

Via Email

May 11, 2018

Laurie Friesen

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca

Dear Madam:

**RE: Request for Regulatory Appeal by Laurie Friesen
Tidewater Midstream (Tidewater)
Application Nos.: 1882589, 1882591, 1882653, 1884135 and A10064398
Approval/Licence Nos.: F48965, 59472, [486102, 486103, 486104, 486105, 486106, 486107
(Application 1882653)], and 59473
License Extension Application / Approval No.: A10064398
Location: 25-071-07W6M;
Request for Regulatory Appeal No.: 1903552 & 1903609**

The Alberta Energy Regulator (AER) has considered your request under section 38 of the Responsible Energy Development Act (REDA) for a regulatory appeal of the AER's decision to approve the Licences. The AER has reviewed your submissions and the submissions made by Tidewater.

For the reasons that follow, the AER has decided that you are not an 'eligible person' under REDA, and cannot request a regulatory appeal in this matter. Your requests are therefore not properly before the AER. The AER has also decided that the requests for regulatory appeal are vexatious. Accordingly, the requests for a regulatory appeal are dismissed.

The applicable provision of REDA in regard to regulatory appeals, section 38, states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [emphasis added]

The term "eligible person" is defined in section 36(b)(ii) of REDA to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment]...

Section 39 (4)(a) of REDA provides that the AER may dismiss a request for regulatory appeal if it considers the request to be frivolous, vexatious, or without merit.

Reasons for DecisionNot an 'Eligible Person'

In your regulatory appeal requests, you have raised the following grounds relating to Tidewater's gas injection and storage operations:

- Safety in the event of an incident
- Groundwater impacts;
- Noise and light impacts;

- Air pollution;
- Impacts on your health and well-being; and
- Impacts on your property value

Although not stated with the same degree of detail, the concerns you have raised and the impacts you have alleged in your regulatory appeal request are substantially the same as those raised previously in the statements of concern (SOC) filed by you with respect to the initial subsurface, facility and pipeline applications filed by Tidewater which have now been approved and are the subject of your regulatory appeal requests (applications 1882589, 1882591, 1882653, & 1884135).

You have not identified what within the 638 page submission you provided, is new information not previously filed with your SOCs, or how it supports your regulatory appeal grounds. Upon review, it appears that the small amount of new information in your submission is substantively similar to information you had previously provided, in that it relates generally to impacts from gas storage projects in other jurisdictions, and not specifically to any of the approvals you have appealed. For example, the June 2014 Policy Brief from the National Agricultural & Rural Development Policy Center addressing impacts from the underground natural gas storage is co-authored by the Purdue University graduate student that penned a previous study you provided in support of your previous SOC and contains much of the same information as the study. The information still does not relate to your property, Tidewater's gas storage project, or oil and gas development in Alberta.

In its October 31, 2017 written decision in response to your SOCs on the above captioned applications, the AER found that you would not be directly and adversely affected by the applications, which have now been approved and appealed by you. Detailed reasons were provided for this finding, and you have provided very little additional or new substantive information to support that you are directly and adversely affected by the approvals. For the reasons specified in the AER's October 31, 2017 decision letter, a copy of which is enclosed with this letter for your reference, the AER finds that you are not directly and adversely affected by the approvals and licenses you have appealed.

To the extent that your safety related concerns about human error at the site are not specifically addressed in that decision letter, these concerns are very general in nature, and are addressed to the extent possible by applicable site safety requirements of the AER, and the Government of Alberta's workplace safety requirements. Preventing case by case instances of human error is well outside the scope of the AER's regulatory authority, duties, and capabilities. Similarly, you have stated in a vague and general manner that you 'will be exposed to light' from Tidewater's project, but have not provided any further particulars or information to describe the source of the impact, or whether or how this adversely impacts you. There is insufficient information to determine whether the light exposure you are concerned with is of a sufficient magnitude so as to directly and adversely impact you given the distance of your residence to the project, or even whether it originates from an approval that is the subject of the current regulatory appeal.

