

BY E-MAIL ONLY

April 1, 2014

ATCO Energy Solutions Ltd.
200, 919 – 11 Avenue SW
Calgary AB T2R 1P3**Attention: Pat Creaghan, President**

Dear Mr. Creaghan:

**RE: APPLICATION NO. 1781418
KEYERA ENERGY LTD.
RIMBEY PLANT TURBO EXPANDER PROJECT
STATEMENT OF CONCERN NO. 28494**

As indicated by the attached Notice of Decision, the Alberta Energy Regulator (AER) has decided to approve Application No. 1781418 (Application) made by Keyera Energy Ltd. (Keyera). In arriving at this decision, the AER reviewed ATCO Energy Solutions Ltd.'s (ATCO) letter of January 13, 2014.

Pursuant to section 32 of the *Responsible Energy Development Act* (REDA) any person who believes they may be directly and adversely affected by an application may file a statement of concern (SOC) with the AER in accordance with the *Alberta Energy Regulator Rules of Practice* (the Rules). In this way, SOC filers are able to bring concerns to the attention of the AER at the start of the regulatory process. Filed SOCs will be reviewed by the AER. If the AER determines to disregard an SOC, the AER will continue to process the application to determine whether it meets technical requirements, and may approve same, without further consideration of any SOC that has been disregarded.

Section 6.2 of the Rules allows the AER to disregard a SOC, or any concern raised in it, if the AER concludes, *inter alia*:

- The SOC filer has not demonstrated he or she may be directly and adversely affected by the application;
- The concern relates to matters outside the AER's jurisdiction or beyond the scope of the Application;
- The concern has been adequately addressed in an earlier proceeding; or,
- For any other reason the AER considers the SOC is not properly before it.

ATCO's letter of January 13, 2014 satisfied the requirements of section 6(1) of the Rules and was filed in the time frame set out in section 5.3 of the Rules. For this reason, it was accepted as a

SOC by the AER. However, for the reasons stated below, the AER has determined that it is appropriate to disregard the ATCO SOC. For that reason, the concerns raised in the ATCO SOC did not form part of the AER's consideration of the Application for compliance with applicable requirements.

In its SOC, ATCO indicated:

- It is part owner of the Edmonton Ethane Extraction Plant (EEEP);
- EEEP's economic and commercial viability will be jeopardized by approval of the Application because the concentration of ethane available for processing at EEEP will be reduced by the Application;
- The Application will undercut the ethane realization value of EEEP and potentially cause its owners to revise EEEP's process design parameters. This could lead to the ethane throughput to be undermined which in turn would lead to unused processing capacity and in increased costs from design alterations.
- If the Application is approved there will be an increased ratio of CO₂ to ethane in the common stream which will create operational difficulties to efficiently and viably recover ethane. A cost-benefit analysis shows this change could cause EEEP to suffer increased operating costs leading to diminished operational viability for EEEP which is not in the public interest;
- EEEP serves 18 industrial consumers and it would not be in the public interest if there was diminished ethane recovery;
- Earlier proceedings involving upstream extraction to the detriment of straddle plants gave "standing" to the straddle plants to participate in hearings. Earlier decisions demonstrate as a fact that downstream straddle plants are directly and adversely affected by upstream leaning of the common stream.
- There is no evidence to justify Keyera obtaining priority access to extract ethane ahead of EEEP. Both are "midstreamers" not producers.
- The Inquiry into Natural Gas Liquids (NGL) Extraction Matters (EUB Decision 2009-009, February 4, 2009) provided guidance on how "lean gas streaming" matters should be considered.

1. Reasons for Disregarding the ATCO Statement of Concern

a. Direct and Adverse Effect

The AER has decided to disregard ATCO's SOC because the information provided in the ATCO SOC does not demonstrate that ATCO may be directly and adversely affected by the Application.

The AER is not satisfied that the alleged impacts to EEEP would be a direct and adverse effect resulting from an AER decision to approve the Application. It is the view of the AER that the impacts described would be a direct result of the producers' decision to have the NGLs in their gas removed in the field rather than placing that gas in the common stream without the NGLs extracted. The producers operate in a competitive marketplace and that is a decision they are entitled to make. The AER's decision to approve the Application to allow the requested modifications to the Keyera plant would not be the direct cause of the alleged harm: the decision of the producers to process their own gas is what may result in decreased NGL recovery at EEEP. At most, the Application might have an indirect impact on EEEP as a result of reduced receipts. The AER is not, however, an economic regulator in this context and therefore cannot make a decision on the Application that is based on ATCO's concerns about NGLs being diverted from the EEEP.

