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## What is the Status of the Shell /Pieridae Deal and What is the AER Doing?

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**Matter commented on:** Deferred Shell/Pieridae Licence Transfer Application: Amended Notice of Hearing, [Proceeding 410](#), Shell Canada Limited and Pieridae Alberta Production Ltd., Caroline, Waterton, and Jumping Pound, and [2022 ABAER 001](#).

In 2019, Shell Canada, an international major, entered into a purchase and sale agreement (PSA) with Pieridae Alberta Production Ltd. The PSA contemplated that Shell would sell Pieridae its interests in what are known as Shell’s ‘Foothills Natural Gas Assets’ in Alberta: the Waterton, Jumping Pound, and Caroline fields. These assets are all sour gas assets meaning that they are rich in hydrogen sulphide, thus their development and continuing production pose considerable risks to human health as well as technical risks to the integrity of facilities that must be carefully managed.

ABlawg first alerted Albertans to the risks associated with this transaction (international major divesting aging assets to a smaller and less experienced operator) in a [post \(# 1\)](#) at the end of 2019. ABlawg followed that up with [a post \(# 2\)](#) in May of 2020 reporting on the decision of the Alberta Energy Regulator (AER) in which the AER refused to agree to Shell’s proposal to transfer the well licences and facility approvals associated with these assets to Pieridae.

This is a follow-up to those posts. It details what is publicly known about the transaction and the status of licences for the wells and facilities subject to the PSA. One of the things that we do know is that the Shell/Pieridae deal closed on [October 16, 2019](#). Since then, and as Shell has acknowledged in its public filings, “Shell has remained the licensee of record, and Pieridae has owned and operated the Foothills Assets”. ([Letter from Shell Canada Limited](#) to parties involved in proceeding 410, Licence Transfer, January 31, 2022 [Shell January 31 Letter]).

Based on what we know, I argue that the AER is failing to fulfill its obligations with respect to the licensing of the wells and facilities that were the subject of this PSA. This creates uncertainty for all and is inconsistent with the AER’s obligations to “provide for the efficient, safe, orderly and environmentally responsible development of energy resources and mineral resources in Alberta” (*Responsible Energy Development Act*, [SA 2012, c R-17.3](#), s 2), and to provide under s 4(c.1) of the *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#). (*OGCA*) “for the responsible management of a well, facility, well site or facility site throughout its life cycle”.

## What do we Know About the Transaction and Related Regulatory Developments?

As indicated above, ABlawg left this story in May 2020 when the AER declined to approve Shell’s application to transfer the licences associated with these legacy assets because the AER did not

accept the parties' proposal to split regulatory liability for remediation and reclamation between the two companies.

On January 4, 2021, Shell submitted a new application to the AER to transfer all of the licences and approvals for the Foothills Assets to Pieridae. AER advised that the application would be sent to a public hearing. Shell sought and was granted successive adjournments of this application. Then, on January 31, 2022, more than a year after commencing the application, Shell announced that it “and Pieridae have jointly decided to withdraw the licence transfer application” (Shell January 31 Letter). The stated reason for this change of heart was that the AER had issued new guidance documents with respect to the AER's new Liability Management Framework. (Other ABlawg posts have described this new liability management framework: see [here](#), [here](#), and [here](#).) No further details were forthcoming, then or since. In [Decision 2022 ABAER 001](#) (February 3, 2022) the AER authorized Shell's request to withdraw its application and confirmed that Shell remains the licensee of record (at para 8).

Here is Shell's statement of the status quo, taken from its [website](#) on March 23, 2023 (but clearly composed several years ago, and indeed likely before the January 2021 application).

Through its acquisition of the Foothills Assets, Pieridae has assumed responsibility for the long-term liability associated with the abandonment, remediation and reclamation of these assets. The assets have been well maintained and end-of-life wells have been systematically remediated and reclaimed through-out the life of the assets. Through the commercial terms of the sale, Shell has contractually retained liability for the ongoing management and remediation of specific environmental impacts in, around and under the Waterton and Jumping Pound gas plants resulting from the operation of these two gas plants until regulatory closure is achieved.

Shell appreciates the complexity associated with the regulatory aspects of this transaction. Taking into account the feedback from the May 2020 decision (see application history), Shell will soon file a transfer application with the Alberta Energy Regulator (AER) that seeks to transfer all of the licences and approvals for the Foothills Assets to Pieridae. This will include regulatory responsibility as licensee and responsible party for 282 well licences, 70 facility licences (including the three gas plants), 81 pipeline licences, as well as other supporting approvals/licences.

