



# Oil and Gas Appeal Tribunal

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## **DECISION NO. OGAT-OGA-21-A001(a)**

In the matter of an appeal under section 72 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36.

<b>BETWEEN:</b>	Dejour Energy (Alberta) Ltd.	<b>APPELLANT</b>
<b>AND:</b>	Oil and Gas Commission	<b>RESPONDENT</b>
<b>BEFORE:</b>	A Panel of the Oil and Gas Appeal Tribunal Darrell Le Houillier, Panel Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on May 21, 2021	
<b>APPEARING:</b>	For the Appellant: Temple Jeremiah For the Respondent: Claire Bond, Counsel	

## **SUMMARY DISMISSAL DECISION**

### **BACKGROUND**

[1] Dejour Energy (Alberta) Ltd. (the "Appellant") held a number of petroleum and natural gas leases granted by the Ministry of Energy, Mines and Low Carbon Innovation (the "Ministry") in British Columbia. These included lease titles 52769, 52770, and 59628 (the "Leases"). It is unclear based on the information available when the Leases began.

[2] The Appellant secured several well authorization permits issued by the Oil and Gas Commission (the "Commission") in 2007 and 2008. Some of these were transferred from an original permit-holder and some were issued as new permits to the Appellant by the Commission. The Appellant obtained another permit in 2014. Included in these well authorization permits were those numbered 22881, 22887, 23736, 23737, 23845, and 30889 (the "Authorizations"). The Authorizations relate to the Leases.

[3] The Appellant was required to pay rental fees to the Ministry in respect of the Leases. It failed to pay rental fees on the Leases that were due from January to May 2020.

[4] According to section 63 of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 31 (the "PNGA"), petroleum and/or natural gas leases expire 60 days after rentals are due if they are not paid.

[5] As a result of section 63, the Leases expired between March 27 and July 19, 2020.

[6] The current management and shareholder of the Appellant acquired the company in August 2020 and was, at that time, unaware that the Leases had expired. At the time, there were no operations ongoing and there was no staff carried over through the transition.

[7] According to correspondence that the Ministry sent to the Appellant on October 20, 2020, the rights to petroleum and natural gas resources contained in the Leases reverted to the Province.

[8] Section 39(3)(a)(i) of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36 (the "Act"), requires a permit holder to immediately suspend operations at a well when it ceases to be the holder of the associated petroleum or natural gas rights, or the "holder of the location" related to the well. The "holder of the location" means a person holding a licence, lease, or permit allowing it to operate the well.

[9] Notwithstanding that the associated Leases had expired and that the Appellant had ceased to be the "holder of the location", the Appellant continued to operate petroleum and natural gas wells authorized in at least two of the Authorizations after October 20, 2020. The Appellant says this was to test well integrity and to confirm necessary repairs and maintenance completed since August 2020 were adequate and was not for commercial sale of petroleum and/or natural gas.

[10] From early 2021, the Appellant began attempting to resolve the issues related to the expiry of the Leases with the Commission.

[11] On March 5, 2021, the Commission issued general order 2021-0025-01 (the "Order") to the Appellant, pursuant to section 49(1)(d) of the *Act*. The Order states that it was issued because the Appellant was not in compliance with section 39(3)(a)(i) of the *Act*. According to the Order, the Appellant was required to close the master valves on the wells that were the subjects of the Authorizations, and to either remove the handles on those valves or chain and lock those valves. The Appellant was also required to write to the Commission by March 11, 2021, confirming it had done so.

[12] The Appellant appealed the Order to the Oil and Gas Appeal Tribunal (the "Tribunal"). The Appellant asks the Tribunal to "allow [the Appellant] to repost the land title and acquire it back as soon as possible". The Appellant advises that if the facility and compressor station remain idle, pipes and instruments may freeze and cause greater environmental issues.

[13] The Commission has asked the Tribunal to dismiss the Appellant's appeal because it lacks the jurisdiction to consider the appeal or because there is no reasonable chance of success. The Tribunal provided the Appellant the opportunity to make submissions, and the Appellant did so. The Commission provided a further response.

## **ISSUE**

[14] Should the appeal be dismissed, either because it is not within the Tribunal's jurisdiction or because there is no reasonable prospect the appeal will succeed?

