



Shell Canada Limited

Prehearing Meeting
Applications for a Well and Associated Pipeline Licences
Waterton Field

June 29, 2007

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2007-053: Shell Canada Limited, Applications for a Well and Associated Pipeline Licences, Waterton Field

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

SHELL CANADA LIMITED APPLICATION FOR A WELL AND ASSOCIATED PIPELINE LICENCES WATERTON FIELD

Decision 2007-053
Applications No. 1498479 and 1483571

1 APPLICATIONS

Shell Canada Limited (Shell) applied to the Alberta Energy and Utilities Board (EUB/Board), pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a level-3 critical sour gas well from a surface location of Legal Subdivision (LSD) 10, Section 1, Township 6, Range 3, West of the 5th Meridian (10-1 well), to a projected bottomhole location of LSD 12-36-5-3W5M. The purpose of the proposed well would be to obtain gas production from the Rundle Group Formation. The maximum hydrogen sulphide (H₂S) concentration in the gas would be about 356 moles per kilomole (mol/kmol) (35.6 per cent) and the cumulative drilling H₂S release rate would be 4.9 cubic metres per second, with a corresponding calculated emergency planning zone (EPZ) of 6.78 kilometres (km). However, Shell has chosen to use an EPZ of 6.9 km. The proposed well would be located about 5.8 km southwest of Beaver Mines.

Shell also applied, pursuant to Part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline for the purpose of transporting natural gas from the proposed well at LSD 10-1-6-3W5M to a pipeline tie-in point at LSD 6-12-6-3W5M. The proposed pipeline would be about 1.19 km in length, with a maximum outside diameter of 168.3-millimetre (mm), and would transport natural gas with a maximum H₂S concentration of 320 mol/kmol (32 per cent). The proposed pipeline would be operated as a level-2 pipeline. To address public protection measures, the pipeline would be incorporated into the Waterton Complex Emergency Response Plan.

Additionally, Shell has applied to construct and operate a new fuel gas pipeline in the same right-of-way as the pipeline described above to supply fuel from the existing compressor station at LSD 6-12-6-3W5M. The purpose of the fuel gas line would be to operate equipment at the proposed 10-1 well site. The maximum outside diameter of the proposed fuel gas pipeline would be 60.3 mm and it would be about 1.19 km in length. The gas transported in the fuel gas pipeline would not contain H₂S. The proposed pipelines would be located about 5.8 km southwest of Beaver Mines.

2 OBJECTIONS

The Board has received a number of objections to date from landowners, residents, and community groups in the vicinity of the proposed project stating concerns about public safety, the environment, including impacts to air and water quality, area development, and location of the proposed 10-1 well. In addition, members of the community in the vicinity of the proposed project have formed two groups, the Friends of Mount Backus and the Seven Gates group.

3 PREHEARING MEETING

The Board decided to hold a prehearing meeting to determine the scope and issues to be considered at a hearing on the applications, as well as the timing and location of the hearing, standing, requests for advance intervener cost funding, and other procedural matters.

The prehearing meeting was held in Pincher Creek, Alberta, on June 15, 2007, before Presiding Board Member T. M. McGee, Acting Board Member W. G. Remmer, P.Eng., and Acting Board Member D. A. Larder, Q.C.

Those who registered and participated at the prehearing meeting are listed in Appendix 1.

The Board requested that the participants express their views on the following matters:

- scope and purpose of the hearing, including relevant issues to be examined,
- relevant emergency planning issues, including the appropriate H₂S modelling,
- timing and location of the hearing,
- procedures to be used in the hearing,
- participants and their roles in the hearing,
- funding of the participants, and
- any other matters as necessary.

The Board did not hear evidence, submissions, or arguments pertaining to the merits of the applications or to the objections. Parties will be given the opportunity to present evidence, cross-examine witnesses, and make arguments regarding the merits of the applications at the upcoming public hearing.

4 STANDING AND INTERVENER COSTS

In the determination of who may be granted full participation rights at a hearing, the Board is governed by Section 26 of the *Energy Resources Conservation Act (ERCA)*. Section 26 states:

26(1) Unless it is otherwise expressly provided by this Act to the contrary, any order or direction that the Board is authorized to make may be made on its own motion or initiative, and without the giving of notice, and without holding a hearing.

