

Digest of Alberta Energy Regulator Participatory and Procedural Decisions

Between 30 September 2015 and 1 February 2017

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Introduction

The Alberta Energy Regulator (AER) began posting what it refers to as participatory/procedural decisions (presumably a sub-set of a broader category of letter decisions) on its website in the fall of 2015. The AER provides a brief description of each matter on the website, but it is still a laborious task to click and retrieve each document and assess its significance. Hence this project, which provides a digest of each decision collated into one searchable document, making the decisions more usable and accessible. Given the number of decisions (already over 170) we have not attempted to synthesise or *précis* their contents. Rather, the exercise has been more of a cut-and-paste job hewing closely to the AER's actual text. Each decision also includes key words categorizing its subject matter. There is no additional commentary. The next step will be to present this information as a set of web-pages. That is a work in progress. Eventually, we anticipate writing a short annual survey of these decisions assessing trends and perhaps highlighting some of the more important decisions.

David Rennie (JD 2017) began this work as a summer student in 2016 preparing digests of the first 85 decisions and Amy Matychuk (JD 2018), also a summer student in 2016, continued the work for the latter part of the summer and through the fall. Nigel Bankes provided direction and supervision.

We hope that researchers will find this tool useful and we welcome your feedback to ndbankes@ucalgary.ca.

Alphabetical List of Key Words

abandonment
abandonment costs
Aboriginal Consultation Office
Aboriginal rights
administrative penalty
advance of funds
agenda
agricultural land
air quality
alternative dispute resolution
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animal habitat
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technical competency
traditional knowledge
traditional lands
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trapping
treaty rights
trespass
undue harm
unmarked graves
venting
waste disposal
wastewater disposal
water
water quality
wetlands
wildlife
without prejudice
written submissions

Dale and Janette Snider, Kelly and Paula Dressler/ARC Resources Ltd. (ARC), Statements of Concern No. 30537 and 30554, Feb 1 2017

Proponent application type: Application No. 1876418 to rescind an existing unit spacing approval in the Berrymoor Cardium Unit (partial) in favor of current standard spacing provisions for the Pembina Cardium as per Subsurface Order No. 5.

Procedural or other issue: Do Statements of Concern No. 30537 and 30554 establish a direct and adverse effect on the Sniders or the Dresslers?

Statute or Rule Applied: s. 4.040 of the *Oil and Gas Conservation Rules*, [Alta Reg 151/1971](#); s. 2.2.1(4) of [Directive 056: Energy Development Applications and Schedules](#); Alberta Energy Regulator [Subsurface Order No. 5](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals issued.

Reasons: ARC has submitted an application to rescind the oil holding that is approved for 4 wells per pool per quarter section and revert to the spacing provisions specified in Subsurface Order No. 5. The Order states that there are no well density restrictions in a drilling spacing unit, and the target area for a gas or oil well must be the central area within the drilling spacing unit having sides 100 metres from the sides of the drilling spacing unit and parallel to them unless otherwise prescribed by the regulator.

The Sniders and Dresslers are landowners in the area of the application. Their concerns relate to the impacts that adding three more wells will have on noise levels (both parties), water supply (Sniders only), and increased traffic (Sniders only). However, approval of rescinding the special well spacing does not authorize the drilling of any wells, nor the construction of any related facilities. The application relates solely to subsurface reservoir development. The concerns expressed in the parties' statements relate to surface infrastructure that may or may not be constructed and operated by ARC at a future date. Accordingly, they are not directly and adversely affected. However, pursuant to s. 2.2.1(4) of *Directive 056*, now that ARC is aware of the parties' surface concerns, ARC is required to include them in its participant involvement program for any surface application it plans to file in the area with the AER.

Subject Headings: landowner, directly and adversely affected, equipment spacing, noise, water, traffic, holding, subsurface order

Quattro Exploration and Production Ltd. (Quattro)/Canadian Coyote Energy Ltd. (Coyote) and Pismo Energy Ltd. (Pismo), Statement of Concern No. 30458, Jan 9 2017

Proponent application type: Licence Transfer (Application No. 1876968)

Procedural or other issue: Does Statement of Concern No. 30458 establish a direct and adverse effect on Quattro?

Statute or Rule Applied: [Bulletin 2016-21: Revision and Clarification on Alberta Energy Regulator's Measures to Limit Environmental Impacts Pending Regulatory Changes to Address the Redwater Decision](#)

Ruling: No direct and adverse effect established. No hearing required. Applications approved.

Reasons: Quattro has working interests in some of the well and facility licenses for which Pismo seeks a transfer. However, its interest is less than 20% and less than the interest that Pismo (or Redondo Resources Ltd.) acquired through the Approval and Vesting Order dated May 10, 2016, for the sale of Canadian Coyote Holdings Ltd. (Holdings) working interest in CCEL properties. In reviewing a transfer application, the AER considers whether the proposed transferee will be able to meet its obligations throughout the life cycle of energy development in accordance with *Bulletin 2016-21*. Pismo meets all AER requirements to become a licensee.

Subject Headings: directly and adversely affected, licence transfer, industry v industry

TransCanada Pipelines Limited (TransCanada)/Gibson Energy Inc. (Gibson), Husky Oil Operations Limited (Husky), and AER Closure & Liability Group, Request to Participate, Jan 20 2017

Proponent application type: Regulatory Appeals No. 1866028 (from Husky) and 1866029 (from Gibson)

Procedural or other issue: Is TransCanada permitted limited participation in the appeals from Husky and Gibson?

Statute or Rule Applied: s. 32.1(2)(c) and (b)(i) of the *Alberta Energy Regulator Rules of Practice* [Alta Reg 99/2013](#) (the Rules)

Ruling: TransCanada is permitted participate in the appeals on the limited basis it requests, on its own behalf and on behalf of Keystone.

Reasons: Gibson and Husky are appealing an Environmental Protection Order (EPO) issued July 7, 2016. TransCanada requested limited participation in the appeals on its own behalf and on behalf of TransCanada Keystone Pipeline GP Ltd. (Keystone). It seeks receipt of communications in the proceeding contemporaneously with the other parties, the ability to monitor the proceeding, and the ability to make closing comments to the panel. None of the other parties object to TransCanada's limited participation. Gibson did not object on the condition that it be permitted to provide further comment if the panel considers granting TransCanada any participation beyond what it seeks in its request to participate.

TransCanada applied to participate pursuant to s. 32.1(2)(c), which requires TransCanada to demonstrate that its participation will assist the panel in making a decision on the appeals. The panel declined to grant participation on that basis. However, pursuant to s. 32.1(2)(b)(i), TransCanada is also required to state why it may be directly and adversely affected by the appeal. Given the nature of TransCanada's and Keystone's interests in this matter and the possible effects of the plume on their assets, the panel concludes that its decision on the appeals could directly and adversely affect TransCanada or Keystone. Therefore, the panel is prepared to allow TransCanada, on its own behalf and on behalf of Keystone, to participate in the appeals on the limited basis it requests (with the exception that any member of the public may monitor an AER proceeding, and permission to do so does not need to be granted). TransCanada is required to confirm its intention to participate in writing before January 27, 2017.

Subject Headings: request to participate, regulatory appeal, environmental protection order, material assistance, directly and adversely affected, participation scope

Fort McKay First Nation (FMFN)/Prosper Petroleum Ltd. (Prosper), Recusal Request, Jan 16 2017

Proponent application type: Application for Approval of the Rigel Oil Sands Project (Application No. 1778538); Applications 00370772-001 and 001-341659

Procedural or other issue: Is a reasonable apprehension of bias raised if Commissioner Daniels or Commissioner Macken remains on the panel hearing Prosper's application?

Statute or Rule Applied: Prosper Petroleum Ltd. Regulatory Appeal of 24 Well Licenses and a Letter of Authority, Undefined Field, November 5, 2014 ([2014 ABAER 013](#)); *Wewaykum Indian Band v. Canada* [2003] 2 SCR 259, 2003 SCC 45 at para. 60 citing *Committee for Justice and Liberty v. National Energy Board*, (1976), [1978] 1 S.C.R. 369; *Lavesta Area Group Inc. v. Alberta* (Energy and Utilities Board) [2012 ABCA 84](#) at paras 24, 26, 28, 29; *Responsible Energy Development Act*, [SA 2012, c R-17.3](#), s. 9.

Ruling: A reasonable informed person would not conclude that the presence of either Commissioner Daniels or Commissioner Macken creates an apprehension of bias.

Reasons: The panel sent a letter to FMFN disclosing that Commissioner Daniels had worked with Sander Duncanson, counsel for Prosper, during her employment at TransCanada Pipelines Ltd. from 2008 to 2014. Following receipt of the letter, FMFN objected to Commissioner Daniels sitting on the panel to hear Prosper's application due to a reasonable apprehension of bias and requested that she, as well as Commissioner Macken, recuse themselves. FMFN submitted that because Commissioner Macken had sat on a panel in an earlier matter related to the current application, her presence also raised a reasonable apprehension of bias. The panel denied the request without reasons via a letter on January 5, 2017. These are the reasons for the denial.

The test for a reasonable apprehension of bias comes from *Wewaykum Indian Band v. Canada*, quoting *Committee for Justice and Liberty v. National Energy Board*: would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly? The onus to establish reasonable apprehension of bias lies on the party alleging it. The grounds must be serious, substantial and based on a real likelihood or probability, not mere suspicion. Bald assertions of bias are not sufficient. There is a strong presumption that the panel will properly discharge its duties and is not tainted by bias. *REDA* s. 9 establishes that commissioners owe a duty of care in carrying out their powers, duties, and functions.

The test from *Wewaykum Indian Band*, when applied to Commissioner Daniels, establishes that there is no evidence of an apprehension of bias present in the circumstances and it is not more likely than not that the Commissioner would decide the Prosper applications unfairly. As part of her role at TransCanada, Commissioner Daniels maintained a professional relationship with Mr. Duncanson, was involved in TransCanada's aboriginal consultation with FMFN, and occasionally worked with Mr. Duncanson. There is no evidence to suggest that their professional relationship was sufficiently close or of such a nature that a reasonable informed person would have concerns about Commissioner Daniels' ability to make an impartial decision in the present matter. There is also no evidence to suggest that Commissioner Daniels' involvement in TransCanada's aboriginal consultation with FMFN will impair her ability to make an impartial decision in the present matter. FMFN argued that a reasonable amount of time had not elapsed since Commissioner Daniels opposed FMFN, but provided no evidence that TransCanada and FMFN had been opposed between 2008 and 2014. FMFN's claims are no more than mere suspicions or possibilities of bias.

The test from *Wewaykum Indian Band*, when applied to Commissioner Macken, establishes that there is no evidence of an apprehension of bias present in the circumstances and it is not more likely than not that the Commissioner would decide the Prosper applications unfairly. Commissioner Macken previously participated on a panel that made the regulatory appeal decision on approvals issued for Prosper's oil sands exploration (OSE) program for the present Rigel project. FMFN submits that the issues in the previous hearing are the same issues that will be raised in this hearing and that Commissioner Macken is therefore inclined to approve the present applications. When bias is alleged based on a decision-maker's involvement in previous proceedings, the connection between the previous and the current proceedings is relevant, according to *Lavesta Area Group Inc. v. Alberta (Energy and Utilities Board)*. However, prior involvement does not inevitably lead to disqualification, and the circumstances in which an automatic apprehension of bias will arise are very narrow. There must be some meaningful indication of a real objective prospect that the decision maker's mind was affected by bias, and there is none here. Prosper's OSE program was assessed pursuant to different legislation than the current applications, and the current applications will be decided based on evidence filed and arguments made in this proceeding. FMFN has not provided evidence that suggests that somehow Commissioner Macken's mind is closed, or strongly resistant to persuasion, and cannot be swayed by the arguments or evidence that she will hear in the upcoming hearing.

Subject Headings: bias, recusal request

Allen Pukanski/NEP Canada ULC, Statement of Concern No. 30442, Dec 20 2016

Proponent application type: New Oil Satellite, 0.9% H₂S (Application No. 1869020) and New Oil Effluent, 34 mol/kmol H₂S (Application No. 1869138)

Procedural or other issue: Does Statement of Concern No. 30442 establish a direct and adverse effect on Mr. Pukanski?

Statute or Rule Applied: [Directive 056](#): Energy Development Applications and Schedules; [Directive 038](#): Noise Control

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: The proposed facility and pipeline are not located on Mr. Pukanski's lands, nor would the applications result in setbacks on his lands or include his lands in the emergency planning zone. The facility would be located on an existing lease. NEP meets the requirements of *Directive 56* regarding consultation. The facility is a multiwell oil satellite, and does not have any compressors, additional surface equipment, or hydraulic fracturing that would contribute to noise in the area. Pipelines, once constructed, will not contribute to noise in the area, and NEP is required to comply with *Directive 38* with respect to noise. Mr. Pukanski's health-related concerns about flaring are general in nature, and there is no continuous flaring associated with these applications. His concerns regarding property value and caveats are also general in nature, and are not within the AER's jurisdiction.

Subject Headings: directly and adversely affected, property values, noise, flaring, pipeline, setbacks, emergency planning zone, landowner, consultation, health, jurisdiction

Interested Parties and Counsel/Bashaw Oil Corp., Preliminary Decision on Participation, Dec 20 2016

Proponent application type: New critical sour well, 21.15% H₂S (Application No. 1842705); New Proximity Critical Wells, 21.15% H₂S (Application Nos. 1851246 and 1851250)

Procedural or other issue: Who is entitled to participate in the hearing on Bashaw's applications?

Statute or Rule Applied: s. 34(3) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the Rules)

Ruling: 15 parties, those who own or occupy land within the Emergency Planning Zone, or whose only route of egress is through the EPZ, are permitted to participate in the hearing.

Reasons: According to s. 34(3) of REDA, those who may be directly and adversely affected by an application are entitled to be heard at that application's hearing. In addition, the Rules allow the AER to grant participation status to persons who have a tangible interest and whose participation will materially assist without materially delaying the proceedings or repeating or duplicating evidence.

In the current case, based on submitted Statements of Concern, the panel defines those directly affected by Bashaw's application as those who own or occupy land within the 0.88 km Emergency Planning Zone (EPZ) or those whose only route of egress in the event of an emergency at one of the three proposed wells is through the EPZ. There are therefore 15 parties, identified by name, entitled to participate in the hearing of Bashaw's application. These parties are not required to participate, but if they wish to do so, they must confirm in writing that they intend to participate before January 17 at 4:00pm. They must also indicate in writing which outcome they advocate, the nature and scope of their intended participation, and

their contact information. Sometime after that, the panel will establish the nature and scope of each participant's involvement under s. 9.1(1) of the Rules.

Each participant, before confirming intent to participate and scope of participation, should consider the factors the AER considers when making an award with respect to costs, set out in s. 58.1 of the Rules. Any parties not identified by name who wish to participate must submit a request to the AER and the Applicant.

Subject Headings: directly and adversely affected, participation scope, request to participate, emergency planning zone, costs, landowner, material assistance

Métis Nation of Alberta Association Fort McMurray Local Council 1935 (McMurray Métis)/Imperial Oil Resources Ventures Limited (Imperial), Statement of Concern No. 30426, Dec 16 2016

Proponent application type: land use for Oil Sands Exploration Application 160020 (Application No. A10033421)

Procedural or other issue: Does Statement of Concern No. 30426 establish a direct and adverse effect on the McMurray Métis?

Statute or Rule Applied: Lower Athabasca Regional Plan (LARP)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: According to the McMurray Métis, its members reside in Fort McMurray and some surrounding areas (it is not clear which areas). The community of Fort McMurray is 102 km from the project area, which is located on the McMurray Métis' traditional lands. The concerns raised by the McMurray Métis are general in nature and the SOC did not provide sufficient detail on where its members' activities take place and how the Application may impact those activities. The McMurray Métis has not demonstrated that the Application will directly and adversely affect it. The proposed activities are permitted under LARP. Any impacts from future applications would be assessed at the time of those applications.

Subject Headings: directly and adversely affected, First Nations/Métis, traditional lands, LARP

Métis Nation of Alberta Association Fort McMurray Local Council 1935 (McMurray Métis)/Imperial Oil Resources Ventures Limited (Imperial), Statements of Concern No. 29930 and 30425, Dec 16 2016

Proponent application type: Oil Sands Exploration Application No. 160006, New Multiwell Pad, 0% H2S (Application No. 1869196), and New single well 0 H2S (Application No. 1869631)

Procedural or other issue: Do Statements of Concern No. 29930 and 30425 establish a direct and adverse effect on the McMurray Métis?

Statute or Rule Applied: Lower Athabasca Regional Plan (LARP); Teck Resources Limited, [2013 ABAER 017](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals and licences issued.

Reasons: The applications meet all regulatory requirements. The statements of concern lack enough detail about the impact of the Oil Sands Exploration (OSE) program, and the McMurray Métis has not

demonstrated that the applications directly and adversely affect it. However, the concerns raised are substantially within the AER's jurisdiction. The proposed activities are permitted under LARP. In addition, OSE impacts are localized and temporary according to *Teck Resources* because evaluation wells are abandoned after drilling and will not produce bitumen. Impacts from future applications will be assessed at the time of those applications.

Subject Headings: directly and adversely affected, oil sands exploration, jurisdiction, First Nations/Métis, LARP

Allen Pukanski/NEP Canada ULC (NEP), Regulatory Appeal Request, Dec 7 2016

Proponent application type: Request for regulatory appeal for a new multi-well pad, 1.94% H2S (Application No. 1857298)

Procedural or other issue: Is the AER's decision appealable? Is Mr. Pukanski eligible to request a regulatory appeal?

Statute or Rule Applied: ss. 36(a)(iv), 36(b)(ii), 38(1) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#); [Directive 060](#): *Upstream Petroleum Industry Flaring, Incinerating, and Venting*; [Directive 038](#): *Noise Control*

Ruling: The decision is appealable, but Mr. Pukanski is not eligible to request an appeal because he is not directly and adversely affected.

Reasons: Mr. Pukanski appealed the AER's decision to issue licenses to NEP for four wells referred to as the 12-4 wells. The AER issued its decision under the *Oil and Gas Conservation Act* (an energy enactment) without holding a hearing, making the decision appealable under s. 38(1) of REDA.

However, Mr. Pukanski is not eligible to request an appeal because he is not directly and adversely affected by the decision. He asserted that another set of wells, the 7-4 wells, affected him by causing stress and sleep disruption, creating noise audible at his property, and excess flaring on one occasion. Based on his experience with the 7-4 wells, he asserted that the 12-4 wells would have a similar effect. Mr. Pukanski's history with the 7-4 wells does not demonstrate that the 12-4 wells will affect him. Mr. Pukanski's request for a regulatory appeal with respect to the 7-4 wells was also denied because he did not establish a direct and adverse effect.

Other problems with the 12-4 wells, Mr. Pukanski asserted, include a caveat placed on his property and a decrease in his property value and attractiveness to potential buyers. He also expressed concern that the well application does not meet zoning bylaws. He also has health and safety concerns, noise concerns, and concerns about the visual irritation of the wells. However, NEP will meet the requirements in *Directive 060* and *Directive 038* with respect to noise, and will follow its Water Body Mitigation Plan. The AER will manage operational noise concerns through its field process. Because NEP will meet the AER's requirements and is willing to be responsive to concerns at the site through noise level monitoring, sound wall installation, and water well testing, Mr. Pukanski will not be directly and adversely affected.

None of these concerns demonstrate a direct and adverse effect because they are general in nature or relate to a different, resolved matter. He did not provide sufficient information to support his general concerns. The caveat on his property relates to another development, not the current matter. Concerns about future development also do not demonstrate a direct and adverse effect. Matters related to the County of Parkland's land development process are outside the AER's jurisdiction.

It is unnecessary to address issues related to the filing of Mr. Pukanski's statement of concern because he is not eligible to request a regulatory appeal.

Subject Headings: eligible person, regulatory appeal, appealable decision, directly and adversely affected, property values, noise, flaring, water wells, landowner, health, safety

Canadian Natural Resources Limited (CNRL)/Alberta Energy Regulator—Public Lands, Regulatory Appeal Request, Dec 7 2016

Proponent application type: Regulatory appeal No. 1864625 for the AER's refusal to process applications for a mineral surface lease and a licence of occupation

Procedural or other issue: Is the AER's decision appealable? Is CNRL eligible to request an appeal? Is the AER's decision revoked?

Statute or Rule Applied: ss. 36(a)(iii), 36(b)(i), and 41(2) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); ss. 211 and 212 of the *Public Lands Administration Regulation*, [Alta Reg 187/2011](#) (PLAR); s. 121(1) of the *Public Lands Act*, [RSA 2000, c P-40](#) (PLA)

Ruling: The decision is appealable and CNRL is eligible to request an appeal. However, the parties agreed to a resolution, with the result that the AER's decision is revoked and no appeal hearing is necessary. The mineral surface lease and licence of occupation are reinstated.

Reasons: The Public Lands group and CNRL agreed to a resolution requiring the revocation of Public Lands' decision not to process CNRL's applications for a mineral surface lease and a licence of occupation. Public Lands' decision meets the definition of "appealable decision" in REDA s. 36(a)(iii) and the requirements in the PLAR and PLA. CNRL is also an eligible person under REDA s. 36(b)(i). Although CNRL is eligible to request an appeal, no appeal hearing is necessary due to the agreed resolution.

Subject Headings: eligible person, appealable decision, regulatory appeal, mineral surface lease, licence of occupation, public lands

John Winchester/Petrus Resources Corp (Petrus), Request for Suspension, Dec 6 2016

Proponent application type: Original applications for two New Multi Wells, 0% H2S (Applications No. 1861228 and 1867410); regulatory appeal request and request for suspension from John Winchester

Procedural or other issue: Has Mr. Winchester met the *RJR Macdonald* test for a stay?

Statute or Rule Applied: ss. 38(2) and 39(2) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); [Directive 056](#): *Energy Development Applications and Schedules*; [Directive 038](#): *Noise Control*; [RJR -- MacDonald Inc. v. Canada \(Attorney General\)](#), [1994] 1 SCR 311; [Ominayak v Norcen Energy Resources](#), [1985] 3 W.W.R. 193 (ABCA)

Ruling: Request for stay denied; Mr. Winchester did not establish that he would suffer irreparable harm.

Reasons: Mr. Winchester submitted that the surface location for the two wells should be moved a mile to the north, and that AER mediation between Petrus and the residents should be required before any well licence is issued. He submitted that moving the wells would keep noise, groundwater aquifer problems, flaring, and water well contamination away from landowners' property. He noted that landowners only need and maintain water and air quality, and expressed concern that drilling the wells would interfere with the hardpan. He asserted that the Petrus field representative lied and has no respect for the environment. He requested that the well approvals be suspended until the AER provides a decision on the appeal request.

Petrus asked that the AER deny Mr. Winchester's request to suspend the licences, noting it does not intend to act on them until Jan 3, 2017. It submitted that in its investigation into the feasibility of relocating the wells, it located another landowner who would be directly affected by the relocation. Moving the wells to the north would cause more land disturbance and extra pipeline length, would potentially cause conflict with industry competitors, would impact an additional 2km of public roadway, and would affect 3 more dwellings. The proposed surface location is necessary to maximize reservoir contact and recovery of hydrocarbon liquids, as well as to optimize capital spending. Petrus submitted that it would provide a different day-to-day site representative than the one Mr. Winchester criticized in his submission.

In response to water well concerns, Petrus submitted that reducing the number of wells would not necessarily affect the level of risk to the groundwater and aquifer, and that the wells will be cased, drilled, and tested so as to protect water resources. In response to noise concerns, Petrus submitted that noise associated with the project would comply with *Directive 038* and that it would consider a noise barrier if necessary. In response to flaring concerns, Petrus submitted that flaring will be kept to a minimum, will not be continuous, and will comply with Directive 060 notification requirements. In response to traffic concerns, Petrus submitted that it will manage dust in coordination with the County and will implement a 50 km/hr speed limit for traffic related to the development. Petrus claimed it had exhausted efforts to accommodate Mr. Winchester.

S. 39(2) of *REDA* empowers the AER to grant a stay of the licences at issue. However, under s. 38(2), the filing of an appeal request does not automatically grant a stay.

In order for the AER to grant the stay request, Mr. Winchester must meet the test for a stay from *RJR Macdonald*. The test asks: 1) Is there a serious question to be heard? 2) Will the applicant suffer irreparable harm if the request is refused? 3) Which of the parties would suffer greater harm from the granting or refusal of the requested stay?

There is a low threshold for the first part of the test, which involves the applicant proving that there is some basis on which to present an argument on appeal. Potential serious issues include possible alternate locations, noise, groundwater problems, flaring, traffic, dust, communications with Petrus, and general water and air quality. Mr. Winchester meets the first part.

The second part of the test requires Mr. Winchester to show that he would suffer irreparable harm if the stay request is not granted. Irreparable harm occurs if the applicant would be adversely affected by the denial of the stay request and the adverse affect could not be remedied through damages. The character of irreparable harm, according to *Ominayak*, is such that the harm could not be redressed by a court of law and would be a denial of justice. Mr. Winchester alleges potential harm but did not show irreparable harm. He did not demonstrate a connection between the drilling and operations of the wells and any harm he might suffer, or demonstrate that that harm would be irreparable. Mr. Winchester does not meet the second branch.

It is unnecessary to consider the third branch; Mr. Winchester has not met the test.

Subject Headings: directly and adversely affected, regulatory appeal, request for stay, irreparable harm, evidence, setbacks, noise, flaring, traffic, dust, groundwater, water wells

[Wayne Green/Petrus Resources Corp \(Petrus\), Request for Suspension, Dec 6 2016](#)

Proponent application type: Original application for two New Multi Wells, 0% H2S (Application No. 1861228); regulatory appeal request and request for suspension from Wayne Green

Procedural or other issue: Has Mr. Green met the *RJR Macdonald* test for a stay?

Statute or Rule Applied: ss. 38(2) and 39(2) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); *Directive 056: Energy Development Applications and Schedules*; *RJR -- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311; *Ominayak v Norcen Energy Resources*, [1985] 3 W.W.R. 193 (ABCA)

Ruling: Request for stay denied; Mr. Green did not establish that he would suffer irreparable harm.

Reasons: S. 39(2) of REDA empowers the AER to grant a stay of the licenses at issue. However, under s. 38(2), the filing of an appeal request does not automatically grant a stay.

Mr. Green submitted that the two planned wells would be located too close to existing residences. He noted that the 100 meter setback from the site extends onto his land and that an alternative site is available. He claimed that Petrus agreed to relocate the wells (both verbally and in writing), but did not notify the AER. Mr. Green requested that the wells be relocated one mile to the north and asked for a suspension of the approvals until the AER renders a decision on his appeal request.

Petrus asked that the AER deny Mr. Green's request to suspend the licenses, noting that it did not intend to act on them until Jan 3, 2017, and because there are no residences within the 200 meter public consultation area identified in *Directive 56*. Although Mr. Green claimed that the 100 meter setback intersects with his property, Petrus claims that his use and enjoyment of the property is not directly and adversely affected. Moving the wells to the north would not be the best well design, would cause a different landowner to be directly and adversely affected, would cause more land disturbance and extra pipeline length, and would potentially cause conflict with industry competitors. Petrus claimed it exhausted efforts to accommodate Mr. Green.

In order for the AER to grant the stay request, Mr. Green must meet the test for a stay from *RJR Macdonald*. The test asks: 1) Is there a serious question to be heard? 2) Will the applicant suffer irreparable harm if the request is refused? 3) Which of the parties would suffer greater harm from the granting or refusal of the requested stay?

There is a low threshold for the first part of the test, which involves the applicant proving that there is some basis on which to present an argument on appeal. Potential serious issues include distance from the wells to existing residences, the 100 meter setback radius, and the availability of alternate sites. Mr. Green meets the first branch.

The second part of the test requires Mr. Green to show that he would suffer irreparable harm if the stay request is not granted. Irreparable harm occurs if the applicant would be adversely affected by the denial of the stay request and the adverse affect could not be remedied through damages. The character of irreparable harm, according to *Ominayak*, is such that the harm could not be redressed by a court of law and would be a denial of justice. Mr. Green alleges potential harm but did not show irreparable harm. He did not demonstrate a connection between the wells and harm he might suffer. Mr. Green does not meet the second branch.

It is unnecessary to consider the third branch; Mr. Green has not met the test.

Subject headings: directly and adversely affected, regulatory appeal, request for stay, irreparable harm, evidence, setbacks

Mancal Energy Ltd. (Mancal)/AER, Statement of Concern No. 30356, Nov 28 2016

Proponent application type: Amendment Single Well Oil Battery, 0.090 % H2S (Application No. 1858958)

Procedural or other issue: How will the facility licence be amended?

Statute or Rule Applied: s. 28(2)(b) of the *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#) (OGCA)

Ruling: The AER will amend the licence with information about sound attenuation equipment and close the application.

Reasons: OGCA s. 28(2)(b) allows the AER to amend a licence as it sees fit after notifying the licence holder of its intent. The proposed amendment here is “Mancal will utilize the existing Genset with sound attenuation equipment at their 07-15-035-22 W4M site.” The AER provided Mancal with notice and the opportunity to comment. Mancal responded with confirmation that it did indeed intend to keep the existing Genset with sound accommodation onsite. The AER has now closed the application.

Subject Headings: licence amendment, noise, sound attenuation equipment

Ken Cowles/Jupiter Resources Inc. (Jupiter), Statements of Concern No. 30414 and 30422, Nov 22 2016

Proponent application type: New fuel gas, 0 H2S (Application No. 1866148); New natural gas, 0 H2S (Applications No. 1866149, 1866152, 1866977); Pipeline, New Natural Gas, 0% H2S (Application No. 1866978)

Procedural or other issue: Do Statements of Concern No. 30414 and 30422 establish a direct and adverse effect on Mr. Cowles?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Mr. Cowles purchased trapping line permits, which allow certain rights and privileges granted by the Alberta Trappers Association. He does not own or have exclusive rights to the trapping land, but has the right to trap fur on them. His concerns about possible impacts on wildlife and the environment are general in nature, but Jupiter is required to follow all environmental and regulatory requirements regarding wildlife. His concerns about compensation are outside the AER’s jurisdiction, and should be addressed by the Alberta Trappers Compensation Board. Pipeline construction and development does not involve hydraulic fracturing and will therefore not impact ground water or aquifers.

