

**PRE-HEARING MEETING
SHELL CANADA LIMITED
APPLICATION FOR A LICENCE FOR A
LEVEL-FOUR CRITICAL SOUR GAS WELL**

**Memorandum of Decision
Application No. 1042932**

1 INTRODUCTION

Shell Canada Limited (Shell) applied to the Alberta Energy and Utilities Board (EUB/the Board) for a licence for a well proposed to be drilled from a surface location in Legal Subdivision 7 of Section 7, Township 38, Range 6, West of the 5th Meridian. The well would be drilled for the purpose of obtaining gas production from the Swan Hills Member, the Ostracod Sandstone, and the Ellerslie Member. The applicant estimates that the maximum hydrogen sulphide (H₂S) content of the gas would be 356.0 moles of H₂S per kilomole of natural gas (35.6 per cent H₂S) and that the cumulative drilling H₂S release rate in the event of an uncontrolled release would be 17.4 cubic metres (m³) per second. The well would be classified as a level-4 critical sour gas well in accordance with *Interim Directive (ID) 97-6: Sour Well Licensing and Drilling Requirements*. The applicant has proposed that flaring associated with the testing of the well would be limited to 48 hours over a one-week period. The applicant has also submitted an emergency response plan (ERP) with the application.

The Board directed that this application be considered at a public hearing. In order to implement a more effective and efficient hearing, it further directed that a pre-hearing meeting be convened to consider certain aspects of the hearing.

The EUB held a pre-hearing meeting in Rocky Mountain House, Alberta, on January 31, 2000, before Board Members J. D. Dilay, P.Eng., and T. McGee, who considered the following matters:

- the scope and purpose of the hearing,
- the timing of the hearing,
- the procedures to be used at the hearing,
- the participants and their roles in the hearing, and
- the funding of the participants.

The following table lists the participants at the pre-hearing meeting.

THOSE WHO APPEARED AT THE PRE-HEARING MEETING

Participants (Abbreviations Used in Report)	Representative
Shell Canada Limited (Shell)	S. H. Denstedt
The Clearwater Coalition (the Coalition)*	J. J. Klimek
David Thompson Regional Health Authority (DTRHA)	Dr. R. Zimmer, M.D.
J. Vavrek, V. Vavrek, E. Diedrich (the Vavreks and Diedrichs)	E. Diedrich
M. and B. Tougas (the Tougases)	M. Tougas
J. van Tol (Mrs. van Tol)	
B. Brown (on behalf of Ms. K. Hardill and on her own behalf)	

*The Coalition referred to itself as a “loose affiliation” of area residents within the emergency planning zone (EPZ) or otherwise interested in the application. The following members of the Coalition spoke at the pre-hearing meeting: E. Tait, C. Shipley, B. Foster, C. Manuel, L. Berry, M. Zalaski, R. Zalaski, E. Bosworth, M. Day, M. Scott, A. MacAllister, and M. Bertagnolli.

Prior to the pre-hearing meeting, the Board received a submission from the Coalition for advanced funding. The Board also received a submission from Shell in response to the request for advanced funding.

2 VIEWS OF SHELL

Shell stated that the scope and purpose of the hearing should be limited to the well described in the current application and the issues pertaining to it. It explained that the application was for an exploratory well to test the availability of resources at this location. Shell said that human health issues could be raised at the hearing but the issues had to be relevant to the drilling of its proposed well and to the impacts that would arise as a result of the 48 hours of flaring to which Shell has committed to restrict the well test.

Shell maintained that a review of animal health issues in the context of a single well would be of little assistance to the EUB. It pointed out that in the past the EUB had recognized that this was a generic issue that was better dealt with in the context of the ongoing review of animal health in Alberta. Shell stated that any expert evidence to be considered at the hearing should be relevant and not “reinvent the wheel.”

Shell stated that the timing of the hearing should take into consideration that it had been in the consultation and application process for over 14 months, held an open house in February 1999, and responded to approximately 500 information requests. It stated that, notwithstanding that the

Coalition was opposed to the application, it had entered into mediation with the Coalition so that some of the issues might be resolved and eliminated from consideration at the hearing. It believed that the hearing should proceed at the earliest possible opportunity. Shell observed that it was the EUB's practice to hold a hearing four to six weeks after the conclusion of a pre-hearing meeting. Shell indicated that it would provide additional information to all participants within two or three weeks. All factors considered, Shell argued that the hearing should commence twelve weeks from the date of the pre-hearing meeting, which would be April 11, 2000, with submissions to be filed no later than March 24, 2000.

Shell stated that the EUB's usual hearing procedures should be followed.

