

Via Email

April 26, 2022

Calgary Head Office
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Canada

www.aer.ca

Mike and Faye Partsch

Tidewater Pipestone Infrastructure Corp.

Attention: Mike and Faye Partsch

Attention: Ryan Connery

Dear Sirs and Madam:

**RE: Request for Regulatory Appeal by Mike and Faye Partsch (Partsches)
Tidewater Pipestone Infrastructure Corp. (Tidewater)
Application Nos.: 31404290, 31404291, 31404292, 31404293, 31404294
Licence Nos.: 0486103, 0486104, 0486105, 0486106, 0486107
Location: 8-25-71-7-W6
Regulatory Appeal No.: 1935286 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered your request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve the Well Licence Extension Applications. The AER has reviewed your submissions and the submissions made by Tidewater.

For the reasons that follow, your request for a Regulatory Appeal is dismissed.

Section 38(1) of the *Responsible Energy Development Act (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]

There are three key components to section 38(1), which are as follows:

1. **“Appealable Decision”** – Subsection 36(a) defines an “appealable decision”. For the present purposes, the relevant definition is contained in subsection 36(a)(iv). It says an appealable decision includes:

A decision of the Regulator that was made under an energy resource enactment¹, if that decision was made without a hearing

[Emphasis added]

Thus, to be an “appealable decision” the decision must be made under an energy enactment and there cannot have been a hearing.

2. **“Eligible Person”** – Subsection 36(b) defines an “eligible person” under an energy resource enactment. For the present purposes, the relevant definition is contained in subsection 36(b)(ii). It says an eligible person is:

A person who is directly and adversely affected by a decision referred to in clause (a)(iv) [a decision made under an energy resource enactment, if that decision was made without a hearing].

[Emphasis added]

Therefore, you must be a person who is directly and adversely affected by a decision.

3. **“In Accordance with the Rules”** – Section 30(3) requires that a request for a Regulatory Appeal be made within 30 days after the making of the decision for which an appeal is sought.

Reasons for Decision

Appealable Decision

The granting of the Well Licence Extension Applications are appealable decisions, as the Licences were issued under the *Oil and Gas Conservation Act* – an energy resource enactment – without a hearing.

In Accordance with the Rules

The portion of the request for regulatory appeal relating to the Well Licence Extension Applications was filed in accordance with the time requirements under the Rules. You were asked to provide missing information as outlined in the Deficiency Letter to the AER by December 2, 2021. This information was filed outside of the required timeline set out in Section 30(3)(m) of the Rules, however, you provided it within the deadline requested by the AER.

Therefore, the totality of the Request for Regulatory Appeal was filed in accordance with the Rules.

¹ This includes: the *Coal Conservation Act*, the *Gas Resources Act*, the *Oil and Gas Conservation Act*, the *Oil Sands Conservation Act*, the *Pipeline Act*, the *Turner Valley Unit Operations Act*, a regulation or rule under and of the enactments.

Eligible Person

To be eligible for a regulatory appeal, you must demonstrate that you may be directly and adversely affected by the AER's decision to issue the Approval. The AER acknowledges the concerns put forward in your request for regulatory appeal, including but not limited to:

- Testing and impacts on the integrity of the reservoir;
- Further drilling at the gas storage site;
- Bitumen production; and
- Stakeholder engagement.

Although not stated with the same degree of detail, the concerns you have raised and the impacts you have submitted in your request for regulatory appeal are substantially the same as those raised previously in the statements of concern (SOCs) and requests for regulatory appeals you have filed with respect to Tidewater's initial subsurface, facility and pipeline applications, the most recent of which being applications to amend the gas storage projects in 2019 and 2020. In its February 2019, June 2019, August 2019 and October 2020 decisions, the AER found that you had not demonstrated you may be directly and adversely affected by the applications². Specifically, the AER addressed your concerns around testing and the integrity of the reservoir stating the well met integrity requirements for injection and did not change the maximum allowable pressure under the original gas storage scheme approval or exceed the initial pressure in the reservoir. The responses also noted that any risk of fracturing the reservoir rock was mitigated by the Maximum Wellhead Injection Pressure (MWHIP) assigned to the gas storage scheme approval. As the extension approvals are related to the same well licences, these reasons continue to apply.

With respect to your concerns surrounding further drilling, the current Applications were made to extend the existing licences for the gas storage project, they do not involve the granting of additional well licences or changes to the previously approved infrastructure nor do they involve the initiation of bitumen production.

Regarding stakeholder engagement on behalf of Tidewater, you have confirmed in your request submissions that you were in fact notified of the proposed applications by Tidewater in advance of filing.

The AER does not find that the current request for regulatory appeal contains any additional information demonstrating you may be directly and adversely affected by the decision to allow the extension of the Well Licences.

²AER Disposition Letter – Request for Regulatory Appeal No. 1916093, dated Feb. 21, 2019;
AER Letter to Mike and Faye Partsch – Statement of Concern No. 31283, dated Feb. 27, 2019;
AER Disposition Letter – Request for Regulatory Appeal No. 1919482, dated Jun. 07, 2019;
AER Disposition Letter – Request for Regulatory Appeal No. 1921329, dated Aug. 19, 2019;
AER Disposition Letter – Request for Regulatory Appeal No. 1925635, dated Oct. 22, 2020.

For the above reasons, the AER has decided that you have not demonstrated that you may be directly and adversely affected by a decision made under an energy resource enactment and as such are not eligible to request a regulatory appeal in this matter. Therefore, your request for a regulatory appeal is dismissed.

Sincerely,

<Original signed by>

Sean Sexton
Vice President, Law

<Original signed by>

Elizabeth Grilo
Senior Advisor, Regulatory

<Original signed by>

Niki Atwal
Senior Advisor, Policy Coordination