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AER Refuses Transfer of Foothills Sour Gas Approvals from Shell Canada to Pieridae Energy

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Decision Commented On: Alberta Energy Regulator Decision, Shell Canada Limited Transfer of Ownership Including the Waterton Sour Gas Plant EPEA Application No 021-258 and Jumping Pound Sour Gas Plant EPEA Application No. 015-11587, May 13, 2020

On May 13, the Alberta Energy Regulator (AER) denied an application by Shell Canada to transfer regulatory approvals with respect to its foothills sour gas assets (facilities, wells, pipelines, and related infrastructure) to Pieridae Energy. The subject approvals are issued under a host of energy and environmental legislation, including the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 (*EPEA*). This post comments on the rationale given by the AER for this decision.

The key fact in this decision is the proposal by Shell and Pieridae to split regulatory liability for remediation and reclamation of the sour gas assets between the two companies. The applicants proposed that Shell would retain liability for historic sulfinol and related contamination, and Pieridae would assume liability for all other remediation and reclamation of the sites. The AER has determined that this proposal is not in the public interest for the following reasons:

- The scope and extent of contamination at the sites is not well-known or adequately described in the application. Accordingly, it is difficult to comprehend how the clean-up of sulfilnol by Shell would actually be delineated from the clean-up of all other contaminants by Pieridae. The scope of liability for each of the companies is too uncertain under this proposal;
- The application fails to comply with the polluter-pays principle recognized in section 2(i) of *EPEA*. Under this legislation, Shell is legally responsible for the remediation and reclamation contamination at these sites and this proposal essentially asks the AER to either relieve Shell of this obligation or significantly dilute its responsibility;
- The application does not comply with the requirements of *EPEA* in that the legislation does not contemplate a split in remediation and reclamation responsibilities by substance on the same site;
- The application does not comply with the requirement of *EPEA* that clean-up liability is joint and several amongst operators and all other persons assigned responsibility under the legislation. In lay terms, a joint and several obligation means that the AER can enforce remediation and reclamation obligations against any one or more of those persons. This application proposes to circumvent this enforcement capability by splitting these obligations;

- The application would diminish the effectiveness of the AER enforcement regime against Shell and Pieridae. As the holder of approvals that are merely in relation to remediation and reclamation liability of historic sulfinol, Shell would be immune from sanctions that suspend or cease other producing approvals as an incentive to comply with an enforcement order on the sulfinol. Related to this, an enforcement order against Shell on the clean-up of sulfinol would adversely impact Pieridae's ability to continue to produce under the overlapping approvals.

In essence, the AER has determined that the proposal creates too much regulatory uncertainty and is an attempt to circumvent the statutory requirements of *EPEA* for remediation and reclamation. The following excerpt summarizes this key point as follows (at page 4):

> It is not efficient or orderly for the AER to administer two approvals setting out separate partial regulatory obligations when one single approval already exists and covers all operational and reclamation aspects for each site. Nor is it orderly or efficient to split EPEA rights and obligations amongst separate operators for the same site and activity. As described above, subdividing one aspect of an approved EPEA activity, namely reclamation, for the same site between two operators creates administrative uncertainty and may also diminish the AER's ability to enforce reclamation responsibilities under EPEA. This could impact the AER's ability to provide for environmentally responsible development mandated by section 2(1)(a) of the REDA [*Responsible Energy Development Act*, SA 2012, c R-17.3].

Although not specifically mentioned in this decision, the fact that Pieridae is a junior energy company with insufficient financial means to demonstrate an ability to meet statutory remediation and reclamation obligations for the foothills sour gas assets is the underlying basis for this outcome. The attempt by Shell and Pieridae to work around this deficiency is contrary to the provisions of *EPEA* and not in the public interest.

This is a welcome decision by the AER. It demonstrates that the regulator has the authority to reject applications that are inconsistent with its duty to ensure that energy development in the province occurs in an orderly and environmentally responsible manner (*REDA*, s 2). The decision leaves it open to the parties to file further applications with respect to the transfer of existing approvals; presumably so long as they are not premised on the division of liability for the sites in question.

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