The only other new matter raised in your regulatory appeal requests is the AER's decision to extend the time by which Tidewater must start construction of its facility under Facility Licence F48965 (Approval A10064398). Your main concern is that you were not notified of the application for the extension. As per section 5.3.1 of Directive 056, the AER may extend the expiry date of a licence that has already been issued, on written request by the licensee. Directive 056 does not specify that an application is required in order to extend the licence expiry date. As no application is expressly required under Directive 056, Tidewater did not notify you of its extension request. However, the AER notes that an extension to the term of a licence constitutes an amendment to the licence. The AER's authority to approve a licence amendment is derived from section 26 of the *Oil and Gas Conservation Act (OGCA)*, which contemplates an application being made by the licensee. The AER agrees that Tidewater should have given you notice of its application under section 26 of the OGCA. However, it is understandable why Tidewater did not do so, given that section 5.3.1 of Directive 056 does not contemplate an application process, and it is not the AER's typical business practice to require one. However, for greater clarity, the AER expects Tidewater to

notify all persons with known concerns about Tidewater's gas storage project with respect to any future applications, including license extensions requests.

The regulatory appeal request process has provided you with the opportunity to bring your concerns before the AER, hence there is no impact to the procedural right to have your concerns heard and considered. To that end, the substantive concerns that you have raised on the license extension decision are the same as those you had previously raised in your SOC on Application 1823491 for the said facility and the subsequent regulatory appeal request you filed on the facility licence. The AER previously considered the concerns you had raised about the facility, dismissed your concerns in writing, and provided reasons for those decisions. It is the amendment to the term of the license, and not the license itself, which is the current subject of your regulatory appeal request. In that respect, the AER notes that you have not specifically identified how you might be impacted by the AER's decision to extend the term of licence F48965. Accordingly, the AER finds that you are not directly and adversely affected by the AER's approval of an extension to the licence term of facility licence F48965.

Vexatious Request

The AER may dismiss a request for regulatory appeal if it considers the request to be frivolous, vexatious, or without merit.

There is no definition of 'vexatious' in REDA or the AER's *Rules of Practice*. The AER is guided by section 23(2) of the *Judicature Act of Alberta*, which sets out a list of criteria for what constitutes a vexatious judicial proceeding, including:

(2) For the purposes of this Part, instituting vexatious proceedings or conducting a proceeding in a vexatious manner includes, without limitation, any one or more of the following:

- a) persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction;
- b) persistently bringing proceedings that cannot succeed or that have no reasonable expectation of providing relief;
- c) persistently bringing proceedings for improper purposes;
- d) persistently using previously raised grounds and issues in subsequent proceedings inappropriately;
- e) persistently failing to pay the costs of unsuccessful proceedings on the part of the person who commenced those proceedings;
- f) persistently taking unsuccessful appeals from judicial decisions;
- g) persistently engaging in inappropriate courtroom behaviour.

In addition to the *Judicature Act* indicia, the Courts have also established that repeatedly making the same claim as a matter of practice or strategy, where grounds and issues raised are rolled forward into subsequent actions and repeated and supplemented, constitutes vexatious behavior by a litigant. Unsubstantiated allegations of impropriety against a Court or other inflammatory language in pleadings can also be considered vexatious.

The factors above are non-exhaustive, and the Courts have indicated that the presence of any single factor may be a basis for finding a proceeding or litigant vexatious. While the AER is a quasi-judicial body and not a Court, it finds the above factors to be instructive in determining whether a request for regulatory appeal is vexatious.

Your present regulatory appeal requests essentially repeat the same concerns, grounds, and issues you raised in a number of previous SOC and regulatory appeal requests filed since 2015 regarding Tidewater's gas storage project. These concerns have been addressed and dismissed with reasons in AER decisions dated December 10, 2015 (SOC 29722), October 27, 2016 (SOCs 30352 & 29456), June 23, 2017 (Regulatory appeal 1849413), and most recently October 31, 2017 (SOCs 30712 & 30714). The repetition, generality, and at times inapplicability of your concerns, grounds or issues in relation to certain applications or approvals has been pointed out in some of these decisions. You were advised in the AER's October 31, 2017 decision letter that your concerns have been previously dealt with or addressed by AER decisions on previous applications, and by decisions of the AER on regulatory appeal requests filed by you.