Shell acknowledged that the members of the Coalition are local interveners who would be entitled to local intervener costs. Shell also confirmed its belief that the Tougases would qualify as local interveners. Shell acknowledged that it would be responsible for costs in accordance with the EUB Local Intervenors' Cost Regulations and the EUB's Guidelines for Local Intervenors' Costs. However, Shell submitted that it wanted to ensure that the issues to be addressed at the hearing were reasonably related to the proposed well and not industrywide issues for which other forums exist. It maintained that the reasonableness of cost claims could not be determined until the hearing concluded and that the Coalition's request for advanced funding was premature.

In response to the Coalition's request for advance funding, Shell submitted that

- Intervenors should not duplicate work that has been conducted by Shell but use experts retained to supplement or critique Shell's work.
- Any expert retained should focus on the impacts of the single well as proposed and the issues identified by the Board as relevant at the pre-hearing meeting.
- A study of the economic effects of sour gas operations on area land uses was not relevant, since oil and gas facilities are a permitted land use within the municipality. Further, the scope and cost of such a study were excessive and not reasonable based on the scope of this one well project.
- A considerable amount of the costs relate to expenditures that would not be made for several months and are not appropriately the subject of an award of advance costs.

3 VIEWS OF THE OTHER PARTICIPANTS

3.1 David Thompson Regional Health Authority (DTRHA)

The Medical Officer of Health of the DTRHA, Dr. Zimmer, submitted that it was the DTRHA's mandate to ensure the protection of the public's health within its jurisdiction under the provisions of the Regional Health Authorities Act, specifically Sections 5(a)(i) and 5(b). In addition, interest in this application arose from the Medical Officer of Health's mandate to investigate, prevent, and/or control the risk to human health from known and suspected hazards within the boundaries of the DTRHA.

The scope of the DTRHA's participation in the hearing would be to fully understand the acute and chronic human health risks associated with the application and to assure that provisions in the final EUB decision would reasonably protect the public's health within the DTRHA. The DTRHA deferred to the EUB's normal hearing procedures.

In response to work done by Shell, the DTRHA met with Shell to discuss improvements to its acute and chronic risk assessment and management associated with the application. The DTRHA said that Shell had agreed to provide a formal human health risk assessment within three to four weeks and to provide a revised ERP by March 1, 2000.

With respect to the timing of the hearing, the DTRHA stated that it should allow for a reasonable period for evaluation of the application and requested materials by the Medical Officer of Health and staff as it related to human health risk. The DTRHA stated that it would require two months from receipt of the human health assessment and the revised ERP.

The DTRHA requested that Shell provide specific intervener costs for the DTRHA to contract an independent authority to evaluate both the human health assessment and the revised ERP.

3.2 The Clearwater Coalition

The Coalition stated that it was an informal group of concerned area residents who opposed the application. The Coalition believed that the scope of the hearing needed to take into account that the proposed well was an exploratory well. As such, the scope should include location, future oil and gas development, cumulative effects, land use, human health, animal health, water, air, soil contamination, and unforeseen events. The Coalition argued that the scope must be broad and address all impacts and effects on area residents.

The Coalition stated that the April time frame outlined by Shell was not acceptable. It argued that it would need sufficient time to review the additional information requested by the DTRHA. It further pointed out that the Coalition comprised a cross-section of the community, including farmers, ranchers, and other members of the community, and each of these groups had specific timing constraints. Further, the Coalition stated that it had entered into a mediation process with Shell and believed that the hearing should not commence until the mediation was complete. The Coalition suggested that late fall—i.e., November—would be its preference for the start of the hearing.

The Coalition submitted a request for advanced funding on January 11, 2000, which identified six expert witnesses that would be required to tender evidence on its behalf. These experts would provide evidence in the areas of human health, animal health, human risks associated with a sour

gas well, potential effects on water and other related water issues, economic effects of sour gas on area residents, and the efficiency of the ERP. The Coalition argued that the fairness of the application/hearing process could only be assured if it were provided with sufficient advance funding to retain the necessary experts required for its intervention.

3.3 Mrs. van Tol

Mrs. van Toll indicated that she shared many of the same concerns as the Coalition but her main concern was traffic that would be associated with the proposed well and the effects on the local roads.

3.4 The Vavreks and Diedrichs

The Vavreks and Diedrichs indicated that they did not want the scope of the hearing limited to EUB regulations. They expressed concerns regarding air, water and soil contamination, and the ultimate accountability for unforeseen events. They also expressed concerns regarding the lack of information forthcoming from Shell. They wanted to consider the entire drilling program, maintenance program, and abandonment procedure. They also wanted to discuss human health issues that would not be limited in scope.