(2) Notwithstanding subsection (1), if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person, the Board shall give the person

(a) notice of the application,

(b) a reasonable opportunity of learning the facts bearing on the application and presented to the Board by the applicant and other parties to the application,

(c) a reasonable opportunity to furnish evidence relevant to

the application or in contradiction or explanation of the facts or allegations in the application,

(d) if the person will not have a fair opportunity to contradict or explain the facts or allegations in the application without cross-examination of the person presenting the application, an opportunity of cross-examination in the presence of the Board or its examiners, and

(e) an adequate opportunity of making representations by way of argument to the Board or its examiners.

(3) When by subsection (2) a person is entitled to make representations to the Board or its examiners, the Board is not or examiners are not by subsection (2) required to afford an opportunity to the person

(a) to make oral representations, or

(b) to be represented by counsel,

if the Board or examiners afford the person an opportunity to make representations adequately in writing, unless the statutory provision authorizing the Board's decision requires that a hearing be held.

In making a determination as to whether a person has standing under this section, the Board has adopted a two-part test. The Board will first determine whether a person has a legally recognized interest or right and, second, whether the information provided by that person shows that the applications before the Board may directly and adversely affect that interest or right.

In regard to Shell's proposed well and pipelines, the Board is satisfied that the persons who reside within the proposed 6.9 km EPZ for the well and have submitted an objection have shown that they have a legal interest or right and that that interest or right may be directly and adversely affected. The Board formed this opinion on the basis of these persons' proximity to the proposed well and pipelines, the fact that the proposed well and one of the pipelines will be classified as level 3 and a level 2 respectively, and the nature of the issues raised regarding the potential direct and adverse impacts on their legal interest or right. In addition, the Board notes that Shell agreed that these individuals would have standing with respect to these applications. Therefore, the Board has granted standing to these persons to participate in the hearing.

As noted above, these persons have formed two groups, the Friends of Mount Backus and the Seven Gates group. The Friends of Mount Backus asked the Board to grant standing to the group. The Board notes that this is an ad hoc group, not a legal entity, and that it has not shown that it has legal rights or interests that may be directly and adversely affected by the applications. Therefore, the Board is of the opinion that the Friends of Mount Backus as a group does not have standing. However, the Board accepts that the group represents those persons who are residents within the EPZ referred to above. The Board strongly encourages the formation of a group by persons with standing to prepare for and participate at the hearing for a more efficient process. The Board notes that the Seven Gates group represents four families who reside within the 6.9 km EPZ and includes Dave Sheppard and Jean Sheppard, Kim Barbero and Sylvia Barbero, Elaine Seifert and John Lowe, and Stuart McDowall and Irene McDowall. The Board strongly encourages any other person who is not a member of either of these groups and who may have

standing to join one of these groups. The Board also encourages the groups to share experts and other resources.

The Board notes that Barry Orich, who resides within the EPZ and is a member of the Friends of Mount Backus, asked that he be able to advance his specific issues respecting the applications, such as Shell's plan regarding safety. The Board grants Mr. Orich standing for the reasons set out above. However, the Board encourages Mr. Orich to participate as a member of the Friends of Mount Backus and bring his issues and submissions forward through the group.

On June 1, 2007, the Board received a Notice of Constitutional Question from Michael Sawyer, as he wanted to raise a constitutional question. He stated that if he were denied standing regarding these applications, it would be a contravention of his right to security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice, under Section 7 of the *Canadian Charter of Rights and Freedoms (Charter)*. On June 8, 2007, counsel for the Board wrote to Mr. Sawyer asking him if the notice was a request for standing and informing him that the Board required information about his legal rights, if any, in relation to the lands on which the proposed project would be located and the manner in which the applications may directly and adversely affect his rights; the Board required this information in order to make a determination of Mr. Sawyer's standing under Section 26(2) of the *ERCA*. The letter also informed Mr. Sawyer that the Board would not consider his constitutional question unless he was granted standing respecting these applications. Mr. Sawyer replied and declined to provide the information requested but stated that he would address the question of his standing at the prehearing meeting.