Moreover, ATCO confirms that the alleged harm to EEEP includes an economic loss and reduction of the plant's viability and efficiency. However, the information provided does not tell the AER what impacts ATCO may suffer. Rather, ATCO simply says it will be directly harmed by the Application but does not outline or articulate the nature and extent of the alleged harm. The AER does not consider that it has sufficient information before it to determine what impacts ATCO may suffer. It is not for the AER to speculate how harm to EEEP might translate into impact to ATCO as a part owner of EEEP. The information provided is insufficient to support a conclusion on this topic. Further, as the AER has concluded the Application could have only an indirect impact on EEEP, and the connection between the Application and ATCO is more remote, the AER's decision cannot have a direct and adverse impact on ATCO.

b. Not within the AER's Jurisdiction and Outside the Scope of the Application

The AER also notes that even if the information in the ATCO SOC was sufficient to show that the Application might cause ATCO to suffer some sort of direct and adverse impact, the impacts complained of would be caused by competition. The AER's mandate is set out in REDA¹ and the *Oil and Gas Conservation Act* (OGCA)². While the AER has the jurisdiction to consider whether the project is consistent with the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta, it does not have the jurisdiction to compel gas producers to have their gas processed at EEEP and protect EEEP from market forces and the competition arising therefrom. It is not within the scope of the AER's authority in the context of this application for the AER to interfere with market competition. For this reason, the AER considers that the ATCO SOC is not properly before it and should therefore be disregarded.

¹ REDA section 2 (1) (a)

² OGCA section 4.

c. Matters Addressed in Earlier Proceedings

The AER is also satisfied that the concerns raised in ATCO's SOC relate to matters that have been decided in previous applications. Implicit in the Energy Resources Conservation Board's approval of Keyera's 2007 application³ is the determination that recovery of ethane and propane plus from the existing raw gas inlet stream from the field to the Rimbey Plant is, subject to such extraction meeting the applicable technical requirements and regulations, in the public interest. In its consideration of the Keyera 2007 application, the Board noted that "producers have the right to extract NGL in the field".⁴ While each application before the AER must be considered on its own facts and meet the AER's requirements, in this matter the public benefit of field extraction of NGLs, particularly at Keyera's Rimbey Plant, has already been determined. For this reason, the AER considers that the ATCO SOC should be disregarded.

The AER notes that Keyera is not applying to extract NGLs from the common stream as is the case with side-streaming and co-streaming. Rather, Keyera is applying for authorization to conduct field extraction. For this reason, many of the decisions referenced by the parties have limited application to the present matter.

2. Section 33 Hearing Decision

The AER has decided not to hold a hearing to consider the Application.

Where a statement of concern is filed in respect of an application, section 33 of the REDA requires the AER to decide, in accordance with the Rules and subject to section 34, whether to conduct a hearing on the application. Section 34 requires the AER to conduct a hearing on an application if a hearing is required under the energy resource enactments, the regulations or the Rules. Otherwise, it is in the AER's discretion as to whether it will conduct a hearing to consider an application. In this matter, the legislation does not mandate that a hearing be held.

Where there is no requirement to hold a hearing, section 7 of the Rules provides that the AER may consider any of the specified factors when deciding whether or not to conduct a hearing on an application. The factors include whether any of the circumstances described in section 6.2 for disregarding a statement of concern apply.

For the reasons stated above, certain of the section 6.2 factors for disregarding a statement of concern apply to ATCO's SOC. For that reason, the AER has decided to disregard ATCO's SOC. This fact, combined with the fact the other SOC's filed in response to the Application have also been disregarded, leads the AER to conclude that it should exercise its discretion and not to hold a hearing to consider the Application.

³ Application No. 1526838

⁴ Letter decision of the ERCB to each of ATCO Midstream Ltd, NOVA Chemicals Corporation and AltaGas Ltd. dated March 13, 2008, concerning Application Nos. 1526838 and 153007

Please be advised that REDA and the Rules outline the requirements applicable to a request for a regulatory appeal made to the AER on a decision made by the AER under the energy enactments and to appeals of AER decisions made to the Court of Appeal of Alberta. Please refer to Part 2, Divisions 3 and 5 of REDA and Part 3 of the Rules.

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If you have any questions, please contact Jennifer Koppe, Authorization Specialist, by phone at 403-297-8288 or by e-mail at Jennifer.Koppe@aer.ca.

Yours truly,



Cathy Webb
Director, Authorizations Infrastructure
Authorizations (Oil & Gas)

Encl. – Notice of Decision

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