

Administrative Penalty Director’s Decision

Named Party: AlphaBow Energy Ltd. **BA Code:** A7H2

File No. 2022-013

Location of Event: Legal Subdivision 5 & 12 of 15-040-08W4M, near Hardisty, Alberta

Preliminary Penalty Assessment

Number of Counts Identified	Base Assessment Amount	Factor Variance(s)	
Count 1	\$3 500 x 6 days = \$21 000		+\$500
Count 2	\$3 500		+\$500
Total Counts: 2	Total Base Assessment: \$24 500	Total Variance:	\$1 000

Preliminary Penalty Assessment: \$25 500

Director’s Decision Summary

On March 27, 2023, I, Candace MacDonald, Director, Field Operations North for the Alberta Energy Regulator (AER) spoke with Jay Kleinsasser, Vice President Operations for AlphaBow Energy Ltd. (AlphaBow) to discuss the Preliminary Administrative Penalty Assessment (PA). Mr. Kleinsasser agreed to meet via videoconference to discuss the investigations findings. A copy of the PA was emailed to Mr. Kleinsasser, Mr. Ben Li, CEO, and Mr. Tim Doerksen, Sr. Production Engineer on March 28, 2023.

On April 13, 2023, I, Candace MacDonald, along with AER subject matter experts met with Mr. Kleinsasser.

The purpose of the meeting was to review the facts on which the PA was based, how the PA was calculated, and provide an opportunity for AlphaBow to share with the AER any relevant information not previously submitted to be considered prior to making a final decision.

The PA identified the following counts and penalty assessments.

Pipeline Act

COUNT #1

On November 12 and continuing on each day to November 17, 2021, during six days, in the Province of Alberta, AlphaBow Energy Ltd. did construct part

BASE PENALTY TABLE				
Seriousness of Contravention				
Extent of actual or potential loss or damage		Major	Moderate	Minor
		Major	5000	3500
Moderate		3500	2500	1500
Minor to		2500	1500	1000
None		1000	600	250

of a pipeline without holding a licence or acting pursuant to a direction of the Regulator under section 33 of the *Pipeline Act* authorizing the person to do so, contrary to section 6(1) of the *Pipeline Act*.

Seriousness of Contravention: Major

The AER requires all entities who wish to construct pipelines within Alberta to adhere to the requirements of the *Pipeline Act*. A pipeline licence must be obtained from the AER through a well-established application process prior to commencing with the construction of a pipeline. An application for a pipeline licence allows the AER to preemptively assess the eligibility of the applicant and assess the risks of constructing a pipeline. If warranted, the AER may issue a pipeline licence with conditions to mitigate site specific circumstances.

By constructing these pipelines designed to transport sour natural gas without holding licences to do so, AlphaBow circumvented the regulatory process which is fundamental to ensuring the safe and responsible development of energy resources within Alberta. As AlphaBow was on Global Refer, their pipeline licence applications are automatically subjected to additional regulatory scrutiny by the AER and do not immediately generate a pipeline licence or provide the authority to construct a pipeline.

Extent of Actual or Potential Loss or Damage: Moderate

By constructing pipelines without holding a licence, AlphaBow prevented the AER from assessing the risks and impacts associated with the activity, including technical review of sour service pipelines and associated impacts to residents or the public, and ensuring appropriate mitigative measures were put in place for safe operations. Additionally, the AER was prevented from assessing the adequacy of AlphaBow’s participant involvement program as part of a pipeline licence application. Further, the principle of a level regulatory playing field for all of industry was undermined.

The damage to the regulatory scheme not only undermines the AER's authority but also puts the public and environment at risk of loss or damage, which is only increased by the fact that these are sour gas service pipelines. The above is only tempered in that the investigation did not provide evidence of matters such as landowner or public concerns, public proximity to sour service pipelines, or additional technical requirements imposed by the AER under the licences issued. Accordingly, a classification of moderate is appropriate.

Base Assessment: \$3 500 x 6 days = \$21 000

Pipeline Act

COUNT #2

On November 11, 2021, in the Province of Alberta, AlphaBow Energy Ltd. did undertake operations preparatory to the construction of a pipeline without holding a licence or acting pursuant to a direction of the Regulator under section 33 of the *Pipeline Act* authorizing the person to do so, contrary to section 6(1) of the *Pipeline Act*.

Seriousness of Contravention: Major

The AER requires all entities who wish to undertake operations preparatory to the construction of pipelines within Alberta to adhere to the requirements of the *Pipeline Act*. A pipeline licence must be obtained from the AER prior to undertaking any operations preparatory to the construction of a pipeline. An application for a pipeline licence allows the AER to preemptively assess the eligibility of the applicant and assess both the risks and benefits of constructing a pipeline. If warranted, the AER may issue a pipeline licence with conditions to mitigate site specific circumstances.

By undertaking operations preparatory to constructing these pipelines without holding licences to do so, AlphaBow circumvented the regulatory process which is fundamental to ensuring the safe and responsible development of energy resources within Alberta. As AlphaBow was on Global Refer, the submission of a pipeline licence application to the AER does not automatically generate a pipeline licence or provide the authority to construct a pipeline.