The most accurate description of your SOC and regulatory appeal requests is that the issues and grounds have been rolled forward into subsequent proceedings, repeated, and supplemented, which the courts have identified as vexatious behavior. Persistently raising the same grounds and issues in subsequent proceedings after those grounds and issues have been considered and dismissed by the AER also falls squarely within factors set forth in section 23(2)(a) as well as subsection (b) above, as there can be no reasonable expectation that the same grounds, concerns, and issues raised again in the current regulatory appeal requests could lead the AER to a different decision. It is vexatious and a misuse of the AER's process to raise previous grounds and re-argue the same issues already wholly considered and decided in a number previous AER proceedings.

On several occasions, you have requested regulatory appeals or filed SOC on applications or approvals which are administrative in nature, unrelated to the impacts cited in your SOC or regulatory appeal request, or which on their face will not give rise to any impacts. For example, in SOC 30714 and in the present request, you have appealed against an amendment to facility License F48965, the approval of which resulted in a decrease to the gas inlet rates, and the replacement of 3 licensed gas and 3 licensed electric compressors with 3 smaller gas and 2 smaller electric compressors. As indicated in the AER's October 31, 2017 decision letter to you, you have not indicated how this type of an amendment would impact you, and the concerns you have stated in your regulatory appeal request do not relate to the amendment of the approval. It is counterintuitive for you to have filed a regulatory appeal request on this approval given the amendment on its face does not result in additional impacts. It is the AER's task on a regulatory appeal to determine whether you are directly and adversely affected by an approval, and therefore eligible to request a regulatory appeal. Persistently and indiscriminately filing SOC and appeals on substantially all AER decisions or approvals relating to Tidewater's gas storage project, based on substantially the same general grounds raised in previous proceedings, without any clear indication or link between a specific approval or application in question and whether or how you may actually be directly and adversely affected by it, is inappropriate, and constitutes vexatious conduct as contemplated under section 23(2)(d) of the *Judicature Act*.

Substantial process has been provided to you in AER proceedings relating to Tidewater's Dimsdale Gas storage project. Additional process has been required with the current regulatory appeal requests due to the unnecessarily voluminous, repetitive, and poorly organized written submissions you have filed. More specifically, you have filed approximately 638 pages of material, of which only 4 pages contain the grounds and argument for your regulatory appeal, and relief requested. In contrast, at least 220 pages are documents which relate specifically to previous applications and approvals that are not the subject of the present regulatory appeal request. At least 114 pages of the documents are duplicates (i.e. they are provided more than once in different locations of your submission). This has resulted in unnecessary but significant additional use of AER time and resources to process and review your regulatory appeal requests, and is not a proper use of the regulatory appeal process. You have also alleged in your regulatory appeal request of approval A10064398 that the AER is biased and lacks the expertise to make

decisions relating to Tidewater's gas storage applications. These allegations are not substantiated with any information or argument to support your claims, and the AER wholly rejects them.

For the above reasons, the AER also dismisses your regulatory appeal request pursuant to section 39 (4)(a) of REDA on the basis that it is vexatious.

Sincerely,

<original signed by>

Andrew MacPherson
Director, Pipelines, Environment & Operational Performance

<original signed by>

Alanda Allum
Director, Oil and Gas, Environment & Operational Performance

Cc: Tidewater Midstream - Clark Dickson

Enclosed

BY E-MAIL ONLY

October 31, 2017

Laurie Friesen

**TIDEWATER MIDSTREAM AND INFRASTRUCTURE
SUBSURFACE APPLICATION NO. 1882581
INFRASTRUCTURE APPLICATIONS NO. 1882589, 1882591, 1882653, 1884135
STATEMENTS OF CONCERN NO. 30712 and 30714**

Dear Laurie Friesen:

You are receiving this letter because you filed statements of concern about the above applications. The Alberta Energy Regulator (AER) has reviewed your statements of concern, along with the applications, the applicable requirements, and other submissions or information about the applications. The AER has decided that a hearing is not required under an enactment, or necessary, to consider the concerns outlined in your statements of concern.

