

Via Email

June 22, 2022

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Tallahassee Exploration Inc.

Alberta Energy Regulator – Regulatory
Applications Branch**Attention: Fady Ahmad****Attention: Candice Ross, Counsel**

Dear Sir and Madam:

**RE: Request for Regulatory Appeal by Tallahassee Exploration Inc.
Alberta Energy Regulator – Regulatory Applications (Regulatory Applications)
Application No.: 1935488
Location: 122-21W5M, Marlowe Alberta
Request for Regulatory Appeal No.: 1936001 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered Tallahassee Exploration Inc.'s (Tallahassee) request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's Regulatory Applications' decision to deny the licence transfer application no. 1935488 on February 14, 2022. The AER has reviewed Tallahassee's submissions and the submissions made by Regulatory Applications.

For the reasons that follow, the AER has decided that Tallahassee is not eligible to request a regulatory appeal in this matter. Further, Tallahassee's Request for Regulatory Appeal is without merit. Therefore, the request for a Regulatory Appeal is dismissed.

The applicable provisions of REDA in regard to this regulatory appeal are as follows:

Eligibility to Request Regulatory Appeal

Section 38(1) of the 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]

Conducting a regulatory appeal

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

Background

On December 23, 2021, Tallahassee submitted a licence transfer application to the AER requesting to transfer AER licences, formerly held by Strategic Oil & Gas Ltd. (Strategic), to Tallahassee. The application included 10 Wells, 2 Facilities and 2 Pipeline Licences (collectively, the Licences).

Regulatory Applications registered Tallahassee's licence transfer application on January 14, 2022, as Application No. 1935488 (Application).

On February 14, 2022, Regulatory Applications issued its decision to Tallahassee, refusing to consent to the transfers and denying the Application pursuant to section 24(2) of the *Oil and Gas Conservation Act* (OGCA) (the Decision).

On February 16, 2022, the AER Law Branch (Regulatory Appeals) received a request for regulatory appeal from Tallahassee requesting to appeal the Decision (RRA).

During an initial review of the RRA, Regulatory Appeals determined that some of the information required to request a regulatory appeal pursuant to section 30(1) of the *Alberta Energy Regulator Rules of Practice* (Rules) was missing. Regulatory Appeals issued correspondence to Tallahassee on February 22, 2022, outlining the RRA's deficiencies and providing a deadline of March 16, 2022, for Tallahassee to complete its RRA (Deficiency Letter).

By March 1, 2022, Regulatory Appeals had received correspondence from Tallahassee submitting the remaining information outstanding as per the Deficiency Letter.

On March 4, 2022, Regulatory Appeals issued correspondence to the parties requesting submissions on the merits of Tallahassee's RRA.

On March 17, 2022, Regulatory Applications filed its response to the RRA. Tallahassee did not file a reply submission.

A summary of the grounds for Tallahassee's request for regulatory appeal, and Regulatory Application's reasons for objection, are included in the analysis that follows.

Eligibility to Request a Regulatory Appeal

Appealable Decision

The decision not to transfer the licences is an appealable decision, as the Decision was issued under the *Oil and Gas Conservation Act* and the *Pipeline Act* (energy enactments) without a hearing.

In Accordance with the Rules

Despite initially failing to include all the requisite information in its request for regulatory appeal, Tallahassee rectified its mistakes by filing additional submissions. Thus, its request for regulatory appeal was filed in accordance with the Rules.

Eligible Person

Parties' Positions

Tallahassee

Tallahassee submitted that it would like to acquire the wellbores under the regulator directed transfer (RDT) application. Tallahassee understands that with the Caribou restriction there are no definite timelines for land postings, but it submitted that it is looking to explore options that may allow it to directly purchase or acquire the lands with these wellbores. Tallahassee submitted that it requires additional time to pursue this option or any other that may be possible. Tallahassee submitted that the OWA is currently abandoning in the area with the subject wellbores on the list, and as the RDT application was rejected, Tallahassee is requesting the appeal.

Regulatory Applications

Regulatory Applications admitted that Tallahassee was directly affected. However, Regulatory Applications submitted that the denial of the RDT application does not adversely affect Tallahassee.

Regulatory Applications argued that Tallahassee does not currently have mineral or surface leases for the wells in question, and due to the caribou restrictions, it may never hold the leases. Thus, by denying the transfer, Tallahassee has only lost a “hope” or a “chance” to be able to produce from the wells applied for.

Regulatory Applications further submitted that it has no ability to grant an application in the circumstances, especially considering government policy may result in there being no further development allowed in this area at any time in the future.

Analysis

To be eligible for a regulatory appeal, a requester must demonstrate that they are directly *and* adversely affected by the appealable decision: section 36(b)(ii) of REDA. Regulatory Applications conceded that Tallahassee is directly affected by the appealable decision. However, as Regulatory Applications noted in their submission, Tallahassee must also be adversely affected by the appealable decision. The AER finds that Tallahassee is not adversely affected by the appealable decision, because it is applying for licences where not only does it not hold the mineral leases, but because of the caribou restrictions in the area, it may never hold the mineral leases. The AER concurs with Regulatory Applications that adversely affected must mean more than the loss of a chance; a standard which Tallahassee has not met.

Tallahassee’s Request for Regulatory Appeal Is Without Merit

Even if Tallahassee were eligible to request a regulatory appeal, we would dismiss the request because it is without merit.

Regulatory Applications submitted that Tallahassee’s Request for Regulatory Appeal is without merit and should be dismissed pursuant to section 39(4) of REDA, as Tallahassee has not met the requirements of section 16 of the OGCA.

Legislation

Section 39(4) of REDA provides the AER with discretion to dismiss all or part of a request for a regulatory appeal in the following circumstances:

- (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.

Section 16 of the OGCA provides that “no person shall apply for or hold a licence for a well... unless that person...is entitled to the right to produce the oil, gas or crude bitumen”:

Analysis

Section 16 is unambiguous; as Tallahassee is not entitled to the right to produce the oil, gas or crude bitumen from the well, then it cannot hold a licence for the wells that are the subject of the transfer application. As the AER does not have the jurisdiction to grant the requisite mineral rights, Tallahassee’s request for regulatory appeal does not have a reasonable chance of success. If Tallahassee obtains the mineral rights to the wells, then it may reapply to transfer the wells and all of the associated infrastructure.

Conclusion

Accordingly, the AER dismisses Tallahassee's request. Tallahassee is not an eligible person, and its appeal is without merit and not properly before the AER.

Sincerely,

<Original signed by>

Sean Sexton
Executive Vice President, Law and General
Counsel

<Original signed by>

Evan Knox
Senior Advisor, Regulatory Integration

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Niki Atwal
Senior Advisor, Policy Coordination