



Greenland Minerals A/S

Decision regarding application for alternative exploitation licence on the basis of Exploration Licence 2010-02

8. September 2023
case no. 2023 - 4265
doc. no. 23011166

1. INTRODUCTION

By decision of 1 June 2023, the Government of Greenland refused Greenland Minerals A/S's ("GM") application of 17 June 2019 for an exploitation licence at Kuannersuit in South Greenland. In this regard, it was stated that the Government of Greenland had not decided on GM's application of 16 December 2022 for an alternative exploitation licence. The Government of Greenland hereby informs that the processing of the application of 16 December 2022 has now been completed.

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2. REFUSAL OF APPLICATION FOR ALTERNATIVE EXPLOITATION LICENCE

The Government of Greenland refuses the application of 16 December 2022 for an alternative exploitation licence for the Kuannersuit project.

The decision is final and cannot be appealed to another administrative authority. The decision may be appealed to the Court of Greenland as the first instance within one year from today's date, see section 3d(1) and (4) of the Mineral Resources Act.

Below is a description of the main information in the matter and the reasons for the refusal.

3. STATEMENT OF FACTS

As described in the decision of 1 June 2023, GM on 17 June 2019 applied for an exploitation licence for the Kuannersuit project with reference to Exploration

Licence 2010/02. While this application was pending, GM on 16 December 2022 applied for an alternative exploitation licence. The application states, inter alia:

"Greenland Minerals hereby submits the following documentation in support of an amendment supplementing its existing exploitation licence application filed on 17 June 2019 to incorporate an additional and alternative licence solution:

1. Kvanefjeld Concentrator and Refinery Simple Process Diagram;

This has been amended from the original Process Flow Sheet (PFS) to delete the step in which uranium is separated from the rare earth-bearing solution with uranium instead being diverted through to the Tailings Storage Facility (TSF).

2. Environmental Impact Assessment – Alternative Flowsheet – dated 12 December 2022; This has been amended from the original Environmental Impact Assessment (EIA) to remove the parts that concern the production, transport and sale of uranium.

3. Memo from Arcadis Country: Canada Inc. – dated 9 December 2022; This is a memorandum prepared by Greenland Minerals' external radiological consultants, which concludes that the radiation doses associated with the Project will not materially change whether uranium is recovered as a product or is stored as waste.

4. Amended Feasibility Study – dated 14 December 2022.

This has been amended from the original Feasibility Study to implement the modified PFS and remove the parts of the Feasibility Study that concern uranium processing and how uranium is managed and transported (as yellowcake). This Amended Feasibility Study is provided with password protection, in light of its confidential and commercially sensitive nature. The password for the document will be provided upon confirmation by the Ministry that the Amended Feasibility Study will be kept confidential and not disclosed without the written consent of Greenland Minerals.

The alternative licence solution contained in this documentation is one in which only rare earths (fluorspar and zinc) are exploited, and uranium is not exploited but is, instead, removed as an impurity and placed in the TSF. As described above, we can confirm that the documentation (for which external technical consultants were engaged) demonstrates that the treatment of uranium in the alternative licence solution will not materially alter any radiological impact of the Kvanefeld Project.

Greenland Minerals declares in relation to the alternative licence solution that:

- 1. The deposit is commercially viable as demonstrated in the Amended Feasibility Study.*
- 2. It is the intention of the licensee to exploit the deposit in the manner outlined above and as described in the supplementary documentation provided.*
- 3. The Amended Feasibility Study contains all relevant information.*
- 4. The delineation of the exploitation area is described in the Amended Feasibility Study.*

Greenland Minerals notes that, as previously indicated to the Ministry, Greenland Minerals continues to perform technical optimisation work on the Project's flowsheet.

Outside of the above declaration and amended documentation, Greenland Minerals' exploitation licence application (both as originally framed and in relation to the supplementary alternative licence solution) is assessable on the basis of the documentation already submitted. In particular, the Social Impact Assessment (SIA) that has already been submitted in support of Greenland Minerals' exploitation licence application does not require amendment to account for the revised PFS for the alternative licence solution. Greenland Minerals notes, in this regard, that the amended PFS will produce no saleable uranium product and, as a result, the Greenland Government will receive no uranium royalties and will receive lower taxation receipts as Project revenues will be somewhat reduced."

As the application of 16 December 2022 for an alternative exploitation licence, with the above amendments, concerns the same project as the application of 17 June 2019, reference is made to the statement of facts in the decision of 1 June 2023. Therefore, this decision does not contain a full account of the facts, but the Government of Greenland provides the following additional information to the facts in the decision of 1 June 2023:

The Government of Greenland took over the field of mineral resources with effect from 1 January 2010 by adopting Inatsisartut Act no. 7 of 7 December 2009 on Mineral Raw Materials and Relevant Activities (the Mineral Resources Act).