The Vavreks and Diedrichs stated that a written set of rules governing the hearing process should be established with the input of the interveners. They were concerned about having sufficient time to assess evidence presented at the hearing and wanted the right to have the hearing adjourned pending their review of such evidence. Further, they submitted that a person be appointed at the hearing with the power to ensure that the public would not in any way be limited in its intervention.

The Vavreks and Diedrichs believed that the timing of the hearing should be determined by a questionnaire to all participants and that the date of the hearing be determined by the dates that the most people were available.

4 VIEWS OF THE BOARD

The Board has carefully considered all of the comments of the participants. The Board is prepared to consider site-specific evidence relating to human health, animal health, location, safety, water and soil contamination, traffic, and drilling of the well that is relevant to the specific application before the Board. The Board advises all participants that evidence must be relevant to the specific impacts of the current application. If evidence is not relevant, it may affect the awarding of local intervener costs. The Board notes that Shell confirmed that it would provide a human health risk assessment to all participants.

The Board recognizes that there are some ongoing concerns within the community about potential health effects on animals due to the proposed well. The Board continues to believe that potential health effects on animals are a generic issue best dealt with through ongoing studies. The Board notes that a

study of animal health impacts from oil and gas operations has been proposed that would encompass the four western provinces. Therefore, the Board will only consider evidence relating to animal health associated with the specific proposal before it.

The Board recognizes that there was a difference of opinion on timing for the hearing. The Board has the responsibility not only to ensure that energy development is in the best interest of Albertans and to ensure public safety, but also to process applications in a timely fashion. The Board notes that Shell committed to provide additional information by March 1, 2000, and that the DTRHA would require two months to review the information. The Board acknowledges the needs of the community, including its need to review the additional information. However, given that Shell filed its application in June 1999, the Board is prepared to hear the application commencing on June 5, 2000. This time frame should be sufficient to allow all parties to review any new information and prepare for the hearing. The Board recognizes that the Coalition expressed concerns about being involved in mediation and preparing for a hearing at the same time. It is the Board's belief that meaningful communication is always beneficial in the application process. Mediation is one method of bringing parties together to discuss the application. Even if mediation does not resolve the concerns of a party or parties, it can help to focus the issues, allow meaningful discussion, build trust through a third party, and allow for an exchange of information.

The Board finds that sufficient information has been presented to enable it to make a determination that the Coalition is a local intervener as defined in Section 31(1) of the Energy Resources Conservation Act (ERC Act). A significant number of individual members of the Coalition reside within the proposed EPZ and/or in close proximity to the proposed well site.

Other residents who participated at the pre-hearing meeting, the Vavreks and Diedrichs, the Tougases, Mrs. Van Tol, Ms. Brown, and Ms. Hardill—and whose membership in the Coalition may be less clear—also qualify as local interveners for the same reasons applicable to the Coalition. The Board encourages citizens who share a common purpose to pool their resources and present a collective intervention. Such interventions are usually effective and efficient, as they eliminate duplication of effort and costs that may occur when several individual residents present essentially the same intervention.

The Board finds that the DTRHA is not a local intervener under Section 31(1) of the ERC Act, as it is a public body charged with certain responsibilities that the Board believes include participation at public hearings when appropriate.

The Board has received a formal request for an advance of costs from the Coalition. Several members spoke to the necessity of receiving advance funding at this time. The Board agrees that in this case it is essential that funding be provided to the Coalition, since there are a number of consultants who must be retained if the Coalition is to advance an effective intervention. It has been the Board's policy to award costs where it has been shown that an advance payment of forecast expenditures is essential in preparing and presenting a submission. The Coalition has submitted a total hearing budget in excess of \$60 000.00. In these circumstances, the Board will approve an advance of costs in the sum of \$30 000.00 and directs Shell to immediately provide the funds to the Coalition's counsel for the purpose of retaining experts and general preparation for the hearing.

The Board wishes to advise, however, that an award of advance funding is subject to the Board's post-hearing assessment of whether the Coalition's costs are reasonable and directly and necessarily related to the intervention. Costs awarded in advance of a hearing form part of the overall costs of an intervention. If the Board approves overall costs in an amount that is less than the sum advanced prior to the hearing, the Coalition must repay the difference.

Notwithstanding the Vavreks' and Diedrichs' concerns with procedures, the Board will use its procedures as outlined in EUB *Guide 29: Hearings*.

The Board will be issuing a Notice of Hearing for Application No. 1042932 very shortly.

Dated at Calgary, Alberta, on March 8, 2000.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

J. D. Dilay, P.Eng.
Presiding Member

(Original signed by)

T. McGee
Board Member