

By e-mail only

July 5, 2023

Bennett Jones LLP

Alberta Energy Regulator – Compliance and
Liability Management Branch

**Attention: Keely Cameron
Kelsey Meyer**

Attention: Candice Ross, Counsel

Dear Mesdames:

**RE: Request for an Inquiry by AlphaBow Energy Ltd. (AlphaBow) regarding
Suspension Order issued to AlphaBow Energy Ltd. on June 5, 2023
Locations: Various**

The Alberta Energy Regulator (**AER**) has considered AlphaBow's request for an inquiry pursuant to section 45 of the *Oil and Gas Conservation Act* (**OGCA**) and section 30 of the *Pipeline Act* (**PA**) (**Request for Inquiry**), and in doing so has reviewed the submissions made by both AlphaBow and CLM.

Background

On June 5, 2023, the AER issued a Suspension Order to AlphaBow pursuant to sections 27 of the OGCA, and section 23 of the PA (**Suspension Order**). The Suspension Order is attached to this decision as Appendix 1, for ease of reference.

On June 12, 2023, the AER received an email from counsel for AlphaBow providing correspondence dated June 9, 2023, requesting a stay of the Suspension Order or, alternatively, an interim stay pending the AER's decision on the stay request, a request for regulatory appeal of the Suspension Order (Proceeding #1943268) and request for inquiry. In a previous request, AlphaBow had also requested a regulatory appeal of the RCAM order that CLM had issued to it on March 30, 2023 (**RCAM Order**) (Proceeding #1942793).

On June 14, 2023, the AER issued correspondence dated June 13, 2023, granting an interim stay of the Suspension Order pending the decision on the request for inquiry. Deadlines for submissions on the stay request were also suspended pending a decision on the request for inquiry.

On June 28, 2023, the AER granted AlphaBow's requests for regulatory appeal of the Suspension Order and RCAM Order. The matters will be set down for hearing before a panel of AER Hearing Commissioners. Further details on the process will be provided by the panel in due course.

Submissions of parties

AlphaBow asserted the following in support of its request:

- The Suspension Order should have been ordered pursuant to s.44 rather than s.27(3) of the OGCA and as such, it is entitled to an inquiry under s.45 of the OGCA.
- The Suspension Order was not due to site-specific concerns regarding risks individual wells or facilities pose to the public or environment, but rather was issued in response to AlphaBow's alleged failure to fully comply with the RCAM Order and certain other alleged breaches of the OGCA. This was evidenced in the AER's announcement of the Suspension Order.
- The reasons provided for the Suspension Order coincide with the AER's authority under section 44(a) of the OGCA, and therefore should have been issued under that section.
- There is an important distinction between s. 27(3) and section 44 regarding procedural rights, as s. 45 of the OGCA permits any licensee or approval holder who is the subject of a shut-in order under s. 44 to request an inquiry into the matter, which must be held within 15 days of receipt of the same; s. 27(3) does not include a similar provision.
- The Suspension Order was "in essence a shut-in order as contemplated in s. 44 and 45 of the OGCA" and should have been issued accordingly.
- The AER had improperly relied on s.27(3) in issuing the Order and, in doing so, was "seeking to deprive" AlphaBow of a statutory right to an inquiry. Section 27 of the OGCA provides the AER with the discretionary authority to order the suspension or abandonment of wells or facilities in certain circumstances.
- The requirement to post over \$15 million with the AER as security for the completion of abandonment and reclamation, instead of using that money to carry out abandonment and reclamation work did not prevent harm to the public or to the environment but rather, had the opposite effect (i.e. diverted efforts to prevent harm to the public and environment).
- Shutting-in its assets prevented it from accessing the value of those assets to fund any environmental work and would "shutter" AlphaBow's operations.

- The Suspension Order has the effect of halting its operations completely, which would result in harm to the environment and the public as funds would be diverted away from carrying out “clean up work” and certain carbon capture activities it is currently undertaking.
- By escalating the RCAM Order through the issuance of the Suspension Order, the AER was “contravening the Alberta Auditor General's guidance” regarding the impacts to companies’ cash flow in the event they are required to post security”, to the detriment of not only AlphaBow, but its employees, stakeholders, the public, and the environment.
- AlphaBow communicated to the AER on June 2, 2023, its belief that the shutting-in of certain AlphaBow wells, facilities and pipelines related to its Prentiss CO2 capture facility would cause “direct and specific harm to the environment” as well as a loss of jobs and royalties, and cause AlphaBow to be in breach of various contractual obligations.
- The AER had not given any indication the Prentiss CO2 assets were necessary to shut-in and the AER had erred in law and jurisdiction by failing to exclude it from the Suspension Order.
- Its application raised substantive questions about the AER’s use of discretionary authority and the appropriateness of its enforcement action, and it was entitled to an inquiry under s. 45 of the OGCA.

CLM asserted the following in response:

- AlphaBow’s request for inquiry was without merit.
- The Suspension Order was properly issued pursuant to s.27(3) of the OGCA and s.23 of the PA.
- The AER regularly directs suspension pursuant to section 27 of the OGCA.
- Rule 3.020 of the OGCR and Directive 013: Suspension Requirements for Wells also provides the Regulator the discretion to order suspension:

3.020(1) A licensee shall suspend a well when required by and in accordance with Directive 013, or as otherwise directed by the Regulator.
- AlphaBow posed a “significant risk to the public and environment” and the Suspension Order was meant to be an “escalation of authority” in response to AlphaBow’s continued failure to provide reasonable care and measures over its sites.

