

Via Email

April 29, 2022

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

ORLEN Upstream Canada Ltd.

Alberta Energy Regulator – Enterprise
Reclamation Group

www.aer.ca

Attention: Trevor Schoenroth

Attention: Lindsey Mosher, Counsel

Dear Sir and Madam:

**RE: Request for Regulatory Appeal by ORLEN Upstream Canada Ltd. (ORLEN)
Alberta Energy Regulator – Enterprise Reclamation Group (ERG)
Reclamation Certificate Application No.: 31344596 (Application)
Location: 01-12-083-13W6M
Request for Regulatory Appeal No.: 1935284 (Regulatory Appeal)**

By way of a letter dated November 29, 2021, ERG refused ORLEN's Application for a reclamation certificate pursuant to section 138(1.1) of the *Environmental Protection and Enhancement Act (EPEA)* (the Refusal).

ORLEN has requested a regulatory appeal of the Refusal pursuant to section 38 of *Responsible Energy Development Act (REDA)*. The Alberta Energy Regulator (AER) received ORLEN's request for a regulatory appeal of the Refusal on December 16, 2021, within the period provided by the *Alberta Energy Regulator Rules of Practice*.

The AER has reviewed ORLEN's request for a regulatory appeal, as well as the submissions received from ORLEN and ERG on January 20 and February 3, 2022, respectively.

The AER also received submissions from Charlie and Pat Johnson (the Landowners) on January 18, 2022, relating to ORLEN's request for regulatory appeal. As stated in the AER's letter to the Landowners of January 28, 2022, the AER has not considered these submissions in relation to ORLEN's request for a regulatory appeal and will not address these submissions herein.

For the reasons that follow, the AER agrees that ORLEN is an eligible person to request a regulatory appeal of the Refusal, which is an appealable decision. The AER has declined to dismiss ORLEN's request for any other reason. Therefore, ORLEN's request for a regulatory appeal is approved.

Relevant statutory provisions

Section 38 of *REDA* provides, in part, as follows (emphasis added):

Request for 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.

The term “eligible person” is defined in section 36(b)(i) of *REDA* to include a person referred to in section 36(a)(i). Section 36(a)(i) of *REDA* provides, in part, as follows (emphasis added):

Definitions

In this Division, “appealable decision” [includes] a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 91(1) of [*EPEA*], if that decision was made without a hearing...

Section 91(1) of *EPEA* provides, in part, as follows:

Notice of appeal

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

...

(k) where the Director or an inspector refuses to accept an application for a reclamation certificate or an inspector refuses to issue a reclamation certificate, the operator may submit a notice of appeal;

Section 39(4) of *REDA* provides, in part, as follows:

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,

... or

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

Section 41(2) of *REDA* provides as follows:

In its decision on a regulatory appeal, the Regulator may confirm, vary, suspend or revoke the appealable decision.

Reasons for Decision

ERG and ORLEN agree that ORLEN is an “eligible person” and that the Refusal is an “appealable decision” pursuant to *REDA* and *EPEA*.

ERG has requested that the AER exercise its discretion to dismiss ORLEN’s request for a regulatory appeal pursuant to section 39(4)(a) and (c) of *REDA*. Specifically, ERG has respectfully submitted that

ORLEN's request for a regulatory appeal is "without merit and not properly before the AER... as it has no reasonable chance of success and ultimately seeks relief that is not available to the AER to grant."

Without commenting on the substance of the Regulatory Appeal, the AER has determined that it would be inappropriate to dismiss ORLEN's request for a regulatory appeal at this preliminary stage. In the case of the Refusal, *EPEA* grants ORLEN the right of regulatory appeal barring extraordinary and obvious circumstances. The AER found that no such circumstances exist in this case.

Given the above, the AER will be asking that the Chief Hearing Commissioner appoint a panel of hearing commissioners to conduct a hearing of the Regulatory Appeal.

Sincerely,

<Original signed by>

Charlene Graham
Executive Vice President, Law and General Counsel

cc: Jason Pytlarz, ORLEN
Drew Lockwood, ERG