At the prehearing meeting, Mr. Sawyer asked to be granted standing and filed an affidavit in support of his request. Mr. Sawyer stated that he resided in Calgary but, along with his family, was a recreational user of the public lands within the EPZ and private lands adjacent to the proposed well. He submitted that the proposed well and pipelines represented an increased health risk to himself and his family associated with exposure to H₂S in the event of an accidental release. He claimed the risk posed a real threat to his right to life, liberty, and security of the person under Section 7 of the *Charter*. He concluded that for these reasons he should be granted standing.

Shell opposed Mr. Sawyer's request for standing. Shell argued that Mr. Sawyer was raising a health concern and that it was not necessary for the Board to determine if Mr. Sawyer had a right to health or the source of the right. Shell added that even if the Board were to assume that Mr. Sawyer had a right in relation to health in respect of Subsection 26(2) of the *ERCA*, he had not shown that the proposed well and pipelines could have a direct and adverse impact on his health or that the potential impacts to him were greater than those to any other member of the public.

Shell further argued that Mr. Sawyer had not served his Notice of Constitutional Question at least 14 days prior to the prehearing, in accordance with the *Administrative Procedures and Jurisdiction Act*. Therefore, Shell maintained that the Board was without jurisdiction to consider the question raised in the notice.

The Board considered the evidence and submissions on this matter. The Board is of the view that a person must have standing to place issues before the Board. Therefore, the Board determined

whether Mr. Sawyer has standing. On the first part of the test, the Board accepted the argument that a right may arise regarding the protection of an individual's health or safety. The Board does not need to examine the source of this entitlement. On the second part of the test, the Board was of the opinion that Mr. Sawyer had not shown that the proposed well and pipelines had the potential to directly and adversely impact his and his family's health or safety for the following reasons.

Mr. Sawyer is a recreational user of the public lands in the area and visits friends. However, he and his family do not reside near the proposed well or pipelines. Therefore, they would not be subject to the potential direct and adverse impacts claimed, unless they choose to frequent the area. This is not the case for residents who are within the EPZ. Also, the proposed well and pipelines are within the vicinity of other wells and pipelines producing or transporting gas containing H₂S. This type of well and pipeline is not new to the area. Therefore, the Board believes Mr. Sawyer failed to establish that the potential impacts may affect his and his family's safety differently or to a greater degree than that of any other member of the public using the area for recreation or visiting friends. He has not demonstrated the connection between the proposed well and pipelines and a potential direct and adverse impact on his and his family's health or safety. The Board is of the view that this finding is supported by the *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)* 2005 ABCA 68. In addition, the Board reviewed the case law in relation to the determination of standing under other provincial legislation that has interpreted the phrase "directly affected." More specifically, the Board took note of the following cases that determined that "directly affected" referred to a personal and individual interest as opposed to a general interest that pertained to the community as a whole: *Canadian Union of Public Employees, Local 30 v. Alberta Public Health Advisory and Appeal Board* [1996] 178 A. R. 297 (Alta. C.A.); *the Friends of the Athabasca Environmental Association et al. v. Alberta Public Health Advisory and Appeal Board* [1996] A.J. No. 47 (Alta. C.A.); *Kostuch v. Alberta (Environmental Appeal Board)* [1996] A.J. No 311 (Alta. Q.B.).

Therefore, the Board determined that Mr. Sawyer does not have standing. As such, the Board need not consider his Notice of Constitutional Question. Also, the Board cannot consider the notice, as it was not served in time.

With respect to the Castle Crown Wilderness Coalition's (CCWC) request for standing, on the first part of the test, the Board is of the opinion that CCWC has not advanced a legal right or interest in relation to the proposed well or pipelines. The CCWC stated that its interest was in the ecologically important public land. It argued that this had been demonstrated by its expressions of concern over the last twenty years and described its services and programs in the area. CCWC did not advance any potential direct and adverse impacts. Therefore, the Board finds that CCWC has no standing with respect to the present applications.

With respect to the CCWC representing Gordon Petersen and Cathy Scrimshaw, residents within the EPZ, the Board has asked for more details regarding their concerns and will make a determination on their standing once it receives the information requested. If the Board grants Mr. Petersen and Dr. Scrimshaw standing, they can choose to have the CCWC represent them at the hearing.