On 1 February 2010, GM issued an announcement to the Australian stock exchange containing a “Pre-Feasibility Study” concerning the Kuannersuit project. On page 18 of the report, in the section “Permitting”, GMAS stated, inter alia, as follows:

“Currently there is a zero-tolerance toward uranium mining of any kind in Greenland. However Greenland Minerals and Energy have been fully permitted in all their exploration activities at Kvanefield to date by the Bureau of Minerals and Petroleum. The Company is exploring for, and evaluating, specialty metal resources in the northern Ilimaussaq Intrusive Complex. Mineral resources that have been identified by the Company to date are multi-element, or polymetallic, in nature and are inclusive of uranium-bearing minerals.

The Company conducts its work programs with the understanding that under the current regulations multi-element deposits such as those defined at Kvanefield to date cannot be exploited. The Company is working closely with the relevant authorities to define acceptable development scenarios.” (Emphasis added)

GM’s exploration licence in force at the time was to be renewed after the recently adopted Mineral Resources Act in 2010. In a proposal for the Government of Greenland on 24 February 2010, the mineral resources authorities recommended that the Government of Greenland approve the renewal of the exploration licence by granting Licence 2010-02 under the Mineral Resources Act. As regards GM’s licence terms, the proposal stated as follows (in translation):

"The licence does not give the right to exploration for radioactive elements and hydrocarbons. GME A/S has previously informed the Bureau of Minerals and Petroleum in writing that the company agrees that they are not entitled to an exploitation licence for the deposit."
(Emphasis added)

The Government of Greenland then authorised GM to be granted Exploration Licence 2010-02.

On 6 August 2010, GM sent a letter to the then Premier of the Government of Greenland, Kuupik Kleist, on a proposal for a possible change to the company's licence terms to include uranium, as well as what such a change would entail. The letter stated, inter alia:

"As I mentioned to you, one way forward and to ensure certainty for all parties moving forward is the concept of governmental "special dispensation" for the expansion of exploration license 2010/02 to include uranium for the purposes of further evaluation only [...]"

Expanding the current exploration license to include uranium gives the company the legal latitude to complete these detailed studies, but it does not give the company a right to mine; another point I think is critically important. At the end of this 2-3 year evaluation process all stakeholders can properly evaluate the best way forward based on the outcomes of the studies. If applicable, an application for an exploitation license would be made at this time and the government can decide, based on all possible information if an exploitation licence can be granted." (Emphasis added)

The Government of Greenland subsequently, on 9 September 2010, approved that sections 709-711 be added to the standard terms for GM's Exploration Licence 2010-02. Reference is made to the decision of 1 June 2023 for further details.

Further, on 22 November 2011, the mineral resources authorities sent a proposal to the Government of Greenland, whereby the mineral resources authorities recommended that the Government of Greenland approve the addition of Addendum 1 to GM's exploration licence. In Addendum 1, it was proposed that GM's exploration licence be extended to include radioactive elements. Reference is made to the decision of 1 June 2023 for further details in that regard.

The proposal for the Government of Greenland of 22 November 2011 indicated that the background for the proposal was to be found in meetings held between GM and the Government of Greenland (in translation):

"Greenland Minerals and Energy stated at the meetings with the Premier of the Government of Greenland and the Minister for Industry and Mineral Resources that it is not possible for the company to raise the sufficient funding for the continuation of exploration and any subsequent expansion activities, unless a clearer indication is given that the company may explore the deposit, including rare earth metals."
(Emphasis added)

On the consequences of the Government of Greenland's approval of the proposal for Addendum 1, the following was stated (in translation):

"The company has therefore asked for an addition to the standard terms or to their licence terms, stating that the company has the right to explore radioactive elements. In addition, the company has stated that it is agreed that, in such a case, it must be stated in the terms of the licence that the Government of Greenland has the right to refuse to grant an exploitation licence. Such refusal may be given for any reason, including political considerations." (Emphasis added)

The proposal also stated that the mineral resources authorities had consulted the authorities' lawyer in order to ensure that Addendum 1 (in translation) "*does not confer any right on the company to obtain an exploitation licence.*"

The Government of Greenland approved the recommendation for Addendum 1, which was notified to GM in December 2011.

As set out in the decision of 1 June 2023, the zero tolerance policy was abandoned by the 2nd examination of a proposal for a decision in principle in Inatsisartut on 24 October 2013. Prior to this, the then Minister for Industry, Mineral Resources and Labour Market, Jens-Erik Kirkegaard, stated, in answer to Question No. 167 in Inatsisartut on 17 September 2013, that (in translation) "*nor do [the terms] entitle the licensee to be granted an exploitation licence if the content of radioactive elements exceeds natural background levels*".