- AlphaBow was provided an opportunity to provide additional information and submissions as to why the Suspension Order should not be issued prior to its issuance, so even if it is entitled to an inquiry, it has been satisfied already.
- The Suspension Order was not in essence a “shut-in order” pursuant to sections 44 and 45 of the OGCA. The Order was intended to be a temporary measure imposed to make AlphaBow’s sites safe in the absence of an RCAM plan; it was not intended to be a permanent shut down and closure of AlphaBow’s sites. This was exemplified by the inclusion of “terms under which AlphaBow’s suspended sites could be reactivated” in the Suspension Order.
- AlphaBow posed a high risk to the public and environment given its compliance history.
- AlphaBow’s assertion the Suspension Order was not issued due to site specific concerns was false and AlphaBow had still not provided a reasonable RCAM plan.
- AlphaBow had 8167 licences and it was impossible for CLM to inspect them all, but it believes AlphaBow poses a variety of risks, including risk to air, risk to ground water, risk regarding improperly suspended wells (risk of failure and leaking both below and above ground), risk regarding pipelines, risk of tanks for leaks and venting, risk of operational wells failing, risks associated with “end-of-life obligations”.
- The Statutory Decision Maker (SDM) chose to issue the Suspension Order pursuant to s. 27 of the OGCA and s. 23 of the PA and had the discretion and authority to do so.
- Regulators have the right to choose their process, which has been long established by the Courts and, in the AER’s case, is codified by section 69 of the *Responsible Energy Development Act* (REDA).
- The word “temporary” in the definitions of “suspension” (OGCA) and “deactivation” (PA) must be given meaning, the legislation was intentional regarding the temporary nature of the words suspension and discontinuation. This was in contrast with s. 44 of the OGCA.
- It understood that sections 44 and 45 were historical provisions of the OGCA which generally weren’t used by the AER any longer. This was demonstrated by the language in the OGCR and the AER Directives coinciding with the “suspension” and “abandonment” language found in s. 27.

- It understood the purpose of section 44 was where a well or facility was shut down in the field due to a contravention or a safety issue; the purpose of an inquiry was to provide due process to a licensee or approval holder after the shut down occurred.
- An inquiry is only available in relation to an order under issued under subsection 44(a). Paragraph 9 of the Suspension Order outlines the steps that AlphaBow may take to reactivate its sites.
- CLM submitted that it clearly and deliberately made the Suspension Order pursuant to section 27 of the OGCA and section 23 of the PA, and as stated at the close of the Suspension Order, the remedy is a request for regulatory appeal.
- Sections 44 and 45 of the OGCA contemplate only the shutdown or closure of “wells and facilities”, and any inquiry in relation thereto would only deal with AlphaBow’s wells and facilities. It makes little sense to deal with only wells and facilities when there are also many pipelines at issue in relation to the Suspension Order. It would result in a bifurcation of proceedings.
- The request for inquiry should be denied.

AlphaBow asserted the following in reply:

- CLM is misconstruing the OGCA and lacks understanding of the impacts of requiring a licensee to shut down its entire operations, which is the effect of the Suspension Order.
- The Suspension Order not only cuts off AlphaBow’s cash flow but also impacts its employees, partners, other stakeholders, and has the added effect of causing harm to the environment. Such an action should not be utilized regularly or broadly applied but should be considered carefully by an impartial decision maker based on a full record as the legislature intended under s. 45.
- The Suspension Order is not supported by s. 27 of the OGCA or Section 23 of the PA, and it appears to have been issued under those provisions to deprive AlphaBow from obtaining procedural fairness.
- The Suspension Order was issued at least in part because of CLM’s finding that AlphaBow had contravened the RCAM Order, which is further acknowledged by CLM’s submission stating that “The Suspension Order was intended to be an escalation of authority...”¹.

¹ CLM’s June 16, 2023 Submission at p. 3.

- A plain reading of s. 44 suggests that is not limited to situations where the AER directs “closure” but also applies in circumstances where the AER is ordering a well or facility to be shut down. While there is no definition of “shut-down” under the OGCA, the Merriam-Webster dictionary defines it as: “*the cessation or suspension of an operation or activity*”², and this is clearly what the Suspension Order directs.
- It is also entitled to an inquiry in respect of its pipelines which are required to be “suspended” under the Suspension Order, and so AlphaBow requests an inquiry pursuant to s. 30 of the *Pipeline Act* as well.
- No cogent reasoning has been provided as to why the Suspension Order is necessary to protect the public or the environment.
- With respect to its finances, it is the RCAM Order and Suspension Order that seek to impair AlphaBow’s ability to meet its regulatory obligations by diverting funds from operations, and in doing so, it is CLM that is creating the risk to the public and the environment, not AlphaBow.
- Compliance with AER requirements is important but it is difficult to see how the suspension of all operations by AlphaBow assists in addressing these items or protects the public and environment. AlphaBow is continuing to take steps to address issues and remains in communication with the AER but rather than facilitate AlphaBow's efforts, the Suspension Order seeks to cause AlphaBow to become insolvent, causing harm to the public and environment.
- In looking at the effect of the Suspension Order, there can be no doubt that it requires AlphaBow to cease/shut-down its operations in whole or in part because of previous non-compliances, and so it is entitled to an inquiry under both the OGCA and the PA.

2 AlphaBow reply Submission dated June 19, 2023 at pg. 4.

Reasons for Decision

Current Legislation

Oil and Gas Conservation Act, RSA 2000

Interpretation

1(1) In this Act,

(xx) “**suspension**”, subject to section 68(f), **means the temporary cessation of operations at a well or facility in the manner prescribed by the regulations or rules and includes any measures required to ensure that the well or facility is left in a safe and secure condition;**

Suspension and abandonment

27(1) Subject to subsection (2), a licensee or approval holder shall suspend or abandon a well or facility when directed by the Regulator or required by the regulations or rules.

