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Canada Energy Law Service (Alberta) Constance D. Hunt and Alastair R. Lucas Release No. 2, November 2023

Publisher's Special Release Note 2023

The pages in this work were reissued in November 2023 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the November 2023 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This release features updates to the commentary and legislation throughout the service.

Commentary Highlights

- **ERCB Background and General Issues — Constitutional Jurisdiction of the Alberta Energy Regulator (formerly the ERCB & EUB) — First Nations’ Rights —** In response to concerns raised in a Statement of Concern (SOC) about a proposed pipeline, the AER in its April 12, 2023 letter decision concluded that a hearing was not required to further consider the issues raised in the SOC. The AER noted that Aboriginal rights and traditional land use activities are held by a collective such as a First Nations Band or a Metis Settlement, not by an individual. Therefore, the AER concluded that SOC’s should be filed by a First Nation or Metis Settlement, not an individual. The AER noted that the concerns raised in the SOC about the ability of Indigenous people to harvest plants and food were general in nature and lacked detail on where these activities were carried out and how the activities might be impacted by the proposed project. Furthermore, concerns about the loss of fur bearing animals and compensation for any loss of business related to industrial activity on Crown lands was best addressed by the Alberta Trapper’s Compensation Board. The AER also concluded that the concern in the SOC about increased road traffic was outside of AER jurisdiction, and that Spur Petroleum had indicated that it would take measures to mitigate road traffic during the construction and operation of the pipeline. The AER indicated in the letter decision that noise concerns raised in the SOC had been addressed by imposing the requirements set out in *Directive 038: Noise Control*, on the company. In addition, the AER noted that concerns raised in the SOC about health-related environmental impacts from chemicals that might contaminate the soil and water contamination were general and appeared to be operational in nature.
- **ERCB Background and General Issues — The AER’s Relationship with Other Regulatory Agencies, Departments and Processes — Land Conservation and Reclamation —** In its June 8, 2023 letter decision the AER concluded that a hearing was not required to consider the reclamation concerns outlined in a SOC filed in response to Application No. 32001223. The AER noted that a detailed assessment of the reclaimed wellsite are for soil, landscape, and vegetation had been completed in August 2022, that showed the conditions of the reclaimed site were comparable both on-site and on adjacent land, thus satisfying the *2010 Reclamation Criteria for Wellsites and Associated Facilities* for

Cultivated Lands. In response to concerns about land subsidence, the AER noted that the *Reclamation Criteria*, allows for minor variations of up to 5 cm in micro contour. Likewise, in response to concern raised about the presence of large rocks on the surface of the reclaimed site, the AER noted that the rocks had been removed to address that concern. After considering the issues raised in the SOC, the AER concluded that it was unnecessary to hold a hearing and issued the reclamation certificate.

- **Practice and Procedure — Rehearing and Reconsideration** — On April 12, 2023, the applicant requested the inclusion of an information request (IR) as part of the hearing process for the regulatory appeal of a pipeline licence, based on the amount and complexity of new information provided by Pieridae Alberta Production Ltd. on April 4, 2023. The information to be provided was in response to a March 28, 2023, letter sent by the AER that requested additional information. It was submitted that one round of information requests was necessary to ensure the fair and efficient conduct of the hearing. In response, Pieridae submitted that it was unreasonable and inappropriate for the applicant to request an IR process so far into the proceedings, and that the request would likely delay the current hearing schedule which would prejudice Pieridae.

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