

Via Email

June 20, 2016

KMSC Law LLP

Osler, Hoskin & Harcourt LLP

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca**Attention: Owen Lewis****Attention: Martin Ignasiak**

Dear Sirs:

**RE: Request for Regulatory Appeal by Silvia Coulas
Ferus Natural Fuels Inc. (Ferus)
Application No.: 1847839
Licence No.: 49026 (Facility Licence)
Location: 08-08-070-116M
Regulatory Appeal No. 1852107 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered Silvia Coulas' request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve the Facility Licence. The AER has reviewed Ms. Coulas' submissions and the submissions made by Ferus.

For the reasons that follow, the AER has decided that Ms. Coulas is not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is 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]...

The term "appealable decision" is defined in section 36 of the *REDA*. Specifically relevant to this regulatory appeal request is section 36(a)(iv):

36(a)(iv) A decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

The AER notes the request for regulatory appeal was filed within 30 days of issuance of the Facility Licence and Ferus states that it does not advocate that the request for regulatory appeal be dismissed on the basis that no SOC was filed.

Reasons for Decision

The decision to issue the Facility Licence is an appealable decision as the decision was made under the *Oil and Gas Conservation Act (OGCA)* without a hearing. In order for Ms. Coulas to be an eligible person to request a regulatory appeal of the Facility Licence, she must demonstrate that she is a person who is directly and adversely affected by the AER's decision to issue the Facility Licence.

Ms. Coulas filed extensive submissions. Her position is that she is directly and adversely affected by the decision to issue the Facility Licence because:

- The February 19, 2016 Noise Impact Assessment (“NIA”) report does not accurately reflect the current noise impact on her property. An independent NIA should occur on her land and an independent expert should review the existing NIA reports. Existing NIA reports dated February 19, 2016, April 14, 2014, February 14, 2014 and December 6, 2013 were attached to Ms. Coulas’ submissions.
- There is a cumulative noise impact from the Ferus Elmworth facility and the other industrial activities in the area.
- Ferus failed to obtain the necessary NIA and failed to provide notice of the Facility Licence application.
- The NIA Ferus uses considers the implementation of noise reduction strategies at the ConocoPhillips plant to arrive at numbers that barely fall under permissible levels and/or exceed permissible levels under *Directive 038: Noise Control*. The current situation with the existing equipment is not considered by the NIA reports and the ConocoPhillips fan retrofit program to reduce noise has not been completed. It is submitted that an unimplemented future noise reduction strategy should not be taken into account on the Ferus NIA and not factor in the Permissible Sound Level (“PSL”).
- FDI acoustics (“FDI”) has prepared numerous past reports regarding this area and in reference to its December 6, 2013 report regarding the Northstone Power Plant, FDI notes that noise contributions from ConocoPhillips’ and Ferus’ facilities were not included and that when the Northstone plant operates at maximum level in the summer, with the doors open, the PSL is exceeded.
- Of the NIAs available, only the April 14, 2014 Northstone NIA takes into account the operations of the ATCO and Northstone facilities and shows noise which potentially exceeds permissible levels. When considering the cumulative impacts of ConocoPhillips’ and Ferus’ plants with existing equipment it is difficult to see how the sound levels cannot be exceeded.
- The existing equipment at the ConocoPhillips plant has not been taken into account in the current Ferus NIA.
- Although the ConocoPhillips’ plant has been in operation since before 1988 and has been granted deferred status, Ms. Coulas has made numerous complaints and as per *Directive 038* the deferred status should not be taken into consideration when performing the NIA. If the deferred status were removed, eight of ten residences in the area would not be within the permitted PSL.
- Low level parameter noise has likely been exceeded at all residences and although referenced in these submissions, a formal complaint will follow as a separate application. On page 38 of the February 19, 2016 FDI report, table 19 it shows where at six of the ten residences low frequency components may exist and should be tested. An article Ms Coulas references states “intense low frequency noise appears to produce clear symptoms including respiratory impairment and aural pain” Ms. Coulas states these symptoms have become prevalent in her and her family.
- Damage has occurred to Ms. Coulas’ property, including cracks in her home. This may be attributable to vibration from activity in the area and low frequency noise.
- When all factors are taken into consideration in preparing an NIA, it is likely that both the daytime and night-time PSLs will be exceeded and that the low level parameters for noise have been exceeded.

Ferus states that Ms. Coulas has not demonstrated that she is directly and adversely affected by the issuance of the Facility Licence for two reasons. First, she has not demonstrated that her complaints about noise and other nuisances originate from the Ferus Elmworth facility. Her concerns are with numerous industrial facilities in the area. Second, issuance of the Facility License by the AER did not result in any change in construction or operations at the Ferus Elmworth facility; therefore, the alleged adverse effects Ms. Coulas refers to in her request for a regulatory appeal all pre-date the issuance of the Facility Licence. The Ferus Elmworth facility commenced operations in May of 2014 and the only effect of issuing the Facility Licence was to bring the facility into compliance with the AER’s determination that liquefied natural gas facilities are subject to the *OGCA*. Ms. Coulas has not demonstrated that she is “directly and adversely affected” by the issuance of the Elmworth License and is therefore not an “eligible person” under the *REDA* to request a regulatory appeal. The AER should dismiss the request for a regulatory appeal pursuant to section 39(4)(c) of the *REDA* on the basis that the appeal is not properly before it.