(2) Notwithstanding subsection (1),

(a) if the Regulator so directs, a well or facility must be suspended or abandoned by a working interest participant other than the licensee or approval holder, and

(b) with the consent of the Regulator, a well or facility may be suspended by a working interest participant other than the licensee or approval holder.

(3) **The Regulator may order that a well or facility be suspended or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.**

(4) A suspension or abandonment must be carried out in accordance with the regulations or rules.

Shut-down and closure

44 **Where the Regulator or its authorized representative determines that a licensee, approval holder, contractor or operator of a well or facility has contravened or failed to comply with this Act, the regulations or rules or an order of the Regulator, or that a method or practice employed at a well or facility or any equipment or installation at a well or facility is improper, hazardous, inadequate or defective,**

(a) **the Regulator or its authorized representative may order the well or facility to be shut down or closed,**

(b) **the Regulator or its authorized representative may require that approved methods be adopted and that remedial measures be taken** before any operation proceeds at the well or facility, or

(c) the Regulator may hold an inquiry into the matter.

Request for inquiry

45(1) **Where the Regulator orders that a well or facility be shut down or closed under section 44(a),** the licensee or approval holder may by notice in writing to the Regulator request an inquiry into the matter.

(2) Where the Regulator receives a request for an inquiry, it shall, within 15 days after receiving the request, hold an inquiry into the matter.

(3) Unless the Regulator directs otherwise, a well or facility that has been ordered to be shut down or closed under section 44(a) must remain shut down or closed pending the result of the inquiry.

Powers of Regulator

46 Where the Regulator holds an inquiry pursuant to section 44(c) or 45 it may

- (a) in a case to which section 44(c) applies, make an order under section 44(a) or (b), or
- (b) in a case referred to in section 45, withdraw the order made under section 44(a) or extend it on any terms and conditions the Regulator considers appropriate.

Pipeline Act, RSA 2000

Interpretation

1(1) In this Act,

- (g) “**discontinuation**” means the temporary deactivation of a pipeline or part of a pipeline;

Discontinuation and abandonment

23(1) A licensee shall **discontinue** or abandon a pipeline when directed by the Regulator or required by the rules.

(2) The **Regulator may order that a pipeline be discontinued** or abandoned **where the Regulator considers that it is necessary to do so in order to protect the public or the environment.**

(3) A discontinuation or abandonment must be carried out in accordance with the rules.

Part 5 Suspension and Shutting Down

Suspension of construction or operation

29(1) **Where it appears to the Regulator or its authorized representative that in the construction or operation of a pipeline or in the undertaking of a ground disturbance there has been or is a contravention of this Act, the rules, a licence or an order or direction of the Regulator, or that a method or practice employed or any equipment or installation at a pipeline or in a controlled area is improper, hazardous, inadequate or defective,**

(a) the Regulator or its representative may order that the construction or operation of the pipeline, or the ground disturbance, is suspended and shall not be resumed until

- (i) the contravention ceases or this Act or the rules, licence or order or direction of the Regulator is complied with,
- (ii) approved methods or practices are employed or adopted,
- (iii) remedial measures are taken, or
- (iv) proper, safe and adequate equipment is used,

(b) the Regulator or its representative may order that the construction or operation of the pipeline or the ground disturbance be suspended until further order, or

(c) the Regulator may call an inquiry.

Inquiry into suspension

30 Where an **order is made under section 29(1)(a) or (b) for the suspension of the construction or operation of a pipeline or of a ground disturbance within a controlled area, the person to whom the order is directed may request an inquiry and, if the person does so, the Regulator**

shall hold an inquiry within 5 days, exclusive of holidays, after the date of receipt of the request.

Powers of Board

31(1) Within 15 days after the conclusion of an inquiry pursuant to section 29 or 30, the Regulator may

- (a) allow the construction or operation of the pipeline, or the ground disturbance within a controlled area, to continue or resume subject to any conditions that the Regulator may prescribe,
- (b) order the continued suspension of the construction or operation of the pipeline, or the ground disturbance within a controlled area, until the Regulator makes an order to the contrary, or
- (c) in the case of the construction or operation of a pipeline, cancel or suspend the licence for the pipeline.

(2) On the cancellation or suspension of a licence by the Regulator, no construction shall be carried out and no oil, gas, water or other substance shall be transmitted in the pipeline until the licence has been reinstated or a new licence has been issued by the Regulator except such as the Regulator authorizes to maintain the facilities in a state whereby operations can be carried out in accordance with this Act.

Responsible Energy Development Act, R-17.3, 2012

Division 3 Regulatory Appeals

Definitions

36 In this Division,

- (a) “appealable decision” means
- (iv) **a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing,**
- (b) “eligible person” means
- (ii) **a person who is directly and adversely affected by a decision referred to in clause (a)(iv),**

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.

(2) The filing of a request for regulatory appeal does not operate to stay the appealable decision.

Hearing on regulatory appeal

40(1) **Subject to the regulations, the Regulator may conduct a regulatory appeal with or without conducting a hearing.**

(2) If the Regulator conducts a hearing in respect of a regulatory appeal, any person who is an eligible person in respect of the appealable decision is entitled to be heard at the hearing.

Decision of Regulator on regulatory appeal

41(1) The Regulator shall, after the completion of a regulatory appeal, make a written decision, with reasons, on the regulatory appeal within the time prescribed.

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

Responsible Energy Development Act General Regulation, AR 90/2013

Hearing on regulatory appeal

4 For the purposes of section 40 of the Act, the Regulator shall conduct a regulatory appeal with a hearing if it appears to the Regulator that the concerns of the eligible person requesting the regulatory appeal have not been

- (a) addressed through any alternative dispute resolution process the Regulator has used under section 46 of the Act, or
- (b) otherwise resolved by the parties.

