 7, 2021, the AER registered a Licence Transfer Application from Sinopec Daylight Energy Ltd. (Sinopec), requesting approval to transfer existing AER licences from the current licensee of record, Sinopec, to Maga Energy Ltd. (MAGA). Sinopec's application includes 3 Wells, 2 Facilities and 9 Pipeline Licence(s), and was registered by the AER as Application No. 1933227 (the Transfer Application).

On August 10, 2021, the AER approved the Transfer Application and issued approval nos. 62547, 62548, 62549, 62550, 62551 and 62552 (Transfer Approvals) to MAGA.

On September 29, 2021, the AER Law Branch (Regulatory Appeals) received a request for regulatory appeal (RRA) from Mr. Kaup in relation to the AER's decision to approve the Transfer Application and issue the Transfer Approvals to MAGA.

During its initial review of the RRA, Regulatory Appeals noted that the RRA was filed outside of the timelines set out in section 30(3)(m) of the *AER Rules of Practice (Rules)*, and correspondence was issued to the parties requesting comments on whether the late filing of the RRA should be allowed. MAGA responded on October 12, 2021, and Mr. Kaup's reply submission was received on October 20, 2021.

On November 1, 2021, after reviewing the parties' submissions, an AER delegate decided that an extension of time to allow the RRA to be filed was warranted. Mr. Kaup's RRA was registered by the AER as Request for Regulatory Appeal No. 1934774.

On November 5, 2021, Regulatory Appeals issued correspondence to the parties requesting submissions on the merits of Mr. Kaup's RRA.

Parties' Positions

Mr. Kaup's Position

Mr. Kaup submits that he is directly and adversely affected by the pipeline licence transfer from Sinopec to MAGA. Part of Mr. Kaup's argument that he is directly and adversely affected is that before the transfer he was to have an abandoned pipeline across his land; now, with MAGA, the pipeline will have natural gas actively flowing through it.

Further, Mr. Kaup submits that the Licence and the clean-up have been transferred to an insolvent company (MAGA). Mr. Kaup highlighted, that on August 10, 2021, MAGA was:

- in arrears of Sturgeon County municipal taxes and lease payments to Sturgeon County landowners,
- the subject of claims before the Land and Property Rights Tribunal,
- allowing an illegal bitcoin operation to carry on business from a MAGA lease site, and
- delinquent in its filings with the Alberta corporate registry, since December 23, 2019

MAGA's Position

MAGA argued that the transfer of assets occurred after an extensive review by the AER, including with respect to MAGA's financial capabilities; thus, a further review is not necessary. MAGA highlighted that it is not insolvent but noted instead that it had inherited some rental arrears from purchasing certain assets from the Orphan Well Association, and it has been working with landowners to address those arrears.

Further, MAGA submitted that Mr. Kaup is not an “eligible person” as he is not directly and adversely affected by the transfer of the licences. MAGA argued that the simple fact that an AER decision concerns an asset located on Mr. Kaup’s land is not sufficient by and of itself to establish a finding of directly and adversely affected. Direct and adverse effects are a question of fact and must be supported by evidence. MAGA highlighted that it is in full compliance with its obligations in respect of Mr. Kaup’s land. Furthermore, Mr. Kaup’s concerns are general in nature and not specific to the licence transfer.

MAGA also argued that the transfer of the licences and sale of the underlying interests have already occurred. Thus, when a sale has already occurred, Courts have held appeals of the sale to be moot. *DGDP-BC Holdings Ltd. V. Third Eye Capital Corporation*, 2021 ABCA 226 at para. 35; *Resurgence Asset Management LLC v. Canadian Airlines Corp.*, 2000 ABCA 238 at para. 32.

Finally, addressing the remainder of Mr. Kaup’s submissions, MAGA noted:

- The bitcoin operation is neither owned nor operated by MAGA. The bitcoin operation was on land subleased by MAGA. MAGA has no intention to conduct unauthorized and unlicensed activities on Mr. Kaup’s land; and
- MAGA's status is that of an "active" company. While MAGA was delayed in updating its corporate records, the information has since been submitted to the Alberta corporate registry.