Extent of Actual or Potential Loss or Damage: Moderate

By undertaking operations preparatory to the construction of pipelines without holding a licence, AlphaBow prevented the AER from assessing the risks and impacts associated with the activity, including reviewing the impacts to residents or the public, and ensuring appropriate mitigative measures were put in

place for safe operations. Additionally, the AER was prevented from assessing the adequacy of AlphaBow's participant involvement program as part of a pipeline licence application. Further, the principle of a level regulatory playing field for all of industry was undermined.

The damage to the regulatory scheme not only undermines the AER's authority but also puts the public and environment at risk of loss or damage, which is only increased by the fact that these are sour gas service pipelines. The above is only tempered in that the investigation did not provide evidence of matters such as landowner or public concerns, public proximity to sour service pipelines, or additional technical requirements imposed by the AER under the licences issued. Accordingly, a classification of moderate is appropriate.

Base Assessment: \$3 500

Factors to be Considered to Vary the Assessment

- (a) the importance to the regulatory scheme of compliance with the provision that was contravened;
- (b) the degree of wilfulness or negligence, if any, on the part of any person responsible for the contravention;
- (c) any steps taken by a person responsible for the contravention to avoid or limit the extent of any actual loss or damage that resulted or any potential loss or damage that may reasonably be expected to result from the contravention;
- (d) any steps taken by a person responsible for the contravention to prevent its recurrence;
- (e) any previous contravention of a provision prescribed by section 8.1 by a person responsible for the contravention;
- (f) whether a person responsible for the contravention derived or is likely to derive any economic benefit from the contravention;
- (g) any other factor that, in the opinion of the Regulator, is relevant.

Factors Applicable to this Case

Factor	Amount Varied	Description/Comments
(a)	+\$500	<p>Obtaining a licence prior to constructing a pipeline or conducting preparatory operations is critical to ensuring the safe, efficient, and orderly development of oil and gas resources.</p> <p>Although AlphaBow submitted two pipeline applications, the ability of the AER to review the applications prior to the preparation and construction was extinguished as AlphaBow commenced with operations two days after applying, but without first obtaining licences. The AER closed both applications due to AlphaBow's outstanding levies payable to the AER.</p>
(b)	+\$500	AlphaBow demonstrated an awareness that pipeline licence applications had to be submitted and had a history of obtaining licences for pipeline construction. In this case however, AlphaBow proceeded with construction of their pipelines without having first obtained the regulatory authority to do so. AlphaBow did not have the internal processes, nor the qualified people in place to ensure the regulatory requirements would be adhered to.
(c)	Neutral	Factor not applied in this case.
(d)	Neutral	Factor not applied in this case.
(e)	Neutral	Factor not applied in this case.
(f)	Neutral	Factor not applied in this case.
(g)	Neutral	Factor not applied in this case.

Discussion

At the April 13, 2023, meeting, an AER investigator provided a summary of the investigation's findings related to the contraventions. An AER senior compliance assurance specialist discussed the PA calculation, including the base penalty and variance factors.

During the meeting, Mr. Kleinsasser stated AlphaBow had lost much expertise in the year prior to this construction. He acknowledged that AlphaBow made a mistake, but they will apply the learnings on the construction of future pipelines. Mr. Kleinsasser agreed with the major and moderate assessment of the

counts but thinks the factors applied are a duplication. He also believes the two counts are a continuation of the same mistake.

AlphaBow requested, and the Director agreed to a deadline of April 19, 2023, to submit a written submission. On the morning of April 20, 2023, Mr. Kleinsasser left a voice mail with the Director and also sent an email requesting an extension for the written submission till noon of that day. The extension was granted by the Director via email to Mr. Kleinsasser on April 20, 2023. The Director received a written submission via email, before noon on April 20, 2023.

AlphaBow's written submission acknowledges AlphaBow's process errors in initiating this pipeline construction but at all times have "owned the issue". It states that process gaps were reviewed by AlphaBow and describes the steps they took prior to receiving the Information Request from the investigator in order to prevent future recurrences. AlphaBow emphasized that they were diligent by the fact they contacted the AER by way of the pressure test notification.

The AER recognizes that AlphaBow provided the pressure test notification, but a notification to the AER is also a regulatory requirement and is not discretionary.

AlphaBow provided context that these two pipelines were different than ones listed in the Due Diligence section of the PA. The three pipeline licences issued to AlphaBow between January 1, 2020, and November 8, 2021, were for new pipelines which were not actually constructed whereas this activity was a modification to existing pipelines. AlphaBow also stated "virtually all of the technical staff" had moved on from AlphaBow between January 2020 and October 2021.

The AER acknowledges both staffing challenges and the distinction in the pipelines but still places the onus on AlphaBow to be aware of and to adhere to all regulatory requirements.

AlphaBow requested in the written submission that "Count 2 be dropped or combined into Count 1".

Two counts are warranted as they have separate elements within section 6(1) of the *Pipeline Act* which are supported by the evidence. Further, even if the counts were combined, the net result would not change. AlphaBow contravened section 6(1) of the *Pipeline Act* from November 11, 2021, to November 17, 2021; combining the counts does not change this.