Subject Headings: trapping, wildlife, jurisdiction, groundwater, pipeline, directly and adversely affected

Mikisew Cree First Nation (MCFN)/Athabasca Oil Corporation (AOC), Statement of Concern No. 30199, Nov 16 2016

Proponent application type: Application to Amend Approval No. 11888 to increase the maximum operating pressure at the Hangingstone Project (Application No. 1852014)

Procedural or other issue: Does Statement of Concern No. 30199 establish a direct and adverse effect on MCFN?

Statute or Rule Applied: Draft [Directive 86](#): *Reservoir Containment Application Requirements for Steam Assisted Gravity Drainage Projects in the Shallow Thermal Area of Athabasca Oil Sands Area*

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: The project, which is located on lands identified by the MCFN as its traditional lands, is 205 km from MCFN’s closest reserve, Old Fort 217. It is 20 km from McMurray and 250 km from Fort Chipewyan, both major population centers for MCFN members. AOC’s application would only amend a subsurface operation by increasing the maximum operating pressure in accordance with *Directive 86*. The

concerns MCFN raises are general in nature and MCFN did not provide sufficient detail on where activities by MCFN members take place and what those activities are, or how those activities may be impacted by the Application.

Subject Headings: First Nations/Métis, traditional lands, amendment application

Mark Roberts/Baytex Energy Ltd. (Baytex), Statement of Concern No. 30427, Nov 16 2016

Proponent application type: New single oil sand evaluation well, 0 H2S (Application No. 1866242)

Procedural or other issue: Does Statement of Concern No. 30427 establish a direct and adverse effect on Mr. Roberts?

Statute or Rule Applied: s. 2.030 of the *Oil and Gas Conservation Rules*, [Alta Reg 151/1971](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: S. 2.030 of the *Oil and Gas Conservation Rules* requires oil sand evaluation wells to be abandoned within 30 days. Mr. Roberts' lands and residence are 6.6 km and 6.8 km from the proposed well. His nearest farm lands are 2.4 km away. Mr. Roberts is concerned about odours and emissions, however there will be no flaring or venting associated with the well. Mr. Roberts is concerned about additional development in the area, but no production equipment has been applied for and no bitumen production will be authorized or facilitated by this approval. Concerns about Baytex's previous applications, existing Baytex infrastructure, THC levels, and air monitoring results in the Reno area are outside the scope of the subject application.

Subject Headings: directly and adversely affected, odours, emissions, flaring, venting, application scope

Wayne Green, Jeff Redmond, John Winchester/Petrus Resources Corp (Petrus), Statements of Concern, Oct 31 2016

Proponent application type: New Multi Well, 0% H2S (Application No. 1861228); Application No. 1867410

Procedural or other issue: Do any of the Statements of Concern establish a direct and adverse effect on any of the parties?

Statute or Rule Applied: Directive 038: Noise Control; Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons:

Wayne Green (Statements of Concern No. 30348 and 30429): Mr. Green does not own the lands where the project is proposed. He did not demonstrate that a 100 m setback radius around the proposed sweet well would adversely impact the use and enjoyment of his lands. He did not provide evidence to support future development plans within the 100 m radius.

Jeff Redmond (Statement of Concern No. 30361): Mr. Redmond does not own the lands where the project is proposed. Petrus will perform testing to protect groundwater and aquifers. Petrus will adhere to Directive 038 and will consider constructing a noise barrier if necessary. Petrus will not perform

continuous flaring, will keep flaring to a minimum, and will provide notification, all in accordance with *Directive 60*.

John Winchester (Statements of Concern No. 30360 and 30428): Mr. Winchester does not own the lands where the project is proposed. Petrus will perform testing to protect groundwater and aquifers. Petrus will adhere to *Directive 038* and will consider constructing a noise barrier if necessary. Petrus will not perform continuous flaring, will keep flaring to a minimum, and will provide notification, all in accordance with *Directive 60*.

Subject Headings: directly affected, groundwater, noise, flaring

Janette Ramful; Don and Brenda Midgley; L. White; Kehewin First Nation (KFN); Deanna Hensel; Shane Franklin, Charlene Lodoen, and Arlana Franklin; Peter Cordingley; Richard and Mary Bourgeois; Hector Soloway and Pauline Cardinal/Canadian Natural Resources Limited (CNRL), Statements of Concern, Oct 31 2016

Proponent application type: Amendment Multiwell Bitumen Battery, 0% H₂S (Application No. 1863046)--application requesting approval to install and operate a second 99 HP (74 Kw) gas compressor, and to change the maximum licensed inlet rates to reflect the increased gas volumes at the facility. An existing 74Kw compressor currently operating at the facility was exempt from licensing requirements but is included in the amendment application.

Procedural or other issue: Do any of the Statements of Concern establish a direct and adverse effect on any of the parties?

Statute or Rule Applied: [*Directive 055: Storage Requirements for the Upstream Petroleum Industry*](#), [*Directive 038: Noise Control*](#), [*Alberta Ambient Air Quality Guidelines*](#), [*Directive 56: Energy Development Applications and Schedules*](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence amendment issued.

Reasons:

Janette Ramful (Statement of Concern No. 30392): Ms. Ramful owns land on or near Muriel Lake, 2 km or more away from the existing CNRL facility. Her concerns about surface water runoff and diversion by roads, culverts and abandoned leases and berms are not related to the application. CNRL does not require a water source or intend to divert water and must adhere to *Directive 55* with respect to surface discharge of collected surface run-on/runoff waters. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation. Property devaluation concerns are general in nature, unless supported with property-specific or area-specific information that indicates a direct and adverse impact on the value of a person's property.

Don and Brenda Midgley (Statement of Concern No. 30376): The Midgleys own land on or near Muriel Lake, 2 km or more away from the existing CNRL facility. Their concerns about surface water runoff and diversion by roads, culverts and abandoned leases and berms are not related to the application. CNRL does not require a water source or intend to divert water and must adhere to *Directive 55* with respect to surface discharge of collected surface run-on/runoff waters. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has

implemented on the existing compressor. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation.

L. White (Statement of Concern No. 30405): L. White owns land on or near Muriel Lake, 2 km or more away from the existing CNRL facility. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring. Concerns about surface water runoff and diversion by roads, culverts and abandoned leases and berms are not related to the application. CNRL does not require a water source or intend to divert water and must adhere to *Directive 55* with respect to surface discharge of collected surface run-on/runoff waters. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor.

Kehewin First Nation (KFN) (Statement of Concern No. 30402): KFN's reserve boundary is 500 m from the existing CNRL facility. The facility is located on privately owned (freehold) land that has been leased to CNRL. CNRL has met *Directive 56* participant involvement requirements in relation to KFN. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. Concerns about road use are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation. This amendment to an existing facility will not impact harvesting activities on traditional lands.

Deanna Hensel (Statement of Concern No. 30374): Ms. Hensel owns land on or near Muriel Lake, 2 km or more away from the existing CNRL facility. Concerns about surface water runoff and diversion by roads, culverts and abandoned leases and berms are not related to the application. CNRL does not require a water source or intend to divert water and must adhere to *Directive 55* with respect to surface discharge of collected surface run-on/runoff waters. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation.

Shane Franklin, Charlene Lodoen, and Arlana Franklin (Statement of Concern No. 30399): The Franklins own the lands where the existing CNRL facility is located, and have leased a portion of those lands to CNRL. Mr. Franklin and Ms. Lodoen reside 1.1 km from the existing facility. The AER accepts CNRL's Noise Impact Assessment (NIA). Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. The NIA predicts nighttime noise at the Franklin/Lodoen residence will be below the maximum permissible sound level, but CNRL must conduct a comprehensive sound survey at the residence while both compressors are operating. Noise concerns were referred to the AER's Bonnyville Field Centre for consideration as an operational matter. CNRL built a larger berm and fence to contain headlights from vehicles at its site. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring.

Peter Cordingley (Statement of Concern No. 30398): Mr. Cordingley owns land on or near Muriel Lake, 2 km or more away from the existing CNRL facility. Concerns about surface water runoff and diversion by roads, culverts and abandoned leases and berms are not related to the application. CNRL does not require a water source or intend to divert water and must adhere to *Directive 55* with respect to surface discharge of collected surface run-on/runoff waters. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation.

Richard and Mary Bourgeois (Statement of Concern No. 30373): The Bourgeois own land on or near Muriel Lake, 2 km or more away from the existing CNRL facility. Concerns about surface water runoff and diversion by roads, culverts and abandoned leases and berms are not related to the application. CNRL does not require a water source or intend to divert water and must adhere to *Directive 55* with respect to surface discharge of collected surface run-on/runoff waters. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation.

Hector Soloway and Pauline Cardinal (Statement of Concern No. 30401): Mr. Soloway and Ms. Cardinal own and reside on lands north and west of the existing CNRL facility. The AER accepts CNRL's Noise Impact Assessment. Predicted noise will be at or below the maximum levels permitted under *Directive 038*. CNRL will use the same noise mitigation measures on the proposed new compressor as it has implemented on the existing compressor. Concerns about road use and dust are outside the AER's jurisdiction. There will not be any increased CNRL traffic to or from the site except for approximately two days during compressor installation. Facility emissions will comply with the *Alberta Ambient Air Quality Guidelines*, and CNRL does not anticipate flaring. Concerns about possible impacts on future development or sale of lands are general in nature and not supported by actual plans or property-specific information. Concerns about adverse environmental impacts are also general in nature and do not appear related to the application. Directive 56 addresses consultation concerns. CNRL was not required to notify Mr. Soloway and Ms. Cardinal of the application.

Subject Headings: dust, water, noise, traffic, property values, mitigation, emissions, flaring, First Nations/ Métis, traditional lands, air quality, light, consultation, directly and adversely affected, amendment application

[Laurie Friesen, Dale & Heather Sorenson, Mike & Faye Partsch, Bernie & Wendy Olydam, Debbie Kerluke/Tidewater Midstream And Infrastructure Ltd. \(Tidewater\), Statements of Concern, Oct 27 2016](#)

Proponent application type: New Single Well, 0% H2S (Application No. 1858864); Pipeline (Application No. 001-00360116)

Procedural or other issue: Do any of the Statements of Concern establish a direct and adverse effect on any of the parties?

*Statute or Rule Applied: Pipeline Act, [RSA 2000, c P-15](#); Pipeline Regulation, [Alta Reg 91/2005](#); Environmental Protection and Enhancement Act, [RSO 1990, c E.19](#) (EPEA); Canadian Standards Association Z662: Oil and Gas Pipeline Systems. (CSA Z662); [Directive 056](#): Energy Development Applications and Schedules; [Directive 077](#): Pipelines— Requirements and Reference Tools; [Directive 071](#): Emergency Preparedness and Response Requirements for the Petroleum Industry; Alberta Energy Regulator Rules of Practice, [Alta Reg 99/2013](#) (the Rules); [Directive 008](#): Surface Casing Depth Requirements; [Directive 009](#): Casing Cementing Minimum Requirements; [Directive 051](#): Injection and Disposal Wells – Well Classifications, Completions, Logging, and Testing Requirements; [Directive 055](#): Storage Requirements for the Upstream Petroleum Industry; [Directive 065](#): Resources Applications for Oil and Gas Reservoirs; Government of Alberta’s *Land Use Guidelines*; [Directive 038](#): Noise Control*

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons:

Laurie Friesen (Statements of Concern Nos. 30352 & 29456):

Regarding the pipeline application: The nearest segment of the pipeline will be 605 m from Ms. Friesen’s property boundary. The pipeline has already been licenced pursuant to a *Pipeline Act* application, on which Ms. Friesen also filed a Statement of Concern that the AER found did not require a hearing. Ms. Friesen also filed a Statement of Concern about the facility to which the pipeline will connect, and those concerns are outside the scope of the current application. The AER has completed a separate review of land use and reclamation on this application and is satisfied that the pipeline will meet all requirements under *EPEA* and its regulations. Once constructed, the pipeline will not be a significant source of noise or increased traffic. Regarding concerns about lifestyle, safety, health, air and water quality, Tidewater has complied with the *Pipeline Act*, the *Pipeline Regulation*, *CSA Z662*, *Directive 056*, *Directive 077*, and *Directive 71*. Standard conditions in the *EPEA* pipeline approval protect water quality, and the pipeline will not impact groundwater sources or create emissions. Because the pipeline will be underground, it is not clear how it could affect property values.

Regarding the well application: The well will be 1,481 m from Ms. Friesen’s lands. Rule 6(1)(a) of the Rules requires a Statement of Concern to explain the nature of the concern or the direct and adverse effect, which Ms. Friesen’s did not. Other statements of concern that Ms. Friesen has filed are outside the scope of the current application. Tidewater has complied with *Directives 008, 009, 051, 055, and 065*, as well as the limits on injected volumes of gas and reservoir pressures and the monitoring and reporting requirements set out in its gas storage scheme approval. The AER has reviewed the application and related submissions, has determined that the application meets all regulatory requirements, and is satisfied that these requirements address Ms. Friesen’s concerns.

Dale & Heather Sorenson (Statements of Concern Nos. 30353 & 29455):

Regarding the pipeline application: The nearest segment of the pipeline will be 428 m from the Sorensons’ property boundary. The pipeline has already been licenced pursuant to a *Pipeline Act* application, on which the Sorensons also filed a Statement of Concern that the AER found did not require a hearing. The Sorensons also filed a Statement of Concern about the facility to which the pipeline will connect; those concerns are outside the scope of the current application. The AER has completed a separate review of land use and reclamation on this application and is satisfied that the pipeline will meet all requirements under *EPEA* and its regulations. Regarding concerns about safety, Tidewater has complied with the *Pipeline Act*, the *Pipeline Regulation*, *CSA Z662*, *Directive 056*, *Directive 077*, and *Directive 71*. Pipeline construction is temporary and is not expected to impact animal habitat in the long term. Tidewater will employ mitigative measures during pipeline construction and has committed to following the Government of Alberta’s *Land Use Guidelines* with respect to protection of Trumpeter Swan Habitat. The *EPEA* pipeline approval will require pre-construction wildlife surveys, restricted

activity periods and setback distances in relation to wildlife. The Sorensons' concern about the diameter of the pipeline is vague and unclear and is, to the extent that it is relevant, addressed above.

Regarding the well application: The well will be 1,184 m from the Sorensons' lands. Setback requirements relating to the well do not impact their lands. The application meets applicable regulatory requirements. Concerns about corporate name changes, licence transfers, the approval and notification process for other Tidewater infrastructure and subsurface development, and the AER's regulatory appeal process for Tidewater's gas storage project are outside the scope of the current application. The AER will consider all of the regulatory appeals on each licenced component of the facility at the same time. Tidewater has met all regulatory requirements regarding the submission of applications with regard to stakeholder notification practices.

Mike & Faye Partsch (Statement of Concern No. 30299): The well will be 1,137m from the Partschs' property boundary and 1,233m from their residence. Tidewater has complied with the AER's health and safety requirements. Concerns about other Tidewater facilities are outside the scope of this application. Regarding concerns about subsurface gas injection, Tidewater has complied with *Directives 008, 009, 051, 055, and 065*, as well as limits on injected volumes of gas and reservoir pressures and the monitoring and reporting requirements set out in its gas storage scheme approval. Fracturing operations will not take place at the proposed facility. There is no evidence to support the Partschs' assertion that Tidewater's application will affect their property value.

Bernie & Wendy Olydam (Statement of Concern No. 30349): The well will be 3,270m from the OlydaMs.' lands and over 3,500m from their residences. Regarding concerns about gas injection into the reservoir and potential impacts on well water, Tidewater has complied with *Directives 008, 009, 051, 055, and 065*, as well as limits on injected volumes of gas and reservoir pressures and the monitoring and reporting requirements set out in its gas storage scheme approval. The applied for well will meet or exceed safety requirements. Concerns about noise do not appear to be relevant to this application considering the distance of the OlydaMs.' residence from the well, but Tidewater has complied with *Directive 38* re: noise control. There is no evidence to support the OlydaMs.' assertion that Tidewater's application will affect their property value.

Debbie Kerluke (Statement of Concern No. 30354): The well will be 1,303 m from Ms. Kerluke's property boundary. Tidewater has complied with the AER's health and safety requirements. Regarding concerns about water quality, Tidewater has complied with *Directives 008, 009, 051, 055, and 065*, as well as limits on injected volumes of gas and reservoir pressures and the monitoring and reporting requirements set out in its gas storage scheme approval. There is no evidence to support Ms. Kerluke's assertion that Tidewater's application will affect her property value. Concerns about other Tidewater facilities are outside the scope of this application.

Subject Headings: directly and adversely affected, land use, reclamation, pipeline, noise, traffic, safety, health, wildlife, animal habitat, air quality, water quality, groundwater, emissions, application scope, regulatory requirements, gas storage, mitigation, pipeline diameter, property values, regulatory appeal, gas injection, reservoir pressure

Chris Huhn/Shell Canada Ltd. (Shell), Statement of Concern No. 30404, Oct 24 2016

Proponent application type: New Compressor Station, 42% H2S (1863668)

Procedural or other issue: Does Statement of Concern No. 30404 establish a direct and adverse effect on Mr. Huhn?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Mr. Huhn owns but does not reside on lands 1.35 km from the proposed facility. The existing emergency protection zone will not change as a result of the application, which is to add an electric compressor and larger flare stack to existing facilities. The additions will not result in more venting or continuous flaring, and Shell will still be required to comply with *Directive 60*. In the event of an emergency or release incident, Shell has a corporate Emergency Response Plan (ERP) in place, and Mr. Huhn's information is included in the plan. Concerns about compensation for negotiations or alleged damages are outside the AER's jurisdiction. Other concerns not related to the proposed compressor and flare stack, including regulatory effectiveness, the Caroline gas plant and unspecified wells and pipelines at other locations, are also beyond the scope of the present application.

Subject Headings: directly and adversely affected, venting, flaring, jurisdiction, application scope

Mike Richard/Grizzly Resources Ltd. (Grizzly), Request for Regulatory Appeal, Oct 11 2016

Proponent application type: Well - New Single Well, 0% H₂S (Application No. 1843024); Well - New Single Well, 0% H₂S (Application No. 1843026); New Exempt Single Well Facility, 0% H₂S (Application No. 1850163); New Multiwell Oil Battery, 0% H₂S (Application No. 1850167)

Procedural or other issue: Is Mr. Richard eligible to request a regulatory appeal? Has Mr. Richard met the RJR Macdonald test for a stay?

Statute or Rule Applied: ss. 36, 38, and 39 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#); *Mis v. Alberta (Human Rights & Citizenship Commission)* 2011 ABCA 212; [WP v Alberta, 2014 ABCA 404](#) at para 26; s. 45 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the Rules); [RJR -- MacDonald Inc. v. Canada \(Attorney General\), \[1994\] 1 SCR 311](#); [Lubicon Lake Band v. Norcen Energy Resources Ltd., 1985 ABCA 12](#); [Dreco Energy Services Ltd. v. Wenzel, 2008 ABCA 290](#), [Canada \(Attorney General\) v. Amnesty International Canada 2009 FC 426](#) at paras 29 and 30.

Ruling: Mr. Richard is eligible to request a regulatory appeal because he is directly and adversely affected by the decision. His request for a stay is not granted because he has not established irreparable harm.

Reasons: In order to successfully request an appeal, the decision must be appealable according to REDA and Mr. Richard must be an eligible person. S. 36(a)(iv) of REDA defines an appealable decision as "a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing." Mr. Richard is eligible to request an appeal based on the definition of an eligible person in 36(b)(ii) of REDA. The request for appeal was filed within the 30-day limit. Mr. Richard owns the land on which the wells and facilities will be located. Even though the wells and facilities are to be located on existing surface leases, the drilling of new holes will impact Mr. Richard's land, and new infrastructure will be located on his land.

Grizzly argued that the request for appeal was "without merit," does not allege an appealable ground, and should therefore be dismissed, pursuant to s. 39(4)(a) of REDA. The test for "without merit" is similar to the test for an application for summary judgement in the courts, articulated in *WP v Alberta*: there must be an issue of merit genuinely requiring a trial or such a compelling claim or defence that its likelihood of success is very high. Mr. Richards has raised meritorious issues, such as water and calcium pooling concerns, failures by Grizzly to honour verbal and written commitments, and the failure of the AER to impose any conditions on Grizzly when it issued the project licences. Grizzly also did not complete a Noise Impact Assessment, as required. Grizzly responded that Mr. Richard's assertions are unfounded

and that Grizzly has maintained compliance with all regulatory requirements and made extraordinary efforts, at significant costs, to address Mr. Richard's concerns.

The AER is of the view that Grizzly has not met the threshold for dismissal in s. 39(4) of REDA. Mr. Richard had raised meritorious issues, specifically whether the AER should have issued the Licences without imposing any conditions to mitigate Mr. Richard's noise and environmental concerns with respect to the new wells and facilities.

Grizzly also argued that the request for regulatory appeal should be dismissed because Mr. Richard did not file a Statement of Concern in respect of the application in accordance with the AER Rules of Practice, pursuant to s. 39(4)(b) of REDA and s. 45 of the *Rules*. Mr. Richard's Statement of Concern was late. However, s. 39(4)(b) of REDA is discretionary, and the AER is not required to dismiss the request for appeal on this basis. Grizzly provided a response to Mr. Richard's late statement of claim and did not object at that time, even though it had the opportunity. Mr. Richard was in accordance with the *Rules* even though his Statement of Concern was late.

Mr. Richard also requested a stay of the licences issued to Grizzly. S. 39(2) of REDA gives the AER the power to grant a stay. S. 38(2) of REDA provides that the filing of a request for regulatory appeal does not stay the appealable decision. The adapted test for a stay from *RJR MacDonald* requires: 1) A serious question to be heard, 2) irreparable harm to stay applicant if request denied, and 3) an analysis of which of the parties would suffer greater harm from the grant or refusal of the requested stay. The onus is on Mr. Richard to show he satisfies the test. The issues Mr. Richard raises are neither frivolous nor vexatious, so he meets the first part of the test. On the second part, there must be "clear and non-speculative evidence" that harm will occur as a result of the request for stay being denied that is irreparable through damages and cannot be cured (*Canada (Attorney General) v. Amnesty International Canada*). Mr. Richard did not establish irreparable harm. He refers to a report on low frequency noise and its effects, but does not establish specifically what the harm to him would be, what the qualifications are of the author of the report, or the application of the report to his geographic area. None of the issues he raises are unresolvable if addressed after the wells are drilled. Mr. Richards did not meet the second part of the test, so the third part need not be addressed.

Subject Headings: noise, eligible person, directly and adversely affected, appealable decision, regulatory appeal, request for stay, irreparable harm, evidence

Gibson Energy Inc. (Gibson) and Husky Oil Operations Limited (Husky)/AER Closure and Liability, Request for EPO Appeal, Oct 5 2016

Proponent application type [2 applications]:

[1] No. 1864185 and 1866029: Regulatory Appeal request from Gibson to Closure and Liability for an Order under S 113 & 241 of *EPEA* dated July 7, 2016.

[2] No. 1863309 and 1866028: Regulatory Appeal request from Husky to Closure and Liability for an Order under S 113 & 241 of *EPEA* dated July 7, 2016.

Procedural or other issue: Have Gibson and Husky's concerns about the EPO (Environmental Protection Order) issued against them been addressed through an alternative dispute resolution (ADR) process? If not, are they eligible to request a regulatory appeal?

Statute or Rule Applied: s. 91(1)(h) of the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#) (*EPEA*); s. 36(a)(i) and (b)(i) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (*REDA*); s. 4 of the *Responsible Energy Development Act General Regulation*, [Alta Reg 90/2013](#) (the *Regulation*)

Ruling: Gibson and Husky's concerns have not been addressed through ADR. They are entitled to a hearing.

Reasons: All parties agree that Gibson and Husky are entitled to an appeal in relation to the EPO based on EPEA and REDA. S. 4 of the *Regulation* requires that the AER conduct an appeal with a hearing if it appears the concerns of the eligible person requesting the appeal have not been addressed through ADR or otherwise resolved. These concerns have not been addressed or resolved, and the parties are therefore entitled to a hearing.

Subject Headings: regulatory appeal, environmental protection order, eligible person, alternative dispute resolution

Christine Schlieff, G. Cameron Donald, Deanna Bildson, Stefanie Clarke, Brian Bildson/Blackbird Energy Inc. (Blackbird), Statements of Concern, Sept 28 2016

Proponent application type: New Multiwell Gas Battery, 8% H₂S (Application No. 1858838); Pipeline- New Sour Natural Gas, 6% H₂S (Application No. 1858843); Pipeline- New Sour Gas, 8% H₂S (Application No. 1858844); Pipeline- New Single Fuel Gas pipeline, 0% H₂S (Application No. 1858845); New Sour Natural Gas, 80 mol/kmol H₂S (Application No. 1859621); New Fuel Gas, 0% H₂S (Application No. 1859622); Pipeline - New Sour Gas, 8% H₂S (Application No. 1861781); Pipeline – New Fuel Gas, 0% H₂S (Application No. 1861783); Pipeline - New, Salt Water (injection), 0% H₂S (1862566); *Public Lands Act* Applications 160274 and 160331

Procedural or other issue: Do any of the Statements of Concern establish a direct and adverse effect on any of the parties?

Statute or Rule Applied: [Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting](#); [Directive 038: Noise Control](#); [Directive 056: Energy Development Applications and Schedules](#)

Ruling: No direct and adverse effect established. No hearing required. Approvals and licences issued.

Reasons:

Brian Bildson (Statements of Concern Nos. 30333 and 30347): Mr. Bildson lives 2.8 km from the proposed battery, and owns land for development 2.5 km from the project. Both lands are outside the project's emergency planning zone. In regards to concerns about health effects and exposure to H₂S, the proposed facility will not have any continuous flaring or venting. As such, there should not be an increase in odours or emissions with this facility during normal operating conditions. Mr. Bildson is encouraged to contact Blackbird and the local AER field centre with future odour complaints. Blackbird is required to meet the flaring requirements in *Directive 60* and has not applied to continuously flare at the proposed battery. Blackbird's Dispersion Modelling Report for SO₂ and H₂S is technically complete. A review of Blackbird's Noise Impact Assessment confirmed that it meets all *Directive 038: Noise Control* requirements. Mr. Bildson did not provide evidence to indicate that the project would negatively affect his property value. The proposed battery is in a designated conservation area, but Blackbird holds a valid mineral surface lease for the location of the proposed facility and has minimized surface disturbance by choosing existing disturbances for placement of its project. There is no direct and adverse effect.

Stefanie Clarke (Statements of Concern Nos. 30297 and 30298): Ms. Clarke lives 4 km from the proposed battery, outside the Emergency Planning Zone. Concerns regarding traffic and road use are outside the AER's jurisdiction and should be directed to the MD of Greenview. *Directives 60* and *38* address flaring and noise concerns (as in Mr. Bildson's letter). Ms. Clarke received the same response to conservation concerns as Mr. Bildson. There is no direct and adverse effect.

Deanna Bildson (Statement of Concern No. 30334). Ms. Bildson lives 2.8 km from the proposed battery, outside the Emergency Planning Zone. *Directives 60* and *38* address flaring and noise concerns (as in Mr. Bildson's letter). Ms. Bildson did not provide evidence that the project would negatively affect her property value. Ms. Bildson received the same response to conservation concerns as Mr. Bildson. There is no direct and adverse effect.

G. Cameron Donald (Statement of Concern No. 30345). Mr. Donald lives 2.7 km from the proposed battery, outside the Emergency Planning Zone. *Directive 60* addresses flaring concerns (as in Mr. Bildson's letter). Mr. Donald received the same response to conservation concerns as Mr. Bildson. There is no direct and adverse effect.

Christine Schlieff (Statement of Concern No. 30330): Ms. Schlieff lives 4 km from the proposed battery. The emergency planning zone (EPZ) for part of the project extends onto land she owns but does not live on. She did not provide information to indicate how the EPZ would adversely affect her. In the event of an operational issue, she is encouraged to contact Blackbird and the AER with her concerns. *Directive 038* addresses noise concerns (as in Mr. Bildson's letter). Ms. Schlieff did not provide evidence that the project will negatively affect her property value. Ms. Schlieff received the same response to conservation concerns as Mr. Bildson. Blackbird meets the *Directive 056* consultation and notification requirements for the proposed project. There is no direct and adverse effect.

Subject Headings: emergency planning zone, directly and adversely affected, noise, traffic, jurisdiction, health, emissions, property values, venting, flaring

Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN)/Teck Resources Limited (Teck), Statements of Concern Sept 19 2016

Proponent application type: Infrastructure Applications No. A10026515, A10026518, A10026523, A10026527 and A10027815; Public Lands Applications No. OSE160002, OSE160003, OSE160004 and OSE160005

Procedural or other issue: Do Statements of Concern No. 30366 and 30365 establish a direct and adverse effect on ACFN or MCFN?

Statute or Rule Applied: *Re: Teck Resources Limited, Application for Oil Sands Evaluation Well Licences 2013 ABAER 017* (*Re Teck Resources*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence extensions granted.

Reasons: Neither Nation provided information to demonstrate that a change to the timeline for the subject project would impact its rights. The Nations' concerns are dealt with in *Re: Teck Resources*, in which the AER determined that there were no significant adverse effects on the environment, bison in the area, or Aboriginal traditional land use and rights. In response to ACFN specifically, concerns about impacts from the Frontier project are to be considered in the context of that proceeding.

Subject Headings: First Nations/Métis, project timeline, traditional lands, Aboriginal rights, licence extension

Chipewyan Prairie Dene First Nation (CPDFN)/Surmont Energy Ltd. (Surmont), Statement of Concern No. 28752, Sept 15 2016

Proponent application type: Application for Approval of the Surmont Wildwood SAGD Project, 65 Km south of Fort McMurray, for producing bitumen (Application No. 1746146); Application No. 001-318401 (under *EPEA*)

Procedural or other issue: Does Statement of Concern No. 28752 establish a direct and adverse effect on CPDFN?