Analysis

Review of the evolution of these legislative provisions (see Appendix 2) reveals that the sections that AlphaBow seeks to invoke (s. 45 OGCA and s. 30 PA) preceded the sections that the Suspension Order references as its authority (s. 27 OGCA and s. 23 PA). The sections that AlphaBow seeks to invoke provide express entitlement to an immediate “inquiry”.

The legislation has evolved significantly over time. “Suspension” and “discontinuation” became defined terms when the Acts were amended in 2000 to add additional authorities and provisions regarding suspension and discontinuation. Orders issued under those newer sections and directing those activities are subject to the regulatory appeal provisions in the *Responsible Energy Development Act (REDA)*.

In fact, decisions made under s. 44 and s. 29 are *also* now subject to the regulatory appeal provisions under REDA.

While the old language regarding “inquiry” remains in section 44 of the OGCA and section 30 of the PA, any decision made under an energy enactment without a hearing that directly and adversely affects a person is subject to a regulatory appeal.

AlphaBow has sought and been granted its request for regulatory appeal of the Suspension Order and the RCAM Order. It will have its hearing of the whole matter by AER Hearing Commissioners. REDA and the *Alberta Energy Regulator Rules of Practice* provide a clearly defined path for hearings. AER Hearing Commissioners have all the powers of a commissioner appointed under the *Public Inquiries Act* (s. 55 of REDA).

Given the above, we do not find it necessary to try to parse or reconcile the differences between the sections and make the determination that either AlphaBow or CLM requests. A statute must be read in its entirety, along with entire statute book. Sections 44 of the OGCA and 29 of the PA cannot be read in isolation. Neither can sections 27 of the OGCA and 23 of the PA. REDA overlays all the legislation that the AER administers and provides procedural rights where orders are issued against a company.

A regulatory appeal hearing is a modern equivalent to the inquiry envisioned by the earliest versions of the energy enactments. The procedural fairness afforded by either (regulatory appeal or inquiry) is a codification of the principles of common law. These principles will be respected and AlphaBow will be afforded procedural fairness regardless of the sections that underpin the Suspension Order because a regulatory appeal has been granted. The process for an inquiry is not defined in the energy enactments, REDA or the AER *Rules of Practice*. The process for a regulatory appeal is well defined by the AER *Rules of Practice*, permits full participation and allows submission of new evidence, enabling the fulsome challenge of the Suspension Order that AlphaBow seeks. AlphaBow will be able to raise any issues it has with the Suspension Order and bring forward any new evidence it wishes. The same remedies that could be granted in an inquiry can be granted in the regulatory appeal.

Conclusion

Accordingly, given that AlphaBow's request for a regulatory appeal of the Suspension Order has been granted, and AlphaBow's challenge to the Suspension Order will be addressed in a fulsome hearing before a panel of Hearing Commissioners, we consider that AlphaBow has received in essence the opportunity for the remedy that it seeks through a regulatory appeal hearing process, so it is unnecessary and duplicative for the AER to hold an inquiry on the same matter. Given the above, the request for an inquiry is denied.

The interim stay will remain in place while the Hearing Commissioners decide the stay request as part of the regulatory appeal hearing process.

Sincerely,

<Original signed by>

Paul Ferensowicz
Principal, Regulatory Advisor

<Original signed by>

Steve Thomas
Director, Oil & Gas Subsurface, Waste &
Storage

Appendices (2). Suspension Order and Legislation History

A P P E N D I X

1

Made at Edmonton, in the Province of Alberta, on June 5, 2023	ALBERTA ENERGY REGULATOR
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Under section 27 of the *Oil and Gas Conservation Act (OGCA)*, and section 23 of the *Pipeline Act*

AlphaBow Energy Ltd.

Suite 300, 708 – 11 Ave SW

Calgary, AB T2R 0E4

(AlphaBow, or the Licensee)

WHEREAS AlphaBow is the holder of Business Associate (BA) code A7H2, and holds licences granted by the Alberta Energy Regulator (AER or the Regulator) under the *OGCA* and *Pipeline Act* as listed in Appendix 1 (collectively, the Licences);

WHEREAS there is physical infrastructure associated with the Licences, including wells, well sites, facilities, facility sites, and pipelines (collectively, the Sites);

WHEREAS on July 28, 2022, the AER found that AlphaBow posed an unreasonable risk and restricted AlphaBow's licence eligibility status to Limited, due in part to AlphaBow's decreasing field compliance rating, compliance history and its assessed lack of capability to meet its regulatory and liability obligations throughout the energy life cycle;

WHEREAS on March 30, 2023, the AER issued an Order (the March Order) to AlphaBow under sections 26.2 and 27 of the *OGCA*, sections 1.100 and 12.152 of the *Oil and Gas Conservation Rules (OGCR)*, and section 22.1 of the *Pipeline Act*, due in part to concerns that AlphaBow was not providing reasonable care and measures to prevent impairment or damage in respect of the Sites, and to mitigate the risks of AlphaBow's assessed lack of capability to meet its regulatory and liability obligations throughout the energy life cycle;

WHEREAS the March Order required AlphaBow to submit a Reasonable Care and Measures Plan (RCAM Plan) to the satisfaction of the Director within thirty (30) calendar days to demonstrate that reasonable care and measures were being provided at the Sites;

WHEREAS the March Order required AlphaBow to submit an Abandonment Plan to the satisfaction of the Director to abandon all mineral-lease expired wells within six (6) months if not already managed under the January 11, 2023, approved Closure Plan as part of the Alternative Payment Plan for Security

owing in relation to the 2021 Area Based Closure Program;