Shell detailed some of the complexities resulting from the division between ownership and licensee responsibility in [a letter](#) (January 4, 2021) accompanying its reapplication:

As the legal owner and operator, PAPL [Pieridae] is currently responsible for the day-to-day operation of the Foothills Assets and is responsible for conducting all actions necessary to ensure compliance with applicable laws on behalf of itself and Shell. This is because while legal title for the Foothills Assets has passed to PAPL, Shell remains the licensee of record. This means that Shell is held responsible for the implementation or corrective actions related to any non-compliance events, without operational or financial control. These circumstances also require Shell to duplicate the actions of PAPL's regulatory staff to coordinate any required reporting to the AER, in respect of assets that Shell doesn't own

or operate. As a result of the majority of staff responsible for the Foothills Assets being transferred to PAPL at closing, Shell no longer has internal staffing resources necessary to properly oversee and ensure the efficacy of such actions. The expertise and resources needed to manage the assets are now housed within PAPL.

In addition to these practical operational concerns, the concept of splitting the ownership of the Foothills Assets from licensing also presents significant challenges for the future development of the related fields and capital investment for such development. Under the current arrangement, the PSA requires ‘business as usual’ operations and places restrictions on PAPL’s ability to carry out new capital expenditures for exploration and production until it is the licensee of record. To carry out its development plans and reinvest capital in the Foothills Assets, and for each of the parties to have autonomy over its corporate compliance record, PAPL wishes to be the licensee of record so that it may act independently from Shell, to be able to apply for new licences, as well as to amend existing licences, in order to pursue the efficient and orderly development and conservation of resources, in accordance with the AER’s mandate and the public interest.

Given these challenges, PAPL and Shell submit that the continued operations of the Foothills Assets, with the current split between ownership, operatorship and licensee, would result in uncertainty, duplication, inefficiency and confusion. (at 4 – 5)

In sum, Shell acknowledged several years ago that there was considerable complexity associated with the transaction. It is even more complex for those of us looking at this from the outside.

Since the withdrawal of that second application, another year has passed. Another year of considerable complexity and mounting uncertainty. Another year with no real communication from any of Shell, Pieridae, or the AER as to what the plan might be to regularize this situation.

Which brings us to the law. What does the law have to say about the situation in which a licensee continues as licensee even though it has apparently completely divested itself of any working interest in the assets that support the licence? In considering this question I will focus on the well licences provisions of the *OGCA*.

### **Well Licences: The Basics**

In order to drill a well in Alberta, an exploration company (ExCo) needs to have both a property interest in the oil and gas that is the target of the well, and a well licence from the AER. An ExCo will acquire its property right by way of a lease, either from the Crown or from a private party where the oil and gas rights are owned privately (about 20% of the lands in Alberta). Leases will frequently have multiple parties, that is to say leases will be held by different oil and gas ExCos as co-owners (tenants in common), with one of them designated by way of agreement between them as the operator. When it comes time to drill, it will typically be the operator that will apply for the well licence. We refer to these co-owners in the lease as working interest owners or participants – each of them will hold an undivided percentage interest in the lease. The licence application will be made for what is known as a spacing unit – which one can think of as the

production area allocated to the well. In the case of a gas well, the default spacing unit is one section of land (*Oil and Gas Conservation Rules*, [Alta Reg 151/1971](#), s 4.010(1)).

Here's what the *OGCA* has to say about well licences.

The first rule is that an ExCo cannot drill a well, or continue any operation in relation to the well, unless there is a licence for those operations and the person carrying out those operations “is the licensee”. Here is the text of s 11 of the *OGCA*:

11(1) No person shall commence to drill a well or undertake any operations preparatory or incidental to the drilling of a well or continue any drilling operations, any producing operations or any injecting operations unless

- (a) a licence has been issued and is in full force and effect, and
- (b) the person is the licensee.

The second rule addresses the question of who is entitled to hold a well licence. Section 16 of the *OGCA* tells us that an ExCo cannot “apply for or hold” a well licence unless it is a working interest owner in that well. In other words, this section ties together the two requirements referenced above, namely a property interest and a regulatory approval. An ExCo must have both. Here is the text of s 16(1) of the *OGCA*.