Statute or Rule Applied: *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#) (*EPEA*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals granted.

Reasons: CPDFN reserve is located 40 km from the proposed project, which meets all regulatory requirements. The information Surmont provided in its application is adequate relative to the scope of review for pilot projects (projects producing less than 2000 m³/d) where an EIA is not required. Surmont has adequately addressed environmental concerns. Other concerns are beyond the scope of the applications or are addressed by conditions in the *EPEA* approval. CPDFN did not provide enough detail to indicate how Surmont's project might affect traditional activities. According to the Aboriginal Consultation Office, Surmont's consultation was adequate.

Subject Headings: First Nations/Métis, pilot project, application scope, consultation, environmental impact assessment, Aboriginal Consultation Office, traditional lands

[The Cymbaluks, Committee on Keephills Environment \(COKE\), Tammi Cymbaluk Breymann, Gunn Métis Local 55 \(GML\)/Transalta Corporation \(Transalta\), Statements of Concern, Sept 15 2016](#)

Proponent application type: Application No. 1848037 under the *Coal Conservation Act*; Application No. 013-11187 under the *Environmental Protection and Enhancement Act*; Application Nos. 007-240557 and 008-79264 under the *Water Act*

Procedural or other issue: Do any of the statements of concern establish a direct and adverse effect on any of the parties?

Statute or Rule Applied:

Cymbaluks, COKE, and Tammi Cymbaluk Breymann: [Directive 038](#): Noise Control

GML: s. 35 of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, [1982, c 11](#); s. 21 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); [Ministerial Order 53/2014](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals granted.

Reasons: Transalta applied to renew its approvals for Highvale Mine and expand the boundaries of Pit 03 (though the expansion will remain within the boundaries of the approved project area). The renewal applications do not contemplate a change to the existing operations.

The Cymbaluks are landowners within boundary of Pit 07 and reside on lands adjacent to Highvale Mine boundary. They did not raise concerns about Pit 03. The renewal applications in question do not contemplate any change in approved activity. Transalta complied with *Directive 038* by providing the Cymbaluks with a Noise Impact Assessment. Transalta will monitor groundwater and install additional monitoring wells as part of the *EPEA* approval. If impacts to groundwater are observed, Transalta must address them. Odour concerns are likely related to spontaneous combustion of coal or nearby power plants. The Cymbaluks are encouraged to contact TransAlta and the local AER field centre with any future odour complaints and to contact Alberta Environment and Parks with complaints regarding power

plants. Concerns regarding duck feeding and contractual concerns with Transalta are outside the AER's jurisdiction. Transalta is required to submit a Mine Reclamation Plan, which will provide a consistent source of reclamation information to the regulator and public stakeholders. Alberta Environment & Sustainable Resource Development has approved and probably already technically assessed Transalta's ash disposal practices. Transalta's air quality management equipment meets legislative standards, but it is required to submit a Dust Management Plan. If dust issues become more frequent and surrounding ambient air monitoring systems detect exceedances of any air quality requirements, the appropriate regulatory body will be notified to ensure compliance. Operational concerns, such as dust control, should be referred to TransAlta and to the local AER field centre. The Cymbaluks are not directly and adversely affected.

COKE is an organization that represents residents proximate to Highvale Mine. The renewal applications do not contemplate expanding previous approved project boundaries. Transalta is compliant with Directive 038, which requires a Noise Impact Assessment. COKE members are not directly and adversely affected.

Tammi Cymbaluk Breymann owns lands adjacent to the Highvale Pit 07 Mine boundary and has the same concerns as COKE. Ms. Breymann is not directly and adversely affected.

Gunn Métis Local 55 (GML) members are Aboriginal people within the meaning of s. 35 of the *Constitution*. GML asserted that the project will have a direct and adverse effect on its members. The Project Area is within the Traditional Hunting and Gathering Territory of several generations of Métis families with historic ties to Lac Ste. Anne. The renewal applications do not contemplate expansion beyond approved boundaries of the project area. The AER does not have the authority to determine whether Crown consultation with GML was adequate (s. 21 of REDA), but Transalta has met the requirements relating to public notification and participation. Transalta's application complies with Ministerial Order 53/2014, and it is engaged with Aboriginal rights holders in the area.

Compliance with climate change policy statements is a concern outside the AER's jurisdiction and best addressed to the Government of Alberta. The expansion area is not adjacent to Wabamun Lake, and there is no evidence to suggest that existing environmental protection measures to prevent groundwater contamination are inadequate. However, Transalta is not permitted to decrease frequency of reporting on groundwater conditions from annual to biennial. Transalta's air quality management equipment meets legislative standards, but it is required to submit a Dust Management Plan. If dust issues become more frequent and exceedances of any air quality requirements are detected by surrounding ambient air monitoring stations, the appropriate regulatory body will be notified to ensure compliance. The AER will continue to require that ash be deposited 1.5 meters above the water table.

GML attached an affidavit from Ms. Crossen regarding sweetgrass, gathering berries, fishing, and the habitat of the Sharp-Tailed Grouse. She asserted that the mining activities would prevent her from gathering sweetgrass, which grows on wet and undisturbed lands. However, the project area is on private land that has already been disturbed by decades of farming and mining. There is no evidence that expanding mining activities would adversely impact Ms. Crossen's ability to gather berries or fish. Although the Sharp-Tailed Grouse's key habitat is not within the project area and there is no evidence that the mine expansion would impact the grouse, Transalta will be required to submit a Wildlife Mitigation and Monitoring Plan. GML is not directly and adversely affected.

Subject Headings: directly and adversely affected, First Nations/Métis, consultation, wildlife, Aboriginal rights, animal habitat, reclamation, air quality, groundwater, mitigation, jurisdiction, landowner, renewal application, dust, traditional lands

Non-Status Fort McMurray, Fort McKay Band (the Band)/Blackpearl Resource Inc. (Blackpearl), Statement of Concern No. 29207, Sept 15 2016

Proponent application type: Construction and operation of the Blackrod Commercial SAGD Project, with a bitumen production capacity of 12,700 m³/d (80,000 bbl/d) (Application No. 1728831)

Procedural or other issue: Does Statement of Concern No. 29207 establish a direct and adverse effect on the Band?

Statute or Rule Applied: s. 35 of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11*; [*Lower Athabasca Regional Plan*](#); *Oil Sands Conservation Act*, [RSA 2000, c O-7](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: The Band does not have treaty or Aboriginal rights under s. 35 of the *Constitution*. Even if it did, it has not provided sufficient information about how its members use the project lands to establish an effect. The application meets all regulatory requirements. Cumulative effects are addressed in the Environmental Impact Assessment summary and the Lower Athabasca Regional Plan. Blackpearl has adequately addressed the Band's environmental concerns, and other concerns are beyond the scope of the application or are addressed by conditions in the EPEA approval. According to the Aboriginal Consultation Office, Blackpearl's consultation on the project was adequate.

Subject Headings: First Nations/Métis, consultation, application scope, Aboriginal Consultation Office, treaty rights, Aboriginal rights

Dorothy Fisher/Medicine River Oil Recyclers Ltd. (MROR), Statements of Concern, Sept 9 2016

Proponent application type: Application to change the disposal Class from Class II to Class 1b (Application No. 1857229); Application advising of MROR's intention to change the facility from a salt water disposal facility to a Waste Management Facility associated with a Class 1b well (Application No. 1857884)

Procedural or other issue: Do Statements of Concern No. 30272 and 30277 establish a direct and adverse effect on Ms. Fisher?

Statute or Rule Applied: [Directive 009: Casing Cementing Minimum Requirements](#); [Directive 051: Injection and Disposal Wells- Well Classifications, Completions, Logging, and Testing Requirements](#); [Directive 058: Oilfield Waste Management Requirements for the Upstream Petroleum Industry](#)

Ruling: No direct and adverse effect established. No hearing required.

Reasons: Ms. Fisher's unoccupied lands are 185 meters from the project site. The project will not increase the footprint of the existing facility. MROR has complied with *Directives 009, 051 and 058* with respect to groundwater contamination, and groundwater is therefore adequately protected. An earthquake is unlikely because the area is not in an earthquake susceptibility zone. Concerns about increased traffic to the area are outside the jurisdiction of the AER and should be raised with the County of Lacombe. Ms. Fisher has not demonstrated that she is directly and adversely affected.

Subject Headings: directly and adversely affected, groundwater, earthquake, traffic, jurisdiction, waste disposal

Fort McKay Sustainability Department (FMSD)/Imperial Oil Resources Ltd. (Imperial), Sept 9, 2016

Proponent application type: Application Approval No. AT10032138, Reduced Spacing Between Wellsite Equipment and Bodies of Water

Procedural or other issue: Is the application approval rescinded?

Statute or Rule Applied: none

Ruling: Project approval rescinded. Imperial will be required to file infrastructure applications on a non-routine basis.

Reasons: FMSD expressed concerns about the approval, which granted certain equipment spacing waivers. The AER reviewed the project and rescinded its approval, requiring Imperial to file infrastructure applications non-routinely due to this and other known concerns with the project. The AER will reconsider the equipment spacing issue when it reconsiders the project.

Subject Headings: Equipment spacing, non-routine status

O’Chiese First Nation (OCFN)/Shell Canada Ltd. (Shell), Motion objecting to site visit, Sept 2, 2016

Proponent application type: New NG pipeline, 0% H2S (Application No. 1823846); *Public Lands Act* Application 150215

Procedural or other issue: Are the parties entitled to be included in a visit to the site of a project in order to satisfy procedural fairness?

Statute or Rule Applied: s. 61 *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); s. 40 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: Parties are permitted to be present when the panel visits the site, subject to conditions.

Reasons: s. 40 of the *Rules* provides that the AER may visit the site of a proposed project with or without the parties to the application. However, OCFN had concerns about procedural fairness if the AER visited the site without the parties present. The AER must ensure that the site visit and the conditions in which it is taken are procedurally fair to the parties, and allowing the parties to be present for the site visit would satisfy the principles of natural justice and procedural fairness. The parties were required to arrange their own transportation, to avoid interaction, and to limit their visit to visual observation only.

OCFN asserted that the purpose of the site visit was to gather evidence, and Shell asserted that the purpose was to better understand the evidence presented at the eventual hearing. The AER confirmed Shell’s view and clarified that the purpose was to observe and gain a better understanding of the landscape surrounding the proposed project in order to better understand the parties’ evidence. Regardless of how OCFN characterized the purpose, the AER held that allowing the parties to be present at the visit met its obligation of procedural fairness.

Subject Headings: procedural fairness, site visit, First Nations/Métis, evidence

Gibson Energy Inc. (Gibson)/Alberta Energy Regulator Closure and Liability Group, Request for Stay of EPO, August 31 2016

Proponent application type: Regulatory appeal request from Gibson Energy Inc. to Closure and Liability for an Order under S 113 & 241 of EPEA dated July 7, 2016

Procedural or other issue: Has Gibson met the RJR Macdonald test for a stay?

Statute or Rule Applied: s. 38(2) and 39(2) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#); test for a stay from [RJR MacDonald Inc. v Canada \(Attorney General\)](#), [1994] 1 S.C.R. 311 (*RJR Macdonald*) at para 43; definition of irreparable harm from [Ominayak v Norcen Energy Resources](#), [1985] 3 W.W.R. 193 (ABCA) at paragraph 30; *1370996 Alberta Ltd v Director, South Saskatchewan Region, Alberta Environment and Parks* (14 October 2015, Appeal No. 15-020-ID1) 2015 AEAB 15 at paragraphs 92 and 93.

Ruling: Request for stay denied; Gibson did not establish that it would suffer irreparable harm.

Reasons: Gibson asked in its request for appeal that the EPO be stayed (the filing of a request for regulatory appeal does not automatically grant a stay). One of the EPO's requirements was that Gibson submit a Remediation Action Plan (RAP). Gibson argued that the appeal process would inform its RAP, and that the appeal request was therefore reasonable. The AER responded that stays are not granted on the basis of reasonableness but on the basis of the common law test for a stay.

Gibson made no submissions on whether it could satisfy the common law test for a stay, as articulated in *RJR Macdonald*. The AER applied the *RJR Macdonald* test and found that Gibson did not satisfy the second part of the test. The criteria required to be granted a stay are: 1) There is a serious issue to be tried on appeal; 2) The party seeking the stay will suffer irreparable damage if it is not granted; 3) an analysis of which party will suffer more harm from granting or refusing the stay (in this case, the two parties who could suffer harm are the public and Gibson).

On the first part, the serious issue to be tried was the question of whether or not Gibson is a "responsible person" under the *Environmental Protection and Enhancement Act*. Gibson is a "responsible person," and the first branch of the test was met.

On the second part, the only harm Gibson would suffer if the stay were refused were the costs of contamination containment and preparation of an RAP. Therefore, Gibson would not suffer irreparable damage, and failed the second branch of the test.

It was not necessary to consider the third branch, but if the stay were granted, hydrocarbons would continue to spread and contaminate water. Thus, the public would suffer significant harm if the stay was granted, and Gibson would suffer only mild harm if the stay was refused. The public interest is better served by refusing the stay request.

Subject Headings: Request for stay, irreparable harm, environmental protection order, regulatory appeal

Bigstone Cree First Nation (Bigstone)/Cenovus Energy Inc. (Cenovus), Statement of Concern No. 30022, August 29, 2016

Proponent application type: *Environmental Protection And Enhancement Act* Application No. 004-269241 to extend the term of the Pelican Lake Grand Rapids Thermal Pilot Project until 2026

Procedural or other issue: Does Statement of Concern No. 30022 establish a direct and adverse effect on Bigstone?

Statute or Rule Applied: s. 21 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); [O'Chiese First Nation v Alberta Energy Regulator](#), 2015 ABCA 348 (*O'Chiese v. AER*), at para 44; [Dene Tha' First Nation v Alberta \(Energy and Utilities Board\)](#), 2005 ABCA 68 at paras 10, 14, 18; *Dover Operating Corp.*, [2013 ABAER 014](#); *Prosper Petroleum Ltd.*, [2014 ABAER 013](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval granted.

Reasons: The application is for an extension of an existing project (Pelican Lake Grand Rapids Thermal Pilot, operational since 2010) to allow for continued operation, decommissioning, and land reclamation. The project is 19 km from Bigstone's reserve lands. The application will not increase the project's footprint or create additional surface disturbances. Based on *O'Chiese v. AER*, which held that a project's location within a First Nation's "consultation area" does not automatically establish an adverse effect, the project's location in Bigstone's traditional territory does not establish a direct and adverse effect on Bigstone without further factual connection between Cenovus' application and the rights asserted. Although Bigstone stated that its members exercise treaty rights on the land affected by Cenovus' project, Bigstone did not demonstrate how Cenovus' application might directly and adversely affect these activities. Bigstone's concerns about the Project contributing to the cumulative impacts of commercial development in the area should be addressed through the *Lower Peace Regional Plan* (following its start date). In response to Bigstone's concern regarding lack of notification of the application, Cenovus has provided notification. It is outside the jurisdiction of the AER to assess whether Crown consultation on the project was adequate. The concerns raised by Bigstone have been addressed, relate to a matter beyond the scope of Cenovus' application, or relate to a matter outside the AER's jurisdiction. Bigstone has not demonstrated that it may be directly and adversely affected by Cenovus' application.

Subject Headings: First Nations/Métis, directly and adversely affected, consultation area, traditional lands, consultation, reclamation, application scope, jurisdiction, treaty rights, licence extension

Saraswati Singh and Dorin Land Management (DLM)/Penn West Petroleum Ltd. (Penn West), Statements of Concern, August 26 2016

Proponent application type: A scheme for the enhanced recovery of oil by gas reinjection and water flood in the Blairmore pool sections in the Armisic field (Application No. 1832419)

Procedural or other issue: Do Statements of Concern No. 30225 or 30235 establish a direct and adverse effect on Mr. Singh or DLM?

Statute or Rule Applied: [Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry](#); [Directive 65: Resources Applications for Oil and Gas Reservoirs](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval granted.

Reasons: Dr. Singh owns a quarter section of land in the area of the application. However, the application involves subsurface matters. It would result in the gas currently being flared to be re-injected into the formation to facilitate oil production. It will not affect surface rights, authorize activities impacting the surface, increase the project footprint, or require additional surface facilities. The application does not require a surface lease agreement, and in any event, those are outside the jurisdiction of the AER. Penn West has met all requirements under *Directive 071*. Dr. Singh is not directly and adversely affected.

DLM does not own mineral rights in the area. The AER provided the same response to DLM regarding surface rights as to Dr. Singh. Operational concerns such as odours are outside the AER's jurisdiction. Penn West has met emergency planning requirements under *Directive 071*. Concerns regarding regional and government policies are beyond the scope of the application. Penn West has met all *Directive 065* consultation and notification requirements for this application. With respect to liability for abandonment of the infrastructure located in the area of application, the licensee or approval holder would be responsible for abandonment. DLM has not demonstrated a direct and adverse effect.

Subject Headings: directly and adversely affected, odours, flaring, surface rights, abandonment, consultation, application scope, jurisdiction, mineral rights, gas injection

Fort Chipewyan Métis Local 125 (FCML)/Williams Energy Canada ULC (Williams), Statement of Concern No. 30216, August 24 2016

Proponent application type: Application No. 007-73203

Procedural or other issue: Does Statement of Concern No. 30216 establish a direct and adverse effect on FCML?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: FCML's community is 193 km from the project site. The existing facility is on freehold land owned by Williams and Suncor, and the application will not expand the existing facility. FCML's concerns are general and do not give sufficient detail to establish that the project has a direct and adverse effect on FCML's members. FCML's concerns about transportation of liquid hydrocarbons and natural gas through pipelines are unrelated to Williams' application, which does not include pipelines. In response to FCML's concern regarding lack of notification of the application, Williams has provided notification. It is outside the jurisdiction of the AER to assess whether Crown consultation on the project was adequate, and the Aboriginal Consultation Office indicated no consultation was required.

Subject Headings: First Nations/Métis, directly and adversely affected, consultation, jurisdiction, Aboriginal Consultation Office

Richard Holyk/OMERS Energy Inc. (OMERS), Request for Regulatory Appeal, August 17 2016

Proponent application type: Appeal of a reclamation certificate issued to OMERS Energy Inc.

Procedural or other issue: Is Mr. Holyk eligible to request a regulatory appeal?

Statute or Rule Applied: ss. 91(1)(i) and 145 of the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12 \(EPEA\)](#); s. 36 of *Responsible Energy Development Act*, [SA 2012, c R-17.3](#)

Ruling: Mr. Holyk is eligible to request a regulatory appeal because the decision is appealable and he is an eligible person.

Reasons: The legislative tests for appealable decision and eligible person are met in this case. Mr. Holyk's lands are subject to a reclamation certificate and the *EPEA* therefore grants him an automatic right of appeal. He also provided photo evidence to support his concerns with the state of the site. There are no extraordinary and obvious circumstances that should override his right to appeal.

Facilitated discussions between OMERS and Mr. Holyk resulted in an agreement between the parties. [Mr. Holyk withdrew the appeal.](#)

Subject Headings: Right to appeal, eligible person, landowner, reclamation, reclamation certificate, appealable decision, regulatory appeal, evidence

O'Chiese First Nation (OCFN)/Shell Canada Ltd. (Shell), Motion Pursuant to Sections 14(2) and 44 of the Rules, August 10, 2016

Proponent application type: New NG pipeline, 0% H2S (Application No. 1823846); Public Lands Act Application 150215

Procedural or other issue: Is OCFN entitled to responses from Shell regarding the submitted Information Requests?

Statute or Rule Applied: ss. 12(1), 14(2), and 44 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*); s. 21 of *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); [Joint Operating Procedures for First Nations Consultation on Energy Resource Activities](#)

Ruling: Motion dismissed; the type of information requested pertains to issues that fall outside the scope of the panel's jurisdiction.

Reasons: The AER issued a Process Letter to OCFN and Shell in which it specified that at an upcoming hearing, it would take submissions on the potential impact of Shell's applications on OCFN (as well as the environmental and social impacts). It specified that it would not take submissions on issues over which it does not have jurisdiction: the adequacy of Crown consultation, the Aboriginal Consultation Office (ACO) requirements, or compensation for the impacts of the applications.

OCFN made six IRs to Shell in which it requested further and better information on materials Shell prepared for the ACO regarding the applications' impact on OCFN. The IRs also requested information on the way Shell assesses the potential impact of its applications on non-Aboriginal rights holders. According to s. 12(1)(c) of the *Rules*, part of the purpose of IRs is to "permit a full and satisfactory understanding of the matters to be considered." Because OCFN requested information unrelated to matters the AER intended to consider at the hearing, the AER denied the IRs. It did not wish to provide OCFN information that would cause a challenge to the ACO's findings on consultation or compensation in an inappropriate venue. The AER cannot consider whether or not the ACO made accurate findings, as per s. 21 of REDA.

OCFN can still make submissions on the applications' impact, can still file direct evidence, and can orally examine Shell. The ACO will attend the hearing to determine if Aboriginal rights issues are raised at the hearing that were not previously considered. OCFN did not need the information it requested in order to make an informed statement on the impact that the Applications might have on OCFN members and their lands and resources.

Subject Headings: First Nations/Métis, Information Request, jurisdiction, consultation, Aboriginal Consultation Office, Aboriginal rights

Simon and Tina Kostawich/Devon Canada Corp. (Devon), Request for Regulatory Appeal, August 10 2016

Proponent application type: Regulatory Appeal request for a B140 well (Devon Application Nos. 1848948 & 1849138)

Procedural or other issue: Are the Kostawiches eligible to request a regulatory appeal?

Statute or Rule Applied: ss. 38 and 36(b)(ii) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); [Directive 056: Energy Development Applications and Schedules](#); [Directive 038: Noise Control](#); [Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting](#)

Ruling: The Kostawiches are not eligible to request a regulatory appeal because they are not directly and adversely affected by the decision.

Reasons: S. 36(b)(ii) of REDA defines "eligible persons" under s. 38 as those who are directly and adversely affected by a decision. The Kostawiches are not directly and adversely affected because the subject well is not located on their land. Devon has complied with the consultation requirements in *Directive 056* and with *Directives 038* and *060* on noise and air pollution. Devon also adequately

addressed the Kostawiches' concerns by committing to reducing its haul traffic to certain times of day, agreeing to engage in further consultation regarding air quality and noise concerns with the Kostawiches, and agreeing to notify the Kostawiches about future development in the area. It was not required to personally consult with the Kostawiches but did so nonetheless.

Subject Headings: directly and adversely affected, consultation, eligible person, noise, pollution, traffic, air quality, regulatory appeal

Donna Dahm/Penn West Petroleum (Penn West), Statement of Concern No. 30362, August 3 2016

Proponent application type: New Multiwell Bitumen Battery, 0.15% H₂S (Application No. 1860916)

Procedural or other issue: Does Statement of Concern No. 30362 establish a direct and adverse effect on Ms. Dahm?

Statute or Rule Applied: [Directive 056: Energy Development Applications and Schedules](#)

Ruling: No hearing required. Applied-for licence issued.

Reasons: Ms. Dahm does not own, use, or live on property in the proposed project area or emergency planning zone. She did not provide evidence that the environmental impacts she raises would occur on lands she uses as a result of the project. Her specific concern about wetlands was already addressed in the original Public Land Use application process. Penn West has met all consultation and notification requirements of *Directive 056* that apply to Ms. Dahm.

Subject Headings: emergency planning zone, wetlands, consultation

Paramount Resources (Paramount)/Tourmaline Oil Corp. (Tourmaline), Statement of Concern No. 30358, July 28 2016

Proponent application type: Compulsory Pooling for Spirit River gas spacing unit (Application No. 1860696)

Procedural or other issue: Does Statement of Concern No. 30358 establish a direct and adverse effect on Paramount?

Statute or Rule Applied: *Alberta Energy Pooling Orders Nos. P375 and P451*; Section 80 of the *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#); [Directive 065: Resources Applications for Oil and Gas Reservoirs](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: Tourmaline requested a pooling order for tract owners in a drilling spacing unit so that it could operate a well on that land. Paramount is an owner with a 50% working interest in part of the land. It asserted that producing the well would have an adverse financial effect on its business; it requested that the AER not grant the pooling order and instead wait for Paramount to negotiate a voluntary pooling order with Tourmaline; and it asked that a pooling order, if granted, be consistent with *Alberta Energy Pooling Orders Nos. P375 and P451*. Paramount did not give detail to prove an adverse financial effect. Efforts to come to a voluntary pooling arrangement had been adequate but not successful within a reasonable amount of time (meaning the owner may apply for a compulsory pooling order under s. 80 of the *Oil and Gas Conservation Act*). The pooling order is consistent with *Alberta Energy Pooling Orders Nos. P375 and P451*.

Subject Headings: directly and adversely affected, pooling order, industry vs. industry

Bob Plowman and Donna Dahm/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30296, July 27 2016

Proponent application type: Mineral Surface Lease Application No. 160320

Procedural or other issue: Does Statement of Concern No. 30296 establish a direct and adverse effect on Bob Plowman and Donna Dahm?

Statute or Rule Applied: Factual part of the test for information indicating a direct/adverse effect in para 14 of [*Dene Tha' First Nation v. Alberta \(Energy and Utilities Board\), 2005 ABCA 68*](#); “directly affected” test as summarized in para 28 of [*Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*](#) (03 April 2013), Appeal No. 12-033-ID1 (AEAB)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: The concerns that Mr. Plowman and Ms. Dahm expressed about the proposed oil sands development do not demonstrate that they are directly and adversely affected. Their lands are located some distance from the proposed development; their concerns are too general and not specifically related to their land; and they did not demonstrate that they use lands in the project area.

Subject Headings: directly and adversely affected

O’Chiese First Nation (OCFN)/Shell Canada Limited (Shell), July 27, 2016

Proponent application type: New NG pipeline, 0% H2S (Application No. 1823846); Public Lands Application No. 150215

Procedural or other issue: Does OCFN meet the requirements necessary for approval of an advance funding request in the amount of \$572,648.09?

Statute or Rule Applied: ss. 58.1 and 59 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*); [Directive 031: REDA Energy Cost Claims](#).

Ruling: Advance of funds awarded in the amount of \$25,000.

Reasons: According to s. 59 of the *Rules*, the purpose of advance funds awards from a project proponent (Shell) is to assist a participant in effectively participating in a hearing by covering specific pre-hearing out-of-pocket expenses the participant could otherwise not afford. If, following the hearing, advance funds are found not to have been used for the correct purposes, the participant must refund the advanced funds to the proponent. *Directive 31* sets out the information that must be included in a request for funds. Section 58.1 of the *Rules* provides the factors that will be used to assess this information.

The AER did not grant the whole amount of OCFN’s request for funds because:

- OCFN requested advance funds to cover the possible cost of its entire participation in the hearing. Advance funds are not intended to cover costs which will be incurred at or after the hearing.
- OCFN did not include enough detail in its claim for advance funding for the panel to determine whether the amounts sought were reasonable and necessarily related to the hearing, including

detail on why it required these funds in advance of the hearing, as well as which expert witnesses it required and why.

- OCFN requested advance funds to cover costs that advance funds are not intended to cover, such as fees and disbursements for external counsel and the cost of paying in-house counsel.

However, OCFN received a partial award of funds to cover the preparation of a third-party report and the preparation of testimony from community members. OCFN must account for all advance funds following the hearing in accordance with *Directive 031*. The AER is not bound to issue a costs award in the amount of the advance of funds, and OCFN may therefore be required to repay the advance following the hearing.

Subject Headings: First Nations/Métis, advance of funds, expert evidence

Samson Cree Nation (SCN)/Encana Corporation (Encana), Request for Regulatory Appeal, July 22, 2016

Proponent application type: Integrated Water Infrastructure System - Fox Creek Area Lead Application (Application No. 1802269); Water Act Application No. 00347134-001; Environmental Protection and Enhancement Act Application No. 001-354353; five regulatory appeal requests

Procedural or other issue: Is the Samson Cree Nation eligible to request a regulatory appeal?

Statute or Rule applied: s. 38 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); *Water Act*, [RSA 2000, c W-3](#); *Public Lands Act*, [RSA 2000, c P-40](#); *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#) (EPEA); s. 30 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the Rules); *Specified Enactments (Jurisdiction) Regulation*, [Alta Reg 201/2013](#); *Pipeline Act*, [RSA 2000, c P-15](#); *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission* (03 April 2013), [Appeal No. 12-033-ID1](#) (AEAB) at para 29; *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)* [2005 ABCA 68](#) (Dene) at paras 14, 18, 19; *O'Chiese First Nation v. Alberta Energy Regulator* [2015 ABCA 348](#) (O'Chiese) at paras 37, 38, 42-45; *Cheyne v. Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Cheyne v. Alberta (Utilities Commission)*, [2009 ABCA 348](#) at paras 3-9; *Administrative Procedures and Jurisdiction Act*, [RSA 2000, c A-3](#); s. 35 of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, [1982, c 11](#), *Court v. Alberta Environmental Appeal Board*, [2003 ABOB 456](#), *Mikisew Cree First Nation v. Director, Northern Region, Environmental Management, Alberta Environment, re: Nexen Inc.*

Ruling: SCN is not eligible to request a regulatory appeal because it is not directly and adversely affected by the approvals.

Reasons: SCN requested appeals for five approvals the AER issued to Encana. Encana's project was in the Treaty 8 area, 10 km from its boundary within the Treaty 6 area. SCN is a Treaty 6 First Nation. SCN does not meet the requirements for a regulatory appeal under s. 38(1) of REDA. While four of the decisions are appealable, SCN is not an eligible person, and it did not file all requests in accordance with the rules.

