Alberta Energy Regulator

Via Email

December 6, 2016

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Wayne Green
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Petrus Resources Corp.
2400, 240 – 4th Avenue SW
Calgary AB T2P 4H4

Attention: Brett Booth and Pamela MacDonald

Dear Sirs and Madam

RE: Request for Suspension by Wayne Green (Mr. Green)
Petrus Resources Corp. (Petrus)
Application Nos.: 1861228
Licence Nos.: 0481082; 0481083
Regulatory Appeal No. 1872809 (Regulatory Appeal)

The Alberta Energy Regulator (AER/Regulator) has considered Mr. Green's request under section 39(2) of the *Responsible Energy Development Act* (*REDA*) for a stay of the above noted licences. The AER reviewed Mr. Green's suspension request submission dated November 10, 2016. The AER also reviewed Petrus' submission dated November 11, 2016.

For the reasons that follow, the AER denies the request of Mr. Green for a stay of the above noted licences.

Parties' Submissions

In Mr. Green's suspension request, he submits that the single surface location at 01-08-039-08W5M for the two wells planned is too close to existing residences. He further submits that the 100 meter setback from the site extends into his land, and that an alternate site is available. He notes that Petrus agreed in both writing and verbally to move the site to address this and was in the process of negotiating an alternate site one mile north, but that this information was not made available to the AER. Mr. Green argues that the wells should be moved one mile to the north and drilled south, and that the AER should meet with the residents and Petrus to view the site and understand concerns. He also requests a suspension of the approvals until a decision regarding the appeal request is made.

In response, Petrus requests that the AER decline Mr. Green's request to suspend the above referenced licences. Petrus confirms that it does not intend to act on the licences until January 3, 2017. Petrus states that, in regards to Mr. Green's statement that the proposed development is too close to existing houses, there are no residences within the 200 meter minimum public consultation requirement identified within *Directive 056: Energy Development Applications and Schedules*. In regards to Mr. Green's statement that the proposed development's 100 meter setback intersects his property, Petrus submits that Mr. Green's use and enjoyment of the property is not adversely affected. In response to Mr. Green's submissions on moving the wells to the north, Petrus submits that this would not be the best well design. Furthermore, in investigating the relocation of the proposed surface lease to a different parcel of land, Petrus submits that the potential pipeline route causes concerns from a landowner that would be directly affected by the proposed alignment and as such would not be interested in this development on their land. In addition, there would be more land disturbance, extra pipeline length, potential conflict with industry competitors, and an unfair prejudicial effect on the same landowner under the existing licenses. Petrus submits it has exhausted all efforts to reasonably resolve Mr. Green's concerns and consider his suggested alternative.

Reasons for Decision

The Regulator is empowered to grant a stay pursuant to section 39(2) of the *Responsible Energy Development Act (REDA)*.

Section 39(2) provides the AER the authority to grant a stay. It states:

> The Regulator may, on the request of a party to a regulatory appeal, stay the appealable decision or part of it on any terms or conditions that the Regulator determines.

However, section 38(2) indicates that the mere filing of a request for regulatory appeal does not operate to stay the appealable decision.

The Regulator's test for a stay is adapted from the Supreme Court of Canada case of *RJR MacDonald.*[1] The three questions within the test are:

1. Serious question – Is there is a serious question to be heard at the requested appeal? This requires a preliminary assessment of the merits of the requested appeal.

2. Irreparable harm – Will the stay applicant suffer irreparable harm if the stay request is refused?

3. Balance of convenience – Which of the parties would suffer greater harm from the grant or refusal of the requested stay?[2]

The *RJR MacDonald* decision makes it clear that the onus is on the stay applicant, in this case Mr. Green, to satisfy the AER that he has satisfied each element of the three-part test.

1. Serious Issue

The first step of the test requires the applicant to show there is a serious issue to be tried. The applicant has to demonstrate that there is some basis on which to present an argument on the appeal.

Mr. Green submits issues which are seriously arguable before the AER. For instance, issues indicated include distance from the wells to existing residences, the 100 meter setback radius on his land, and the availability of alternate sites. Mr. Green submits that the wells should be moved to an alternate site one mile north and drilled to the south and that the AER should meet with the residents and Petrus to view the site and concerns.

Given the low threshold for this part of the three-part test, the AER is satisfied that Mr. Green raises serious issues to be argued.

2. Irreparable Harm

The second step in the test requires the decision maker to decide whether the applicant seeking the stay would suffer irreparable harm if the stay is not granted. Irreparable harm will occur if the stay applicant will be adversely affected by the conduct the stay would prevent if the regulatory appeal applicant prevails in the appeal and the harm is not the sort that could be remedied through damages (i.e. in monetary terms). As noted by the Court of Appeal of Alberta irreparable harm is "of such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the [stay] would be a denial of justice."[3]

In relation to the second part of the test, whether Mr. Green will suffer irreparable harm, the AER is of the view the test is not met. Although Mr. Green submits concerns regarding proximity to residences, setback radius on his land and alternate surface locations, as outlined in the *RJR MacDonald* decision, it is not enough for Mr. Green to allege potential harm, he must show irreparable harm will result. The AER finds that Mr. Green has not provided evidence sufficient to demonstrate a connection between the wells and the harm he may suffer, not to mention whether that harm will be irreparable, if the stay is denied. As a result, Mr. Green has failed to meet the second part of the *RJR MacDonald* test.

3. Balance of Convenience

As explained above, an applicant for a stay must satisfy each element of the three-part test set out in the *RJR MacDonald* decision if it is to be successful in its request to stay an AER decision. In light of the

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[1] *RJR MacDonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311 (*RJR MacDonald*)
[2] *RJR MacDonald* at paragraph 43
[3] *Ominayak v. Norcen Energy Resources,* [1985] 3 W.W.R. 193 (ABCA) at paragraph 31.

finding that Mr. Green has failed to satisfy the second test (demonstrating irreparable harm), a consideration of the third test (balance of convenience), is therefore not necessary.

Conclusion
The stay/suspension request is dismissed because Mr. Green has not demonstrated he will suffer irreparable harm if the stay is not granted.

The regulator will provide its decision on the request for regulatory appeal in due course.

Sincerely,

Kevin Parks, P.Geo.
Vice President, Reserves and Resources

Tom Byrnes, P.Eng.
Senior Advisor, Oil and Gas

K. Fisher
Manager, Regulatory Effectiveness