16(1) *No person shall apply for or hold a licence for a well*

- (a) for the recovery of oil, gas or crude bitumen, or
- (b) for any other authorized purpose

*unless that person is a working interest participant and is entitled to the right to produce the oil, gas or crude bitumen from the well or to the right to drill or operate the well for the other authorized purpose, as the case may be.* (Emphasis added).

According to Shell’s own public communications, Shell no longer has any working interest in wells licensed to Shell and Shell no longer has the right to produce oil or gas from any of these wells. It must therefore follow that Shell is in breach of s 16(1) of the *OGCA* insofar as it continues to hold licences for these wells.

I acknowledge that this conclusion is contrary to what the AER said in its [decision](#) rejecting Shell’s initial application, which was to the effect that:

The AER notes that the legislative scheme established by the *OGCA* contemplates that the licensee and the operator can be different persons. Based on the information provided by Shell on the commercial arrangement between the parties, Pieridae is the operator at the sites. This current arrangement between Shell and Pieridae accords with the AER’s regulatory framework. (at 5).

The supporting footnote reads as follows: “A licensee means the holder of a licence according to the records of the AER (section 1(1)(cc) of the *OGCA*). Section 1(1) (kk) of the *OGCA* also defines the term operator, and includes a person who is not the licensee.”

My position is that the AER’s decision letter simply does not address the language of s 16 of the *OGCA* and thus does not support the conclusion that the *status quo* is consistent with the Act.

Does my position mean that the licences are invalid? The subsequent subsections of s 16 suggest not, but they do describe a process that the AER may initiate to cancel or suspend licences.

(2) If, after 30 days from the mailing of a notice by the Regulator to a licensee at the licensee’s last known address, *the licensee fails to prove entitlement under subsection (1) to the satisfaction of the Regulator*, the Regulator may cancel the licence or suspend the licence on any terms and conditions that it may specify.

(3) Where a licence is cancelled or suspended pursuant to subsection (2),

(a) all rights conveyed by the licence are similarly cancelled or suspended, and

(b) notwithstanding the cancellation or suspension of the licence, the liability of the licensee to complete or abandon the well and reclaim the well site or suspend operations as the Regulator directs continues after the cancellation or suspension. (Emphasis added).

These provisions afford the AER the power to resolve the complexities and uncertainties surrounding the status of the regulatory responsibilities as between Shell and Pieridae. The AER can give notice to Shell of a process, the AER may cancel or suspend Shell’s licences on terms and conditions, and the public interest can be protected by appropriate terms and conditions as well as the assurance that Shell remains fully responsible for the wells notwithstanding licence cancellation or suspension.

At the very least, a decision by the AER to initiate the procedure contemplated by s 16 should serve to focus the attention of Shell and Pieridae on this matter and cause them to bring forward a new application to be reviewed by the AER in a public process. Short of that, Shell and Pieridae seem to be quite content to perpetuate the existing uncertainty. Amongst other things, the continued division between asset ownership and licensee responsibilities makes it exceptionally difficult for the public to understand and assess obligations, liabilities, and responsibilities of each of Shell and Pieridae under the Liability Management Framework. Given the size, age, and sour character of the Waterton, Jumping Pound, and Caroline fields, this uncertainty raises a significant matter of public interest concern and places into serious question whether the AER is fulfilling its statutory obligations.

## Conclusion

The record available to the public suggests that Shell is no longer legally entitled to hold well licences and other approvals for its Foothills Assets since it no longer has an ownership position in some, or all, of those assets. Yet, Shell remains the licensee of record for these assets. This irregularity needs to be resolved.

The obvious way to resolve it is for Shell to bring on a new application to transfer these licences to Pieridae so that the merits of any such application can be considered by the AER in a public proceeding. Shell’s last communication on this matter suggested that the parties would do so once they understood the implications of the AER’s new guidance documents on liability management. But that was well over a year ago and the AER has since enacted and amended numerous directives to implement the Liability Management Framework.

The law does not allow the parties to sit on this forever. If the parties won’t take steps to complete this transaction by seeking and obtaining regulatory approval of licence transfers, then it is the responsibility of the AER to resolve these issues. And if the AER refuses to meet this responsibility on its own initiative, then it is incumbent on the Minister of Energy to direct the AER to do so under section 67 of the *Responsible Energy Development Act*.

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