Appealable decision

The five approvals for which SCN requested appeals were issued under various Acts. Under s. 36 of REDA, four of the approvals are appealable decisions. The first approval, issued under s. 91 of EPEA, is appealable because it was issued by the AER under EPEA s. 70(1)(a) or 70(3)(a) and notice was provided. Under s. 115(1)(a) of the *Water Act*, the second approval is appealable because it is an approval issued by the AER for which notice was provided. Under s. 115(1)(b) of the *Water Act*, the third approval is not appealable because SCN submitted its Statement of Concern too late. Under s. 121(1) of the *Public Lands*

Act and s. 211(a) of the *Public Lands Administration Regulation*, the fourth approval is appealable because it is a disposition issued under the *Public Lands Act*. Under the Pipeline Act, the fifth approval is appealable. In order for a decision to be appealable, all these Acts also require that the entity filing the appeal be directly and adversely affected and have complied with the rules. These requirements are addressed below.

Eligible person/directly and adversely affected

Under s. 36 of REDA, an eligible person is a person who is directly and adversely affected by a decision made under an energy resource enactment without a hearing. This requirement varies slightly under the different Acts at issue here. Under EPEA and the *Water Act*, an eligible person is a person who previously submitted a statement of concern in response to public notice and who is directly affected by the AER's decision. Under the *Public Lands Act*, an eligible person is a person to whom notice of the decision was given or a person that is directly and adversely affected by the AER's decision.

Whether SCN is a person who is directly and adversely affected by the AER's decisions to issue these approvals is the principal question to be decided in relation to SCN's requests for regulatory appeals. The burden of proof for determining a direct and adverse effect falls on SCN. It must present reliable information that demonstrates a reasonable potential or probability that it will be affected (*Court v. Alberta Environmental Appeal Board, Tomlinson*). SCN's submissions addressed in detail the rights and interests it claims to have and exercise throughout its traditional territory (which by SCN's description includes the entire province of Alberta). However, its submissions lacked hard information that establishes an SCN presence at a particular location in some ascertainable proximity to Project infrastructure or activities.

According to *Dene Tha'*, a First Nation who asserts that it may be directly and adversely affected by the AER's decision on an application must demonstrate a degree of location or connection with that application, or its effects, in order to bring itself within the bounds of the legislative provision. According to *O'Chiese First Nation v. Alberta Energy Regulator*, SCN must identify specific locations where its members might be affected, or specific ways in which they might be affected by the Project. SCN cannot claim that it is directly and adversely affected merely because the project takes place on its traditional lands. SCN's concerns are general in nature, leaving unanswered the questions of which of its members are active in what locations and for what purposes, and how they or the resources they rely on might be affected by the Project or elements of it.

SCN attempted to rely on the Court of Appeal of Alberta's leave decision in *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94, citing it as authority that the test for direct and adverse effect only requires that a prima facie case be made for the possible infringement of a legal right. However, the court discounted this argument in the full appeal decision. SCN also referred to *Mikisew Cree First Nation v. Director, Northern Region, Environmental Management, Alberta Environment, re: Nexen Inc.* In that case, the Environmental Appeals Board was prepared to accept that the Nation was directly and adversely affected without much evidence of project impacts, but the decision predated more definite rulings from the Alberta Court of Appeal, such as the *O'Chiese* case.

SCN did not present evidence to establish that it is directly and adversely affected, and it is therefore not an eligible person under s. 38 of REDA. The AER will not conduct an appeal.

The Rules

SCN did not meet all filing requirements under the *Rules*. For the *Water Act* approvals, SCN was required to file a request for appeal 7 days after the notice of the order was issued. SCN did not meet this requirement for or the regulatory appeal request it filed on October 7, 2014 in relation to the AER's notice

of decision dated September 26, 2014. Therefore, that approval is not an appealable decision because it was not made in accordance with the *Rules*. In addition, for the preliminary certificate issued under the Water Act, SCN did not file a statement of concern to the original application and it therefore is not an eligible person under REDA in relation to that decision, nor is the decision itself an appealable decision.

Other Questions

SCN also raised three other questions in its submissions that are not relevant to the requests for regulatory appeal. First, SCN questioned whether the AER correctly applied the directly and adversely affected test when it initially approved Encana's applications. However, this is a non-issue because the AER's initial approval was not an appealable decision (it was not issued under an energy resource enactment). Second, SCN also questioned whether or not the AER would jointly consider SCN's August 28 Statement of Concern in respect of both the Water Diversion and Program Applications. The AER considered all these concerns, to the extent that they related to the questions of whether SCN was an eligible person, whether the AER's decisions were appealable decisions, or whether the regulatory appeal requests were filed in accordance with the rules. Third, SCN questioned whether the AER had properly characterized its constitutional questions. The constitutional law questions were not raised in compliance with Part 2 of the *Administrative Procedures and Jurisdiction Act*, and so the AER lacks jurisdiction to consider them. They are also not relevant to the determining if SCN can request an appeal. Even if the AER could have considered SCN's constitutional questions, it would have required more evidence.

Subject Headings: First Nations/Métis, directly and adversely affected, regulatory appeal, eligible person, appealable decision, treaty rights, constitutional questions, traditional lands

MEG Energy Corp. (MEG)/PTTEP Canada Limited (PTTEP), late Statement of Concern, July 19 2016

Proponent application type: PTTEP application to recover bitumen from the McMurray Formation using SAGD. This application is connected to EPEA amendment application 00353243-002.

Procedural or other issue: Is MEG Energy permitted to file a late Statement of Concern?

Statute or Rule applied: *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#)

Ruling: Late filing not permitted.

Reasons: MEG has not demonstrated that the filing delay was reasonable in the circumstances. The Notice of Application that prompted the Statements of Concern (two letters dated Oct 26 2015 and June 20 2016) was both published on the AER website and provided to MEG. Their Oct 26 letter was still 101 days late. MEG's concerns regarded PTTEP's proposed disposal strategy, and MEG will have opportunity to file a Statement of Concern when PTTEP files an application for a wastewater disposal scheme. PTTEP will be required to notify MEG least 15 business days prior to submitting the application.

Subject headings: wastewater disposal, late filing, industry vs. industry, amendment application

ISH Energy Ltd. (ISH)/Canadian Natural Resources Ltd. (CNRL), Statement of Concern, July 15, 2016

Proponent application type: Application to dispose Class 1b fluids into the McMurray Formation via well. (Application No. 1849990)

Procedural or other issue: Does ISH's Statement of Concern establish a direct and adverse affect?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Approval issued.

Reasons: Given the following, including the lack of technical evidence to support its position, ISH has not demonstrated that it may be directly and adversely affected by the AER's decision on the application.

ISH's gas wells producing from the Wabiskaw gas Member are shut-in, as mandated in the AER's (EUB's) Order 05-001. The proposed addition to the water disposal scheme cannot affect production. These wells were shut-in pursuant to Order 05-001 and Decision 2005-122, due to the gas pools being directly over potentially recoverable bitumen. This application is for Class 1b disposal into the McMurray Formation. ISH does not own the mineral rights for bitumen in the relevant areas of the Wabiskaw-McMurray Formation.

CNRL owns the bitumen above the disposal zone and has an interest in ensuring that the disposal does not adversely affect its bitumen.

ISH provided limited technical data in support of its position that there is not a sufficient barrier between the disposal zone and the gas zone; in particular, ISH argues that the 11-29 well log shows the muds to be sandy with a 27-30% porosity, which would not be a sufficient barrier to water flow.

The AER notes that although the McMurray B2 mudstone may be sandy within the 11-29 well, the McMurray A2 mudstone exists within the area, which provides a barrier between the disposal zone and Wabiskaw gas Member.

CNRL also provided technical evidence, including well logs in the area and geologic mapping, and referenced past regulatory decisions in support of its position that there are sufficient geologic barriers to protect ISH's gas wells.

There is a 1m shale interval separating the disposal zone from the overlying bitumen, three silty shale intervals located throughout the McMurray Channel and the McMurray A2 Mudstone separating disposal from the Wabiskaw gas zone. Therefore, fluid migration to the Wabiskaw gas Member is not expected.

Further, the AER notes that there is 5m of McMurray bitumen that could act as a baffle or barrier between the disposal zone and Wabiskaw gas Member.

CNRL's pressure balancing system will ensure reservoir pressure will not reach fracture pressure by keeping the pressure relatively low.

The applied-for disposal would be for a limited time and the AER has included a condition in the approval to require CNRL to return the pressure in the reservoir back to initial pressure following the disposal, which will further ensure that the gas zone is protected.

Finally, ISH requested that a separate CNRL well be shut in based on its concerns with insufficient seals. That request is outside the scope of this Application and there is no evidence to support the requested shut in.

Subject headings: industry vs. industry, directly and adversely affected, mineral rights, waste disposal, application scope, reservoir pressure, evidence

O'Chiese First Nation (OFCN)/Tourmaline Oil Corp. (Tourmaline), Statements of Concern, July 8 2016

Proponent application type: Pipeline Installation Lease Application No. 160062-001, Licence of Occupation Application No. 160177-001, Public Lands Act Applications No. 160116-001 and 160220-001

Procedural or other issue: Do Statements of Concern No. 30193 and 30195 establish a direct and adverse effect on OCFN?

Statute of Rule applied: none

Ruling: No direct and adverse effect. No hearing required. Applied-for approval issued.

Reasons: OCFN does not own the lands on which the project is proposed. The proposed project locations are approximately 135 and 142 km from OCFN's reserve lands. None of the information OCFN provided establishes that its members actually conduct traditional use activities at any specific locations within or in proximity to the area on which the applications are located. OCFN's concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the Applications and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected.

Subject headings: directly and adversely affected, First Nations/Métis, Aboriginal rights, treaty rights, traditional lands

**Ernst & Young Inc. (E&Y)/Court-Appointed Receiver of Spyglass Resources Corp. (Spyglass),
Appeal Filing Extension Request, June 29 2016**

Proponent application type: Request by Ernst & Young for an extension to file Regulatory Appeal of the AER's Order dated June 3, 2016 on Abandonment Costs Order No. ACO 2016-01

Procedural or other issue: Is E&Y permitted to file a late request for regulatory appeal?

Statute of Rule applied: ss. 30(3)(j), 41, and 42 of the *Alberta Energy Regulatory Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: Request for extension denied.

Reasons: Under s. 30(3)(j) of the *Rules*, the deadline for filing a regulatory appeal request for an abandonment cost order is seven days after the date of issuance of the order. E&Y's request (filed on June 13, 2016), was filed after the deadline expired.

The AER has discretion under ss. 41 and 42 of the *Rules* to extend the time within which a person may request a regulatory appeal. The AER's exercise of that discretion must have regard for established legal principles and does not grant unfettered discretion. The AER uses its authority to extend deadlines where circumstances indicate that an extension is warranted to protect procedural fairness for all parties concerned. The onus is on the entity requesting an extension to demonstrate special circumstances exist that support extending the deadline. The requester must show that a *bona fide* intention to file a regulatory appeal existed prior to the deadline passing, and that the failure to file on time was by reason of special circumstances that serve to excuse or justify such failure.

E&Y did not provide an explanation why the request was filed late, nor did it state an intention to "preserve its rights of appeal in all respects" before the filing deadline in either its formal requests or email correspondence with the AER. If E&Y was uncertain about the deadline for filing a regulatory appeal, it could and should have made inquiries when it received notice the Order had issued. Timelines for filing regulatory appeals are an important part of ensuring fairness and certainty in the regulatory process. E&Y has not demonstrated that this is a case that warrants an extension.

Subject headings: Abandonment costs, filing deadline, filing extension, regulatory appeal, procedural fairness

35 Landowners (Prowse Chowne LLP)/Pembina Pipeline Corporation (Pembina), Statement of Concern No. 30290, June 29, 2016

Proponent application type: New High Vapour Pressure pipeline, 0 H₂S (Application No. 1856542)

Procedural or other issue: Does Statement of Concern No. 30290 establish a direct and adverse effect on the 35 landowners?

Statute or Rule applied: Pembina Pipeline Corporation Applications for Two Pipelines Fox Creek to Namao Pipeline Expansion Project, [2016 ABAER 004](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: None of the 35 landowners own lands on which the project is proposed, nor are they within the 200m required notification radius. It does not appear that the proposed pipeline, setbacks, or Emergency Planning Zone (EPZ) may directly and adversely affect the 25 landowners. 7 landowners own, and 4 of those 7 reside on, lands within the project's EPZ. However, they are also within the portion of the EPZ that overlaps the already approved Fox Creek to Namao Pipeline EPZ at the tie in points. No new EPZ is imposed on their lands and their concerns were already addressed during the Fox Creek to Namao pipeline hearing. The application complies with applicable standards.

Taglines: emergency planning zone, directly and adversely affected, pipeline, landowner

Kingsbury and Sandra Manderville, Lucie Bouvier/Bonavista Energy Corporation (Bonavista), Requests to Participate, June 24 2016

Proponent application type: New natural gas pipeline, 0% H₂S (Application No. 1833192); Regulatory appeal by Alexander and Heringer of 2 well licences held by Bonavista

Procedural or other issue: Are the Mandervilles and/or Ms. Bouvier eligible to participate in the hearing on the Bonavista application and regulatory appeal?

Statute or Rule applied: ss. 9 and 32.1 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#)

Ruling: The Mandervilles may be directly and adversely affected and will be permitted to participate fully (unless the matter is otherwise resolved and no hearing is necessary). Ms. Bouvier has an interest in the subject matter and will not unnecessarily delay the proceeding, so she will be allowed a 30-min presentation at the hearing (unless the matter is otherwise resolved and no hearing is necessary).

Reasons: The purpose of the hearing is to determine whether the AER should approve the pipeline application and whether it should confirm, vary, suspend, or revoke its decision to issue the well licences. Bonavista, Patricia and Patrick Alexander (the Alexanders), and Evelyne Heringer are parties to the hearing.

The information the parties provided regarding their proximity to Bonavista's proposed pipeline and wells suggests that they have an interest in the subject matter. Furthermore, the issues they have raised will not unnecessarily delay the proceeding. They will be allowed limited participation in the hearing. They are permitted to make an oral presentation of up to thirty minutes. The Mandervilles are permitted

full participation. If Bonavista, the Alexanders, and Ms. Heringer come to an agreement or otherwise resolve this matter, the panel may cancel the hearing by issuing notice of same.

Subject headings: directly and adversely affected, participation scope, request to participate, pipeline, regulatory appeal, oral submissions

For the AER Regulatory Appeal in relation to this matter see [2017 ABAER 001](#).

Claresholm Beef Produces Ltd. (CBP)/Canadian Natural Resources Limited (CNRL), Statement of Concern No 30286., June 22 2016

Proponent application type: Amendment Multiwell Gas Battery, 0% H₂S (Application No. 1857747)

Procedural or other issue: Does Statement of Concern No. 30286 establish a direct and adverse effect on CBP?

Statute or Rule applied: [Directive 038: Noise Control](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: CBP owns the property where the existing facility (the subject of the proposed amendment) is located. The cattle feed lot is 0.4 km away from the existing facility. CNRL's proposed mitigation measures include placing and using the production tanks as a buffer and directing the tank burners away from the area of concern. These mitigation measures will ensure CNRL complies with *Directive 038*. CBP has not demonstrated that it may be directly and adversely affected by the application. CNRL has satisfactorily addressed the Statement of Concern.

Subject headings: noise, directly and adversely affected, mitigation, amendment application

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30294, June 22 2016

Proponent application type: New Multiwell, 0% H₂S (Application No. 1857827)

Procedural or other issue: Does Statement of Concern No. 30294 establish a direct and adverse effect on Donna Dahm and Bob Plowman?

Statute or Rule applied: [Directive 060 Upstream Petroleum Industry Flaring, Incinerating, and Venting](#), [Directive 056: Energy Development Applications and Schedules](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Ms. Dahm's lands and residence are 11.5 km from the proposed location. Mr. Plowman's lands and residence are 13.2km from the location. The wells will be located in the Peace River Area. Pursuant to *Directive 060*, there is no gas venting permitted at any site in the Peace River Area.

Regarding concerns about wetlands, the wells will be located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original Public Land Use applications process, prior to the initial approval and construction of these wells. Ms. Dahm and Mr. Plowman have not provided information that demonstrates their use of lands or other natural resources in the area of the wells or other locations may be affected by the project, or that the kinds of impacts they are concerned with may result from the application. Penn West has met all applicable consultation and notification requirements of *Directive 056*.

Subject headings: directly and adversely affected, wetlands, venting, water, consultation

Donna Dahm/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30328, June 22, 2016

Proponent application type: New multiwell, 0 H₂S (Application No. 1858162)

Procedural or other issue: Does Statement of Concern No. 30328 establish a direct and adverse effect on Donna Dahm?

Statute or Rule applied: [Directive 060 Upstream Petroleum Industry Flaring, Incinerating, and Venting](#), [Directive 056: Energy Development Applications and Schedules](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons:

Ms. Dahm's lands and residence are 11.5 km from the proposed location. The wells will be located in the Peace River Area. Pursuant to *Directive 060*, there is no gas venting permitted at any site in the Peace River Area.

Regarding concerns about wetlands, the wells will be located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original Public Land Use applications process, prior to the initial approval and construction of these wells. Ms. Dahm has not provided information that demonstrates use of lands or other natural resources in the area of the wells or other locations that may be affected by the project, or that supports her concerns. Penn West has met all applicable consultation and notification requirements of *Directive 056*.

Subject headings: directly and adversely affected, wetlands, venting, consultation

Silvia Coulas/Ferus Natural Fuels Inc. (Ferus), Request for Regulatory Appeal, June 20, 2016

Proponent application type: New LNG Gas Plant, 0% H₂S (Application No. 1847839)

Procedural or other issue: Is Ms. Coulas eligible to request a regulatory appeal?

Statute or Rule applied: ss. 36, 38, 39 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); [Oil and Gas Conservation Act](#), RSA 2000, c O-6 (OGCA); [Directive 038: Noise Control](#); s. 5.1 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013

Ruling: Ms. Coulas is not eligible to request a regulatory appeal because she is not directly and adversely affected by the decision.

Reasons: Under s. 38 of REDA, an eligible person may request a regulatory appeal on an appealable decision. The decision to issue the licence is appealable, as it was made under the OGCA without a hearing. However, Ms. Coulas is not an eligible person who is directly and adversely affected by the AER's decision, under 36(b)(ii) of REDA.

The Ferus Elmworth facility commenced commercial operations in May of 2014 and has been in continuous unchanged operation since then. The 2015 Ferus Elmworth facility licence application was to meet new AER requirements that the facility be approved under the OGCA. The only effect of the licence was to bring the facility into compliance with the AER's determination that liquefied natural gas facilities

are subject to the *OGCA*. The facility complied with all AER regulatory requirements and there were no adverse effects as a result of the issuance of the licence.

Regarding noise concerns, *Directive 038* does not guarantee that a resident will not hear noises from a facility; rather, it aims to not adversely affect indoor noise levels for residents near a facility. Ferus' Elmworth facility complies with *Directive 038* with a significant margin. This is the case for cumulative noise concerns as well. A separate submission will follow with respect to low frequency noise concerns.

Ms. Coulas alleges that Ferus did not provide notice to her of its application for a facility licence as required by section 5.1 of the *Rules*. There is evidence that Ms. Coulas engaged with Ferus repeatedly regarding the Ferus Elmworth facility and its application. Ferus is prepared to continue ongoing engagement with Ms. Coulas even if her request for a regulatory appeal is dismissed. This ground is irrelevant to the question of whether Ms. Coulas is an "eligible person" or whether the decision is considered an "appealable decision".

Taglines: eligible person, noise, directly and adversely affected, appealable decision, regulatory appeal, evidence, LNG facilities

Mark Roberts/Baytex Energy Ltd. (Baytex), Statement of Concern No. 30283, June 16 2016

Proponent application type: Application to Amend Primary Recovery Scheme Approval No. 10070I in various sections within Bluesky Formation - Reno Field - Peace River Oil Sands Area (Application No. 1856446)

Procedural or other issue: Does Statement of Concern No. 30283 establish a direct and adverse effect on Mr. Roberts?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: No new lands will be taken up or disturbed as a result of the approval. Application approval has the potential to impact subsurface rights only. The approval would not authorize any activities that have the potential to impact the surface of the land, such as the drilling of wells or the construction of any related facilities. Those activities require additional applications and decisions by the AER. Any impacts from future applications would be assessed at the time those applications are considered, and notice of the applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER. As a party with known concerns, Mr. Roberts would receive direct notice from Baytex of such related applications.

Mr. Roberts did not provide any information to indicate or explain how an approval of subsurface well spacing might impact him or affect his lands. His concerns are not related to the application or relate to matters outside its scope. He has not demonstrated a direct and adverse effect.

Subject headings: directly and adversely affected, surface rights, application scope, equipment spacing, filing deadline, amendment application

O'Chiese First Nation (OCFN)/Cardinal River Coals Limited. (Cardinal or CRC), Statement of Concern No. 29814, June 13 2016

Proponent application type: Coal Conservation Act Application No. 1828666 (Pit Licence Amendment); Water Act Application No. 010-00205213 (Upper Harris Extension); *Environmental Protection and*

Enhancement Act Amendment to Approval No. 017-00046972 (Upper Harris Extension), Land Use Amendment Application No. MSL0041321

Procedural or other issue: Does Statement of Concern No. 29814 establish a direct and adverse effect on OCFN?

Statute or Rule applied: *O’Chiese First Nation v Alberta Energy Regulator* 2015 ABCA 348 no citation given

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: OCFN does not own lands on which the project is proposed, and the project is located approximately 105 km from OCFN’s closest reserve lands. The proposed Upper Harris Extension Amendment (UHEA) is located within the boundaries of the existing Cheviot Coal Mine (Mine Permit No. C2003-4A), and the proposed extension was anticipated in the original mine approval.

In *O’Chiese First Nation v Alberta Energy Regulator*, the Court of Appeal stated that the mere fact that the proposed developments would be located within an area claimed by OCFN as part of its traditional territory, does not, in and of itself, mean that the AER’s decision on the applications directly and adversely affects OCFN.

OCFN members carry out traditional activities in the MacKenzie Gap, but OCFN did not provide a specific location for the Gap. In response, CRC explained that the two possible locations for the Gap are not within the mine permit area.

In the Occupied Lands Inventory OCFN filed, it provided extensive detail on the types of activities its members carry out in its traditional territory. OCFN described how OCFN members will avoid the mine area. However, OCFN did not provide information on where its members carry out activities within the Mineral Surface Lease area, either currently or historically.

OCFN’s concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the Applications and the potential interference or impacts on its asserted Treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the Application.

An Environmental Impact Assessment (EIA) was completed at the time of the original mine applications. The AER determined that an additional EIA was not required and is satisfied the information provided by CRC addresses the environmental concerns raised by OCFN.

Subject headings: First Nations/Métis, directly and adversely affected, environmental impact assessment, treaty rights, Aboriginal rights, traditional lands, amendment application

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statements of Concern, June 7 2016

Proponent application type: two Resumption Single Wells, 0% H₂S (Applications No. 1855595 and 1855822)

Procedural or other issue: Do Statements of Concern No. 30229 and 30233 establish a direct and adverse effect on Donna Dahm and Bob Plowman?

Statute or Rule applied: [*Directive 60: Upstream Petroleum Industry Flaring, Incinerating, and Venting*](#), [*Directive 056: Energy Development Applications and Schedules*](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Ms. Dahm's lands and residence are 26.9 km from the proposed location. Mr. Plowman's lands and residence are 28.5km from the location. The wells will be located in the Peace River Area. Pursuant to *Directive 060*, no gas venting is permitted at any site in the Peace River Area. Regarding their concern about wetlands, the wells will be located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original Public Land Use applications process, prior to the initial approval and construction of these wells.

Ms. Dahm and Mr. Plowman have not provided information that demonstrates their use of lands or other natural resources in the area of the wells or other locations that may be affected by the project. They have not demonstrated that the kinds of impacts they describe will result from the application. The Township Road referenced in the Statement of Concern is more than 25 km away from the well sites, and they have not specified nor is it clear how they or other residents near these roads might be impacted as a result of the Applications. Penn West has met all applicable consultation and notification requirements of *Directive 056*.

Subject headings: directly and adversely affected, consultation, venting, wetlands, water

Cameron Grabo/Mancal Energy Inc. (Mancal), Statement of Concern No. 30273, June 6 2016

Proponent application type: New Single Well, 11.64% H2S (Application No. 1857767)

Procedural or other issue: Does Statement of Concern No. 30273 establish a direct and adverse effect on Mr. Grabo?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Mr. Grabo does not own the lands on which the activity is proposed. The land he occupies and farms is 185m east of the proposed project. His sole concern is about clubroot contamination, and it is addressed by Mancal's proposed mitigation measures. Mancal will not be directly accessing Mr. Grabo's lands during the construction and operation of this well site.

Subject headings: directly and adversely affected, mitigation

Spyglass Resources Corp (Spyglass)/Bonavista Energy Corp. (Bonavista), Statement of Concern, June 3 2016

Proponent application type: Cost Reimbursement Applications, Licences F17377 & F22070

Procedural or other issue: Does Spyglass Resources Corp's Statement of Concern regarding an application for abandonment costs require a hearing?

Statute or Rule applied: s. 30(2) of the [Oil and Gas Conservation Act](#), RSA 2000, c O-6; the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*)

Ruling: No hearing required. Application for abandonment costs granted.

Reasons: Spyglass has not raised concerns that could fall under the authority of the AER, as set out in its governing legislation. Spyglass' concerns relate to Bonavista's Authorization for Expenditure (AFE). The AFE is related to the parties' private agreements. The other concerns raised by Spyglass relate to the

private agreements between the parties. The determination and enforcement of those agreements is outside the authority of the AER and a matter for the Alberta courts.

Further, Spyglass' concerns relating to the improper withholding of royalties or Spyglass' reserve write down by its reserve auditor appear to be impacts already incurred by Spyglass, and it is not clear how the AER's decision on the abandonment cost application is related to those occurrences.

Finally, in regards to Spyglass' concern regarding public notice, Spyglass was made aware of the application prior to a decision being made and was able to file its Statement of Concern, which has been considered in accordance with REDA and the *Rules*. Accordingly, it appears that any potential defects in providing of notice have not resulted in an adverse impact to Spyglass.

Subject headings: industry vs. industry, abandonment costs

O'Chiese First Nation (OCFN)/Penn West Petroleum (Penn West), Statement of Concern No. 29965, June 1 2016

Proponent application type: 35 applications

Procedural or other issue: Does Statement of Concern No. 29965 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals granted.

Reasons: The applications are for renewals of previously approved dispositions. Penn West included a signed affidavit (statutory declaration) from the surveyor attesting that there has been no change in the lands. The renewal applications contain no changes to the dispositions.

Penn West consulted the Aboriginal Consultation Office (ACO) with respect to their applications and the ACO determined "No Consultation Required" or "Consultation is Complete" on all of the applications.

None of the information provided by OCFN identifies that its members actually conduct traditional use activities at any specific locations within or in proximity to the area on which the applications are located. OCFN's concerns are of a general nature and the information provided by OCFN does not establish a sufficient degree of location or connection between the Applications and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected.

Subject headings: directly and adversely affected, First Nations/Métis, consultation, treaty rights, Aboriginal rights, renewal application, Aboriginal Consultation Office, traditional lands, renewal application

Gordon Hayward & Donna Harker, Wilfred Hemeyer/Bonavista Energy Corporation (Bonavista), Statements of Concern, May 31 2016

Proponent application type: Ferrybank Area - Application No. 1855105 to establish a Holding for Upper Mannville Gas

Procedural or other issue: Do Statements of Concern No. 30236 and 30237 establish a direct and adverse effect on Gordon Hayward, Donna Harker, or Wilfred Hemeyer?

Statute or Rule applied: [Oil and Gas Conservation Act](#), RSA 2000, c O-6

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals issued.

Reasons: The applicant is requesting a holding approval with a well density of three wells per pool per section and is applying with a standard buffer zone of 150 meters on the south and west boundaries of the relevant sections. The parties are the freehold mineral rights owners on the relevant sections, and have leased their mineral rights to Waldron Energy Corporation, which is currently in receivership.

The parties' concerns relate to potential drainage of their mineral rights from additional wells if the holding application is approved. No gas wells have been drilled in the relevant sections, and based on the AER's current pool interpretation, the Morningside Upper Mannville I pool, which is being targeted by the Applicant, does not extend out to the lands where the parties' mineral rights are located. There is currently no evidence that the gas resource exists in the relevant sections of land.

One of the purposes of the OGCA is to afford each owner the opportunity of obtaining the owner's share of production of oil or gas from any pool. The parties are not prevented from drilling wells to access their mineral rights, if any exist.

Subject headings: mineral rights, drainage, directly and adversely affected, holding

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statement of Concern No. 30021, May 31 2016

Proponent application type: Pipeline Installation Lease Application No. 910052

Procedural or other issue: Does Statement of Concern No. 30021 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals issued.

Reasons: Shell's application is for an amendment of an existing Pipeline Installation Lease (PIL) disposition, which has a pipeline riser already constructed on the lands. Shell has not requested any changes to the PIL.

OCFN's nearest reserve boundary is 70 km from the existing PIL. OCFN's concerns are of a general nature, and it did not provide information outlining specific locations where OCFN members conduct activities in relation to the PIL. OCFN did not submit information to establish a sufficient degree of location or connection between the application and the potential interference or impacts on its asserted treaty and Aboriginal rights.

Subject headings: directly and adversely affected, First Nations/Métis, treaty rights, Aboriginal rights, pipeline, amendment application

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statement of Concern No. 30090, May 31 2016

Proponent application type: Licence of Occupation Application No. 151944.

Procedural or other issue: Does Statement of Concern No. 30090 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: OCFN's nearest reserve boundary is 159 km from the proposed project. The project will include an already constructed road and no additional disturbance is proposed.

The mere fact that the project would be located within an area claimed by OCFN as part of its traditional territory does not, in and of itself, mean that the AER's decision on the application directly and adversely affects OCFN. The concerns OCFN raised in its statement of concern are of a general nature. OCFN did not provide information outlining specific locations where OCFN members conduct activities in relation to the proposed application. The information OCFN submitted does not establish a sufficient degree of location or connection between the application and the potential interference or impacts on OCFN's asserted treaty and Aboriginal rights.