The same Minister for Industry, Mineral Resources and Labour Market, Jens-Erik Kirkegaard, presented, in connection with the abandonment of the zero tolerance

policy in Inatsisartut, a statement dated 23 October 2013 from the Ministry of Industry, Mineral Resources and Labour Market on the understanding of GM's special licence terms in the form of sections 709-711 of the standard terms and Addendum 1 to Exploration Licence 2010-02.

It was entitled "Statement on addendum to the standard terms of September 2010 relating to sections 709-711 and Addendum No. 1 to Licence 2010/02 for an area near Kuannersuit in south-western Greenland". The statement included the reasons for adding sections 709-711 to the standard terms (in translation):

"On 21 April 2010, the company Greenland Minerals & Energy A/S was granted an extension of Exploration Licence 2010/02 (formerly 2005/28) with an exclusive right of exploration for an area near Kuannersuit in south-western Greenland. Exploration Licence 2005/28 was granted under the then applicable standard terms. The licence covers mineral raw materials as specified in section 1 of the standard terms. The licence thus did not cover the exploration of radioactive elements.

Greenland Minerals and Energy informed by letter of 9 August 2010 that analyses had confirmed that the explored rare earth metals in the multi-element deposits could not be extracted without including radioactive elements in the mining process [...]

A clarification of the framework for what was permitted within the scope of the Standard Terms for exploration licences was therefore required.

This was a general issue that was not only linked to the multi-element deposits in Kuannersuit [...]

On this basis, the Government of Greenland approved the addition of 9 September 2010 to the Standard Terms for exploration licences with the new sections 709-711". (Emphasis added)

As regards the reasons for the mineral resources authorities' proposal to the Government of Greenland to approve Addendum 1 to the exploration licence, the following was stated (in translation):

"After obtaining the licence, the company continued the exploration under the new additions to standard terms 709-711.

In October 2011, the Premier of the Government of Greenland and ministers for industry and mineral resources held meetings with the management of the company Greenland Minerals and Energy A/S to inform about the progress of the exploration [...]

Greenland Minerals and Energy stated at the meetings with the Premier of the Government of Greenland and the Minister for Industry and Mineral Resources that it was not possible for the company to raise the sufficient funding for the continuation of exploration and any subsequent expansion activities, unless a clearer indication was given that the company may explore the deposit, including rare earth metals."

The following was then stated about the reasons for and consequences of the Government of Greenland's approval of Addendum 1 to GM's Exploration Licence 2010-02 (in translation):

"In order to ensure that the exploration process could be continued, an addition to the licence text was discussed to allow funding to continue the activities and to complete the EIA, health impact assessments, the SIA and the feasibility studies.

Against this background, the Government of Greenland approved the following addendum to the company's licence text

[...]

The addendum gives the company the right to explore radioactive elements. In addition, the addendum states that the Government of Greenland has the right to refuse to grant an exploitation licence. Such refusal may be given for any reason, including political considerations. The company agreed to this." (Emphasis added)

As mentioned in the decision of 1 June 2023, it was confirmed, inter alia, on 13 May 2016 by Randi Vestergaard Evaldsen, the then Minister for Mineral Resources, by her reply to the Section 37 Question No. 2016-115 from Múte B.

Egede, Member of Parliament, that the above-mentioned licence terms remained in force.

GM's special licence terms were again the subject of an answer to Section 37 Question No. 2019/266 in Inatsisartut, when the then Minister for Mineral Resources and Labour Market, Erik Jensen, answered a number of questions from Member of Parliament, Múte B. Egede. Thus, referring to the statement by the mineral resources authorities of 23 October 2013 on GM's special licence terms, Múte B. Egede again asked whether GM's special licence terms remained in force, to which the then minister replied in the affirmative.

4. CONSULTATION PROCES

By letter of 27 July 2023, the Ministry of Resources and Justice submitted a draft decision on GM's application for an alternative exploitation licence for the Kuannersuit project. The Ministry requested to receive GM's comments, if any, within two weeks from 27 July 2023.

On 2 August 2023, GM requested the Ministry for access to all documents and information in relation to the processing of GM's application for an alternative exploitation licence. In this connection, GM requested that the processing of its application of 16 December 2022 be suspended until the Ministry had finalised the processing of GM's request for access to documents.

By decision of 18 August 2023, the Ministry finalised the processing of GM's request for access to documents of 2 August 2023, extending the deadline for GM's submission of comments to 1 September 2023.

