

BY E-MAIL ONLY

April 1, 2014

NOVA Chemicals Corporation
1000 7th Avenue S.W.
Calgary AB T2P 5L5

Attention: Sonia Mah, Manager, Regulatory Affairs

Dear Ms. Mah:

**RE: APPLICATION NO. 1781418
KEYERA ENERGY LTD.
RIMBEY PLANT TURBO EXPANDER PROJECT
STATEMENT OF CONCERN NO. 28495**

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 NOVA Chemicals Corporation's (NOVA) 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* (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 SOC's 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.

NOVA'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

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

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In its SOC, NOVA indicated:

- It uses ethane and NGLs as feedstock for its petrochemical facilities. Some of this feedstock comes from plants downstream of the Keyera Rimbey plant including the Edmonton Ethane Extraction Plant (EEEP);
- The “nature” of NOVA’s “present concern” is that it requires a better understanding of the potential impacts of the project on other pipelines and extraction facilities in the area;
- A significant portion of the gas that will flow to Rimbey if the Application is approved is currently processed at other extraction plants and NOVA seeks to mitigate any adverse impacts resulting from potential displacement of natural gas flows from these other extraction plants;
- Flow displacement to Rimbey could result in leaning of the gas stream downstream of Rimbey, which could lead to interference with or frustration of NOVA’s contractual rights for the purchase of ethane and NGLs to meet the needs of its facilities;
- Flow displacement could also lead to potential inefficient or duplicative extraction capabilities.
- The Application may not be consistent with the AER’s mandate to ensure the efficient and orderly development of energy resources in Alberta.
- The NOVA SOC was filed in time, relates to a matter within the AER’s jurisdiction, has not been adequately dealt with, and does not relate to government policy but to outcomes of the Application that could cause direct and adverse effect to NOVA.

1. Reasons for Disregarding the NOVA’s Statement of Concern

a. Direct and Adverse Effect

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

NOVA says the Application could reduce the ethane and NGL’s available for extraction downstream of Rimbey and this could lead to interference with or frustration of its contractual rights for the purchase of ethane and other NGLs to meet the needs of its petrochemical facilities. The AER considers that this assertion, without more, does not provide sufficient information to demonstrate possible adverse effect to NOVA. Even if such occurrence could be traced back to

the Application, it is not clear what the actual harm to NOVA might be. It is not appropriate for the AER to speculate as to what the harm might be based on the very limited information provided. Therefore the AER has concluded that NOVA has not demonstrated how it may be directly and adversely affected by the Application. Further, even if the AER were to try and assume or speculate what this might mean for NOVA in terms of harm, the chain of causation of such impacts would be too convoluted and remote to constitute a direct impact.

b. Matters Addressed in Earlier Proceedings

The AER is also satisfied that the concerns raised in NOVA'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 application¹ 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".² 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 has considers that the NOVA 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

¹ Application No. 1526838

² 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 1530007.

application. The factors include whether any of the circumstances described in section 6.2 for disregarding a statement of concern apply.

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

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.

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

cc: Osler LLP Attn: Sander Duncanson via e-mail: sduncanson@osler.com
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