Subject headings: traditional lands, First Nations/Métis, directly and adversely affected, treaty rights, Aboriginal rights

Samson Cree Nation (SCN)/Pengrowth Energy Corporation (Pengrowth), Statement of Concern Nos. OSCA 29174 and EPEA 29178, May 27 2016

Proponent application type: Oil Sands Conservation Act Application 1784285, Environmental Protection and Enhancement Act Application 008-1581.

Procedural or other issue: Do Statements of Concern No. 29174 and 29178 establish a direct and adverse effect on SCN?

Statute or Rule applied: s. 21 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); [The Constitution Act, 1982, Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: SCN's lands are 225 km from the proposed project. The fact that the proposed developments would be located within an area claimed by SCN as part of its traditional territory does not, in and of itself, mean that the AER's decision on the Applications directly and adversely affects SCN.

SCN's concerns are of a general nature, and it did not provide any information outlining specific locations where SCN members conduct activities in relation to the proposed project. The information SCN submitted does not establish a sufficient degree of location or connection between the Applications and the potential interference or impacts on its asserted treaty and Aboriginal rights.

To the extent that SCN raises concerns regarding consultation, under s. 21 of REDA the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples as recognized and affirmed under Part II of the Constitution Act, 1982.

Subject headings: directly and adversely affected, First Nations/Métis, traditional lands, treaty rights, Aboriginal rights, jurisdiction, consultation

Westbrick Energy Ltd. (Westbrick)/Lightstream Resources Ltd. (Lightstream), Request for Regulatory Appeal, May 27 2016

Proponent application type: Application No. 1843804 to establish a holding for the production of gas from the Falher member in the Pembina area; Regulatory appeal and stay request by Westbrick Energy Ltd. to Lightstream Resources Ltd. for a holding for the production of gas from the Falher member

Procedural or other issue: Is Westbrick eligible to request a regulatory appeal?

Statute or Rule applied: ss. 36, 38, and 39 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3; [Oil and Gas Conservation Act](#), RSA 2000, c O-6 (OGCA); [Oil and Gas Conservation Rules](#), Alta Reg 151/1971 (OGCR); [1990 CAPL Operating Procedure](#) (Operating Procedure); [Directive 065: Resources Applications for Oil and Gas Reservoirs](#)

Ruling: Westbrick is not eligible to request a regulatory appeal because it is not directly and adversely affected by the decision.

Reasons: Under s. 38(1) of REDA, an eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. S. 36(b)(ii) of REDA defines an eligible person as a person who is directly and adversely affected by a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

S. 36 of REDA also defines an appealable decision. Under s. 36(a)(iv), an appealable decision is a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing. The decision was made under the OGCA, an energy resource enactment, without a hearing, and it is therefore an appealable decision. However, in order to have the right to appeal, Westbrick must also show that it is directly and adversely affected.

Westbrick and Lightstream are joint owners of mineral rights in Section 19. The parties have signed a Joint Operating Agreement (JOA) for the operation of Section 19, which incorporates the *Operating Procedure*. Westbrick alleges that it is directly and adversely affected by the AER's approval of the holding. It is concerned with the penalty provisions in the JOA changing the mineral rights interests of the working interest holders, thereby negating common ownership in Section 19.

Under the *Operating Procedure*, when a working interest holder in Section 19 does not participate in an independent operation involving drilling of a well, the entire beneficial interest (100%) in the working interest held by the non-participant is effectively wholly transferred to those working interest holders who participated in the well. The JOA strips the non-participating working interest holder of most, if not all, its ownership rights and obligations until the penalty is paid and possibly permanently.

Westbrick submits once Lightstream Wells were drilled in operating, Lightstream obtained 100% of the beneficial interests in those wells. Therefore, when Lightstream filed the Application, common ownership did not exist in Section 19, and the AER erred by approving the holding.

Under ss. 5.190 (1) and (2) of the OGCR, the AER may establish holdings in accordance with *Directive 065*. Under s. 5.200 of the OGCR, a holding shall contain only a single drilling spacing unit (DSU) of common ownership or whole, contiguous DSUs of common ownership. S. 1.020(2)(4) of the OGCR provides the test for common ownership in a DSU and a holding: the term must be used in connection with a block, holding or project, and ownership of the lessees' and lessors' interests through the holding must either be the same or they must have agreed to pool their interests. Alternatively, the term must be used in connection with a DSU, and the owners of the lessee's interest throughout the DSU must be the same or they must have agreed to pool their interests.

S. 7.2.7.1 of *Directive 065* confirms that common mineral rights ownership at both the lessor and lessee levels is a prerequisite for establishing a holding. A holding area must consist of at least one DSU or whole, contiguous DSUs of common mineral ownership. Westbrick argues that the JOA between

Westbrick and Lightstream is not a pooling agreement and the agreement did in fact change the ownership of mineral rights.

Directive 065 specifically refers in s. 1.020(2)(4) to the potential for a farm-in or farm-out agreement to change ownership in the area of a holding. However, Westbrick and Lightstream do not have a farm-in or farm-out agreement. Both parties agree that private agreements can affect the ownership of mineral interests within a holding, but Lightstream submits that neither the Joint Operating Agreement nor the Operating Procedure do so in this case.

Westbrick claims that the AER erred in finding that common ownership remains in Section 19 and submits that it has been adversely affected by the issuance of the holding approval. Westbrick is relying on the fact that it elected to go penalty under its Joint Operating Agreement as the basis upon which common ownership has failed. Joint Operating Agreements are common private agreements used within the industry and the option of a Working Interest Participant to go penalty under its private agreement is a common occurrence in the oil and gas industry.

For the purpose of compliance with the common ownership under s. 5.200 of the OGCR, both Westbrick and Lightstream's mineral rights in Section 19 remain the same as before the holding approval was issued; however, Westbrick's mineral interests are subject to the penalty provision under the Joint Operating Agreement. Although Westbrick may not be receiving the full benefit of its interests due to its election to go penalty, the requirement for common ownership remains met.

Further, the adverse impact that Westbrick alleges is a result of it exercising its rights under the Joint Operating Agreement to not participate in the drilling of wells and be subject to the penalty provision. These consequences are not a direct or necessary result of the AER's decision to approve the holding.

The AER notes that the requirement for common ownership is closely connected to the purposes of the *OGCA*. Section 4(c) provides that one of the purposes of the Act is to afford each owner the opportunity of obtaining the owner's share of production of oil or gas from any pool. In this case, the AER is satisfied that Westbrick has the opportunity of obtaining its share of the production of gas from the pool and has decided to go penalty on its own initiative.

The AER's determination that Westbrick continues to hold mineral interests in satisfaction of the common ownership requirements under the *OGCR* is not a final or conclusive determination of the rights of the parties under the Joint Operating Agreement. The ultimate authority on the interpretation and enforcement of private agreements belongs to the courts. Accordingly, Westbrick is able to seek a decision from the courts that it does not, in fact, retain mineral interests in section 19 by operation of its private agreements.

Other Grounds

Westbrick cannot seek a regulatory appeal of the AER's decision not to go to a hearing as that decision was made under *REDA*. As per ss. 36 and 38 of *REDA*, the only decisions that can be appealed are decisions made under the energy enactments, the specified enactments and any other decision or class of decisions described in the regulations.

Subject headings: eligible person, regulatory appeal, directly and adversely affected, common ownership, holding, industry vs. industry, mineral rights, joint ownership, CAPL operating procedure, request for stay, right to appeal

O’Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statement of Concern No. 30097, 30137, 30175, and 30176, May 18 2016

Proponent application type: New Natural Gas, 0% H2S (Infrastructure Application No. 1849404); New Single Well, 0% H2S (Infrastructure Application No. 1850839); New Single Well, 0% H2S (Infrastructure Application No. 1850842); Land Use Application No. PLA 151597-001

Procedural or other issue: Do Statements of Concern No. 30097, 30137, 30175, and 30176 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: OCFN’s concerns are of a general nature, and the information it provided does not establish a sufficient degree of location or connection between the applications and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the applications.

The proposed project is 135 km from OCFN’s reserve lands. The mere fact that the proposed project would be located within an area claimed by OCFN as part of its traditional territory does not, in and of itself, mean that the AER’s decision on the applications directly and adversely affect OCFN.

OCFN submitted that the proposed project will interfere with the exercise of its Aboriginal rights “through the impacts of construction, the physical presence of the project and supporting activities”. In Statement of Concern No. 30097, OCFN provided the O’Chiese First Nation Traditional Land Use Study Trans Mountain Expansion Project (September 13, 2013) prepared for Kinder Morgan (Trans Mountain Pipeline ULC) which included maps purporting to show large areas of current and past traditional land use activities such as gathering, trapping, hunting, habitation and travel routes within the Trans Mountain Expansion Project’s Local Study Area and its Regional Study Area. The maps did not provide information outlining specific locations where OCFN members conduct activities in relation to the proposed project.

Subject headings: First Nations/Métis, traditional lands, treaty rights, Aboriginal rights, trapping, maps

O’Chiese First Nation (OCFN)/Penn West Petroleum Ltd. (Penn West), Statements of Concern, May 12 2016

Proponent application type: Public Lands Act Application 160019-001, Pipeline Installation Lease Application No. 160061-001, and Licence of Occupation Application No. 160169.

Procedural or other issue: Do Statements of Concern Nos. 30134 and 30192 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: OCFN’s reserve lands are 40 km from the project locations. The proposed project is on lands OCFN identifies as its traditional lands. None of the information OCFN provided identifies that its members actually conduct traditional use activities at any specific locations within or in proximity to the area on which the applications are located. OCFN’s concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the Applications and

the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected.

The Aboriginal Consultation Office (ACO) advised that as OCFN did not provide any site specific comments or concerns regarding any potential impacts of the proposed project on OCFN's treaty rights and traditional uses, its concerns are better addressed outside of this project specific consultation. Consultation is adequate for these projects.

Subject headings: First Nations/Métis, directly and adversely affected, traditional lands, treaty rights, Aboriginal rights, consultation, Aboriginal Consultation Office

Patricia & Patrick Alexander, Evelyne Heringer/Bonavista Energy Corporation. (Bonavista), Request for Regulatory Appeal, May 9 2016

Proponent application type: New single well, 0% H2S (Application No. 1831567); New single well, 0% H2S (Application No. 1831564); Regulatory Appeal Request

Procedural or other issue: Are the Alexanders and/or Ms. Heringer eligible to request a regulatory appeal?

Statute or Rule applied: ss. 36, 38, 39 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); s. 30 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*)

Ruling: The AER grants the request for regulatory appeal and will include the well licences in the AER hearing to consider the related pipeline application. The AER hereby requests that Bonavista refrain from acting on the related well licences pending the outcome of the proceeding.

Reasons: Under s. 38(1) of REDA, an eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. For the purposes of this case, an "appealable decision" is defined in s. 36(a)(iv) of REDA as a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing. S. 36(b)(ii) of REDA defines an eligible person as a person who is directly and adversely affected by a decision made under an energy resource enactment.

Section 30(3)(m) of the *Rules* requires that a request for a regulatory appeal be filed within 30 days after the date the notice of decision is issued. Section 30(2) of the *Rules* requires that the requester provide a copy of their Statement of Concern (SOC) or an explanation as to why the requester did not file an Statement of Concern in relation to the application. Section 39(4) of REDA states that the AER may dismiss a request for regulatory appeal if: a) the request is frivolous, vexatious, or without merit; b) if the person did not file an SOC in respect of the application; or c) for any other reason the request is not properly before the AER.

The request for regulatory appeal was filed within 30 days of issuance of the well licences. Both parties agree that the definitions of appealable decision and eligible person are met in this case.

Given the proposed wells are located on the requesters' lands, and in light of other extenuating circumstances noted below, the AER does not agree the regulatory appeal is frivolous, vexatious, or without merit. However, the requesters failed to file a SOC. The requesters specifically refused the registered mail that contained notice of the Applications. The AER has stringent pre-application notification and public consultation and public notice requirements in order to allow concerns to be brought to the attention of the applicants and the AER. This helps create certainty and finality in the AER's decision-making processes. This purpose is frustrated when parties choose not to engage in the regulatory process. Absent extenuating circumstances, the AER would normally dismiss a regulatory

appeal under s. 39(4)(b) for failure to file an SOC. However, in this case the AER is of the view there are extenuating circumstances to justify granting the regulatory appeal in this circumstance.

The requesters notified Bonavista of their intention to retain counsel. It does not appear that Bonavista followed up with the requesters on their intent of retaining counsel to identify the counsel retained. The AER finds that retention of counsel by the requesters demonstrates that they were not trying to evade participating in the regulatory process. Had Bonavista provided notice to the Requesters' counsel as requested, it is likely the complainants would have filed an SOC on the Applications. This finding is supported by the fact that the complainants filed an SOC in relation to the pipeline application seeking approval of a pipeline to tie in the applied-for wells that was submitted by Bonavista shortly after the well licence applications were submitted. The requesters' notice to Bonavista that they had retained counsel to assist in participation in the regulatory process, the requesters' filing of an SOC in relation to the pipeline application, and Bonavista's failure to provide notice to the requesters' counsel as requested constitute extenuating circumstances that justify granting the regulatory appeal.

The related pipeline application submitted by Bonavista has been set down for a hearing. The AER finds that a hearing that includes consideration of the entire project proposed by Bonavista (i.e., both the wells and the related pipeline that will be tied into the wells) will permit the AER to consider the project as a whole and its potential impacts on the Requesters. For this reason, the AER has concluded that it is appropriate to grant the regulatory appeal in this circumstance.

Finally, the filing of the well applications and the pipeline application separately and at different times led to confusion on the part of the requesters. AER requests that next time Bonavista file related applications together.

Subject headings: directly and adversely affected, eligible person, regulatory appeal, appealable decision, pipeline

Rita Callan/Canadian Natural Resources Ltd. (CNRL), Statement of Concern No. 29466, May 2 2016

Proponent application type: Public Lands Act Application No. 141837

Procedural or other issue: Does Statement of Concern No. 29466 establish a direct and adverse effect on Rita Callan?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: Ms. Callan does not appear to request a hearing on the application. This application was made for administrative purposes only; the pipeline was constructed in 1993, and no new disturbance will occur as a result of this application.

This application relates to an existing disturbance and will not cause any new impacts to Ms. Callan's trap line. As a result, she has not demonstrated that she may be directly and adversely impacted by this administrative application.

Attached: Pursuant to s. 20 of the *Public Lands Act*, the AER is granting authority to enter upon those portions of vacant or other public lands for which you have obtained the occupant's consent, for the purpose of a pipeline subject to the conditions (attached).

Subject headings: trapping, directly and adversely affected, pipeline

Métis Nation of Alberta, Region 3 (MNA)/Benga Mining Limited. (Benga), May 2 2016

Proponent application type: Coal Conservation Act Applications No. 1845520 and 1845522

Procedural or other issue: Is the Métis Nation permitted to file a late Statement of Concern?

Statute or Rule applied: [Coal Conservation Act](#), RSA 2000, c C-17; [Responsible Energy Development Act](#), SA 2012, c R-17.3; [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013

Ruling: Late filing permitted.

Reasons: 88 days have passed since the deadline for filing.

Benga has filed two applications under the *Coal Conservation Act (CCA)* to date, and will be filing additional applications for the Grassy Mountain Coal project in the coming months. These may include applications under the *Environmental Protection and Enhancement Act*, the *Water Act*, the *Public Lands Act*, and an additional *CCA* application. Public notice of those applications will be issued by the AER once they are filed and the MNA would have an opportunity to file a Statement of Concern regarding the project at that time.

Considering all of the above, extending the deadline would not cause an unreasonable delay in processing the Application.

Subject headings: late filing, First Nations/Métis, filing deadline

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statement of Concern No. 30183, April 18 2016

Proponent application type: New Multiwell Gas Battery, 0% H₂S (Application No. 1850978)

Procedural or other issue: Does Statement of Concern No. 30183 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: OCFN does not own lands on which the project is proposed, and the project is 155 km from OCFN's reserve lands. The proposed facility is located on an existing lease.

OCFN's concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the Application and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the Application.

Subject headings: First Nations/Métis, treaty rights, Aboriginal rights, directly and adversely affected

Donna Dahm and Bob Plowman/Baytex Energy Ltd. (Baytex), Statement of Concern No. 30201, April 18 2016

Proponent application type: Amendment C331 Multi-well Bitumen Battery, change maximum licenced inlet rates, correct/remove injection/disposal pumps from licence, remove/replace compression (Application No. 1851985)

Procedural or other issue: Does Statement of Concern No. 30231 establish a direct and adverse effect on Donna Dahm and Bob Plowman?

Statute or Rule applied: [Alberta Ambient Air Quality Objectives, Directive 060 Upstream Petroleum Industry Flaring, Incinerating, and Venting](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: This is an amendment to an existing facility. The amendment is required to remove three pumps and one compressor and install two compressors. Ms. Dahm's lands are 9.8 km away. Mr. Plowman's lands are 11.5 km away.

Pursuant to *Directive 060*, no venting is permitted at the facility, and all gas is captured via vapour recovery units. The facility is fully compliant with *Directive 060*, including the requirements specific to the Peace River area in which the facility is located.

Regarding concerns about wetlands, this is an existing facility and no new lands outside of the lease will be used or impacted as a result of the amendment application. The facility is located on Crown land, and the potential impact on water bodies would have been assessed at the time of the original Land Use application process, prior to the approval and construction of the existing facility.

Ms. Dahm and Mr. Plowman have not provided information that demonstrates that they may actually use lands or other natural resources in the project area or other locations that may be affected by the project, or that the kinds of impacts they are concerned with may result from the application.

Baytex has met all applicable consultation and notification requirements.

Based on the above, Ms. Dahm and Mr. Plowman have not demonstrated that they may be directly and adversely affected by the application for the amended facility licence.

Subject headings: directly and adversely affected, air quality, venting, wetlands, water, consultation, amendment application

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30230, April 18 2016

Proponent application type: Amendment Multiwell Bitumen Battery, 0.15% H₂S (Application No. 1854267)

Procedural or other issue: Does Statement of Concern No. 30230 establish a direct and adverse effect on Donna Dahm and Bob Plowman?

Statute or Rule applied: [Alberta Ambient Air Quality Objectives, Directive 060 Upstream Petroleum Industry Flaring, Incinerating, and Venting](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence amendment issued.

Reasons: This is an amendment to an existing facility. Approval of the amendment will not result in any additional equipment at the site. Ms. Dahm's lands are 24 km away. Mr. Plowman's lands are 25 km away.

Pursuant to *Directive 060*, no venting is permitted at the facility site, and all gas is captured via vapour recovery units. The facility is fully compliant with *Directive 060*, including the requirements specific to the Peace River area in which the facility is located.

Regarding concerns about wetlands, this is an existing facility and no new lands outside of the lease will be used or impacted as a result of the amendment application. The facility is located on Crown land, and the potential impact on water bodies would have been assessed at the time of the original Land Use Application process, prior to the approval and construction of the existing facility. As well, Penn West has committed to appropriate mitigation measures to protect the low area within 100 m of the lease.

Ms. Dahm and Mr. Plowman have not provided information that demonstrates that they may actually use lands or other natural resources in the project area or other locations that may be affected by the project, or that the kinds of impacts they are concerned with may result from the application.

Penn West has met all applicable consultation and notification requirements.

Based on the above, Ms. Dahm and Mr. Plowman have not demonstrated that they may be directly and adversely affected by the application for the amended facility licence.

Subject headings: directly and adversely affected, air quality, venting, wetlands, mitigation, water, consultation, amendment application

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30227, April 18 2016

Proponent application type: Amendment Multiwell Bitumen Battery, 0.15% H₂S (Application No. 1854271)

Procedural or other issue: Does Statement of Concern No. 30227 establish a direct and adverse effect on Donna Dahm and Bob Plowman?

Statute or Rule applied: [*Alberta Ambient Air Quality Objectives*](#), [*Directive 060 Upstream Petroleum Industry Flaring, Incinerating, and Venting*](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence amendment issued.

Reasons: Based on the following, Ms. Dahm and Mr. Plowman have not demonstrated that they may be directly and adversely affected by the application for the amended facility licence. This is an amendment to an existing facility. Approval of the amendment will not result in any additional equipment at the site. Ms. Dahm's lands are 24 km away. Mr. Plowman's lands are 25 km away.

Pursuant to *Directive 060*, no venting is permitted at the facility site, and all gas is captured via vapour recovery units. The facility is fully compliant with the requirements of *Directive 060*, including the requirements specific to the Peace River area in which the facility is located.

Regarding the concern about wetlands, this is an existing facility and no new lands outside of the lease will be used or impacted as a result of the amendment application. The facility is located on Crown land, and the potential impact on water bodies would have been assessed at the time of the original Land Use application process, prior to the approval and construction of the existing facility. As well, Penn West has committed to appropriate mitigation measures to protect the low area bordering the southeast edge of the lease.

Ms. Dahm and Mr. Plowman have not demonstrated that they may actually use lands or other natural resources in the project area or other locations that may be affected by the project, or that the kinds of impacts they are concerned with may result from the application.

Penn West has met all applicable consultation and notification requirements.

Subject headings: directly and adversely affected, air quality, venting, mitigation, water, consultation, wetlands, amendment application

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30226, April 18 2016

Proponent application type: Multiwell Bitumen Battery, 0.15% H₂S (Application No. 1854253)

Procedural or other issue: Does Statement of Concern No. 30226 establish a direct and adverse effect on Donna Dahm and Bob Plowman?

Statute or Rule applied: [Alberta Ambient Air Quality Objectives, Directive 060 Upstream Petroleum Industry Flaring, Incinerating, and Venting](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence amendment issued.

Reasons: This is an amendment to an existing facility. Approval of the amendment will not result in any additional equipment at the site. Ms. Dahm's lands are 24 km away. Mr. Plowman's lands are 25 km away.

Pursuant to *Directive 060*, venting is not permitted at the facility site, and all gas is captured via vapour recovery units. The facility is fully compliant with the requirements of *Directive 060*, including the requirements specific to the Peace River area in which the facility is located.

Regarding the concern about wetlands, this is an existing facility and no new lands outside of the lease will be used or impacted as a result of the amendment application. The facility is located on Crown land, and the potential impact on water bodies would have been assessed at the time of the original Land Use application process, prior to the approval and construction of the existing facility. As well, Penn West has committed to appropriate mitigation measures to protect the muskeg bordering the lease.

Ms. Dahm and Mr. Plowman have not demonstrated that they may actually use lands or other natural resources in the project area or other locations that may be affected by the project, or that the kinds of impacts they are concerned with may result from the application.

Penn West has met all consultation and notification requirements.

Subject headings: directly and adversely affected, air quality, venting, mitigation, water, consultation, wetlands, amendment application

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statements of Concern, April 8 2016

Proponent application type: Pipeline--New Natural Gas, 0% H₂S (Application No. 1850756); Land Use Application No. PLA [Public Lands Act] 151643-001 and PIL [Pipeline Installation Lease] 150851-001

Procedural or other issue: Do Statements of Concern No. 30122 and 30172 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: OCFN does not own lands on which the project is proposed. The project is 146 km from OCFN's reserve lands. The proposed pipeline will be 4.88 km in length and will be used to transport natural gas from an existing well to an existing pipeline.

OCFN's concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the application and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the applications.

Subject headings: First Nations/Métis, directly and adversely affected, treaty rights, Aboriginal rights, pipeline

Canadian Natural Resources Limited (CNRL)/Signalta Resources Limited (SRL), Statement of Concern No. 30057, April 4 2016

Proponent application type: Application No. 1842650, to produce gas from the Upper Grand Rapids zones in a well in the Cold Lake Oil Sands Area.

Procedural or other issue: Does Statement of Concern No. 30057 establish a direct and adverse effect on CNRL?

Statute or Rule applied: [Interim Directive 99-1: Gas/Bitumen Production in Oil Sands Areas Application, Notification, and Drilling Requirements](#) (the *Interim Directive*); s. 3(5) of the [Oil Sands Conservation Regulation](#), Alta Reg 76/1988 (*OSCR*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: CNRL submitted that the application was not complete as per the *Interim Directive* and that there was log evidence of bitumen accumulations in the Colony and McLaren within a reasonable radius of influence around the subject well. The AER has reviewed the application and is satisfied that the application meets the requirements in the *Interim Directive*.

CNRL has not demonstrated that its bitumen interests may be directly and adversely affected by gas production from SRL's well. The wells in closest proximity to SRL's well do not have bitumen present, CNRL has not provided correlations or maps or seismic to demonstrate that its well is in the same pool as SRL's, and the location of CNRL's well in relation to the SRL's well suggests that CNRL's well is in a different stratigraphic trend than SRL's well.

CNRL can file an application under s. 3(5) of the *OSCR* to have gas production shut in to protect CNRL's bitumen assets. As gas production is already occurring in other areas of the pool, a section 3(5) *OSCR* application is the appropriate process because it would examine the impact of gas production on a pool basis, rather than on a single well.

Subject headings: directly and adversely affected, industry vs. industry, conservation, gas over bitumen, evidence

Fort McMurray Métis Local 1935 (FMML)/Canadian Natural Resources Limited (CNRL), Request for Regulatory Appeal, March 31 2016

Proponent application type: Regulatory Appeal Request for Oil Sands Exploration Application 140048 (Gregoire OSE Program)

Procedural or other issue: Should the AER reconsider its decision under s. 42 of REDA? Is FMML eligible to request a regulatory appeal?

Statute or Rule applied: ss. 36, 38, 39, 42 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); ss. 20 and 121 of the [Public Lands Act](#), RSA 2000, c P-40 (PLA); ss. 211 and 212 of the [Public Lands Administration Regulation](#), Alta Reg 187/2011; [Dene Tha' First Nation v. Alberta \(Energy and Utilities Board\)](#), 2005 ABCA 68 (*Dene Tha'*) at paras 14, 18, 19

Ruling: Request for reconsideration dismissed. FMML is not eligible to request a regulatory appeal because it is not directly and adversely affected by the decision to issue the authorization.

Reasons: The AER has considered FMML's request, under s. 42 of REDA, for reconsideration of its Feb 26, 2015 decision to not hold a hearing to consider the Application (the No Hearing decision). It has also considered the decision of the same date to approve the Application and issue the Authorization pursuant to s. 20(1) of PLA. It has also considered FMML's request for regulatory appeal of these decisions under s. 38 of REDA.

FMML seeks to include information not previously provided to the AER, including a letter with maps indicating traditional land use areas attached. The AER will consider the additional information because FMML believed the information would be provided to the AER by the Aboriginal Consultation Office (ACO) and because the additional information is credible and relevant. FMML believed that the ACO had an obligation to share the information with AER under the Joint Operating Procedure, which is not true.

The AER has authority to reconsider its decisions pursuant to s. 42 of REDA. S. 42 provides that it is at the AER's sole discretion to reconsider its decisions. That section is not intended to and does not provide any additional appeal mechanisms beyond those provided in ss. 38 and 45 of REDA. Given the appeal processes available under REDA, and the need for finality and certainty in its decisions, the AER will only exercise its discretion to reconsider a decision under s. 42 in the most extraordinary circumstances and where it is satisfied that there are exceptional and compelling grounds to do so. Mere disagreement with a decision is not sufficient.

The additional information submitted does not demonstrate any error in the decision to not have a hearing, nor does it demonstrate an error in the decision to approve the Application. Further, no extraordinary circumstances are disclosed. This is not an appropriate case to exercise the discretion to reconsider under s. 42 of REDA.

S. 38 of REDA provides that an eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. S. 36 of REDA defines an "appealable decision." Under s. 36(a)(iii), the decision must be one in respect of which a person would otherwise be entitled to submit a notice of appeal under s. 121 of the *Public Lands Act*, if that decision was made without a hearing. Under s. 36(b)(i), an eligible person is a person who is directly and adversely affected by an appealable decision.

The decision not to hold a hearing is not an appealable decision. The decision was made under REDA, and, as per ss. 36 and 38 of REDA, the only decisions that can be are decisions made under energy enactments (which does not include decisions as to whether have a hearing).

In order for the decision to issue the authorization to be an “appealable decision” under s. 36(a)(iii) of REDA, FMML must be a person who would otherwise be entitled to submit a notice of appeal under s. 121 of the PLA and the decision must have been made without a hearing. S. 121(1) provides that a notice of appeal of a prescribed decision may be submitted to an appeal body by a prescribed person in accordance with the regulations. A “prescribed decision” is defined in section 211 of the *Public Lands Act Regulation (PLAR)*. Specifically, section 211(a) provides that the issuance of a disposition under the PLA is a decision that can be appealed. Therefore the decision to issue the public land dispositions would be considered a “prescribed decision” in section 121 of the PLA. Section 212(1) of PLAR provides that a person to whom a decision was given of person who is directly and adversely affected can appeal a “prescribed decision.” FMML is not a person to whom the AER’s decision was given: the decision was given to CNRL. Therefore, to have standing to appeal a “prescribed decision,” FMML must demonstrate that it is a person who is directly and adversely affected by the AER’s decision to issue the authorization.

The *Dene Tha’* ABCA decision explains that, when considering whether someone is directly and adversely affected, the AER must consider whether there is a ‘degree of location or connection’ between the work proposed and the person, and whether that connection is sufficient to demonstrate the person may be directly adversely affected by the proposed activity. What is needed is reliable information indicating that the lands proximate to the program footprint are actually being used by FMML members for particular purposes, and those land uses will not be possible if the projects proceed.

FMML’s assertions of traditional land uses were general in nature, leaving unanswered the question of what land uses occur in what locations, and for what purposes. FMML’s submissions, including the additional information, do not contain the detail needed to demonstrate a degree of location or connection between the program and the asserted impacts on traditional land users that demonstrates a potential for the Authorization to directly and adversely affect a FMML member. As a result, the AER cannot conclude that the issuance of the authorization may or will adversely impact FMML and/or its members.

Subject headings: First Nations/Métis, directly and adversely affected, traditional lands, eligible person, appealable decision, regulatory appeal, prescribed decision, consultation, reconsideration request, maps, Aboriginal Consultation Office

Advantage Oil and Gas Ltd (Advantage)/AER, Request for Regulatory Appeal, March 28 2016

Proponent application type: Regulatory Appeal request from Advantage Oil & Gas Ltd. for AER rescinded Field Order 0390

Procedural or other issue: Is Advantage eligible to request a regulatory appeal?