By letter of 1 September 2023, GM submitted its comments to the draft decision of 27 July 2023.

5. LEGAL FRAMEWORK

Reference is made to what is stated in the decision of 1 June 2023 concerning the application for an exploitation licence on the basis of Exploration Licence 2010-02.

6. REASONING

6.1 **The application for an alternative exploitation licence is covered by the Uranium Act, even if the application is directed at mineral raw materials other than uranium**

Section 1(1) of the Uranium Act states that the prospection, exploration and exploitation of uranium is not permitted. If the prospection, exploration or exploitation is directed against anything other than uranium, the provision in subsection (1) does not apply if the average content of uranium in the total resource is less than 100 ppm weight, see section 1(2) of the Uranium Act.

According to the bill on which the Uranium Act is based, the ban is intended to eliminate the risk of uranium spreading into the surrounding environment. However, mineral resources activities directed against anything other than uranium are allowed if the resource contains only very limited amounts of uranium, i.e. a threshold value for uranium content of 100 ppm (parts per million) based on weight, which is equivalent to 0.01 %. The legislature has considered that a threshold value of 100 ppm weight is sufficiently low to ensure the purpose of the Act, while allowing projects to continue to be carried out where the content of uranium does not exceed the natural background levels.

The ban of the Uranium Act on the exploitation of uranium is therefore justified by the decision to eliminate risks associated with mining where uranium may be released. The adoption of a ban on the exploitation of uranium on the basis of the principle of not only reducing risks but also eliminating risks associated with the exploitation of uranium falls within the competence of Inatsisartut as the legislature in the field of mineral resources.

It follows from the foregoing that mineral resources activities aimed at anything other than uranium are contrary to the Uranium Act if the average content of uranium in the resource exceeds the threshold value for uranium of 100 ppm.

As stated in the decision of 1 June 2023, it is apparent from the project description in the EIA report to the application of 17 June 2019 that the ore in the licence area contains approximately 300 ppm uranium. The application of 16 December 2022 for an alternative exploitation licence does not apply for a modified licence area, and it is therefore still assumed that the resource's average content of uranium is approximately 300 ppm. In GM's consultation response of 1 September 2023 GM has confirmed that the average content of uranium is approximately 300 ppm.

Although the activity is directed at minerals other than uranium, the exploitation does not fall below the threshold value laid down in section 1(2) of the Uranium Act. The project therefore involves the exploitation of uranium within the meaning of the Uranium Act and this above the threshold in section 1(2) and, on that basis, the granting of a licence would be contrary to section 1(1) of the Uranium Act.

Thus, what is stated in the application of 16 December 2022 that, after mining, the uranium is deposited in tailings rather than being produced, transported and sold, does not alter the fact that the application involves the exploitation of uranium as this is to be understood in section 1 of the Uranium Act and GM's licence terms. GM's statement in its consultation response of 1 September 2023 that the content of uranium in the material intended to be sold off commercially, allegedly should be approximately 0 ppm, is not relevant in this regard, as the threshold value for uranium content in the Uranium Act concerns the resource before exploitation activity.

The application of 16 December 2022 for an exploitation licence for the Kuannersuit project is thus subject to the Uranium Act's ban on prospection, exploration and exploitation of uranium in section 1. This applies even if Exploration Licence 2010-02 for the Kuannersuit project was granted prior to the effective date of the Uranium Act, see section 5(2) of the Uranium Act. The Uranium Act does not provide for the granting of exemptions from the ban in section 1 of the Act.

6.2 Refusal of alternative exploitation licence is not an intrusion on property (expropriative)

It is apparent from the legislative history of the Uranium Act that the Act is not in the nature of a compulsory acquisition¹ act and therefore does not provide for the compulsory acquisition of protected property rights. Against this background, it is also stated that a licence may therefore not be refused, restricted or revoked if this is specifically considered to constitute an expropriative interference with property protected by section 73 of the Danish Constitution.

However, this refusal of the application for an exploitation licence does not constitute an interference with property rights protected by section 73(1) of the Danish Constitution. This is because there is no interference with an existing right. Furthermore, there is no legitimate expectation that the application of 16 December 2022 would be granted.

In that regard, it should be noted that GM was granted Exploration Licence 2010-02 on the premise that it was not possible at that time and under the rules in force at the time to also obtain an exploitation licence for the deposit. GM was aware of this premise and expressed several times to the Government of Greenland and to the mineral resources authorities that the abandonment of the then zero tolerance policy and a change in GM's licence terms were a necessary precondition for GM's implementation of the project.