In its review of your concerns, the AER considered the following:

- The pipelines proposed in application 1884135 are located approximately 17.6 km from your property and will transport sweet natural gas.
- The pipeline proposed in application 1882591 is a 70 meter sweet natural gas pipeline that will connect the existing Tidewater facility at 5-36-71-7W6M with a pipeline to be constructed in the future. It is located approximately 1.4 km from your lands.
- The proposed pipeline meets the AER's technical requirements, and Tidewater must operate the pipeline in accordance with all applicable AER requirements, which are protective of safety and the environment. As there is no H₂S content in the pipeline substances, the only setback is the width of the right-of-way. The AER is satisfied with the proposals for construction and operation of the pipelines.
- Regarding Application 1882589, this is an amendment to a previously approved facility licence, and will result in a decrease to the gas inlet rates and will replace the 3 licensed gas and 3 licensed electric compressors with 3 smaller gas and 2 smaller

electric compressors. No further land will be disturbed and no additional emissions would result from the approval of the application.

- The concerns raised in your statement of concern on Application 1882589 relate generally to Tidewater's gas storage project, are outside the scope of and do not relate specifically to the facility amendment application. You have not indicated whether or how you will be impacted by this application.
- You do not own the subsurface rights or the lands on which the project is located. Your lands are located about 960 meters west of the lease boundary of the proposed wells (Application 1882653), which are the nearest part of the project.
- The applications are part of the Dimsdale Gas Storage project, which was approved in January, 2014. The applications are in compliance with AER directives and regulations that ensure the components of the project (wells, pipelines, facilities) may be constructed and operated with minimal risk to residents and the environment.
- Application 1882581 seeks approval for a previously drilled well (Licence # 0480964) to be used as an injector for sweet gas disposal into the depleted Dimsdale Paddy A pool. AER technical staff has reviewed the geological characteristics of the reservoir, the injection pressures, and the well designs, and regard the safety risks as minimal. The Dimsdale Paddy A reservoir into which sweet natural gas will be injected is approximately 1,300 meters below the surface. It is an approximately 10 m thick porous rock formation. Gas is injected and stored within the porous rock. Prior to being used for injection, natural gas had been produced from the reservoir. Prior to being depleted due to production, the original reservoir pressure was 10,485 kPa. Tidewater's existing storage approval (12203C) prohibits the average reservoir pressure from exceeding the initial reservoir pressure, and limits the volume of gas that can be injected. The well meets all *Directive 051* requirements for injection operations, including requirements for well integrity. Further, injection at a well must not exceed the maximum wellhead injection pressure prescribed in Tidewater's scheme approval, determined through the application process. The amendment that is required to add this well will not result in any changes to the approved operating conditions of Scheme Approval No. 12203C.
- In addition, Tidewater has committed to testing and inspecting all injection and observation wells in the approval area of their disposal scheme, and assessing the integrity of existing wells that penetrate the storage zone. Tidewater has indicated that this will include working with third party owners of these wells to ensure proper inspection and required remediation takes place.
- Regarding your water well concerns, the AER's has numerous requirements with which Tidewater must comply to ensure that groundwater sources are protected. Tidewater has gone beyond AER requirements by committing to perform baseline and follow-up tests of your water. Given the nature and depth of the reservoir into which injection will occur, and the AER's numerous requirements which are protective of groundwater sources, it is very unlikely that your well water will be impacted.