AlphaBow's written submission acknowledged their error and accepted the major classification for the seriousness of the contravention but requested the classification of moderate for the actual or potential loss or damage be reduced. This is a change in AlphaBow's position from the due process meeting where they accepted a major/moderate assessment. AlphaBow explained that the AER got to review the new pipeline applications, and subsequently issued the pipeline licences after construction occurred

“without any significant modification” and that there “was little (or no) additional cumulative impact on residents or the environment”.

The AER acknowledges the distinction AlphaBow is making above. However, at the point at which the AER became aware of this activity, the actual or potential loss or damage to the environment already occurred, regardless of whether the second set of pipeline applications were reviewed and approved by the AER.

With respect to Count #1, AlphaBow stripped soil, dug out and backfilled ditches, hydrovaced soil, pounded piles, directionally drilled, and installed pipeline. With respect to Count #2, AlphaBow stripped soil, strung out pipe and prepped the ends, hydrovaced soil and fenced off the holes in preparation for pipeline construction.

Although the new pipelines connected existing pipelines, AlphaBow’s preparatory operations and pipeline construction occurred outside of the existing pipeline right-of-way. The preparation and construction of a pipeline, licensed or not, is an actual alteration of the environment that does create some loss or damage to it; therefore, the actual loss or damage cannot be none.

Sour service pipelines, such as the ones AlphaBow constructed, pose a greater risk than sweet service lines and their construction may receive additional scrutiny by the AER through the application process and by increased field inspections. The AER was not given the opportunity to proactively assess the applications or to visually inspect the preparatory operations or the pipelines as they were buried prior to the AER becoming aware of the construction. Although the investigation did not provide evidence the pipeline construction gave rise to irreparable environmental damage, the principle of a level regulatory playing field for all of industry was undermined. Accordingly, a classification of moderate is appropriate.

AlphaBow’s written submission requested that the “Factors to be Considered to Vary the Assessment” be dropped as they feel the factors are not new but were already considered in the assessment of the contravention as major.

Factor (a) is complementary to the seriousness of the contravention and reinforces the importance of the base penalty to the overall regulatory scheme. The commencement of an activity without a licence while on Global Refer merits an increase under this factor. Factor (b) applies to negligent actions or omissions which occur before the contravention occurred. The investigation found that AlphaBow did not secure the licences, did not have qualified staff, and did not have sufficient process in place to ensure regulatory compliance, and did so while on Global Refer. The evidence derived from the investigation warrants the addition of these two factors.

Final Penalty Decision

I, Candace MacDonald, Director, Field Operations North for the AER, have fully considered all of the information collected in the investigation and verbal submission presented to me by AlphaBow in the April 13, 2023, meeting as well as the written submission AlphaBow sent to me on April 20, 2023.

I am of the opinion that Counts #1 and #2 described above did occur, are supported by the evidence, and that there was a lack of due diligence on the part of AlphaBow.

In response to AlphaBow's written submission regarding a reduction of the moderate assessment for the actual or potential loss or damage, the argument presented by AlphaBow does not speak to the potential loss or damage to the environment that occurred or could have occurred prior to the AER becoming aware of AlphaBow's activities. I determine that the classification of moderate will remain unchanged.

In response to AlphaBow's request that Count #2 being dropped or combined into Count #1, I determine that the two counts shall remain as the evidence supports the separate elements for each count.

In response to AlphaBow's request for factor (a) and factor (b) to be dropped from the assessment, I determine that these factors are warranted as not only did AlphaBow undertake these pipeline activities without first obtaining pipeline licences, but they did so while on Global Refer status without sufficient process and qualified staff in place. Note that I only applied these factors once, to the collective activity rather than one time to each unlicensed pipeline segment which would have doubled the value of the factors.

AlphaBow's written submission stated they "engaged a consultant/advisor who specialize in pipelines and integrity with extensive operations and regulatory experience to support future work" prior to receiving the Information Request from the investigator. The AER acknowledges that AlphaBow has taken steps to prevent a similar recurrence and as a result, I determine that the application of factor (d) which states "any steps taken by a person responsible for the contravention to prevent its recurrence" is warranted to decrease the amount of the final assessment.

I find the total base penalty amount reasonable and shall remain the same. In response to AlphaBow's submissions, the factors listed in the PA are adjusted as follows:

- Factor (a), (b) and (c): no change
- Factor (d): \$500 reduction; new assessment recognizes the prompt implementation of an experienced consultant to support future work as referenced in AlphaBow's written submission
- Factor (e), (f) and (g): no change

Number of Counts Identified	Base Assessment Amount	Factor Variance(s)	
Count 1	\$3 500 x 6 days = \$21 000	(a) +\$500 (b) +\$500 (d) -\$500	
Count 2	\$3 500		
Total Counts: 2	Total Base Assessment: \$24 500	Total Variance:	\$500

Final Assessment: \$25 000

Date: July 12, 2023

Director's Signature: <original signed by>
Candace MacDonald, Director, Field Operations North, AER