Even after the abandonment of the zero tolerance policy, the question of the use of mineral deposits with an increased content of radioactive elements and in particular uranium was the subject of political debate, and in Inatsisartut and in the general public there have been numerous debates over the years as to whether threshold values should be reintroduced in the mineral resources area for the permitted content of uranium in particular.

GM's special licence terms, in particular sections 709-711 of the standard terms for GM's Exploration Licence 2010-02, and Addendum 1 to the exploration licence, contain such conditions that GM could not have a legitimate expectation that GM would later be granted a licence for exploitation of the deposit.

In that regard, it should be noted that the addition in September 2010 of sections 709-711 to the standard terms of GM's Exploration Licence 2010-02 provided that GM could carry out exploration of minerals with a content of radioactive elements above general background radiation, but that at the same time did not give rise to the right to obtain a licence for the exploration and exploitation of radioactive elements.

It should also be noted that, in November 2011, the Government of Greenland approved Addendum No. 1 to GM's Exploration Licence 2010-02, whereby radioactive elements were also covered by GM's exploration licence in accordance with section 102 of the Addendum. At the same time, the Government of Greenland approved that Addendum 1, sections 201-202, provided that the extension of the licence to include radioactive elements did not at the same time entitle GM to a licence for exploitation of radioactive elements. This was repeated in section 304 of the Addendum. At the same time, it was stipulated in section 302 of the Addendum that the Government of Greenland could freely and without justification refuse an application for a licence for exploitation of radioactive elements.

These terms meant that GM's licence terms did not confer a right to a licence to exploit deposits with a uranium content above natural background levels.

The terms were therefore also in line with the zero tolerance policy then in force, as detailed in the decision of 1 June 2023. Furthermore, the Government of Greenland approved the relevant changes to GM's licence terms under this condition.

This very understanding of both the zero tolerance policy and GM's special licence terms is also described in "Statement on addendum to the standard terms of September 2010 relating to sections 709-711 and Addendum No. 1 to Licence 2010/02 for an area near Kuannersuit in south-western Greenland" of 23 October 2013 from the Ministry of Industry, Mineral Resources and Labour Market.

The purpose of GM's special licence terms was thus to provide knowledge as to whether the exploitation of the large deposits of raw materials (rare earth metals) in the project area in terms of environment, health and safety could be done, without the Government of Greenland thereby undertaking to grant an exploitation licence for the deposits. GM knew and accepted this premise.

It was also a prerequisite for Inatsisartut's abandonment of the zero tolerance policy in October 2013 that all licences in the field of mineral resources had been granted on such terms, that no rightholder had the right to be granted an exploitation licence if the content of radioactive elements exceeded the natural background levels, and that the abolition was a decision in principle which had no effect on any specific licences.

It has also been confirmed several times in the following years by changing ministers in the field of mineral resources that GM's special licence terms and the provisions of the statement of 23 October 2013 continued to apply.

Nor do the rest of the proceedings in this matter justify the existence of a legitimate expectation that a licence to exploit the deposit should be granted.

The Government of Greenland therefore refuses the application of 16 December 2022, since the granting of an exploitation licence is contrary to section 1(1) of the Uranium Act. What is stated in GM's consultation response of 1 September 2023 leads to no other result.

The Government of Greenland has not, in that regard, considered whether granting the licence would be in accordance with the rules of the Mineral Resources Act on environmental protection, climate protection and nature preservation, or whether GM's EIA report and SIA report with the consultation responses received would constitute a sufficient basis for its assessment.

7. INTRODUCTION

By decision of 1 June 2023, the Government of Greenland refused Greenland Minerals A/S's ("GM") application of 17 June 2019 for an exploitation licence at Kuannersuit in South Greenland. In this regard, it was stated that the Government of Greenland had not decided on GM's application of 16 December 2022 for an alternative exploitation licence. The Government of Greenland hereby informs that the processing of the application of 16 December 2022 has now been completed.

8. REFUSAL OF APPLICATION FOR ALTERNATIVE EXPLOITATION LICENCE

The Government of Greenland refuses the application of 16 December 2022 for an alternative exploitation licence for the Kuannersuit project.

The decision is final and cannot be appealed to another administrative authority. The decision may be appealed to the Court of Greenland as the first instance within one year from today's date, see section 3d(1) and (4) of the Mineral Resources Act.

Below is a description of the main information in the matter and the reasons for the refusal.