WHEREAS the March Order required AlphaBow to electronically update the working interest participant (WIP) information on OneStop for the wells and facilities licenced to AlphaBow within thirty (30) days;

WHEREAS the March Order required AlphaBow to post a security deposit in the amount of \$15,374,050.00, representing 10% of AlphaBow's inactive liability, to offset the estimated costs of abandoning and reclaiming a well or facility and of carrying out any other activities necessary to ensure the protection of the public and the environment within thirty (30) days;

WHEREAS the AER extended the thirty-day deadline for clauses 1, 3, 5, and 8 of the March Order until May 15, 2023;

WHEREAS on May 12, 2023, AlphaBow made a submission to the AER indicating it had attempted to update its WIP information but experienced difficulties with AER systems;

WHEREAS the AER acknowledges that AlphaBow had updated some of its WIP information and was complying with the WIP requirement in the March Order;

WHEREAS the May 12, 2023, submission included an RCAM Plan and a statement that AlphaBow was committing to bringing every mineral lease-expired well (MLE wells) into compliance within 12 months by March 31, 2024;

WHEREAS the AER reviewed the RCAM Plan and informed AlphaBow that it was not sufficient for approval due to several deficiencies, including but not limited to, lacking specific actions and timelines, failure to provide actions and identify changes that would result in improvement in AlphaBow's overall compliance with AER regulations, failure to specifically address how AlphaBow would change its programs to improve its field compliance rating to the industry average, failure to address outstanding noncompliances, lack of detail regarding how and when the medium risk type 6 wells would be brought into compliance, no details on how AlphaBow will meet its 2023 annual mandatory spend, and insufficient details regarding all outstanding debts and the actions and timelines to satisfy these debts;

WHEREAS on June 2, 2023, in an email to the AER, AlphaBow stated that "This last action of shutting in 60% of its sites is AlphaBow's final action to address stated AER concerns to ensure proper custody and care of its sites, protect the environment and ensure safety.";

WHEREAS on May 23, 2023, AlphaBow submitted a proposal regarding the payment of the required \$15,374,050.00 security deposit, proposing that it would not provide the security deposit but would continue to meet or exceed its annual minimum mandatory spend;

WHEREAS on May 23, 2023, the AER informed AlphaBow that its proposal regarding the security deposit was not acceptable to the Director as it did not contain a plan or proposal for meeting the requirement in the March Order;

WHEREAS on May 29, 2023, AlphaBow submitted a proposal stating it would "... put \$1,921,756 in

escrow with a Calgary legal firm for the sole purpose of AER Manual 23 voluntary spend” every 3 months over eight quarters, with the option to reduce the amount, as an alternative to the required security deposit of \$15,374,050.00;

WHEREAS the alternative proposal does not meet the requirements of sections 3 and 4 of *Directive 068: Security Deposits*, which states the AER will only accept either a cheque drawn on the account of the licensee, a cheque drawn on a legal trust account in the name of the licensee, a money order identifying the licensee, a bank draft identifying the licensee, or a renewable irrevocable letter of credit issued by an eligible financial institution in the exact legal name of the licensee;

WHEREAS on May 25, 2023, AlphaBow made a submission of an abandonment plan to the AER;

WHEREAS the AER reviewed the Abandonment Plan and informed AlphaBow that it was not sufficient for approval due to several deficiencies, including but not limited to, lacking the month and year abandonment activities were planned for each well, no dates and commitments to abandon each well, a timeline was not provided for reacquiring mineral rights to 53 wells and an alternative plan for abandonment if AlphaBow is unable to obtain the mineral rights was not provided, and 94 of the MLE wells were not listed in the plan;

WHEREAS on June 2, 2023, AlphaBow made a submission to the AER titled “Exhibit 1” regarding the Abandonment Plan for the MLE wells;

WHEREAS the Director has reviewed the Abandonment Plan and is of the opinion it is acceptable, and that AlphaBow has complied with Clause 3 of the March Order;

WHEREAS in the May 24, 2023, submission, AlphaBow proposed, beginning with the quarter ending June 30, 2023, to provide third party “Review Engagement” statements, and would provide the “Review Engagement” for beginning with the year ended December 31, 2023, in lieu of audited financial statements;

WHEREAS on May 26, 2023, the AER informed AlphaBow that its proposal to provide “Review Engagement” statements in lieu of audited annual year-end statements was not acceptable;

WHEREAS on May 29, 2023, AlphaBow made a submission to the AER stating it was not possible to comply with the deadline for audited 2022 year-end financial statements and proposed a Review Engagement Report for the 2022 year-end financial statements;

WHEREAS on May 31, 2023, the AER voluntarily granted an extension until August 31, 2023, for submission of third party audited 2022 year-end financial statements;

WHEREAS on June 2, 2023, AlphaBow made a submission to the AER and stated it would commence audited financial statements for the 2022 year-end and provide them once finalized and would provide future annual third party audited financial statements with 180 days or once finalized;

WHEREAS on April 4, 2023, the AER issued invoices to AlphaBow for the 2023 Administration Fee and

the 2023 Orphan Fund Levy (OFL), with payment due prior to May 4, 2023;

WHEREAS on May 15, 2023, the AER issued two Notices of Noncompliance including a 20% penalty for late payment for failure to pay the 2023 Administration Fees for a total amount owing of \$619,787.79;

WHEREAS on May 15, 2023, the AER issued a Notice of Noncompliance including a 20% penalty for late payment for failure to pay the 2023 OFL for a total amount owing of \$1,442,184.94;

WHEREAS as of the date of this Order, AlphaBow has failed to pay both the 2023 Administration Fees and the 2023 OFL;