A person who is granted standing may qualify for local intervener costs under Section 28 of the *ERCA*, which grants the Board the authority to award costs to persons that have an "interest in

land” and that may be directly and adversely impacted by an approval of an energy development. The Board directs the applicant to pay such awards to the intervener. Part 5 of the *Alberta Energy and Utilities Board Rules of Practice* and *EUB Directive 031A: Guidelines for Energy Cost Claims* provide details on the costs that may be recovered and the test and process used by the Board to determine a costs award.

Duplication of efforts on common issues of concern by two or more intervening parties may result in only one set of costs being approved in the absence of unique circumstances. As such, the Board strongly encourages individuals who share a common concern to pool their resources and present a collective and effective intervention, thereby eliminating any duplication and overlapping of effort and costs. The Board recognizes that a number of individuals with similar concerns have formed the Friends of Mount Backus and the Seven Gates group.

An intervener may file a request for advance intervener funding in accordance with Sections 50 and 51 of the *Rules of Practice*. A budget of the intervener’s anticipated costs must be submitted with the request for advance funding. The Board has provided time in the hearing schedule detailed below to submit such requests. The Board may award an advance of funds to an intervener if the intervener has demonstrated a need for financial assistance to address relevant issues in a hearing.

Further, the Board notes that Shell stated it would consider discussing and coming to agreement with interveners on some of the advance funding issues to avoid the need for the Board to adjudicate on this matter.

5 ISSUES OF CONCERN TO BE CONSIDERED AT THE HEARING

The Board heard submissions from various interveners that the scope of the hearing should be broad and consider such policy issues as provincial land-use policy and the impacts of current developments and future developments in the area involving oil and gas, forestry, agriculture, and recreation. The Board is of the view that the scope of the hearing is limited to the applications and the impacts of the proposed well and pipelines and planned development in proximity to this development. The Board refers the parties to *Informational Letter (IL) 93-9: Oil and Gas Developments Eastern Slopes (Southern Portion)*.

The Board also heard argument pertaining to hearing the well application separately from the pipeline applications. The basis for the request was that hearing the applications together would add complexity to the hearing and that if the well application were denied, there would be no need for the pipelines. Usually the Board receives requests from interveners for related applications to be considered together. The Board encourages, and at times requires, applicants to file related applications together so that the potential impacts of an energy development may be assessed once. The well and the pipelines are related and the potential interveners are the same, as are the issues generally. Therefore, the Board denies the request to separate the applications.

The Board also notes that the matter of pipeline integrity was raised at the prehearing meeting and believes that should this matter be discussed further at the hearing, it should be limited to the subject applications.

The Board also heard comments regarding modelling as it related to the determination of the size of the EPZ. It recognizes that Shell has used the EUB's current requirements for determining the size of the EPZ and has even expanded the calculated EPZ to 6.9 km. Therefore, the Board does not require Shell to assess modelling methods other than those currently approved by the EUB.

Regarding flaring, the Board requests Shell to provide the combustion efficiency for all anticipated flaring events and a list of the expected scenarios under which Shell may be flaring. In addition, Shell must provide sulphur dioxide (SO₂) dispersion modelling for flaring that may occur during well cleanup, testing, and completion operations. Regarding production, the Board also requests that Shell conduct SO₂ dispersion modelling for one emergency event and one maintenance event. This information must be filed by August 1, 2007.

The Friends of Mount Backus discussed its intention to conduct modelling of other substances. The Board expects parties to submit modelling as they deem necessary. However, the Board does not believe that a formal information request process is necessary to facilitate the exchange of this information. The Board also cautions that costs will be awarded on the relevance and usefulness of the material presented.

The Board noted from the applications and supporting materials, as well as the submissions made at the prehearing, that visual impacts of the proposed well had been raised as an issue and that Shell had prepared a visual impacts report. The Board requests Shell to file this report by July 20, 2007, to allow the parties time for review and hearing preparation.

Another issue raised was future proposed development in the area in proximity to the proposed well and pipelines. The Board heard comments from parties that Shell had informed them about a number of other wells. Although Shell included information on the planned area development in its environmental assessment, the Board requests that Shell provide more details regarding the future development in this area by July 20, 2007.