The AER notes that the Ferus Elmworth facility commenced commercial operations in May of 2014 and has been in continuous unchanged operation since then. The 2015 Ferus Elmworth facility licence application was to meet new requirements of the AER that these types of facilities required an approval pursuant to the OGCA. The Ferus Elmworth facility as an operating facility did not change with the licence application and the only effect of the licence was to bring the facility into compliance with the AER's determination that liquefied natural gas facilities are subject to the OGCA.

The AER finds that the issuance of the Facility Licence was an administrative decision as it did not result in any construction, expansion or change in operations at the Ferus Elmworth facility. The Ferus Elmworth facility complied with all AER regulatory requirements and there were no adverse effects as a result of the issuance of the Licence. Ms. Coulas has not demonstrated that she is directly and adversely affected by the AER's issuance of the Facility Licence.

Regarding Ms. Coulas' concerns about noise, the AER confirms that *Directive 038* states the requirements for noise control as they apply to all operations and facilities under the jurisdiction of the AER. The directive also provides background information and describes an approach to deal with noise problems. *Directive 038* attempts to take a balanced viewpoint considering the interests of both the nearby residents and the licensee. It does not guarantee that a resident will not hear noises from a facility; rather it aims to not adversely affect indoor noise levels for residents near a facility. The directive sets permissible sound levels (PSLs) for outdoor noise, taking into consideration that the attenuation of noise through the walls of a dwelling should decrease the indoor sound levels to where normal sleep patterns are not disturbed. With regard to the NIA reports referred to in Ms. Coulas' submissions, the AER notes that the February 19, 2016 NIA reflects the current noise emissions in this area. Table 11 of the February 19, 2016 NIA shows that as a stand-alone facility, Ferus' noise impact at Ms. Coulas' residence is 20.2 dBA, which is almost 20 dBA lower than the night-time PSL. As a stand-alone facility, Ferus' Elmworth facility is in compliance with *Directive 038* with a significant margin.

In regard to Ms. Coulas' concerns about cumulative noise and other industrial facilities in the area, the AER notes that the most current NIA of February 19, 2016 indicates that the cumulative sound, including the Ferus facility, is in compliance with *Directive 038*. The NIA report shows that the cumulative sound levels at Ms. Coulas' residence are in compliance with the PSL of deferred status. Table 11 of the February 19, 2016 NIA indicates that in regard to the Ferus facility, its noise contribution is 20.2 dBA which is well below the contribution from major facilities in this area.

With respect to Ms. Coulas' low frequency noise concerns, she indicates in her submission that although low frequency complaints are included as a reference in her submissions, a separate formal complaint will follow to address the low frequency noise situation.

Having regard to the above, the AER finds that the Ferus Elmworth facility is operating in compliance with *Directive 038* requirements and Ms. Coulas has not demonstrated that she is directly and adversely affected by the Ferus facility or issuance of the Facility Licence.

Other Grounds

Ms. Coulas has also raised another ground in her regulatory appeal request that does not go to the issue of whether she is directly and adversely affected. This ground is that Ferus did not provide notice to her of its application for a facility licence as required by section 5.1 of the *Rules*. In its submissions, Ferus confirms that it is not requesting that the regulatory appeal request be dismissed on the basis that no SOC was filed and the AER is not making a decision on that basis. However, the AER notes that Ms. Coulas attended the County of Grande Prairie No. 1 (County) council meeting on April 8, 2013 where the Ferus Elmworth facility was discussed. At that meeting, Ms. Coulas voiced her concerns including those regarding noise. Ferus representatives, also in attendance, responded to those concerns.

In addition to attending the 2013 County meeting, Ferus engaged with Ms. Coulas regarding her concerns in October of 2014, and on February 23 and March 17 of 2015. In March of 2016, Ferus provided Ms. Coulas with a summary of its NIA for its Elmworth facility. It also offered to provide the entire report to Ms. Coulas and meet with her. Ferus is prepared to continue ongoing engagement with Ms. Coulas even if her request for a regulatory appeal is dismissed.

In any event, the above matters are irrelevant to the question of whether Ms. Coulas is an “eligible person” or whether the decision is considered an “appealable decision”. The above grounds do not address the test for a regulatory appeal request which is whether Ms. Coulas has demonstrated that she is directly and adversely affected by the AER’s decision to issue the Licence for the Ferus Elmworth facility.

Conclusion

For the foregoing reasons, the AER finds that Ms. Coulas is not directly and adversely affected by the AER’s decision to issue the Ferus Elmworth Facility Licence, and therefore is not an “eligible person” under section 36(b)(ii) of the *REDA*. Accordingly, the AER dismisses Ms. Coulas’ request for a regulatory appeal pursuant to Section 39(4)(c) of the *REDA*.

The AER further notes that in its submissions Ferus confirms its commitment to continue its ongoing engagement with Ms. Coulas to discuss her concerns, and the AER expects Ferus to follow through with this commitment. If Ms. Coulas has any further complaints that are operational in nature she should contact the:

Grand Prairie Field Centre:
Suite 204
9906 – 106 Street
Grande Prairie, AB T8V 6L6
T: 780-538-5138

Sincerely,

[Original signed by]

K. Fisher,
Manager, Regulatory Effectiveness

[Original signed by]

Doug Boyler, P. Eng.
Chief Operations Engineer

[Original signed by]

Nancy Barnes,
Director Oil and Gas