9. STATEMENT OF FACTS

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"Greenland Minerals hereby submits the following documentation in support of an amendment supplementing its existing exploitation licence application filed on 17 June 2019 to incorporate an additional and alternative licence solution:

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- 1. The deposit is commercially viable as demonstrated in the Amended Feasibility Study.*
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Outside of the above declaration and amended documentation, Greenland Minerals' exploitation licence application (both as originally framed and in relation to the supplementary alternative licence solution) is assessable on the basis of the documentation already submitted. In particular, the Social Impact Assessment (SIA) that has already been submitted in support of Greenland Minerals' exploitation licence application does not require amendment to account for the revised PFS for the alternative licence solution. Greenland Minerals notes, in this regard, that the amended PFS will produce no saleable uranium product and, as a result, the Greenland Government will receive no uranium royalties and will receive lower taxation receipts as Project revenues will be somewhat reduced."

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The proposal also stated that the mineral resources authorities had consulted the authorities' lawyer in order to ensure that Addendum 1 (in translation) "*does not confer any right on the company to obtain an exploitation licence.*"

The Government of Greenland approved the recommendation for Addendum 1, which was notified to GM in December 2011.

As set out in the decision of 1 June 2023, the zero tolerance policy was abandoned by the 2nd examination of a proposal for a decision in principle in Inatsisartut on 24 October 2013. Prior to this, the then Minister for Industry, Mineral Resources and Labour Market, Jens-Erik Kirkegaard, stated, in answer to Question No. 167 in Inatsisartut on 17 September 2013, that (in translation) "*nor do [the terms] entitle the licensee to be granted an exploitation licence if the content of radioactive elements exceeds natural background levels*".

The same Minister for Industry, Mineral Resources and Labour Market, Jens-Erik Kirkegaard, presented, in connection with the abandonment of the zero tolerance policy in Inatsisartut, a statement dated 23 October 2013 from the Ministry of Industry, Mineral Resources and Labour Market on the understanding of GM's special licence terms in the form of sections 709-711 of the standard terms and Addendum 1 to Exploration Licence 2010-02.

It was entitled "Statement on addendum to the standard terms of September 2010 relating to sections 709-711 and Addendum No. 1 to Licence 2010/02 for an area near Kuannersuit in south-western Greenland". The statement included the reasons for adding sections 709-711 to the standard terms (in translation):

"On 21 April 2010, the company Greenland Minerals & Energy A/S was granted an extension of Exploration Licence 2010/02 (formerly 2005/28) with an exclusive right of exploration for an area near Kuannersuit in south-western Greenland. Exploration Licence 2005/28 was granted under the then applicable standard terms. The licence covers mineral raw materials as specified in section 1 of the standard

terms. The licence thus did not cover the exploration of radioactive elements.

Greenland Minerals and Energy informed by letter of 9 August 2010 that analyses had confirmed that the explored rare earth metals in the multi-element deposits could not be extracted without including radioactive elements in the mining process [...]

A clarification of the framework for what was permitted within the scope of the Standard Terms for exploration licences was therefore required.

This was a general issue that was not only linked to the multi-element deposits in Kuannersuit [...]

On this basis, the Government of Greenland approved the addition of 9 September 2010 to the Standard Terms for exploration licences with the new sections 709-711". (Emphasis added)

As regards the reasons for the mineral resources authorities' proposal to the Government of Greenland to approve Addendum 1 to the exploration licence, the following was stated (in translation):

"After obtaining the licence, the company continued the exploration under the new additions to standard terms 709-711.

In October 2011, the Premier of the Government of Greenland and ministers for industry and mineral resources held meetings with the management of the company Greenland Minerals and Energy A/S to inform about the progress of the exploration [...]

Greenland Minerals and Energy stated at the meetings with the Premier of the Government of Greenland and the Minister for Industry and Mineral Resources that it was not possible for the company to raise the sufficient funding for the continuation of exploration and any subsequent expansion activities, unless a clearer indication was given that the company may explore the deposit, including rare earth metals."

The following was then stated about the reasons for and consequences of the Government of Greenland's approval of Addendum 1 to GM's Exploration Licence 2010-02 (in translation):

"In order to ensure that the exploration process could be continued, an addition to the licence text was discussed to allow funding to continue the activities and to complete the EIA, health impact assessments, the SIA and the feasibility studies.

Against this background, the Government of Greenland approved the following addendum to the company's licence text

[...]

The addendum gives the company the right to explore radioactive elements. In addition, the addendum states that the Government of Greenland has the right to refuse to grant an exploitation licence. Such refusal may be given for any reason, including political considerations. The company agreed to this." (Emphasis added)

As mentioned in the decision of 1 June 2023, it was confirmed, inter alia, on 13 May 2016 by Randi Vestergaard Evaldsen, the then Minister for Mineral Resources, by her reply to the Section 37 Question No. 2016-115 from Múte B. Egede, Member of Parliament, that the above-mentioned licence terms remained in force.