The Board notes from the applications and supporting materials that additional equipment is proposed on the well site and pipeline tie-in at LSD 6-12-6-3W5M (6-12 pipeline tie-in). Specifically, Shell's notification package stated that equipment proposed on the 10-1 well site may include a well site heater, injection pumps, meter run, and permanent flare stack. Equipment proposed at the 6-12 tie-in would include a fuel gas compressor. Given the potential for this additional equipment, the Board directs Shell to provide facility applications for the proposed equipment to be installed on the 10-1 well site and 6-12 pipeline tie-in. The Board requests that these applications be filed by August 1, 2007.

As a result, the Board is of the view that the applications raise the following issues:

- need for the wells and pipelines
- location of the well and pipelines
- human health and safety
- emergency response planning
- future area development and cumulative impacts, as outlined in *IL 93-9*
- visual and other environmental impacts
- property values

6 TIMING AND LOCATION OF THE HEARING

At the prehearing meeting, the Board noted that parties proposed different schedules for the hearing. In determining the schedule, the Board took into account the request made by Shell for a hearing in either early August or September with an expedited decision. It also heard the request made by Friends of Mount Backus for the hearing to be scheduled in the third week of September. Furthermore, the Board took into account requests by the Seven Gates group and Judy Huntly of the CCWC to hold a hearing no sooner than October 1, 2007.

The Board also heard concerns raised by intervening parties regarding the need to have evenings free to review argument and be adequately prepared for their participation on subsequent days of the hearing.

The Board, therefore, will commence the hearing on September 18, 2007, at 1:30 p.m. and break at 5:30 p.m. to allow for the registration of all intervening parties. Subsequent hearing days will commence at 9:00 a.m., unless special circumstances warrant a change.

The Board directs the following schedule, which includes the submission of advance funding applications:

Hearing Schedule

Date	Action
July 20, 2007	Submission of visual impact report and area development plan by Shell
July 20, 2007	Submission of advance intervener funding requests
August 1, 2007	Submission of SO ₂ dispersion modelling and facility applications by Shell
August 28, 2007	Intervener's submissions
September 4, 2007	Submission of site visit preferences and permissions by all parties
September 10, 2007	Shell's response to interveners' submissions
September 18, 2007	Commencement of hearing

Regarding information requests, the Board does not believe that a formal process or timeline is needed. The Board expects that the parties will exchange information in a timely manner to allow for the preparation of submissions to the hearing. The Board is prepared to deal with any issues regarding the exchange of information if they arise.

The Board understands that some of the parties are considering an Appropriate Dispute Resolution (ADR) meeting with Shell. The Board strongly encourages Shell to convene at least a preliminary meeting with the interested parties to consider resolution options. The Board requests Shell to periodically inform staff on the progress of the ADR process.

As requested by some of the parties, the Board will be conducting a visit of the area surrounding the proposed facilities prior the hearing. This visit will be conducted by EUB staff without the presence of Shell or the interveners. However, should any party wish the Board to view the area from any particular vantage point or from their property, they should inform staff at least two weeks prior to the start of the hearing and provide permission to enter their property, if necessary.

Dated in Calgary, Alberta, on June 29, 2007.

ALBERTA ENERGY AND UTILITIES BOARD

[Original signed by]

T. M. McGee
Presiding Member

[Original signed by]

W. G. Remmer, P.Eng.
Acting Board Member

[Original signed by]

D. A. Larder, Q.C.
Acting Board Member

APPENDIX 1 HEARING PARTICIPANTS

**Principals and Representatives
(Abbreviations used in report)****Witnesses**

Shell Canada Limited (Shell)

B. Gilmour

M. Henderson

A. Castillo, of Shell Canada Limited

Friends of Mount Backus

Dr. A.L. Norman

J. Hope-Ross

M. Sawyer

B. Orich

J. Hope-Ross

Seven Gates Group

J. Sheppard

S. McDowall

K. Barbero

Castle Crown Wilderness Coalition

W. Ryan

J. Huntley

Alberta Energy and Utilities Board staff

G. Bentivegna, Board Counsel

S. Paulson

J. Smith

E. Tom

D. Miles