**DISCUSSION AND ANALYSIS**

[15] Section 31(1)(a) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "ATA"), permits the Tribunal to dismiss an appeal on a preliminary basis, if it is not within the Tribunal's jurisdiction to consider.<sup>1</sup>

[16] The Order was made under section 49(1)(d) of the *Act*. Section 49 appears in Division 2 of Part 5. Section 69(1) of the *Act* defines orders made in Division 2 of Part 5 as "determinations", and anyone named in such an order as an "eligible person". Section 72(1)(b) of the *Act* allows an "eligible person" to appeal a determination to the Tribunal, if that person has not requested a review of the determination by the Commission, under section 70 of the *Act*.

[17] In this case, the Appellant is an "eligible person" with respect to the Order, which is a determination. The Appellant has not requested a review of the Order, and therefore, the Appellant may appeal the Order to the Tribunal. In this sense, the Order falls within the jurisdiction of the Tribunal; however, that is not the end of the inquiry.

[18] The question of jurisdiction also requires that I consider what remedy the Appellant is seeking on appeal. It is not enough that the Order is appealable; the Appellant must also be asking the Tribunal for a remedy that it is capable of giving, in order for the appeal to be within the Tribunal's jurisdiction.<sup>2</sup>

[19] In this case, the remedy requested by the Appellant is that the Tribunal "allow [the Appellant] to repost the land title and acquire it back as soon as possible". I read this to mean that the Appellant wants the Licences to be restored as quickly as possible, so that the Appellant can put the wells associated with the Authorization back to use.

[20] The expiry of the Licences was not related to the Order; the Licences expired as a result of section 63 of the *PNGA*. The Tribunal does not have any authority with respect to the *PNGA*.

[21] Even considering the matter more broadly, the Appellant's requirement to suspend operations is not a result of the Order. Section 39(3)(a)(i) of the *Act* required that the Appellant immediately suspend its operations, because of the expiry of the Licenses. The Order was issued under section 49(1)(d) of the *Act* after the Appellant failed to comply with section 39 of the *Act*. This requirement in section 39 pre-dated the Order, and the Tribunal does not have jurisdiction over section 39 because it is not defined as a "determination" in section 69(1) of the *Act*. Accordingly, the Tribunal has no ability to authorize the Appellant to continue operating, notwithstanding the expiry of the Licenses.

[22] The Appellant's submissions indicate that it appealed because it was informed of its rights of appeal with respect to the Order. As summarized above, the Appellant has some rights of appeal; however, it has not raised an appealable issue related to the Order. The Appellant could have raised any issue it took with the requirement to shut off the master valves on the wells, to lock up or remove the handles on the valves, or to confirm that it had done so as set out in the Order.

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<sup>1</sup> Section 31 appears in Part 4 of the *ATA*. Section 20(d) of the *Act* provides that Part 4 of the *ATA* applies to the Tribunal, aside from some exceptions not relevant to this decision.

<sup>2</sup> See *Daniel Kerr v. Oil and Gas Commission*, decision No. 2011-OGA-005(b), December 12, 2011, at paragraph 58.

This would have been within the jurisdiction of the Tribunal; however, the grounds of appeal described by the Appellant are not.

[23] As a result, I conclude that the Tribunal has the authority, under section 31(1)(a) of the ATA, to summarily dismiss the appeal because it is not within the Tribunal's jurisdiction. The Appellant has not provided any persuasive reason why I should allow the appeal to continue despite the Tribunal's lack of jurisdiction over the issues the Appellant has sought to appeal. I see insufficient reason to expend the Tribunal's resources to consider the appeal on its merits, given these circumstances.

## **DECISION**

[24] In reaching my decision, I considered all the relevant documents and evidence, whether specifically referenced in my reasons or not.

[25] For the reasons provided above, I conclude that the appeal should be summarily dismissed because it is not within the Tribunal's jurisdiction. Given this conclusion, I do not need to consider whether the appeal should also have been summarily dismissed because it has no reasonable chance of success.

"Darrell Le Houillier"

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Darrell Le Houillier, Panel Chair  
Oil and Gas Appeal Tribunal

May 27, 2021