WHEREAS on June 2, 2023, AlphaBow made a submission to the AER, and regarding the 2023 Administration Fee and 2023 OFL stated “AlphaBow will pay these amounts shortly after the March 30 Order is lifted or rescinded as this will up deposit amounts being required due to the Order.”;

WHEREAS Tyler Callicott, Director, Enforcement and Emergency Management (the Director), has authority to issue orders under the *OGCA* and the *Pipeline Act*;

WHEREAS based on the above, the Director is of the opinion that AlphaBow is noncompliant with clauses 1 and 8 of the March Order;

WHEREAS the Director is of the opinion that AlphaBow is not providing reasonable care and measures to prevent impairment or damage in respect of the Sites, based in part on AlphaBow’s failure to provide an acceptable RCAM Plan, and finds it is necessary to suspend the wells and facilities and discontinue the pipelines listed in Appendix 1;

WHEREAS the Director believes that issuing this order is necessary, as a result of AlphaBow’s failure to comply with the March Order, to safeguard the public interest by preventing AlphaBow from continuing to breach AER requirements and orders, and in order to protect public safety and the environment;

WHEREAS the Director is of the opinion that AlphaBow poses a risk for being unable to fulfil its end-of-life closure responsibilities for the Sites;

Therefore, I, Tyler Callicott, under section 27 of the *OGCA*, and section 23 of the *Pipeline Act* do hereby order the following:

Required Actions- Suspension/Discontinuation

1. All of the AlphaBow Licences in Appendix 1 are hereby suspended.
2. All AlphaBow Sites must be suspended in a safe manner that is acceptable to the AER within **fourteen (14) calendar days** from the date of the Order.
 - a. All wells and facilities listed in Appendix 1 must be suspended following safe industry recognized practices.

- b. AlphaBow must risk rank all pipelines listed in Appendix 1, and as such those with the highest potential for failure and adverse effect to the environment must be of the highest priority when conducting the discontinuation work.
 - c. All pipelines listed in Appendix 1 must be discontinued according to AlphaBow's internal pipeline operations and maintenance manual (POMM) and AlphaBow's pipeline integrity and management program (PIMP), and in accordance with the *Pipeline Act* and the *Pipeline Rules*.
- 3. Any hazards on the Sites that present a risk to public safety or the environment, must be immediately reported to the AER and addressed in a manner acceptable to the AER no later than **fourteen (14) calendar days** from the date of this Order.
 - 4. Within **ninety (90) calendar days** from the date of this Order, AlphaBow must ensure all its wells meet the suspension requirements set out in *Directive 013: Suspension Requirements for Wells*.
 - 5. Any containment devices or equipment including, but not limited to, tanks, vessels, pipelines, lease piping, sumps, drains, tubs, containers, pits, or containment rings on any of the AlphaBow Sites must be depressurized, emptied (with all fluids removed from site and disposed of in a manner acceptable to the AER), and rendered safe in a manner acceptable to the AER no later than **ninety (90) calendar days** from the date of this Order;

Reporting

- 6. AlphaBow must provide in writing to the Director, within **fourteen (14) calendar days** from the date of this Order, confirmation that all AlphaBow Sites, wells, and pipelines have been suspended and discontinued in accordance with Clause 2 of this Order.
- 7. Beginning **fourteen (14) calendar days** from the date of this Order, AlphaBow must provide written updates every two (2) weeks to the Director with details on the progress of the work required under Clauses 4 & 5 of this Order.
- 8. AlphaBow must provide in writing to the Director, within **ninety (90) calendar days** from the date of this Order, confirmation that all AlphaBow Sites have been suspended and the pipelines discontinued per Clauses 2, 4, and 5 of this Order, to the satisfaction of the Director.

Additional Terms and Conditions – Reactivation Plan

- 9. In addition to the requirements of this Order, prior to the Director considering lifting the suspension of operations, AlphaBow must:
 - a. Come into compliance with the March Order.
 - b. Come into compliance with the 2023 Administrative Fee and the 2023 Orphan Fund Levy.

- c. Submit a Reactivation Plan to the Director for review and approval. At a minimum, the Reactivation Plan must include details of actions and timelines for completion of these actions, to safely reactivate the AlphaBow Sites, including verifying the integrity of AlphaBow's wells, facilities, and pipelines prior to resumption of operation.
- d. Implement the Reactivation Plan as approved by the Director.

General

- 10. All plans and information required in this Order shall be submitted to ComplianceCoordination@aer.ca and Tyler.Callicott@aer.ca.
- 11. If requested by the Director, AlphaBow shall submit, within **two (2) business days**, any records pertaining to this Order.
- 12. All submissions of work related to reasonable care and measures, or the completion of abandonment or reclamation shall be submitted in the format, and to the appropriate AER system, as required by AER regulations.
- 13. Where a deadline has been specified in this Order, the AER may authorize in writing a different deadline or reporting frequency as applicable.
- 14. In carrying out the requirements of this Order, AlphaBow shall obtain and comply with all required federal, provincial, or municipal permits and governing legislation and provide to the AER all authorizations obtained immediately upon receipt.
- 15. All applicable regulatory requirements are to be followed and complied with in the undertaking of any actions or direction prescribed under this Order.

Dated at the City of Edmonton in the Province of Alberta, the 5th day of June, 2023.

<Original signed by>

Tyler Callicott
Director, Enforcement and Emergency Management
Alberta Energy Regulator

In complying with this order, the party or parties named must obtain all approvals necessary, notwithstanding the above requirements.

This order in no way precludes any enforcement actions being taken regarding this matter under the *OGCA* or *Pipeline Act*, or any other provincial or federal legislation, or by any other regulator with jurisdiction.