Statute or Rule applied: ss. 36, 38, and 39 of [*Responsible Energy Development Act*](#), SA 2012, c R-17.3 (REDA); s. 33 of the [*Oil and Gas Conservation Act*](#), RSA 2000, c O-6 (OGCA)

Ruling: Advantage is not eligible to request a regulatory appeal because it is not directly and adversely affected by the decision.

Reasons: Under s. 38 of REDA, an “eligible person” may request a regulatory appeal. REDA defines the term “eligible person” in s. 36(b)(ii) to include “a person who is directly and adversely affected by a decision [made under an energy resource enactment].”

The AER's has the authority to designate fields under OGCA s. 33(1)(a).

Advantage has concerns that the rescission of the Glacier field order and merging it into the Pouce Coupe South field has consequences both field and administrative, as well as recognition with the finance and investment community.

Glacier field has become synonymous with Advantage Oil and Gas Ltd. There are several communities and area residents that have become familiar with the Glacier field name, which will also impact those relationships alongside effectiveness of emergency response plans and programs.

The consequences include the recognition of the Glacier field name that has been historically associated to the area with surrounding landowners, communities, industry peers, vendors, financial markets and the investment community.

Advantage has developed over 200 mmscf/d of gas production from the Glacier field and plans to continue growth. There are over 1,000 future drill locations and a resource of 18 T cfe of natural gas and liquids in place. It has been operating in the area for nearly a decade, and the Glacier field and name has been synonymous with Advantage and the Montney formation.

There will be costs to make retroactive changes to field operations and safety, as well as to administrative and regulatory processes.

The Montney production at Glacier is also differentiated by distinct well productivity and reservoir characteristics compared to the Pouce Coupe South.

Advantage suggests that specific parcels could be rationalized into surrounding fields, but that the entire Glacier field should not be consolidated and the field name sterilized, or those adjacent parcels could be rationalized into the Glacier field.

The AER merged the Glacier field into the Pouce Coupe South field in order to permit, track, and regulate, in the AER system, commingled production from the two pools in a single wellbore. The designation of fields, including merging of fields as in this case, is an administrative function that the AER routinely performs (20-25 occur each year).

The AER finds that the administrative change of updating the field name does not adversely affect Advantage. Advantage has not provided evidence that it would be required under AER requirements to undertake work or incur costs as a result of the name change, or that Advantage would be in noncompliance with AER requirements as a result of the change. Advantage raises concerns with possible business matters, such as brand recognition, that are not adverse affects caused by the AER's decision to merge the fields, but are voluntary decisions made by Advantage. In regards to Advantage's safety concerns, there is no evidence demonstrating that updating the field name would result in Advantage not being able to meet its safety obligations, and it seems remote that a person responding to a safety concern would be relying on the field name to be able to respond appropriately. Also, drilling locations are made as a result of the potential to produce hydrocarbons and not on field names, therefore, Advantage's future drilling plans are not likely to be impacted by this administrative change.

Subject headings: eligible person, regulatory appeal, directly and adversely affected, pool name, safety

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statement of Concern No. 30180, March 22 2016

Proponent application type: Well Application No. 1850868

Procedural or other issue: Does Statement of Concern No. 30180 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: OCFN does not own land on which the project is proposed, and the project is 160 km from OCFN's reserve lands. The proposed well is located on an existing lease.

OCFN's concerns are of a general nature and the information provided by OCFN does not establish a sufficient degree of location or connection between the Application and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the Application.

Subject headings: First Nations/Métis, directly and adversely affected, treaty rights, Aboriginal rights

Benga Mining Limited (Benga)/AER, AER Environmental Assessment Major Deficiency Report, March 21 2016

Proponent application type: Application under s. 10 of the *Coal Conservation Act* for permit to develop a surface metallurgical coal mine site (for the Grassy Mountain Coal Project); application under s. 23 of the *Coal Conservation Act* for approval to construct and operate new coal processing plant (incl. EIA report).

Procedural or other issue: Benga requested that the AER provide further information on a report it issued to Benga concerning major deficiencies in its EIA report.

Statute or Rule applied: [Coal Conservation Act](#), RSA 2000, c C-17

Ruling: none

Reasons: This direction is intended to provide specific examples of key areas within the EIA report requiring attention and does not address all items of concern within the report. In addition to addressing these major deficiencies, Benga should conduct a thorough review of the EIA report for other missing information, incomplete analysis or inconsistencies prior to resubmission.

AER is committed to facilitating the discussions between the AER, Alberta Environment & Parks and Department of Fisheries and Oceans to obtain the level of information required for the AER environmental impact assessment (EIA) with respect to the fisheries permitting.

Benga should provide a work plan including timelines (completion dates) for each item on the MDR and a commitment to submit an updated EIA that has addressed all the deficiencies.

Subject headings: environmental impact assessment, MDR report

O'Chiese First Nation (OCFN)/Shell Canada (Shell), Statements of Concern, March 4 2016

Proponent application type: Infrastructure Applications No. 1845551, 1845552, 1845554, 4845555, 1845579, 1845580, 1845581, 1845584, 1845806, 1845807, 1846347; Land Use Application No. 151582

Procedural or other issue: Do Statements of Concern No. 30107 and 30096 establish a direct and adverse effect on OCFN?

Statute or Rule applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: OCFN's reserve boundaries are 20km from the nearest portion of the proposed project. The relevant applications are for projects located wholly on freehold land.

OCFN's concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the applications and/or authorization and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the applications or the authorization.

Subject headings: directly and adversely affected, First Nations/Métis, treaty rights, Aboriginal rights

O'Chiese First Nation (OCFN)/Cardinal River Coals Ltd. (CRC), Reconsideration Request, March 4 2016

Proponent application type: Mine Permit Request No. C2003-4A for Cheviot Coal Mine

Procedural or other issue: Is this a situation where the AER should exercise its discretion under s. 42 of REDA to reconsider its own decision?

Statute or Rule applied: s. 42 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDa); [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12

Ruling: Request for reconsideration dismissed. Hearing not required. Applied-for permit issued.

Reasons: OCFN has not established exceptional and compelling grounds for the AER to reconsider its decision or proven that this case is in obvious need of remediation.

S. 42 of REDA gives the AER authority and sole discretion to reconsider confirm, vary, suspend, or revoke its decisions.

Given the appeal processes available under REDA, and the need for finality and certainty in its decision, the AER will only exercise its discretion to reconsider a decision under the most extraordinary circumstances where it is satisfied that there are exception and compelling grounds to do so. S. 42 of REDA should be used sparingly, and only in the most compelling cases where no other review power exists to address a situation that is in obvious need of remediation.

OCFN has not addressed what harm has or will occur if Mine Permit C 2003-4A stands. The Permit amended Mine Permit No. C2003-4 by removing several clauses and rewording one clause to eliminate overlap and redundancy. OCFN states that the conditions in the original mine permit were imposed to protect Aboriginal and treaty rights, but it does not address how these rights were or are impacted by the removal and rewording of the conditions. OCFN also did not identify why it waited until December 2015 to request a reconsideration of the decision to amend the mine permit, which was made in May 2013.

Subject headings: First Nations/Métis, Aboriginal rights, treaty rights, reconsideration request

Rangeview Farms Ltd. (Rangeview) /Advantage Oil & Gas Ltd. (Advantage), Statement of Concern No. 29776, , March 3 2016

Proponent application type: Application for Reclamation Certificate No. 00366801-001

Procedural or other issue: Does Statement of Concern No. 29776 establish a direct and adverse effect on Rangeview?

Statute or Rule applied: [2010 Reclamation Criteria for Wellsites and Associated Facilities for Cultivated Lands](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for reclamation certificate issued.

Reasons: In May of 2013, erosion was observed along the access road and found to be caused by reclamation work done to address compacted subsoil. In late May of 2013, eroded topsoil was distributed over the access road, the distributed soils were power tilled and rocks were picked from the wellsite and access road and hauled off-site for disposal. In the summer of 2013, a level 1 soils, vegetation and landscape assessment indicated that the site met the 2010 Reclamation Criteria for Wellsites and Associated Facilities for Cultivated Lands (Reclamation Criteria).

AER staff conducted a site visit on October 15, 2015 and concluded the wellsite and access road met the Reclamation Criteria. The concerns raised in the Statement of Concern have been addressed by Advantage to the satisfaction of the AER.

Subject headings: erosion, reclamation, reclamation certificate, directly and adversely affected, site visit

Mark Roberts/Baytex Energy Ltd. (Baytex), Reconsideration Request, February 26 2016

Proponent application type: Regulatory Appeal Request No. 1829801 for Application Nos. 1815571, 1815581, 1817010, 1817013, 1817224, 1817233, 1817261, 1817405, 1817425, 1821341, 1821359, 1821376, 1821385, 1823471, 1823477, 1823478, 1823482

Procedural or other issue: Is this a situation where the AER should exercise its discretion under s. 42 of REDA to reconsider its own decision?

Statute or Rule applied: ss. 38, 42, 45 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDa); [Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for reclamation certificate issued.

Reasons: S. 42 of REDA gives the AER authority and sole discretion to reconsider confirm, vary, suspend, or revoke its decisions.

This section does not intend to and does not provide any additional appeal mechanisms beyond those provided in ss. 38 and 45 of REDA. Given the appeal processes available under REDA, and the need for finality and certainty in its decisions, the AER will only exercise its discretion to reconsider a decision under s. 42 in the most extraordinary circumstances and where it is satisfied that there are exceptional and compelling grounds. Disagreement with a decision is not sufficient.

The AER has determined that this is not an appropriate case to exercise its discretion under s. 42 of REDA to reconsider the decision.

The AER did not err by preferring the evidence of one party over another.

The AER did not err by concluding, based on available evidence, that Baytex is taking steps to ensure no flaring to atmosphere occurs at its facilities and that they operate safely (two instances of flaring since August of 2014).

The AER did not err by finding that Baytex was in compliance with *Directive 060* in respect of its activities on the subject sites. One (possibly two) events that occurred several months ago and several months apart do not justify a conclusion that Baytex has disregarded the requirements of *Directive 060*.

Nor do these events indicate that Baytex is not compliant with AER requirements in light of all the other evidence and information submitted to the AER regarding ongoing efforts to mitigate flaring and venting at AER licenced facilities.

The AER did not err in concluding that the evidence before it did not demonstrate the source of the odours observed by Mr. Roberts was the Baytex facilities.

Subject headings: directly and adversely affected, venting, flaring, odours, reconsideration request, regulatory appeal, reclamation certificate, evidence

Bob Plowman and Donna Dahm/Shell Canada Ltd. (Shell), Statement of Concern No. 30019 & 30020, February 26 2016

Proponent application type: Mineral Surface Lease Application No. 131984 and Licence of Occupation Application No. 132090

Procedural or other issue: Do Statements of Concern No. 30019 and 30020 establish a direct and adverse effect on Bob Plowman and Donna Dahm?

Statute or Rule applied: [*Dene Tha' First Nation v. Alberta \(Energy and Utilities Board\)*](#), 2005 ABCA 68 (*Dene Tha'*) at para 14; [*Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*](#) (03 April 2013), Appeal No. 12-033-ID1 (AEAB) at para 28 (*Tomlinson*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals issued.

Reasons: Based on the following, Mr. Plowman and Ms. Dahm have not demonstrated that they may be directly and adversely impacted by the applications. *Dene Tha'* sets out the factual test for establishing a direct and adverse effect: “some degree of location or connection between the work proposed the right asserted is reasonable.” This is also consistent with decisions of Alberta courts and the Alberta Environmental Appeals Board that describe the “directly affected” test applied by the EAB (*Tomlinson*). The closer the proximity the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.

In its review of Mr. Plowman and Ms. Dahm’s concerns, the AER considered the following:

- The proposed project is 16.40 km from Mr. Plowman’s land and 18.60 km from Ms. Dahm’s land;
- They have not provided information that demonstrates that the type of impacts they are concerned with may result from the approval of the applications. Their concerns appear to be general in nature and are not directly related to the applications;
- They have not provided information that demonstrates they may actually use lands or other resources in the project area or other locations that may be affected by the project;
- The applications are for an amendment only;
- No additional bitumen development, pipelines or other project infrastructure will be authorized by the AER’s approval of the applications, and such activities and infrastructure requires separate AER approvals. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Subject headings: directly and adversely affected, filing deadline, amendment application

Bob Plowman and Donna Dahm/Baytex Energy Ltd. (Baytex), Statement of Concern No. 30023, February 26 2016

Proponent application type: Mineral Surface Lease application No. MSL 112951

Procedural or other issue: Does Statement of Concern No. 30023 establish a direct and adverse effect on Bob Plowman and Donna Dahm?

Statute or Rule applied: [*Dene Tha' First Nation v. Alberta \(Energy and Utilities Board\)*](#), 2005 ABCA 68 (*Dene Tha'*) at para 14; [*Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*](#) (03 April 2013), Appeal No. 12-033-ID1 (AEAB) (*Tomlinson*) at para 28

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals issued.

Reasons: Based on the following, Mr. Plowman and Ms. Dahm have not demonstrated that they may be directly and adversely affected by the applications. *Dene Tha'* sets out the factual test for establishing a direct and adverse effect: “some degree of location or connection between the work proposed the right asserted is reasonable.” This is also consistent with decisions of Alberta courts and the Alberta Environmental Appeals Board that describe the “directly affected” test applied by the EAB (*Tomlinson*). The closer the proximity the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.

In its review of their concerns, the AER considered the following:

- The proposed project (well centre) is 9.10 km from Ms. Dahm’s lands and 19.40 km from Mr. Plowman’s lands;
- They have not provided information that demonstrates that the kinds of impacts they are concerned with may result from approval of the application. Their concerns appear to be general in nature and are not directly related to the application;
- They have not provided information that demonstrates they may actually use lands or other resources in the project area or other locations that may be affected by the project;
- The application is for the conversion of an existing short-term disposition to a long-term disposition;
- No additional bitumen development, pipelines or other project infrastructure will be authorized by the AER’s approval of the application, and such activities and infrastructure requires separate AER approvals. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Subject headings: directly and adversely affected

Bob Plowman and Donna Dahm/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30184, February 24 2016

Proponent application type: Amendment Multiwell Battery 0.15% H2S (Application No. 1848236)

Procedural or other issue: Does Statement of Concern No. 30184 establish a direct and adverse effect on Bob Plowman and Donna Dahm?

Statute or Rule applied: [Alberta Ambient Air Quality Objectives, Directive 60, Report of Recommendations on Odours and Emissions in the Peace River Area](#) (*Report of Recommendations*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals issued.

Reasons: This is an amendment to an existing facility. Ms. Dahm's lands are 21.4km from this facility.

Pursuant to *Directive 060*, no venting is permitted at the facility site, and operators must capture and flare, incinerate, or conserve all casing and tank-top gas. The subject facility is fully compliant with the requirements of *Directive 060*, including the requirements specific to the Peace River area in which the facility is located.

The AER published the Compliance Sweep summary for the Peace River Area on its website. It shows the results of a series of inspections conducted on January 25 and 26, 2016. The report indicated 13 inspections in the Walrus area were found to be 100% compliant with *Directive 060* and the requirements of the *Report of Recommendations*.

Regarding Mr. Plowman and Ms. Dahm's concern about wetlands, the application is for an amendment to an existing facility and will not use or impact new lands. The facility is located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original Public Land Use application process, prior to the approval and construction of the existing facility.

Penn West has met all applicable consultation and notification requirements. Regarding Mr. Plowman and Ms. Dahm's concerns about Penn West not providing them with additional requested information about the application, Penn West did provide a response to some of their requests and much of the information requested is outside of the scope of the application. Further, as indicated in the public notice of application, Penn West's application and supporting documents are publically available through the AER's Integrated Application registry.

Subject headings: directly and adversely affected, venting, consultation, air quality, water, application scope, information request, wetlands, amendment application

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statements of Concern, February 22 2016

Proponent application type: New Natural Gas 0% H₂S (Application No. 1849363), New Single Well 0% H₂S (Application No. 1850233)

Procedural or other issue: Do Statements of Concern No. 30136 and 30158 establish a direct and adverse effect on OCFN?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: OCFN does not own lands on which the project is proposed, and the project is 168 km from OCFN's reserve lands. The proposed well is located on an existing lease.

OCFN's concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the Application and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the Applications.

Subject headings: directly and adversely affected, First Nations/Métis, treaty rights, Aboriginal rights

Mrs. Elsie Neumann and Mr. Henry Neumann/NEP Canada ULC (NEP), Statement of Concern No. 29988, February 17 2016

Proponent application type: New single well 1.94% H2S (Application Nos. 1838099 and 1838112), new multiwell pad 1.94% H2S (Application No. 1838111), new oil satellite 0.9% H2S (Application No. 1843089)

Procedural or other issue: Does Statement of Concern No. 29988 establish a direct and adverse effect on the Neumanns?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: The Neumanns do not own the lands on which the project is proposed, and they reside about 500 meters from the project. The notification radius for these wells is 200 meters. Once NEP became aware of the Neumanns' concerns, it provided the Neumanns with information regarding the project and the applications.

Regarding concerns about potential damage to the Neumanns' water well, NEP has conducted water well testing on their property and has agreed to conduct post-completion testing. NEP is required to comply with all regulations regarding hydraulic fracturing and water monitoring.

Other concerns regarding lifestyle, property value and potential land development were too general in nature to demonstrate possible impacts from the project.

Subject headings: directly and adversely affected, water, property values

Bob Plowman and Donna Dahm/Baytex Energy Limited (Baytex), Statements of Concern, February 17 2016

Proponent application type: Pipeline - Amendments Salt Water .13% H2S (Applications No. 1848038 and 1848040)

Procedural or other issue: Do Statements of Concern No. 30150 and 30151 establish a direct and adverse effect on Bob Plowman and Donna Dahm?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence amendments issued.

Reasons: Baytex received approval to remove the pipeline on June 5, 2015. During the removal process, Baytex was unsuccessful in removing four 30 meter segments at two road crossings. The AER advised Baytex to leave the segments in place and to completely abandon those segments when ground conditions permitted safe access.

These applications are records corrections to reflect that there are portions of the pipeline that were not removed due to technical limitations, and are essentially notifications of activity that has previously occurred.

Ms. Dahm's lands are 2.4 km from the nearest portion of the pipeline. Mr. Plowman's lands are 4.2 km from the nearest portion of the pipeline.

There are no emissions or developments associated with the applications and the records correction does not impact them or their lands.

Baytex has met all applicable consultation and notification requirements.

Subject headings: directly and adversely affected, records correction, pipeline, emissions, consultation, removal application, amendment application

Canadian Natural Resources Limited (CNRL)/AER Enforcement and Surveillance, Request for Regulatory Appeal, February 16 2016

Proponent application type: Regulatory appeal request for Administrative penalty 2013-44

Procedural or other issue: Is CNRL eligible to request a regulatory appeal?

Statute or Rule applied: ss. 36 and 38 of [Responsible Energy Development Act](#), SA 2012, c R-17.3; s. 91 of the [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12; s. 115 of the [Water Act](#), RSA 2000, c W-3

Ruling: CNRL is eligible to request a regulatory appeal because the decision is appealable and it is directly and adversely affected.

Reasons: The decision to issue the administrative penalties meets the definition of an appealable decision, and CNRL is an eligible person. Therefore, the AER shall conduct a regulatory appeal hearing.

Subject headings: regulatory appeal, administrative penalty, eligible person, appealable decision

Mikisew Cree First Nation (MCFN)/Athabasca Oil Corporation (AOC), Late Filing Request, February 09 2016

Proponent application type: Water Act Licence (00316166-00-00) Renewal Application (004-00316166)

Procedural or other issue: Is MCFN permitted to file a late Statement of Concern?

Statute or Rule applied: [Responsible Energy Development Act](#), SA 2012, c R-17.3; s. 45 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*)

Ruling: Late filing permitted.

Reasons: Given the following and finding that an extension would not cause an adverse impact on the processing and consideration of AOC's Application, the AER grants the extension and permits the late filing.

The Public Notice of Application was issued on December 3, 2015, with a deadline to file a Statement of Concern (SOC) by January 2, 2016. MCFN received the notification and related application materials during the second week of December 2015; however, due to the holiday closure of its office, no SOC was provided prior to the deadline. MCFN has indicated it can provide an SOC by February 15, 2016.

AOC has indicated that it is not required to notify or consult with MCFN on its Hangingstone 1 facility, but chose to provide notification of the Application. AOC submitted that it "does dispute change or accommodation within the Regulatory Process to accommodate MCFN when they had ample time to respond within the legislated timelines." (*sic*) AOC notes that the deadline was January 3, 2016, but MCFN did not file a request for an extension until January 15, 2016.

The Application is for a renewal of a Water Act Licence, which is set to expire in March 6, 2016. The AER has the authority to extend that deadline if required to complete the processing and review of the Application.

The relevant legislation, the *Rules*, specifically grant the AER the authority to permit the late filing of a Statement of Concern, which it uses to ensure procedural fairness in the AER's regulatory process.

It does not appear that extending the deadline would cause an unreasonable delay in processing the Application and, in any event, the AER can extend the expiry of the Licence if needed.

MCFN indicated it could provide its SOC prior to February 15, 2016, and the AER notes that it has filed its SOC as of today's date. There is ample time for the regulatory process to be completed without any adverse impact on AOC.

Subject headings: First Nations/Métis, late filing request, procedural fairness, filing deadline, filing extension, renewal application

Fran Gilmar/Benga Mining Ltd. (Benga), Statement of Concern No. 30083, February 8 2016

Proponent application type: Riversdale Deep Drill Permit application for seven confirmation holes at the Grassy Mountain project (Application No. 1842480)

Procedural or other issue: Does Statement of Concern No. 30083 establish a direct and adverse effect on Fran Gilmar?

Statute or Rule applied: [Code of Practice for Exploration Operations](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons

1. Ms. Gilmar's concerns regarding environment and water impacts are addressed by regulatory requirements, including the *Code of Practice for Exploration Operations*, and Benga's proposed mitigations.
2. Ms. Gilmar's concerns regarding private easement access and liability fall outside the AER's jurisdiction.
3. Ms. Gilmar has not demonstrated that she may be directly and adversely impacted by approval of the Application.

Subject headings: directly and adversely affected, jurisdiction, water, regulatory requirements, mitigation

O'Chiese First Nation (OCFN)/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30048, February 3 2016

Proponent application type: Pipeline--Salt Water, 0% H₂S (Application No. 1842114)

Procedural or other issue: Does Statement of Concern No. 30048 establish a direct and adverse effect on OCFN?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: OCFN's reserve boundaries are 15 km from the proposed project. OCFN's concerns are of a general nature and the information it provided does not establish a sufficient degree of location or connection between the Application and the potential interference or impacts on its asserted treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the applications.

Subject heading: First Nations/Métis, directly and adversely affected, treaty rights, Aboriginal rights

Bob Plowman and Donna Dahm/Baytex Energy Limited (Baytex), Statement of Concern No. 30015, February 3 2016

Proponent application type: Public Lands Act Application 151199

Procedural or other issue: Does Statement of Concern No. 30015 establish a direct and adverse effect on Mr. Plowman and Ms. Dahm?

Statute or Rule applied: [*Dene Tha' First Nation v Alberta \(Energy and Utilities Board\)*](#), 2005 ABCA 68 (*Dene Tha'*); [*Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*](#) (03 April 2013), Appeal No. 12-033-ID1 (AEAB) (Tomlinson)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval amendments issued.

Reasons: Mr. Plowman and Ms. Dahm assert that they may be directly and adversely affected by the AER's decisions on the applications. The factual test for a direct and adverse effect in *Dene Tha'* states, "some degree of location or connection between the work proposed the right asserted is reasonable" (para 14). This is also consistent with decisions of Alberta courts and the Alberta Environmental Appeals Board that describes the "directly affected" test applied by the EAB (*Tomlinson*). The closer the proximity the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case of direct and adverse effect.

The proposed project is 14.20 km from Mr. Plowman's land and 12.80 km from Ms. Dahm's land. They have not provided information that demonstrates that the types of impacts they are concerned with may result from the applied-for project. Their concerns appear to be general in nature and are not directly related to the applied-for project. They have not provided information that demonstrates they may actually use lands or other resources in the project area or other locations that may be affected by the project.

No bitumen development, pipelines or other project infrastructure will be authorized by the AER's approval of the Application, and such activities and infrastructure requires separate AER approvals. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Subject headings: directly and adversely affected, filing deadline, amendment application

Beaver Lake Cree Nation (BLCN)/Imperial Oil Resources Limited (Imperial), Statement of Concern No. 30074, February 3 2016

Proponent application type: Request to amend Imperial Cold Lake Operations Waste Management Facility Licence No. WM 039 to include additional waste streams and modify landfill wastewater streams management.

Procedural or other issue: Does Statement of Concern No. 30074 establish a direct and adverse effect on BLCN?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: This is an existing waste facility, located 80 km from BLCN's reserve lands.

Imperial addressed concerns about possible impacts on traditional and treaty rights by responding that the amendment does not require any change in the footprint of the facility.

Concerns about possible impacts on wildlife and vegetation due to potential soil and groundwater contamination are addressed by the mitigation measures that are in place in the design and operation of the facility. As well, Imperial is required to meet all environmental and regulatory guidelines.

Subject headings: First Nations/Métis, directly and adversely affected, traditional lands, treaty rights, wildlife, groundwater, mitigation, wastewater disposal, waste disposal, amendment application

Mark Roberts/Baytex Energy Ltd (Baytex), Regulatory Appeal Request, February 1 2016

Proponent application type: New multiwell battery 0% H2S (Application No. 1831831); Amendment Bitumen Multiwell Batteries 0% H2S (Application Nos. 1832186 and 1832476); New Bitumen Battery 0% H2S (Application No. 1832547)

Procedural or other issue: Is Mr. Roberts eligible to request a regulatory appeal?

Statute or Rule applied: s. 36(b)(ii) and 38 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); [Directive 60](#), [Peace River Proceeding \(Decision 2014 ABAER 005\)](#)

Ruling: Mr. Roberts is not eligible to request a regulatory appeal because he is not directly and adversely affected by the decision.

Reasons: Under s. 38 of REDA, an eligible person may request a regulatory appeal of an appealable decision. S. 36(b)(ii) of REDA defines an "eligible person" as including "a person who is directly and adversely affected by a decision [made under an energy resource enactment]."

Mr. Roberts made submissions to prove that the decision directly and adversely affects him.

- Despite the distance of Mr. Roberts' land from the facilities, he and his family are affected by ongoing odours, chemical exposure and negative health and respiratory effects;
- He experiences loss of use and enjoyment of his property, as sometimes he and his family are prevented from going outdoors because of the odours;
- Baytex continues to have direct atmospheric venting despite *Directive 060*. Mr. Roberts cites video evidence from December 15, 2014 and an odour complaint on April 27, 2015;
- The new facilities will be constructed in the same manner as existing sites and are likely to increase odours and negative impacts;
- On-site equipment is insufficient to meet *Directive 060* requirements;

- The AER's conclusion that recent inspections show Baytex operating in full compliance is a "snapshot" and does not reflect the previous Baytex non-compliances in December 2015 and April 2015; and
- Air quality monitoring reports show elevated hydrocarbons in the air in the vicinity of Baytex's sites and Mr. Roberts' residence. Mr. Roberts notes a July 30, 2015 odour complaint he made and corresponding air quality monitoring results, which he states demonstrate the odours are from Baytex facilities, and are not naturally occurring.

Mr. Roberts argues that allowing further Baytex facilities with the same equipment in the face of continuing non-routine venting and equipment failures is an error. No further facilities should be allowed until Baxtex's direct venting problems are completely rectified. The AER notes that the Licences in question are not for new wells, but are for amendments to existing facilities.

The AER concludes that the facilities complained of are designed to meet *Directive 060* and prevent any venting to atmosphere. The AER finds that Mr. Roberts has not demonstrated that these facilities experience the same problems he alleges Baytex facilities to have experienced in the past. The events Mr. Baytex references are not recent events and only the December 2014 event is a confirmed venting event by Baytex. The AER has completed and continues to complete compliance sweeps.

Subject headings: directly and adversely affected, regulatory appeal, venting, eligible person, air quality, health, appealable decision, odours, evidence, amendment application

Kehewin Cree Nation (KCN)/Canadian Natural Resources Limited (CNRL), Statement of Concern No. 28986, January 29 2016

Proponent application type: Licence of Occupation Applications 140633, 142079, and 151061; [Public Lands Act](#) Application 141333; Mineral Surface Lease Application 142192

Procedural or other issue: Does Statement of Concern No. 28986 establish a direct and adverse effect on KCN?

Statute or Rule applied: [Historical Resources Act](#), RSA 2000, c H-9

Ruling: No direct and adverse effect established. No hearing required. Applied-for authorizations issued.

Reasons: KCN's reserve boundary is 45 km from the proposed projects. CNRL and KCN made efforts to resolve the issues in dispute directly with each other, through in person meetings and correspondence. They proposed and agreed to mitigation measures and terms for moving forward. For example, CNRL committed to provide KCN with two weeks' notice prior to construction so that it may harvest rare medicines and plants.

With respect to KCN's concern regarding unmarked graves, Historical Resources Act clearance was granted on June 13, 2014. With respect to the concern regarding the location of the proposed project within an area designated as a Moose Habitat Enhancement Area and a Wildlife Management Conservation Area, CNRL has addressed mitigation for being within the Key Wildlife and Biodiversity Zone in their Non Standard Mitigation.

The concerns raised in KCN's SOC have been addressed to the satisfaction of the AER.

Subject headings: directly and adversely affected, First Nations/Métis, wildlife, mitigation, unmarked graves, animal habitat

Shell Canada Limited (Shell)/AER, Confidentiality Application, January 26 2016

Proponent application type: To apply for the Kelt Exp HZ Pedley well to be subjected to off target penalties as it is currently producing off target to the Duvernay Pedley well from the same Notikewin formation. (Application No. 1841340)

Procedural or other issue: Is Shell permitted to keep submitted information confidential under s. 49(4)(b) of the *Rules*?