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

- The decision to approve an energy activity, including injection of gas into an underground formation, assumes operational compliance with all AER requirements and approval conditions. Tidewater must operate in accordance with the terms and conditions of its approval as well as all AER operating requirements. It is a contravention of AER requirements to impact ground water sources due to energy activities. Any such contravention would be subject to AER enforcement action, which may include suspension of operations and other remedial action. As has been indicated to you in previous correspondence from the AER, to report any impacts to your well water which may be caused by energy resource activity, please call the AER's Energy and Environmental 24-hour Response Line at 1-800-222-6514.
- The examples of incidents you have provided are the same as provided in previous applications relating to Tidewater's Gas Storage Project. You have also provided additional information from a United Kingdom periodical regarding the safety of Gas storage particularly in respect of salt cavern storage. These incidents and sources of information are not relevant to the AER's consideration of whether you may be impacted by Tidewater's storage in the depleted Paddy Dimsdale A gas reservoir (not a salt storage cavern) and related facilities because these incidents relate to different operators in separate jurisdictions, operating under different requirements.
- There is no fracturing associated with any of Tidewater's applications. To the extent that your concerns relate to the fracturing operations of other operators, such operations must comply with the requirements of AER *Directive 083: Hydraulic Fracturing – Subsurface Integrity*, including requiring operators to take steps to minimize the chance of communication with offset wellbores. The AER is not aware of any instances of induced seismic events occurring in the Dimsdale Paddy A reservoir, or this same formation elsewhere in Alberta.
- Further to your concerns about emissions and pollution, Tidewater must comply with the requirements of *Directive 060: Upstream Petroleum Industry Flaring, Incinerating and Venting*, and *Alberta Ambient Air Quality Objectives (AAAQO)*. Moreover, Tidewater has committed to completing a baseline air quality test and post-operational follow-up, with results made available to residents. If you have any concerns regarding odours or emissions once the project is in operation, please contact the AER's 24 hour Response line.
- In relation to your concerns about noise, the AER notes that drilling and construction are temporary activities. Tidewater has committed to installing continuous noise monitoring equipment when the facility is operational, and will share data with residents. Tidewater is also required to meet the requirements of AER *Directive 038: Noise* in its production and injection operations. Any concerns about noise once the project is operating should be communicated to the AER's 24 hour response line.
- As there is no H₂S associated with Tidewater's project, a site specific ERP is not required. Tidewater must have a Corporate ERP that meets the requirement of AER *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry*. A corporate ERP must be in place to respond to incident, and ensure that there is an effective level of preparedness, and capability of personnel and equipment for an effective emergency response.

- Your concerns about previous Tidewater applications, approved infrastructure, and vandalism at Tidewater's site do not relate to and are outside the scope of the current applications.
- Tidewater has met the *Directive 056* consultation and notification requirements for the infrastructure applications, and must continue to notify all persons with known concerns on future applications. The infrastructure and subsurface applications are being considered as a project in its entirety.
- In support of your concerns about impacts to property values, you have provided a 230 page thesis by a graduate student at Purdue University in West Lafayette, Indiana. The paper is an examination into the effects of natural gas storage reservoirs and related infrastructure on property values in Indiana. This academic paper provides information about gas storage projects in Indiana, and is not specific to your property, Tidewater's gas storage project, or the area in Alberta where Tidewater's the project is located. It is therefore of limited value and does not support the argument that there may be an impact on your property value due to the current infrastructure or scheme amendment applications by Tidewater. The AER notes that you are approximately 1 km away from Tidewater's nearest proposed infrastructure (application 1882653), and 17.6 km away from the furthest proposed infrastructure (application 1884135). There is pre-existing oil and gas infrastructure and development in similar proximity to your lands. In addition, except where required to operate safely and effectively, Tidewater's natural gas pipelines will be buried underground.
- The concerns you have raised in your statement of concern have also been previously raised by you and adequately dealt with or addressed by AER decisions on previous applications, and by decisions of the AER on regulatory appeal requests filed by you in relation to those applications.

inquiries 1-855-297-8311
 24-hour
 emergency 1-800-222-6514

Based on the above, you have not demonstrated that you may be directly and adversely affected by approval of the applications or that the AER should hold a hearing before making its decision on the applications. The AER has issued the applied-for approvals, and this is your notice of that decision. Copies of the approvals are attached. Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website, <http://www.aer.ca/applications-and-notice/appeals>.

If you have any questions, contact Lonny Olsen at 403-297-3513 or e-mail Lonny.Olsen@aer.ca.

Sincerely,

Lane Peterson
Director, Pipeline Authorizations

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

Enclosure (5): **(1 approval, 4 licences)**

cc: Clark Dickson, Tidewater
AER SOC Coordinator,
AER Grande Prairie Field Centre