All enforcement actions issued by the AER may be subject to a follow-up review to confirm previous commitments have been completed and measures have been implemented, to ensure similar noncompliances are prevented in the future. The AER may request any information that demonstrates steps have been taken to prevent repeat noncompliances from occurring.

Under the *Responsible Energy Development Act*, an eligible person may appeal decisions that meet certain criteria. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request according to the AER's requirements. You can find filing requirements and forms on the AER website, www.aer.ca, under Regulating Development: Project Application: Regulatory Appeal Process.

A P P E N D I X

2

Section 44

The Oil and Gas Resources Conservation Act, 1938

Prohibition of production at wells operated in contravention of Act or any order or regulation

45. **In case the Board is satisfied after an inquiry held** upon such notice and to such persons as the Board deems proper, that any well is being operated in such a way that any provision of this Act or of any order or regulation of the Board made pursuant to this Act is contravened or not complied with the **Board may order** that on and from a date to be fixed by the order **no production shall be permitted** at such well **and that the same shall be shut down and kept shut down** until such time as the Board may order to the contrary.

The Oil and Gas Resources Conservation Act, 1969

PART 9 SUSPENSION AND SHUTTING DOWN OF WELLS

Suspension of Operations

45. **Where it appears to the Board or its authorized representative** that the licensee, a contractor or an operator of a well or battery has contravened or is contravening or failing to comply with any provision of this Act, the regulations or an order of the Board, or that a method or practice employed or any equipment or installation at a well or battery is improper, hazardous, inadequate or defective,

(a) the Board or its representative **may order that any operation at the well or battery be suspended**, or

(b) the Board or its representative may require that approved methods be adopted or that remedial measures be taken before any operation proceeds at the well or battery, or

(c) the Board may call an inquiry.

Inquiry re suspension

46. (1) **When any operation at a well or battery is suspended pursuant to section 45, clause (a)**, the Board shall, within 15 days of the suspension, hold an inquiry to investigate the circumstances leading to the suspension.

(2) When adoption of approved methods or institution of remedial measures is required pursuant to section 45, clause (b), and operations must be suspended to conform to the requirement, the licensee may ask for an inquiry, and if he does so, the Board shall call an inquiry.

Shutdown of well

47. After an inquiry pursuant to section 45 or 46, the **Board may order that the suspension** of an operation at a well or battery **continue** or that **the well or battery be shut down** until such time as the Board orders to the contrary.

Oil and Gas Conservation Act RSA 2000

Part 8 SHUT-DOWN AND CLOSURE

Shut-down and closure

44 Where the Regulator or its authorized representative determines that a licensee, approval holder, contractor or operator of a well or facility has contravened or failed to comply with this Act, the regulations or rules or an order of the Regulator, or that a method or practice employed at a well or facility or any equipment or installation at a well or facility is improper, hazardous, inadequate or defective,

(a) the Regulator or its authorized representative may order the well or facility to be shut down or closed,

(b) the Regulator or its authorized representative may require that approved methods be adopted and that remedial measures be taken before any operation proceeds at the well or facility, or

(c) the Regulator may hold an inquiry into the matter.

Request for inquiry

45(1) Where the Regulator orders that a well or facility be shut down or closed under section 44(a), the licensee or approval holder may by notice in writing to the Regulator request an inquiry into the matter.

(2) Where the Regulator receives a request for an inquiry, it shall, within 15 days after receiving the request, hold an inquiry into the matter.

(3) Unless the Regulator directs otherwise, a well or facility that has been ordered to be shut down or closed under section 44(a) must remain shut down or closed pending the result of the inquiry.

Powers of Regulator

46 Where the Regulator holds an inquiry pursuant to section 44(c) or 45 it may

(a) in a case to which section 44(c) applies, make an order under section 44(a) or (b), or

(b) in a case referred to in section 45, withdraw the order made under section 44(a) or extend it on any terms and conditions the Regulator considers appropriate.

Section 27

Oil and Gas Conservation Act, 1994

20.2(1) A licensee shall abandon a well in accordance with the regulations and shall do so when directed by the Board or the regulations.

Oil and Gas Conservation Act, RSA 2000

1(1)(xx) “**suspension**”, subject to section 68(f), means the **temporary cessation of operations at a well or facility** in the manner prescribed by the regulations or rules and includes any measures required to ensure that the well or facility is left in a safe and secure condition;

Suspension and abandonment

27(1) Subject to subsection (2), a licensee or approval holder shall suspend or abandon a well or facility when directed by the Board or required by the regulations.

(2) Notwithstanding subsection (1),

(a) if the Board so directs, a well or facility must be suspended or abandoned by a working interest participant other than the licensee or approval holder, and

(b) with the consent of the Board, a well or facility may be suspended by a working interest participant other than the licensee or approval holder.

(3) The **Board may order that a well or facility be suspended** or abandoned **where the Board considers that it is necessary to do so in order to protect the public or the environment.**

(4) A suspension or abandonment must be carried out in accordance with the regulations.

Section 25

Oil and Gas Resources Conservation Act, 1950

Minister may cancel, suspend or issue new licence

27. The Minister, upon the recommendation of the Board, may,

- (a) cancel or suspend a license granted pursuant to this Part, either for a definite time, or indefinitely, if it is made to appear to him that a contravention of this Act has occurred with respect to the well for which the license was granted ;
- (b) cancel a license if drilling has not been commenced within ninety days of its issue;
- (c) issue a new license in place of a cancelled license.