Statute or Rule applied: s. 49 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*); s. 12 of [Oil and Gas Conservation Rules](#), Alta Reg 151/1971 (*OGCR*); *Kallisto Energy Corp. Application for a Well Licence, Crossfield East Field, 2013 ABAER 013*

Ruling: Confidentiality application denied.

Reasons: S. 49 of the *Rules* requires that information filed in respect of a proceeding including an application and any statements of concern are available on the public record. In the AER's view there is a general presumption in favour of public disclosure as per s. 49(1). S. 12.150 of the *OGCR* also provides that records, reports, and information submitted to or acquired by the AER are available to the public on request. In the absence of very compelling reasons, all materials filed in connection with the application are publicly available. This approach to disclosure is consistent with the AER role as an administrative tribunal and its obligation to be transparent and to provide procedural fairness to all parties who participate in its process. Transparency and disclosure are fundamental to the decision making process.

In this case the provision most applicable to Shell's confidentiality application is 49(4)(b) of the *Rules*, which requires a reasonable expectation that the disclosure of the information would result in undue financial harm to a person, or cause significant harm to Shell's competitive position.

The confidential information is a map of the geological and geophysical extent of the Notikewin pool based upon a Shell's subjective interpretation and application of professional judgment of underlying geophysical and geological data.

There is nothing in Shell's submission to distinguish the confidential information from information that is collected and disclosed routinely in its public proceedings. Further, as to the potential implications of disclosure, Shell has not established that disclosure of the confidential information would result in undue financial harm or cause significant harm particularly given the interpretative and speculative nature of the confidential information.

With regard to suggestion of harm associated with the disclosure of information without a release, any potential harm is within Shell's control when it decides to enter into certain commercial arrangements with its suppliers and submit the confidential information.

It is not reasonable to conclude that disclosure will cause undue or significant harm to Shell or its interests, given the interpretative and speculative nature of the confidential information and the fact Shell need only disclose information required to support its position on the application. Shell has not satisfied the requirement under s. 49.

Subject headings: confidentiality application, undue harm, procedural fairness, disclosure, public record

Kelt Exploration (Kelt)/AER, January 26 2016

Proponent application type: Pool Delineation Application for HZ Pedley well (Application No. 1846297)

Procedural or other issue: Is Kelt permitted to keep submitted information confidential under s. 49(4)(b) of the *Rules*?

Statute or Rule applied: s. 49 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*); s. 12.150 of the [Oil and Gas Conservation Rules](#), Alta Reg 151/1971 (*OGCR*)

Ruling: Confidentiality application denied.

Reasons: S. 49 of the *Rules* requires that information filed in respect of a proceeding including an application and any statements of concern are available on the public record. In the AER's view there is a general presumption in favour of public disclosure as per s. 49(1). Section 12.150 of the *OGCR* also provides that records, reports, and information submitted to or acquired by the AER are available to the public on request. In the absence of very compelling reasons, all materials filed in connection with the application are publically available. This approach to disclosure is consistent with the AER's role as an administrative tribunal and its obligation to be transparent and to provide procedural fairness to all parties who participate in its process. Transparency and disclosure are fundamental to the decision making process.

In this case the provision most applicable to the confidentiality application is 49(4)(b) of the *Rules*, which requires a reasonable expectation that the disclosure of the information would result in undue financial harm to a person, or cause significant harm to Kelt's competitive position.

The confidential information is maps of the geological and geophysical extent of the Notikewin pool based upon a Kelt's subjective interpretation and application of professional judgement of underlying geophysical and geological data.

There is nothing in Kelt's submission to distinguish the confidential information from information that is collected and disclosed routinely in its public proceedings. Further, as to the potential implications of disclosure, Kelt has not established that disclosure of the confidential information would result in undue financial harm or cause significant harm particularly given the interpretative and speculative nature of the confidential information.

With regard to suggestion of harm associate with the disclosure of information without a release, any potential harm is within Kelt's control when it decides to enter into certain commercial arrangements with its suppliers and submit the confidential information.

It is not reasonable to conclude that disclosure will cause undue or significant harm to Kelt or its interests given the interpretative and speculative nature of the confidential information that is routinely disclosed, the interpretative and speculative nature of the confidential information and the fact Kelt need only disclose information required to support its position on the application. Kelt has not satisfied the criteria under s. 49.

Subject heading: confidentiality application, undue harm, procedural fairness, disclosure, maps, public record

Greg Clark/Tamarack Acquisition Corp. (Tamarack), Request for Regulatory Appeal, January 26 2016

Proponent application type: Regulatory Appeal Request for a B150 NR well (Application No. 1830369)

Procedural or other issue: Is Mr. Clark eligible to request a regulatory appeal?

Statute or Rule applied: s. 36(b)(ii) and 38 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA)

Ruling: Mr. Clark is not eligible to request a regulatory appeal because he is not directly and adversely affected by the decision.

Reasons: Under s. 38 of REDA, an eligible person may request a regulatory appeal of an appealable decision. An eligible person, as per, s. 36(b)(ii) of REDA, includes “a person who is directly and adversely affected by a decision [made under an energy resource enactment].”

The issue for the AER in determining Mr. Clark’s eligibility to request a regulatory appeal is whether he are a person who is directly and adversely affected by the decision. He is concerned with drilling activity in an area of protected Crown land. There are no restrictions against oil and gas activity on this pad site location.

Regarding concerns about notification of the MSL application and the initial environmental assessment: Public notice was posted on the AER’s website, and Mr. Clark has stated that he spoke with Tamarack. However, he did not submit a request for regulatory appeal for the MSL application.

Mr. Clark’s lands and residence are 0.69km and 0.97km from the near well centre of the multi-well pad site. He has not provided any new evidence of concerns that were not addressed through the SOC process. Tamarack has had many conversations with Mr. Clark in attempts to address and mitigate his concerns (including about his water wells).

Subject headings: regulatory appeal, eligible person, appealable decision

[Donna Dahm & Bob Plowman/Baytex Energy Limited \(Baytex\), Statement of Concern No. 30084, January 25 2016](#)

Proponent application type: New Salt water 1.5% H₂S (Application No. 1844251)

Procedural or other issue: Does Statement of Concern No. 30084 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 056: Energy Development Applications and Schedules](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: This is an application to add 0.87 km of new pipeline to an existing pipeline. There will be no venting associated with this project. Ms. Dahm’s and Mr. Plowman’s residences are 26 and 27 km from the proposed pipeline. The pipeline is located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original application process. There is no evidence that Ms. Dahm and Mr. Plowman use lands or other natural resources in the project area or other locations that may be affected by the project. Baytex has met all applicable consultation and notification requirements of *Directive 056*.

Subject Headings: directly and adversely affected, venting, pipeline, water, consultation

[Benga Mining Limited \(Benga\)/AER, January 25 2016](#)

Proponent application type: Grassy Mountain Coal Project environmental impact assessment (EIA) report received with mine site and coal processing plant applications under the [Coal Conservation Act](#) (CCA). (No application number.)

Procedural or other issue: Is the EIA report satisfactory?

Statute or Rule applied: [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12 (EPEA); [Public Lands Act](#), RSA 2000, c P-40 (PLA); [Water Act](#), RSA 2000, c W-3; [Coal Conservation Act](#), RSA 2000, c C-17 (CCA)

Ruling: The EIA has major deficiencies and is not complete.

Reasons/Requests: The AER requests that Benga submit a fully integrated project application package along with the EIA. The fully integrated project package should include appropriate applications under the EPEA, PLA, the Water Act, and the CCA. To maintain alignment with the federal regulatory process, this should be submitted along with the federal EIS responses.

There are 29 Statements of Concern (SOCs) and 24 Letters of Support (LOSs) filed on the applications. The SOC and LOSs will be considered as part of the decision on the current applications. The AER will post, for public notice, any and all additional project applications under EPEA, the Water Act, the PLA, and the CCA once received.

Subject headings: environmental impact assessment

Bob Plowman and Donna Dahm/Penn West Petroleum Limited (Penn West), Statement of Concern No. 30110, January 25 2016

Proponent application type: New Multi Well Application, 0% H2S (Application No. 1846748)

Procedural or other issue: Does Statement of Concern No. 30110 establish a direct and adverse effect on Mr. Plowman and Ms. Dahm?

Statute or Rule applied: [Directive 056](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Mr. Plowman and Ms. Dahm have not demonstrated that they may be directly and adversely affected by the application for well licences. This is an application to drill six vertical sweet observation wells. These wells will not produce, and once drilling operations have reached the targeted depth, geological data will be obtained and each well abandoned. Observation wells are not a source of emissions and there will be no venting associated with the wells.

Ms. Dahm's lands and residence are 11 km from the nearest well. Mr. Plowman's lands and residence are 12 km from the nearest well.

Regarding their concern about wetlands, the wells will be located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original Public Land Use application process. They have not provided information that demonstrates that they may use lands or other natural resources in the area of the wells or other locations that may be affected by the project, or that the kinds of impacts they are concerned with may result from the application.

Penn West has met all applicable consultation and notification requirements under *Directive 056*.

Subject headings: directly and adversely affected, observation well, wetlands, flaring, venting, water, emissions, consultation

Bob Plowman and Donna Dahm/Baytex Energy Ltd. (Baytex), Statement of Concern No. 30058, January 25 2016

Proponent application type: New multi well, .28% H2S (Application No. 1844362)

Procedural or other issue: Does Statement of Concern No. 30058 establish a direct and adverse effect on Mr. Plowman and Ms. Dahm?

Statute or Rule applied: Section 2.030 of the [Oil and Gas Conservation Rules](#), Alta Reg 151/1971 (OGCR); [Directive 056](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Mr. Plowman and Ms. Dahm have not demonstrated that they may be directly and adversely affected by the application for well licences. This is an application to drill 4 oil sands evaluation wells. Oil sands evaluation wells are temporary in nature, and are required under Section 2.030 of the OGCR to be abandoned within 30 days. Oil sands evaluation wells are not a source of emissions and there will be no flaring or venting associated with the wells.

Ms. Dahm's lands and residence are, respectively, 1.80 km and 2.40 km from the nearest proposed well. Mr. Plowman's lands and residence are, respectively, 3.41 km and 3.60 km from the nearest proposed well.

Regarding their concerns about wetlands, the wells will be located on Crown land, and the potential impacts on water bodies would have been assessed at the time of the original Public Land Use application process.

They have not provided information that demonstrates that they may use lands or other natural resources in the area of the wells or other locations that may be affected by the project, or that the kinds of impacts they are concerned with may result from the application.

The AER is satisfied that Baytex has met all consultation and notification requirements of *Directive 056* that apply to Ms. Dahm and Mr. Plowman in relation to the application.

Subject headings: directly and adversely affected, wetlands, flaring, venting, water, emissions, consultation

Mark Roberts/Baytex Energy Ltd. (Baytex), Statement of Concern No. 30106, January 25 2016

Proponent application type: Single well, >0.1% H2S (Application No. 1844573); new single well, 0.1% H2S (Application No. 1844701)

Procedural or other issue: Does Statement of Concern No. 30106 establish a direct and adverse effect on Mr. Roberts?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Mr. Roberts has not demonstrated that he may be directly and adversely affected by the application for well licences.

Baytex has applied for two new injection wells at the surface location. Mr. Roberts' property is 6.12 km and his residence 6.52 km from the proposed 12-21 injection well. The proposed 7-15 injection well is

more than 9 km from his lands and residence. Mr. Roberts' farms are 1.4 km from the 7-15 well site and 3.6 km from the 12-21 well site.

Mr. Roberts is concerned about atmospheric venting of gas and chemicals from Baytex wells and facilities. However, the applied for injection wells will not result in any venting. Mr. Roberts is concerned about existing wells and the addition of new wells and production equipment. However, the subject applications relate only to water injection wells. No new production equipment has been applied for and no bitumen production will be authorized or facilitated by the approval of the subject applications.

Concerns about venting, increases in Baytex's bitumen production in the area, and existing production wells and facilities are unrelated to and outside of the scope of the subject applications.

Mr. Roberts' concerns about surface and subsurface impacts from the injection wells are general in nature. He has not provided specific information to support that he might be directly and adversely affected by these alleged potential surface and subsurface impacts. In any event, the AER has numerous requirements relating to injection and disposal wells, which are protective of the surface and subsurface environment.

Subject Headings: directly and adversely affected, injection well, venting, application scope

Gunn Métis Local 55 (GML)/Coalspur Mines. (Coalspur), Statement of Concern No. 30013, January 20 2016

Proponent application type: Amendment Application No. 1819004 for Coal Processing Plant Approval No. C 2011-3; Amendment application No. 1819010 for Coal Project Permit No. C 2011-5; Amendment application No. 1819012 for Coal Project Licences C 2014-4, C 2014-5, C 2014-6, C 2014-7; *Environmental Protection and Enhancement Act* Application No. 002-301345; *Water Act* Applications No. 002-00311965 and 002-0031196

Procedural or other issue: Does Statement of Concern No. 30013 establish a direct and adverse effect on GML?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Based on the following, and especially that the effect of the amendment applications are to reduce the impact of the approval project, GML has not demonstrated that it may be directly and adversely affected by the application.

Concerns regarding adequacy of Crown consultation are outside the jurisdiction of the AER. The concerns GML raised in its Statement of Concern, dated October 16 2015, are related to the original approvals and do not address the amendments. The original project was the subject of a hearing in which the AER considered environmental impacts including the loss of some landscape features and wildlife habitat as has been raised in your SOC.

The AER is satisfied that the concerns that are specific to the amendments are addressed:

- the use of trucks and excavators, instead of draglines, will result in a 25% reduction in land disturbance, as well as reducing the overall number of hours trucks are in use;

- increased coal production will not increase the footprint of the mine or have a negative impact on the environment;
- increased train traffic amounts to an additional 1.3 trains per week, and when taken in context of 30-40 trains using the track daily, the AER considers this impact to be minimal;
- the construction of two silos will be within the approved plan and with the installation of exhaust scrubbing equipment will not significantly increase the particulates;
- access road re-alignment changes are minor and will not contribute to any impact to the environment, and is expected to increase the safety to road users;
- the overall changes will result in a decrease in emissions and particulates; and
- the AER considers Coalspur's participant engagement to be satisfactory.
- The overall effect of the amendment reduces the impact of the Project on the environment. The overall footprint of the Project will be reduced by: (1) the elimination of the fines settling pond; (2) the reduction of waste rock disposal out-of-pit; (3) the reduction in final end pit lake area with improved littoral zones and future opportunity for aesthetic and/or fisheries objectives; (4) the reduction of annual water usage, and total area of water storage; (5) and the total waste rock moved would be reduced

- The licence footprint will be reduced from 2698 hectares to 1957 hectares.

Subject heading: First Nations/Métis, directly and adversely affected, amendment application, traffic, wildlife, animal habitat, water, emissions, consultation, waste disposal

Fort McMurray #468 First Nations (FMFN)/Value Creation Inc. (VCI), Late Filing Request, January 19 2016

Proponent application type: [Oil Sands Conservation Act](#) Application No. 1827947 project amendment, [Environmental Protection and Enhancement Act](#) Application No. 002-00269702

Procedural or other issue: Is FMFN permitted to file a late Statement of Concern?

Statute or Rule applied: [Responsible Energy Development Act](#), SA 2012, c R-17.3; [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013

Ruling: Late filing permitted.

Reasons: FMFN did not receive a copy of the Public Notice of Application (PNOA) from VCI prior to the Statement of Concern deadline. VCI supports Chipewyan Prairie Dene First Nations' request for an extension of the deadline. Extending the deadline would not cause an unreasonable delay in processing the applications.

The AER has no jurisdiction over matters of compensation for land usage. The Alberta Surface Rights Board is the regulatory agency that deals with these issues. The AER also has no jurisdiction with respect to assessing the adequacy of Crown consultation associated with the rights of Aboriginal peoples.

Subject headings: late filing, First Nations/Métis, jurisdiction, consultation, Aboriginal rights, surface rights, filing deadline, filing extension, amendment application

Canadian Natural Resources Limited (CNRL)/AER, Request for Stay Under Regulatory Appeal, January 18 2016

Proponent application type: Regulatory Appeal No. 1849424

Procedural or other issue: Has CNRL met the RJR Macdonald test for a stay?

Statute or Rule applied: S. 39(2) of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); [RJR MacDonald v. Canada \(Attorney General\) \[1994\] 1 SCR 11](#) (RJR Macdonald); *Water Act*, [RSA 2000, c W-3](#); *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#)

Ruling: CNRL has not met the RJR MacDonald test for a stay.

Reasons: CNRL sought a stay of two administrative penalty decisions that CNRL contravened s. 227(e) of *EPEA* and s. 36(1) of the *Water Act*.

S. 39(2) of REDA states: “The Regulator may, on the request of a party to a regulatory appeal, stay the appealable decision or part of it on any terms or conditions that the Regulator determines.”

The common law test for stay from *RJR MacDonald* has three parts: 1) Does the appeal raise a serious arguable question? 2) Would the party seeking the stay suffer irreparable harm if the application were refused? 3) Does the balance of convenience favour granting the stay?

It appears CNRL meets the first part of the test. However, CNRL has failed to establish how it would be irreparably harmed by not receiving interest from a refund of administrative penalties (if successful on regulatory appeal). On the third part of the test, CNRL argues it would be more convenient for it and the AER if CNRL does not pay the administrative penalties. CNRL does not describe how it would be inconvenienced by payment of the administrative penalties, other than the simple act of paying the penalties. Regarding the AER, the AER considers that any “administrative inconvenience” is minimal and does not warrant a stay.

Subject headings: request for stay, irreparable harm, regulatory appeal, administrative penalty

Bearspaw Petroleum Ltd (Bearspaw)/Harvest Operations Corp. (Harvest), Scheduling and Procedural Matters, January 13 2016

Proponent application type: Pool delineation, Crossfield basal quartz C&V pools

Procedural or other issue: Scheduling and procedural matters for pre-hearing meeting, identification of issues to be heard

Statute or Rule applied: [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); s. 33 of the [Oil and Gas Conservation Act](#), RSA 2000, c O-6; *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: n/a

Reasons: REDA requires that the AER provide for the “efficient, safe, orderly and environmentally responsible development of energy resources in Alberta.” When a matter is referred to hearing commissioners for a hearing, a panel is appointed to establish a process for a hearing of the application. The panel is responsible to establish an efficient and effective procedure for the hearing.

Timing

S. 19.1 of the *Rules* requires hearing panels to establish time limits for the presentation of evidence, questioning of witnesses, argument and possibly other procedural matters. S. 9.1(1) of the *Rules* requires the panel to specify the nature and scope of participants' permitted participation.

When time limits are set one of the things the panel will take into account is the practice of pre-filing written evidence, in particular pre-filing written expert evidence, as a means of ensuring that oral evidence in chief need not be lengthy.

The parties raised some concerns about the setting of time limits since not all of the evidence had been filed in this proceeding. Bearspaw anticipated that it would need three hours or a half day to provide its opening statement and technical evidence. Harvest did not oppose the setting of time limits. Harvest advised that the entire hearing should be completed within two days.

Panel will establish time limits closer to hearing.

Formal Information Request

The parties agreed that a formal information request (IR) process was unnecessary. Instead, the parties supported a process where the parties could exchange IRs informally. Bearspaw and Harvest stated that they would endeavour to provide sufficiently reasonable responses; however, a final date for responses to the IRs would help avoid potential delays of the hearing date. The parties suggested March 14 as the date for IR responses and confirmed that IRs would be sent to each other within a sufficient time prior to the March 14 deadline.

The panel confirms that a formal IR process will not be scheduled, but it will include in the prehearing schedule a date of March 14, 2016 by which any outstanding IRs must be addressed.

Subject headings: pre-hearing meeting, industry vs. industry, hearing timing, information request, participation scope, filing deadline, evidence, oral submissions, expert evidence

Bigstone Cree Nation (Bigstone)/Cenovus Energy Inc. (Cenovus), Late Filing Request for Statement of Concern No. 30022, January 12 2016

Proponent application type: Application No. 004-00269241

Procedural or other issue: Is Bigstone permitted to file a late Statement of Concern?

Statute or Rule applied: [Responsible Energy Development Act](#), SA 2012, c R-17.3; [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013

Ruling: Late filing permitted.

Reasons: On October 23, 2015, counsel for Bigstone contacted the AER about filing a Statement of Concern (SOC). In this email Bigstone counsel indicated, "Bigstone was not provided any notice of these Applications by either the Crown or the Applicant. Further, [the AER] confirmed that copies of the Applications are not available through the Alberta Energy Regulator's Integrated Application Registry Query."

The Notice of Application was published on the AER's website on September 23, 2015. The notice indicated that a copy of the Application could be obtained by: 1) requesting it from Cenovus, or 2) requesting it from the AER Information Services. The Notice of Application also indicated that the deadline for filing a SOC for this Application was October 23, 2015.

Notwithstanding the above, Bigstone did not receive a copy of the Application prior to the SOC deadline. However, the AER understands that Bigstone was provided with copies of the Application by Cenovus on October 29, 2015.

On November 26, 2015, the AER indicated by letter that "Bigstone may submit an SOC on or before 4 pm on December 10, 2015 along with an explanation as to why the SOC was not filed within the deadline set out in the notice of application and the AER will consider whether it is appropriate to accept the SOC for filing." The Applicant, Cenovus, has not objected to an extension in these circumstances.

The AER is satisfied that pursuant to the AER's letter of November 26, 2015, Bigstone filed a letter outlining concerns about the Application in a timely manner.

Considering all of the above, extending the deadline would not cause an unreasonable delay in processing the Application.

By way of copy of this letter to Cenovus, they AER requests they contact Bigstone to attempt to address its concerns, as provided under AER requirements.

Please note that the AER has no jurisdiction over matters of compensation for land usage. The Alberta Surface Rights Board is the regulatory agency that deals with these issues. Further the AER has no jurisdiction with respect to assessing the adequacy of Crown consultation associated with the rights of Aboriginal peoples.

Subject headings: First Nations/Métis, late filing, jurisdiction, consultation, surface rights, filing deadline, filing extension, Aboriginal rights

[Bears paw Petroleum Ltd. \(Bears paw\)/Harvest Operations Corp. \(Harvest\), Agenda for Prehearing Meeting, January 5 2016](#)

Proponent application type: Pool delineation, Crossfield basal quartz C&V pools

Procedural or other issue: Agenda for prehearing meeting

Statute or Rule applied: None

Ruling: Panel determined matters that will be discuss at the hearing.

Reasons: Matters which the panel would like to discuss at the hearing include scheduling, submission deadlines, formal information request process, presentation of evidence, specific issues to be addressed at the hearing, and any other matters that will aid in the simplification or fair and expeditious disposition of the proceeding.

Subject headings: Agenda, information request, filing deadline, evidence

For the decision on this matter see [2016 ABAER 007](#)

Shell Canada Limited (Shell)/O’Chiese First Nation (OCFN), Reconsideration Request, December 16 2015

Proponent application type: New natural gas pipeline 0% H2S (Application No. 1823846), Public Lands Act application (Application No. PLA150215)

Procedural or other issue: Should the AER reconsider its decision (set out in a process letter) not to permit filing of two reports from Shell?

Statute or Rule applied: ss. 1(1)(f) and 42 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA)

Ruling: The AER will not reconsider its decision.

Reasons: Under s. 42 of REDA, the AER may, in its sole discretion, reconsider its decision. The AER exercises this discretion only in the most extraordinary and compelling of circumstances. S. 1(1)(f) of REDA defines a “decision” for the purposes of REDA as including “an approval, order, direction, declaration or notice of administrative penalty made or issued.” The AER’s process letter is not a “decision” under REDA and therefore does not fall within the reconsideration provision. Accordingly, the AER declines Shell’s request that the AER reconsider its decision contained in the process letter.

Shell had opportunity to respond to the statements of concern OCFN filed in relation to the Rocky 7 Applications, and it did in fact provide a response. However, Shell did not indicate that it intended to file further materials. Going forward, the AER encourages Shell to provide notice of its intention to provide supplemental information outside of the timelines provided by the AER in order to minimize the risk that the AER makes its decision before any further materials are submitted to the AER.

The AER will hold a hearing to consider the Rocky 7 Applications and Shell and OCFN can expect to receive a formal letter to this effect from the Chief Hearing Commissioner. The process letter did not reflect a refusal by the AER to consider Shell’s two reports in its consideration of the Rocky 7 Applications on their merits. Therefore, Shell has the opportunity to file these two reports as supplemental material on the Rocky 7 Applications or later as part of its hearing binder for the hearing.

Subject headings: First Nations/Métis, decision definition, reconsideration request, administrative penalty

For the decision on this see [2017 ABAER 002](#)

Fort McMurray First Nation (FMFN)/Husky Oil Operations Limited (Husky), Statement of Concern No. 29959, December 16 2015

Proponent application type: Oil Sands Exploration Application 150015

Procedural or other issue: Does Statement of Concern No. 29959 establish a direct and adverse effect on FMFN?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: FMFN lands are 180km from the proposed project. The application meets all applicable regulatory requirements. The Statement of Concern filed by FMFN lacks detail or any specifics regarding FMFN members’ use of the lands and does not explain how the project may impact FMFN. The AER does not have jurisdiction over the Crown’s consultation with FMFN. FMFN’s suggestion that more information could be provided and that confidentiality would be required does not change the

recommendation. Decisions are made on the information provided, not on information that might be provided in the future. Further, counsel for FMFN should be aware of the AER's process for requesting confidential treatment of information prior to filing such information. Any impacts from future applications would be assessed at the time of those applications, and notice of application would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Subject headings: First Nations/Métis, directly and adversely affected, consultation, regulatory requirements, jurisdiction, filing deadline, confidentiality

Non-Status Fort McMurray and Fort McKay Band, Clearwater River Band #175 (the Bands)/Cenovus FCCL Ltd. (Cenovus), Statements of Concern, December 16 2015

Proponent application type: Cenovus Christina Lake Thermal Project Phase H and Eastern Expansion Application. Amendment to Approval No. 8591, proposing to increase bitumen production capacity (Application No. 1758947)

Procedural or other issue: Do Statements of Concern No. 29182 and 29183 establish a direct and adverse effect on the Bands?

Statute or Rule applied: [Lower Athabasca Regional Plan](#) (LARP)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approval issued.

Reasons: The project is within the boundary of LARP, which addresses acceptable land disturbance standards in relation to wildlife and management of cumulative impacts on a regional basis. The subject development activities are permitted under LARP.

The concerns raised by the Bands are general in nature and do not demonstrate how they may be directly and adversely affected by the application. The Bands did not provide sufficient detail on where activities take place and what those activities are, or how those activities may be impacted by the project.

Subject headings: directly and adversely affected, First Nations/Métis, wildlife, amendment application, LARP

TAQA North Ltd. (TAQA)/Roy and Melanie Schulze, Request to Participate, December 15 2015

Proponent application type: Pipeline removal application

Procedural or other issue: Is TAQA permitted to participate in the hearing on the pipeline removal application?

Statute or Rule applied: None

Ruling: Request to participate granted.

Reasons: TAQA submitted that it is the owner of the pipeline subject to the removal application and therefore will be directly and adversely affected. The panel agrees that TAQA may be affected by a decision on this application and as such confers full participation rights on TAQA. TAQA will have an opportunity to file submissions, present evidence, cross-examine, and provide argument in the hearing. Submissions and evidence must be filed in accordance with filing dates set out by the AER. Submissions must include copies of all documentary evidence each party intends to present or rely on at the hearing, including copies of expert reports, presentations, photographs, articles, videos, and any other evidence it intends to present.

The panel request an explanation of the meaning of “willing to discuss the removal of problematic portions of the pipeline,” a statement from TAQA’s Statement of Concern.

Subject headings: directly and adversely affected, removal application, participation scope, pipeline, request to participate, evidence, cross-examination, expert evidence

Harvest Operations Corp., Nexen Crossfield Canada Energy, ExxonMobil Canada Energy (Harvest)/Bears paw Petroleum (Bears paw), Request to Participate, December 11 2015

Proponent application type: Pool delineation, Crossfield basal quartz C&V pools

Procedural or other issue: Is Harvest permitted to participate in the hearing on Bears paw’s application?

Statute or Rule applied: None

Ruling: Request to participate granted.

Reasons: Harvest is eligible to fully participate at the hearing on the issues. Harvest has demonstrated that it may be directly and adversely affected by the AER’s decision on Bears paw’s application as it is a working interest owner of wells in the Basal Quartz C Pool. Furthermore, the panel considers that Harvest’s participation in the hearing will materially assist the AER in deciding the matter.

Subject headings: request to participate, directly and adversely affected

For the decision on this matter see [2016 ABAER 007](#)

Rita Callan/ConocoPhillips Canada Resources Corp (Conoco), Statements of Concern, December 10 2015

Proponent application type: New Multiwell OSE 4% H2S (Application No. 1839529), 2 new single wells 4% H2S (Applications No. 1839540, 1839574), Oil Sands Exploration Application (Application No. OSE 150020)

Procedural or other issue: Do Statements of Concern No. 29966, 30016, 30017, and 30018 establish a direct and adverse effect on Ms. Callan?

Statute or Rule applied: None

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Ms. Callan holds a licence for RFMA # 2820, granting her exclusive trapping rights for fur-bearing animals within the RFMA, but not exclusive land use rights. Her rights do not exclude industrial or other activities from taking place within the RFMA.

The project is a winter delineation drilling program and most impacts to the environment will be minimal, i.e., relatively short-term in duration, with effects being localized and temporary in nature. Conoco has committed to minimizing the pad size and to using minimal disturbance winter construction techniques to reduce effects on the environment.

Having regard for the limited effects of the program, Ms. Callan has not demonstrated that she may be directly and adversely affected by the program. None of the information provided demonstrates if or how Ms. Callan's trapping activities could be affected at any specific location within or near to the sites where the program will be carried out. Her concerns are general in nature, leaving unanswered the questions of what trapping activities occur in what locations proximal to the program sites, and how those activities could be affected.

Conoco has an approved Caribou Protection Plan. This plan minimizes the impact on the Woodland Caribou.