GM's special licence terms were again the subject of an answer to Section 37 Question No. 2019/266 in Inatsisartut, when the then Minister for Mineral Resources and Labour Market, Erik Jensen, answered a number of questions from Member of Parliament, Múte B. Egede. Thus, referring to the statement by the mineral resources authorities of 23 October 2013 on GM's special licence terms, Múte B. Egede again asked whether GM's special licence terms remained in force, to which the then minister replied in the affirmative.

10. CONSULTATION PROCES

By letter of 27 July 2023, the Ministry of Resources and Justice submitted a draft decision on GM's application for an alternative exploitation licence for the

Kuannersuit project. The Ministry requested to receive GM's comments, if any, within two weeks from 27 July 2023.

On 2 August 2023, GM requested the Ministry for access to all documents and information in relation to the processing of GM's application for an alternative exploitation licence. In this connection, GM requested that the processing of its application of 16 December 2022 be suspended until the Ministry had finalised the processing of GM's request for access to documents.

By decision of 18 August 2023, the Ministry finalised the processing of GM's request for access to documents of 2 August 2023, extending the deadline for GM's submission of comments to 1 September 2023.

By letter of 1 September 2023, GM submitted its comments to the draft decision of 27 July 2023.

11. LEGAL FRAMEWORK

Reference is made to what is stated in the decision of 1 June 2023 concerning the application for an exploitation licence on the basis of Exploration Licence 2010-02.

12. REASONING

12.1 **The application for an alternative exploitation licence is covered by the Uranium Act, even if the application is directed at mineral raw materials other than uranium**

Section 1(1) of the Uranium Act states that the prospection, exploration and exploitation of uranium is not permitted. If the prospection, exploration or exploitation is directed against anything other than uranium, the provision in subsection (1) does not apply if the average content of uranium in the total resource is less than 100 ppm weight, see section 1(2) of the Uranium Act.

According to the bill on which the Uranium Act is based, the ban is intended to eliminate the risk of uranium spreading into the surrounding environment. However, mineral resources activities directed against anything other than uranium are allowed if the resource contains only very limited amounts of uranium, i.e. a threshold value for uranium content of 100 ppm (parts per million) based on weight, which is equivalent to 0.01 %. The legislature has considered that a threshold value of 100 ppm weight is sufficiently low to ensure the purpose

of the Act, while allowing projects to continue to be carried out where the content of uranium does not exceed the natural background levels.

The ban of the Uranium Act on the exploitation of uranium is therefore justified by the decision to eliminate risks associated with mining where uranium may be released. The adoption of a ban on the exploitation of uranium on the basis of the principle of not only reducing risks but also eliminating risks associated with the exploitation of uranium falls within the competence of Inatsisartut as the legislature in the field of mineral resources.

It follows from the foregoing that mineral resources activities aimed at anything other than uranium are contrary to the Uranium Act if the average content of uranium in the resource exceeds the threshold value for uranium of 100 ppm.

As stated in the decision of 1 June 2023, it is apparent from the project description in the EIA report to the application of 17 June 2019 that the ore in the licence area contains approximately 300 ppm uranium. The application of 16 December 2022 for an alternative exploitation licence does not apply for a modified licence area, and it is therefore still assumed that the resource's average content of uranium is approximately 300 ppm. In GM's consultation response of 1 September 2023 GM has confirmed that the average content of uranium is approximately 300 ppm.

Although the activity is directed at minerals other than uranium, the exploitation does not fall below the threshold value laid down in section 1(2) of the Uranium Act. The project therefore involves the exploitation of uranium within the meaning of the Uranium Act and this above the threshold in section 1(2) and, on that basis, the granting of a licence would be contrary to section 1(1) of the Uranium Act.

Thus, what is stated in the application of 16 December 2022 that, after mining, the uranium is deposited in tailings rather than being produced, transported and sold, does not alter the fact that the application involves the exploitation of uranium as this is to be understood in section 1 of the Uranium Act and GM's licence terms. GM's statement in its consultation response of 1 September 2023 that the content of uranium in the material intended to be sold off commercially, allegedly should be approximately 0 ppm, is not relevant in this regard, as the threshold value for uranium content in the Uranium Act concerns the resource before exploitation activity.

The application of 16 December 2022 for an exploitation licence for the Kuannersuit project is thus subject to the Uranium Act's ban on prospection, exploration and exploitation of uranium in section 1. This applies even if Exploration Licence 2010-02 for the Kuannersuit project was granted prior to the effective date of the Uranium Act, see section 5(2) of the Uranium Act. The Uranium Act does not provide for the granting of exemptions from the ban in section 1 of the Act.