Oil and Gas Conservation Act, 1994

Cancellation or suspension of licence

19 The **Board** may

(a) cancel a licence or suspend a licence for a definite time or indefinitely if it is made to appear to the Board that a contravention of this Act, the regulations or an order of the Board has occurred with respect to the well for which the licence was granted,

(a.1) shut in the well for a definite period of time or indefinitely if it is made to appear to the Board that a contravention of this Act, the regulations or an order of the Board has occurred with respect to the well,

- (b) cancel a licence if drilling has not been commenced within 6 months of its issue,
- (c) cancel a licence at the request of the licensee, or
- (d) issue a new licence in place of a cancelled licence.

Oil and Gas Conservation Act, RSA 2000

Cancellation and suspension

25 The Regulator may

- (a) cancel a licence or approval or suspend a licence or approval for a definite or indefinite period if the Regulator determines that a contravention of this Act, the regulations or rules or an order or direction of the Regulator has occurred with respect to the well or facility to which the licence or approval relates,
- (b) cancel a licence for a well if drilling has not commenced within 6 months after the licence was granted,
- (c) cancel a licence or approval for a facility if construction has not commenced within one year after the licence or approval was granted,
- (d) cancel a licence or approval at the request of the licensee or approval holder, and
- (e) issue a new licence or approval in place of a cancelled licence or approval.

Pipeline Act, RSA 1975, c. 275

PART 5 SUSPENSION AND SHUTTING DOWN

Suspension of construction or operation

29. (1) Where it appears to the Board or its authorized representative that in the construction or operation of a pipeline there has been or is a contravention of, or failure to comply with, any provision of this Act, the regulations, a permit or licence or an order or direction of the Board or that a method or practice employed or any equipment or installations at a pipeline is improper, hazardous, inadequate or defective,

(a) the Board or its representative may order that approved methods or equipment be adopted or that remedial measures be taken before the construction or operation of the pipeline may proceed, or

(b) the Board or its representative may order that the construction or operation of the pipeline be suspended, or

(c) the Board may call an inquiry.

(2) Where a representative of the Board makes an order under subsection (1), clause (a) or (b), he shall, as soon as possible, report to the Board and advise in writing the permittee or licensee, if any, setting out the reasons for his action.

Inquiry

30. (1) Where the construction or operation of a pipeline is suspended pursuant to section 29, subsection (1), clause (b), the Board, within five days of the suspension, exclusive of holidays, shall hold an inquiry to investigate the circumstances leading to the suspension.

(2) Where the adoption of approved methods or equipment or the taking of remedial measures is ordered pursuant to section 29, subsection (1), clause (a) and the construction or operation of the pipeline is suspended pending conformity with the order, the permittee or licensee may request an inquiry and if he does so, the Board shall hold an inquiry within five days, exclusive of holidays, of the date of receipt of the request.

Disposition of Inquiry

31. (1) Within 15 days of the conclusion of an inquiry pursuant to section 29 or 30, the Board may

(a) allow the construction or operation of the pipeline to continue or resume subject to such conditions as the Board may prescribe, or

(b) order the continued suspension of the construction or operation of the pipeline until such time as the Board orders to the contrary, or

(c) cancel or suspend the permit or licence for the pipeline.

(2) Upon the cancellation or suspension of a permit or licence by the Board, no construction shall be carried out and no oil, gas, water or other substance shall be transmitted in the pipeline until the permit or licence has been reinstated or a new permit or licence has been issued by the Board except such as the Board authorizes to maintain the facilities in a state whereby operations can be carried out in accordance with the Act.

Pipeline Act, SA 1981, c. 30

Suspension of construction or operation

29(1) **Where it appears to the Board or its authorized representative that in the construction or operation of a pipeline or in the undertaking of a ground disturbance there has been or is a contravention of this Act, the regulations, a permit or licence or an order or direction of the Board, or that a method or practice employed or any equipment or installation at a pipeline or in a controlled area is improper, hazardous, inadequate or defective,**

- (a) **the Board or its representative may order that the construction or operation of the pipeline, or the ground disturbance, shall be suspended and shall not be resumed until**
- (i) the contravention ceases or this Act or the regulation, permit, licence or order or direction of the Board is complied with,
 - (ii) approved methods or practices are employed or adopted,
 - (iii) remedial measures are taken, or
 - (iv) proper, safe and adequate equipment is used,
- (b) the Board or its representative may order that the construction or operation of the pipeline or the ground disturbance be suspended until further order, or
- (c) the Board may call an inquiry.
- (2) Where a representative of the Board makes an order under subsection (1)(a) or (b), he shall, as soon as possible, report to the Board and so advise in writing the permittee, licensee, if any, or person responsible for the ground disturbance, setting out the reasons for his actions.

Inquiry into suspension

- 30(1) Where an order is made under section 29(1)(a) for the suspension of the construction or operation of a pipeline or of a ground disturbance within a controlled area, the person to whom the order is directed may request an inquiry and, if he does so, the Board shall hold an inquiry within 5 clear days, exclusive of holidays, after the date of receipt of the request.
- (2) Where the construction or operation of a pipeline, or a ground disturbance within a controlled area, is suspended under section 29(1)(b), the Board shall hold an inquiry to investigate the circumstances leading to the suspension within 5 clear days, exclusive of holidays, after the suspension.

Powers of Board

- 31(1) Within 15 days after the conclusion of an inquiry pursuant to section 29 or 30, the Board may
- (a) allow the construction or operation of the pipeline, or the ground disturbance within a controlled area, to continue or resume subject to any conditions that the Board may prescribe,
 - (b) order the continued suspension of the construction or operation of the pipeline, or the ground disturbance within a controlled area, until the Board makes an order to the contrary, or
 - (c) in the case of the construction or operation of a pipeline, cancel or suspend the permit or licence for the pipeline.