Sinopec’s position

Sinopec argued that the request for regulatory appeal is without merit because Mr. Kaup is seeking to unwind a transaction that has already closed and was approved by the AER following a non-routine review of MAGA’s liability management capabilities. Further, Mr. Kaup is not directly and adversely affected by the licence transfer as the impact to his land interest is limited to two discontinued pipeline segments.

Request for Regulatory Appeal Test

The applicable provision of *REDA* in 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.
[emphasis added]

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

a person who is directly and adversely affected by a decision [made under an energy resource enactment]...

Reasons for Decision

Appealable Decision

The AER finds that the granting of the Pipeline Licence transfer is an appealable decision, as the transfer was processed under the *Pipeline Act* – an energy resource enactment – without a hearing.

In Accordance with the Rules

The regulatory appeal was filed outside of the required timeline set out in Section 30(3)(m) of the *Rules*. However, the AER granted a time extension as it related to the request for regulatory approval.

Further, while Mr. Kaup did not file any Statements of Concern relating to the Licence transfer, the AER notes however that there was not a reasonable opportunity to file an SOC against the proposed licence transfer, for the reasons articulated in the extension decision.

Therefore, the AER finds that the Request for Regulatory was filed in accordance with the *Rules*.

Eligible Person

The remaining question, then, is whether Mr. Kaup is an eligible person as defined in section 36(b)(ii) of *REDA*. To establish that he is an eligible person, Mr. Kaup must demonstrate, on a *prima facie* basis, that he may be directly and adversely affected by the AER's approval of the Licence Transfers.

Addressing Mr. Kaup's arguments about the financial wherewithal of MAGA, the AER finds that Mr. Kaup is not directly affected.

Recently, in *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board*, 2020 ABCA 456, the Court of Appeal explained the meaning of "directly" as follows:

The adverb, "directly" also restricts or limits the effects which can give rise to standing. The *Concise Oxford Dictionary* defines "directly" as meaning "in a direct manner". It defines "direct" as "straight, not crooked or roundabout, following an uninterrupted chain of causes and effect". There also appears to be a temporal aspect to "direct" and "directly". "Direct" is defined as "immediate". And "directly" is defined as "at once, without delay." It is acknowledged that some types of prospective harm may be too remote or too speculative, but not all will be.

Mr. Kaup has not provided sufficient evidence to demonstrate, on a *prima facie* basis, that there is a real potential or probability that MAGA Energy will become insolvent at some point, much less that they are insolvent now. While MAGA did not rebut that it was in arrears to certain landowners, MAGA did note that its business practice involved taking on distressed infrastructure and assets which have been

orphaned, which would explain why they are in arrears to various stakeholders. Furthermore, it should be noted that neither Sinopec nor MAGA are in arrears to Mr. Kaup.

While MAGA could go bankrupt, it is speculative to assume that the pipelines on Mr. Kaup's land would be orphaned. MAGA could transfer the licences to another licensee or the assets could be sold during an insolvency process. Moreover, Mr. Kaup has not presented any arguments as to how he would be specifically affected if the pipelines are orphaned.

Mr. Kaup has not provided any specific evidence that the current regulatory requirements are not sufficient, or that MAGA did not meet the AER's requirements. In approving the transfers, the AER determined the Licence Transfer satisfied all applicable regulatory requirements, including those in *Directive 006*, the purpose of which is to "prevent the costs to suspend, abandon, remediate, and reclaim a well, facility, or pipeline in the LLR Program from being borne by the public of Alberta should a licensee become defunct, and minimize the risk to the Orphan Fund posed by the unfunded liability of licences in the program."

Finally, Mr. Kaup's argument that the reactivation of the pipelines makes him directly and adversely affected is without merit. The AER notes that Sinopec also could have reactivated the pipelines. Moreover, there is no explanation as to why or how the reactivation of the pipelines might directly and adversely affect Mr. Kaup. Thus, Mr. Kaup's objection is with the current approval, not with the transfer of licences, and is therefore out of scope for the current request for regulatory appeal.

Sincerely,

<Original signed by>

Sean Sexton
Vice President, Law

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