12.2 Refusal of alternative exploitation licence is not an intrusion on property (expropriative)

It is apparent from the legislative history of the Uranium Act that the Act is not in the nature of a compulsory acquisition² act and therefore does not provide for the compulsory acquisition of protected property rights. Against this background, it is also stated that a licence may therefore not be refused, restricted or revoked if this is specifically considered to constitute an expropriative interference with property protected by section 73 of the Danish Constitution.

However, this refusal of the application for an exploitation licence does not constitute an interference with property rights protected by section 73(1) of the Danish Constitution. This is because there is no interference with an existing right. Furthermore, there is no legitimate expectation that the application of 16 December 2022 would be granted.

In that regard, it should be noted that GM was granted Exploration Licence 2010-02 on the premise that it was not possible at that time and under the rules in force at the time to also obtain an exploitation licence for the deposit. GM was aware of this premise and expressed several times to the Government of Greenland and to the mineral resources authorities that the abandonment of the then zero tolerance policy and a change in GM's licence terms were a necessary precondition for GM's implementation of the project.

Even after the abandonment of the zero tolerance policy, the question of the use of mineral deposits with an increased content of radioactive elements and in particular uranium was the subject of political debate, and in Inatsisartut and in the general public there have been numerous debates over the years as to whether threshold values should be reintroduced in the mineral resources area for the permitted content of uranium in particular.

GM's special licence terms, in particular sections 709-711 of the standard terms for GM's Exploration Licence 2010-02, and Addendum 1 to the exploration licence, contain such conditions that GM could not have a legitimate expectation that GM would later be granted a licence for exploitation of the deposit.

In that regard, it should be noted that the addition in September 2010 of sections 709-711 to the standard terms of GM's Exploration Licence 2010-02 provided that GM could carry out exploration of minerals with a content of radioactive elements above general background radiation, but that at the same time did not give rise to

the right to obtain a licence for the exploration and exploitation of radioactive elements.

It should also be noted that, in November 2011, the Government of Greenland approved Addendum No. 1 to GM's Exploration Licence 2010-02, whereby radioactive elements were also covered by GM's exploration licence in accordance with section 102 of the Addendum. At the same time, the Government of Greenland approved that Addendum 1, sections 201-202, provided that the extension of the licence to include radioactive elements did not at the same time entitle GM to a licence for exploitation of radioactive elements. This was repeated in section 304 of the Addendum. At the same time, it was stipulated in section 302 of the Addendum that the Government of Greenland could freely and without justification refuse an application for a licence for exploitation of radioactive elements.

These terms meant that GM's licence terms did not confer a right to a licence to exploit deposits with a uranium content above natural background levels.

The terms were therefore also in line with the zero tolerance policy then in force, as detailed in the decision of 1 June 2023. Furthermore, the Government of Greenland approved the relevant changes to GM's licence terms under this condition.

This very understanding of both the zero tolerance policy and GM's special licence terms is also described in "Statement on addendum to the standard terms of September 2010 relating to sections 709-711 and Addendum No. 1 to Licence 2010/02 for an area near Kuannersuit in south-western Greenland" of 23 October 2013 from the Ministry of Industry, Mineral Resources and Labour Market.

The purpose of GM's special licence terms was thus to provide knowledge as to whether the exploitation of the large deposits of raw materials (rare earth metals) in the project area in terms of environment, health and safety could be done, without the Government of Greenland thereby undertaking to grant an exploitation licence for the deposits. GM knew and accepted this premise.

It was also a prerequisite for Inatsisartut's abandonment of the zero tolerance policy in October 2013 that all licences in the field of mineral resources had been granted on such terms, that no rightholder had the right to be granted an exploitation licence if the content of radioactive elements exceeded the natural background levels, and that the abolition was a decision in principle which had no effect on any specific licences.

It has also been confirmed several times in the following years by changing ministers in the field of mineral resources that GM's special licence terms and the provisions of the statement of 23 October 2013 continued to apply.

Nor do the rest of the proceedings in this matter justify the existence of a legitimate expectation that a licence to exploit the deposit should be granted.

The Government of Greenland therefore refuses the application of 16 December 2022, since the granting of an exploitation licence is contrary to section 1(1) of the Uranium Act. What is stated in GM's consultation response of 1 September 2023 leads to no other result.

The Government of Greenland has not, in that regard, considered whether granting the licence would be in accordance with the rules of the Mineral Resources Act on environmental protection, climate protection and nature preservation, or whether GM's EIA report and SIA report with the consultation responses received would constitute a sufficient basis for its assessment.

Kind regards
Med venlig hilsen
Inussiarnersumik inuulluaqqusillunga



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