Conoco notes that any increase in traffic will be temporary in nature, and that all on-site workers will be required to drive at posted speed limits. Conoco further notes that existing access roads will be used as much as possible, and that 467 meters of new, temporary access roads will be constructed within Ms. Callan's RFMA.

Conoco must reclaim the site to comply with the relevant Oil Sands Exploration approval. Abandonment and reclamation typically takes five days to complete. Conoco estimates that the complete process for each well takes approximately fifteen to twenty-one days from site preparation to reclamation.

Ms. Callan's trapper cabin is several kilometres from the nearest delineation well site. Notwithstanding that, ConocoPhillips Canada Resources Corp. (Conoco) has indicated it will provide Ms. Callan with 10 days notification prior to any drilling activities. The sour wells have a H₂S content of 4 mol/kmol; however, they are temporary wells with EPZ parameters of about 70 meters to 360 meters.

Any concerns regarding the effects on Ms. Callan's trap line and trapping income may be addressed by the Alberta Trappers Compensation Board. This includes claims for temporary disruptions to trapping activities and long term loss of income caused by industrial disturbances.

Subject headings: trapping, directly and adversely affected, abandonment, reclamation, land use, traffic, emergency planning zone

Charles and Patricia Johnson/Canadian Natural Resources Ltd. (CNRL), Request to Participate, December 10 2015

Proponent application type: Reclamation Certificate Application 001-00350699

Procedural or other issue: Are the landowners, the Johnsons, permitted to participate in the hearing about AER's refusal to issue a reclamation certificate?

Statute or Rule applied: None

Ruling: Request to participate granted.

Reasons: All parties shall have the opportunity to participate fully in the hearing, including providing oral and written submissions, and questioning witnesses. The purpose of the hearing is to determine whether the AER should confirm, vary, suspend, or revoke its decision to refuse to issue a reclamation certificate.

Subject headings: regulatory appeal, request to participate, reclamation certificate, written submissions, oral submissions

County of Grand Prairie No. 1 (CGP)/Terado Gas Storage Corp. (Terado), Statement of Concern No. 29720, December 10 2015

Proponent application type: New gas storage facility (Application No. 1823481), new natural gas pipeline (Application No. 1834249)

Procedural or other issue: Does Statement of Concern No. 29720 establish a direct and adverse effect on CGP?

Statute or Rule applied: Ss. 4 and 6 of the [Municipal Government Act](#), RSA 2000, c M-26 (*MGA*); s. 32 of [Responsible Energy Development Act](#), SA 2012, c R-17.3; s. 6 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: CGP indicated that there are individual residents within the county who have a number of concerns about the applications. However, CGP, as a municipality, is a corporation with natural person powers pursuant to ss. 4 and 6 of the *MGA*, and is distinct from persons that reside within its boundaries. CGP has not indicated that one or more specific residents has authorized the county to act as their agent.

The AER provided public notice of the applications and a number of County residents have filed statements of concerns on the applications.

CGP has not indicated that it is a person that may be directly and adversely affected by the application, contrary to s. 32 of REDA and s. 6(1)(a)(i) of the *Rules*.

Subject headings: directly and adversely affected, municipality, landowner

Mr. & Mrs. Mike & Fay Partsch/Terado Gas Storage Corp. (Terado), Statement of Concern No. 29960, December 10 2015

Proponent application type: New gas storage facility (Application No. 1823481), new natural gas pipeline (Application No. 1834249)

Procedural or other issue: Does Statement of Concern No. 29960 establish a direct and adverse effect on the Partsches?

Statute or Rule applied: [Pipeline Act](#), RSA 2000, c P-15; the [Pipeline Regulation](#), Alta Reg 91/2005; the Canadian Standards Association CSA Z662: *Oil and Gas Pipeline Systems; Environmental Protection and Enhancement Act*, [RSA 2000, c E-12 \(EPEA\)](#); [Directive 056: Energy Development Applications and Schedules](#), [Directive 077: Pipelines— Requirements and Reference Tools](#), [Directive 051](#), [Directive 055](#), [Directive 065](#), [Alberta Ambient Air Quality Guidelines](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: The applied-for facility will utilize an existing depleted sweet natural gas reservoir, the Dimsdale Paddy A Pool, for underground storage of sweet natural gas. Terado previously received AER approval of its scheme for storage of sweet natural gas in the Dimsdale Paddy A Pool.

The Partsches do not own the lands upon which the project has been proposed. The proposed pipeline would at its closest be 450m east of their lands. The proposed facility would be 1.2 km east of their lands.

Regarding the Partsches' concerns about safety in the event of an incident, the AER has numerous requirements with which Terado must comply that are protective of human health and safety. The AER has confirmed that Terado's facility will meet or exceed these requirements, and it is satisfied that these requirements address the Partsches' safety concerns. The incidents that they have cited do not relate to the subject gas storage reservoir and are outside of the scope of the subject applications.

Terado must comply with number of operational requirements and technical specifications in the design, construction, and operation of its pipeline. This includes the *Pipeline Act*, the *Pipeline Regulation*, the *Canadian Standards Association CSA Z662: Oil and Gas Pipeline Systems*, *Directive 056*, and *Directive 077*. The AER is satisfied that these requirements address the Partsches' concerns about the proposed pipeline.

The Partsches' concerns about impacts from odours and emissions are addressed to the AER's satisfaction. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations. The project relates to the injection of sweet natural gas and no H₂S is associated with the facility. Terado is required to apply for a registration for the facility under *EPEA* in advance of carrying out operations at the project site. As part of that application, Terado must conduct dispersion modelling that demonstrates that NO₂ concentrations will meet the Alberta Ambient Air Quality Guidelines (AAAQO). During operations, Terado must ensure that the facility continues to meet the AAAQO.

In accordance with *Directive 060*, venting and/or fugitive emissions from Terado's operations must not result in any offensive hydrocarbon odours outside the lease boundary that are unreasonable either because of their frequency, their proximity to surface improvements and surface development (as defined in *Directive 056*), their duration, or their strength. Complaints about odours may be registered at the local AER field center and any odours off lease must be dealt with in a timely manner.

Regarding the Partsches' concerns about noise from facility operations, noise associated with the construction of the project will be temporary in nature. Terado must also design its facility to operate in accordance with the requirements of *Directive 038*. Throughout the operation of the facility, Terado must continue to assess and mitigate noise that exceeds the limits of the directive. Terado has indicated that the facility will employ a high-grade noise suppression system on the turbine-driven compressors which will meet or exceed *Directive 038*. Complaints about noise may be registered at the local AER field center. Once a licensee becomes aware of a specific complaint about noise, *Directive 038* requires the licensee to make contact with the complainant to understand the concerns, to set a time frame for action to resolve the issue, and, to make every reasonable attempt to resolve any noise-related complaint in a timely manner. Accordingly, the Partsches' concerns about noise have been addressed to the AER's satisfaction.

Their concerns about groundwater impacts are outside of the scope of the subject applications, as the construction and operation of the proposed pipeline will not impact groundwater sources and no new wells will be drilled as a result of the approval of the applications. Any additional wells to be drilled will require future applications to the AER. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Their concerns regarding the safety and integrity of the reservoir are addressed to the AER's satisfaction. The requirements pertaining to gas injection and storage in *Directives 051*, *055*, and *065*, which Terado has met or is required to meet. The AER has previously assessed and approved the reservoir for the storage of natural gas. The gas storage approval includes limits on injected volumes of gas and reservoir

pressures, as well as monitoring and reporting requirements. The Partsches have not provided information to support their assertion that the value of their property will or may be impacted by the applications.

The AER has reviewed the applications and submissions and has determined that the applications meet the regulatory requirements.

Subject headings: odours, emissions, noise, reservoir integrity, reservoir pressure, safety, air quality, venting, flaring, groundwater, directly and adversely affected, pipeline, health, application scope, regulatory requirements, gas storage, filing deadline, gas injection

Ms. Laurie Friesen, Mr. & Mrs. Dale and Heather Sorenson, and Ms. Debbie Kerluke (Concerned Landowners Group--CLG)/Terado Gas Storage Corp. (Terado), Statement of Concern No. 29722, December 10 2015

Proponent application type: New gas storage facility (Application No. 1823481), new natural gas pipeline (Application No. 1834249)

Procedural or other issue: Does Statement of Concern No. 29722 establish a direct and adverse effect on the CLG?

Statute or Rule applied: [Directive 38](#), [Directive 51](#), [Directive 55](#), [Directive 60](#), [Directive 65](#), [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12; [Government of Alberta's Air Quality Model Guideline](#), [Alberta Ambient Air Quality Guidelines](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: The applied-for facility will utilize an existing depleted sweet natural gas reservoir, the Dimsdale Paddy A Pool, for underground storage of sweet natural gas. Terado previously received AER approval of its scheme for storage of sweet natural gas in the Dimsdale Paddy A Pool. No one in the CLG owns the lands upon which the facility and pipeline have been proposed (the project). The project would be 428 m from the Sorensons' lands, the CLG lands that are the nearest to the project.

It is not clear how CLG's concerns about groundwater impacts are connected to the subject applications, as the construction and operation of the proposed pipeline will not impact groundwater sources and no new wells will be drilled as a result of the approval of the applications. Any additional wells to be drilled will require future applications to the AER. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER. Further, Terado has committed to baseline test CLG water wells and to provide further follow up testing if further wells are approved and drilled. It has also committed to provide potable water to the CLG in the unlikely event that water wells are impacted.

Concerns about impacts from odours and emissions are adequately addressed. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations. The project relates to the injection of sweet natural gas and no H₂S is associated with the facility. Terado is required to conduct dispersion modelling that demonstrates that NO₂ concentrations will meet the *Alberta Ambient Air Quality Guidelines*. The AER has conditioned the approval such that no construction or operations at the project can occur until such time as Terado has met these requirements and obtained a registration under the *Environmental Protection and Enhancement Act*.

In accordance with *Directive 060*, venting and/or fugitive emissions from Terado's operations must not result in any offensive hydrocarbon odours outside the lease boundary that are unreasonable either because of their frequency, their proximity to surface improvements and surface development (as defined in *Directive 056*), their duration, or their strength. Complaints about odours may be registered at the local AER field center and any odours off lease must be dealt with in a timely manner.

Concerns regarding the safety and integrity of the reservoir and contamination are adequately addressed. Terado has met or is required to meet the requirements pertaining to gas injection and storage in *Directives 051, 055, and 065*. The AER previously assessed and approved the reservoir for the storage of natural gas. The gas storage approval includes limits on injected volumes of gas and reservoir pressures, as well as monitoring and reporting requirements.

Regarding concerns about safety in the event of an incident, the AER has numerous requirements with which Terado must comply that are protective of human health and safety. Terado's facility will meet or exceed these requirements, and these requirements address any safety concerns. The examples of incidents CLG cites do not relate to the subject gas storage reservoir and are outside of the scope of the subject applications.

Regarding CLG's concerns about noise from facility operations, noise associated with the construction of the project will be temporary in nature. Terado must also design its facility to operate in accordance with the requirements of *Directive 038*. Throughout the operation of the facility, Terado must continue to assess and mitigate noise that exceeds the limits of the directive. Terado has indicated that the facility will employ a high-grade noise suppression system on the turbine-driven compressors which will meet or exceed *Directive 038*. Complaints about noise may be registered at the local AER field center. Once a licensee becomes aware of a specific complaint about noise, *Directive 038* requires the licensee to make contact with the complainant to understand the concerns, to set a time frame for action to resolve the issue, and, to make every reasonable attempt to resolve any noise-related complaint in a timely manner. Accordingly, concerns about noise have been addressed to the AER's satisfaction.

Traffic increases during construction phases will be temporary in nature. During operations, additional truck traffic may be expected during winter months, but this increased traffic is not expected to be significant. The landowners have not provided any information to support their assertion that the value of CLG property will or may be impacted by the applications.

Concerns about changes in ownership of the project are not related to the subject applications and any future operator must comply with the same AER requirements as Terado.

Subject headings: odours, emissions, health, safety, noise, traffic, groundwater, venting, flaring, pipeline, air quality, application scope, gas storage, landowner, filing deadline, gas injection, reservoir integrity, reservoir pressure

[Jan & Larry Betker/Terado Gas Storage Corp. \(Terado\), Statement of Concern No. 29718, December 10 2015](#)

Proponent application type: New gas storage facility (Application No. 1823481), new natural gas pipeline (Application No. 1834249) (note: letter says 1834269 but this seems to be a mistake)

Procedural or other issue: Does Statement of Concern No. 29718 establish a direct and adverse effect on the Betkers?

Statute or Rule applied: [Directive 51](#), [Directive 55](#), [Directive 60](#), [Directive 65](#), [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12 (EPEA); [Government of Alberta's Air Quality Model Guideline](#), [Alberta Ambient Air Quality Guidelines](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: The applied for facility will utilize an existing depleted sweet natural gas reservoir, the Dimsdale Paddy A Pool, for underground storage of sweet natural gas. Terado previously received AER approval of its scheme for storage of sweet natural gas in the Dimsdale Paddy A Pool. The Betkers do not own the lands upon which the facility and pipeline have been proposed (the project). The project would at its closest be 1.1 km from the Betkers' lands and 1.2 km from their residence.

It is not clear how their concerns about groundwater impacts are connected to the subject applications. The construction and operation of the proposed pipeline will not impact groundwater sources and no new wells will be drilled as a result of the approval of the applications. Any additional wells to be drilled will require future applications to the AER. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER. Further, Terado has committed to baseline test the Betkers' water well and to provide further follow up testing if further wells are approved and drilled.

Terado has addressed the Betkers' concerns regarding the safety and integrity of the reservoir and contamination to the AER's satisfaction. Terado is required to meet the requirements pertaining to gas injection and storage in *Directives 051, 055, and 065*. The AER previously assessed and approved the reservoir for the storage of natural gas. The gas storage approval includes limits on injected volumes of gas and reservoir pressures, as well as monitoring and reporting requirements.

Terado has addressed the Betkers' concerns about impacts from odours and emissions to the AER's satisfaction. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations. The project relates to the injection of sweet natural gas and no H₂S is associated with the facility. Terado is required to apply for a registration for the facility under *EPEA* in advance of carrying out operations at the project site. As part of that application, Terado must conduct dispersion modelling that demonstrates that NO₂ concentrations will meet the *Alberta Ambient Air Quality Guidelines* (AAAQO). During operations, Terado must ensure that the facility continues to meet the AAAQO.

In accordance with *Directive 060*, venting and/or fugitive emissions from Terado's operations must not result in any offensive hydrocarbon odours outside the lease boundary that are unreasonable either because of their frequency, their proximity to surface improvements and surface development (as defined in *Directive 056*), their duration, or their strength. Complaints about odours may be registered at the local AER field center and any odours off lease must be dealt with in a timely manner.

Regarding the Betkers' concerns about safety in the event of an incident, the example they cited occurred outside of Alberta and is outside of the scope of the subject applications. Further, the AER has numerous requirements with which Terado must comply that are protective of human health and safety. The AER has confirmed that Terado's facility will meet or exceed these requirements, and it is satisfied that these requirements address the Betkers' safety concerns.

Regarding their concerns about noise from facility operations, noise associated with the construction of the project will be temporary in nature. Terado must also design its facility to operate in accordance with the requirements of *Directive 038*. Throughout the operation of the facility, Terado must continue to

assess and mitigate noise that exceeds the limits of the directive. The facility will employ a high-grade noise suppression system on the turbine-driven compressors which will meet or exceed *Directive 038*. Complaints about noise may be registered at the local AER field center. Once a licensee becomes aware of a specific complaint about noise, *Directive 038* requires the licensee to make contact with the complainant to understand the concerns, to set a time frame for action to resolve the issue, and, to make every reasonable attempt to resolve any noise-related complaint in a timely manner. Accordingly, the Betkers' concerns about noise have been addressed to the AER's satisfaction.

Traffic increases during construction phases will be temporary in nature, and the Betkers have not specified or demonstrated how increases in noise or traffic might directly and adversely impact them given their distance to the project.

Concerns about planned provincial highways are outside of the AER's jurisdiction and the AER notes that Terado has advised Alberta Transportation of the applications.

The Betkers have not provided any information to support their assertion that the value of their property will or may be impacted by the applications.

The AER has reviewed the applications and submissions and has determined that the application will meet the regulatory requirements.

Subject headings: directly and adversely affected, odours, emissions, health, safety, noise, traffic, water, groundwater, venting, flaring, pipeline, air quality, application scope, regulatory requirements, gas storage, jurisdiction, filing deadline, gas injection, reservoir integrity, reservoir pressure

Holleen Holler, Deborah Rycroft, Sharon Gagnon/Terado Gas Storage Corp. (Terado), Statement of Concern No. 29719, December 10 2015

Proponent application type: New gas storage facility (Application No. 1823481)

Procedural or other issue: Does Statement of Concern No. 29719 establish a direct and adverse effect on Ms. Holler, Ms. Rycroft, or Ms. Gagnon?

Statute or Rule applied: [Directive 51](#), [Directive 55](#), [Directive 60](#), [Directive 65](#), [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12 (EPEA); [Government of Alberta's Air Quality Model Guideline](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: The applied for facility will utilize an existing depleted sweet natural gas reservoir, the Dimsdale Paddy A Pool, for underground storage of sweet natural gas. Terado previously received AER approval of its scheme for storage of sweet natural gas in the Dimsdale Paddy A Pool. None of the concerned parties own lands upon which the facility and pipeline have been proposed (the project). The project will be 2km from their lands.

Terado has addressed their concerns regarding the safety and integrity of the reservoir, including the potential for gas leaks, to the AER's satisfaction. Terado has met or is required to meet the requirements pertaining to gas injection and storage in *Directives 051*, *055*, and *065*. The AER previously assessed and approved the reservoir for the storage of natural gas. The gas storage approval includes limits on injected volumes of gas and reservoir pressures, as well as monitoring and reporting requirements.

Terado has adequately addressed concerns about the environment, including impacts from odours and

emissions. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations. The project relates to the injection of sweet natural gas and no H₂S is associated with the facility. Terado is required to apply for a registration for the facility under *EPEA* in advance of carrying out operations at the project site. As part of that application, Terado must conduct dispersion modelling that demonstrates that NO₂ concentrations will meet the *Alberta Ambient Air Quality Guidelines* (AAAQO). During operations, Terado must ensure that the facility continues to meet the AAAQO. In accordance with *Directive 060*, venting and/or fugitive emissions from Terado's operations must not result in any offensive hydrocarbon odours outside the lease boundary that are unreasonable either because of their frequency, their proximity to surface improvements and surface development (as defined in *Directive 056*), their duration, or their strength. Complaints about odours may be registered at the local AER field center, and any odours off lease must be dealt with in a timely manner. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations.

Questions and concerns about future wells and facility infrastructure at the site will require future applications to the AER. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Concerns about planned provincial highways and municipal zoning requirements are outside of the AER's jurisdiction. Terado has advised Alberta Transportation of the applications and neither the County nor the City of Grande Prairie have raised concerns about zoning in relation to the project.

The AER has reviewed the applications and submissions and has determined that the application would meet the regulatory requirements. Based on the foregoing, the concerned parties have not demonstrated that they may be directly and adversely affected by the applications.

Subject headings: directly and adversely affected, odours, emissions, venting, flaring, air quality, safety, regulatory requirements, gas storage, jurisdiction, filing deadline, gas injection, reservoir integrity, reservoir pressure

Bernie and Wendy Olydam/Terado Gas Storage Corp. (Terado), Statement of Concern No. 29721, December 10 2015

Proponent application type: New gas storage facility (Application No. 1823481)

Procedural or other issue: Does Statement of Concern No. 29721 establish a direct and adverse effect on the Olydams?

Statute or Rule applied: [*Directive 038: Noise Control*](#), [*Government of Alberta's Air Quality Model Guideline*](#), [*Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*](#), [*Environmental Protection and Enhancement Act*](#), RSA 2000, c E-12 (*EPEA*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: The applied for facility will utilize an existing depleted sweet natural gas reservoir, the Dimsdale Paddy A Pool, for underground storage of sweet natural gas. Terado has previously received AER approval of its scheme for storage of sweet natural gas in the Dimsdale Paddy A Pool.

The Olydams do not own the lands upon which the project has been proposed. The project would be

located 1.1km from their lands.

Their concerns about impacts to their water supply are outside of the scope of the subject applications, as the construction and operation of the proposed pipeline will not impact groundwater sources and no new wells will be drilled as a result of the approval of the applications. Any additional wells to be drilled will require future applications to the AER. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a Statement of Concern with the AER.

Regarding their concerns about safety in the event of an incident, the AER has numerous requirements with which Terado must comply that are protective of human health and safety. Terado's facility will meet or exceed these requirements, and these requirements address the Olydams' safety concerns.

Regarding their concerns about noise from facility operations, noise associated with the construction of the project will be temporary. Terado must also design its facility to operate in accordance with the requirements of *Directive 038*. Throughout the operation of the facility Terado must continue to assess and mitigate noise that exceeds the limits of the directive. Terado has indicated that the facility will employ a high-grade noise suppression system on the turbine-driven compressors, which will meet or exceed *Directive 038*. Complaints about noise may be registered at the local AER field center. Once a licensee becomes aware of a specific complaint about noise, *Directive 038* requires the licensee to make contact with the complainant to understand the concerns, to set a time frame for action to resolve the issue, and, to make every reasonable attempt to resolve any noise-related complaint in a timely manner. Accordingly, their concerns about noise have been addressed to the AER's satisfaction.

Terado has addressed concerns about air quality to the AER's satisfaction. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations. The project relates to the injection of sweet natural gas and no H₂S is associated with the facility. Terado is required to apply for a registration for the facility under *EPEA* in advance of carrying out operations at the project site. As part of that application, Terado must conduct dispersion modelling that demonstrates that NO₂ concentrations will meet the *Alberta Ambient Air Quality Guidelines* (AAAQO). During operations, Terado must ensure that the facility continues to meet the AAAQO. In accordance with *Directive 060*, venting and/or fugitive emissions from Terado's operations must not result in any offensive hydrocarbon odours outside the lease boundary that are unreasonable either because of their frequency, their proximity to surface improvements and surface development (as defined in *Directive 056*), their duration, or their strength. Complaints about odours may be registered at the local AER field center and any odours off lease must be dealt with in a timely manner.

The Olydams have not provided any information to support their assertion that the application will or may impact the value of their property.

Regarding the Olydams' concerns about receiving more detailed information on the project, Terado has responded to their concerns in writing and has provided information regarding its licence, the depleted reservoir and its proposal to develop a gas storage facility.

The AER has reviewed the applications and submissions and has determined that the applications meet the regulatory requirements.

Subject headings: directly and adversely affected, noise, odours, emissions, air quality, venting, flaring,

pipeline, safety, health, water, groundwater, application scope, regulatory requirements, gas storage, filing deadline, gas injection

Mr. & Mrs. Wrzosek/Terado Gas Storage Corp. (Terado), Statement of Concern No. 30011, December 10 2015

Proponent application type: New gas storage facility (Application No. 1823481), new natural gas pipeline (Application No. 1834249)

Procedural or other issue: Does Statement of Concern No. 30011 establish a direct and adverse effect on the Wrzoseks?

Statute or Rule applied: [Directive 038: Noise Control](#), [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12; [Government of Alberta's Air Quality Model Guideline](#), [Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting](#), [Environmental Protection and Enhancement Act](#), RSA 2000, c E-12 (EPEA)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences and approvals issued.

Reasons: Based on the following, the Wrzoseks have not demonstrated that they may be directly and adversely affected by the applications. The applied for facility will utilize an existing depleted sweet natural gas reservoir, the Dimsdale Paddy A Pool, for underground storage of sweet natural gas. Terado previously received AER approval of its scheme for storage of sweet natural gas in the Dimsdale Paddy A Pool.

The Wrzoseks do not own the lands upon which the project has been proposed. The proposed pipeline would, at its closest, be 600m from their lands; the proposed facility would be 1 km from their lands. Regarding their concerns about increased noise from facility operations, noise associated with the construction of the project will be temporary in nature. Terado must also design its facility to operate in accordance with the requirements of *Directive 038: Noise Control*. Throughout the operation of the facility, Terado must continue to assess and mitigate noise that exceeds the limits of the directive. Terado has indicated that the facility will employ a high-grade noise suppression system on the turbine-driven compressors which will meet or exceed *Directive 038*. Complaints about noise may be registered at the local AER field center. Once a licensee becomes aware of a specific complaint about noise, *Directive 038* requires the licensee to make contact with the complainant to understand the concerns, to set a time frame for action to resolve the issue, and to make every reasonable attempt to resolve any noise-related complaint in a timely manner. Accordingly, Terado has addressed the Wrzoseks' concerns about noise to the AER's satisfaction.

Traffic increases during construction phases will be temporary in nature, and the Wrzoseks have not specified or demonstrated how increases in traffic might directly and adversely impact them given their distance from the project. Terado has addressed their concerns about impacts from odours, leaks and emissions to the AER's satisfaction. The facility will employ vapour recovery systems to capture gas and minimize emissions. There will be no flaring or venting at the facility during normal operations. The project relates to the injection of sweet natural gas and no H₂S is associated with the facility. Terado is required to apply for a registration for the facility under *EPEA* in advance of carrying out operations at the project site. As part of that application, Terado must conduct dispersion modelling that demonstrates that NO₂ concentrations will meet the *Alberta Ambient Air Quality Guidelines* (AAAQO). During operations, Terado must ensure that the facility continues to meet the AAAQO.

In accordance with *Directive 060*, venting and/or fugitive emissions from Terado's operations must not result in any offensive hydrocarbon odours outside the lease boundary that are unreasonable either because of their frequency, their proximity to surface improvements and surface development (as defined in *Directive 056*), their duration, or their strength. Complaints about odours may be registered at the local AER field center and any odours off lease must be dealt with in a timely manner. Terado must also follow the fugitive emissions management requirements in *Directive 060* and comply with a number of other operational requirements and technical specifications in the design, construction, and operation of its pipeline, many of which are designed to prevent against, detect, and respond to leaks.

The Wrzoseks have not provided information to support their assertion that the applications will or may impact the value of their property.

The AER has reviewed the applications and submissions and has determined that the applications meet the regulatory requirements.

Subject headings: directly and adversely affected, noise, odours, emissions, venting, flaring, pipeline, traffic, air quality, regulatory requirements, gas injection

[Terry Smith & family members/Canadian Natural Resources Limited \(CNRL\), Request for Regulatory Appeal, Dec 7 2015](#)

Proponent application type: 3 x production crude bitumen (scheme) wells (Application No. 1814633) and a new bitumen battery, 0% H₂S (Application No. 1821483). The appeal request is #1831011.

Procedural or other issue: Is Terry Smith (together with his family) eligible to request a regulatory appeal?

Statute or Rule Applied: ss. 36, 38 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3 (REDA); *Kelly v. Alberta (Energy Resources Conservation Board)*, [2011 ABCA 325](#) (CanLII); *Compton Petroleum Corporation and Darian Resources Ltd.* 2011 ABERCB 008 at para 57; [Directive 38: Noise Control](#); [Directive 60: Upstream Petroleum Industry Flaring, Incinerating, and Venting](#)

Ruling: Terry Smith and his family are not eligible to request a regulatory appeal because they are not directly and adversely affected by the decision.

Reasons: Mr. Smith requested an appeal primarily because of the possibility he would be directly and adversely affected by odours, noise, and dust as a result of operations at the wells, facility site and access road. CNRL has committed to limiting its production tank temperatures and using hexa-covers in the tanks to mitigate and reduce odours from the production tanks. They will also use sound suppression shacks and quiet style drive heads for the wells. The Smith lands are 400 meters from the well site and their nearest residence is 444 meters away. The access road at its closest distance to the residence is approximately 400 meters away. Dust from traffic on the access road reaching the lands and residence will be mitigated by the densely treed area in between the lands and the access road. The AER does not have jurisdiction over the local county road which runs adjacent to the lands and which may be used to access the leased road. According to *Kelly v. Alberta*, 'magnitude of risk' associated with an activity must be considered when determining whether the activity may directly and adversely affect a person. Mr. Smith did not indicate that the noise, odour, and dust associated with the project would or might impact his health or safety. Intermittent exposure to unpleasant stimuli is not the same as exposure to stimuli that may give rise to health risks (*Compton Petroleum*), and the former is not enough to establish an adverse effect. The Smiths are not directly and adversely affected.

Under *Directives 38 and 60*, the AER has specific requirements relating to noise and off-lease odours with which CNRL must comply. The Smiths should contact the local AER field center if they are experiencing noise or odours that exceed these requirements. Mr. Smith's questions about the appropriateness or effectiveness of these requirements does not affect the AER's finding of no direct and adverse effect, and he has not yet attempted to resolve issues by contacting the field office. Other concerns over facilities in the area are outside the scope of the regulatory appeal request, and similar issues with those facilities do not demonstrate likelihood of direct and adverse effects from the subject wells and facility. No details were provided about commitments or mitigation efforts at those sites to reduce noise, odour, and dust from access roads, as has been done with the subject wells and facility. Mr. Smith also asserted he could no longer use his property for target shooting, but did not provide details as to why the project restricted his recreational activity. He also provided no information to support his assertion that the subject wells and facility will result in economic loss or loss of property values. Only eligible persons according to REDA can apply for an appeal, and Mr. Smith is not eligible.

Subject Headings: eligible person, regulatory appeal, noise, odours, directly and adversely affected, traffic, health, scope of appeal, mitigation, property values, jurisdiction, dust

Mark Roberts/Baytex Energy Ltd. (Baytex), Request for Regulatory Appeal, Dec 8 2015

Proponent application type: 2 x Oil Sands Evaluation Well (Application Nos. 1815571 and 1815581); 7 x production (scheme) crude bitumen (0 H2S) (Application Nos. 1817010, 1817013, 1817224, 1817233, 1817405, 1817425, and 1817261); 6 x New Bitumen battery, 0% H2S (Application Nos. 1821341, 1821359, 1821376, 1821385, 1823471, and 1823477); 2 x New Natural Gas, 0% H2S (Application Nos. 1823478 and 1823482); Regulatory Appeal No. 1829801

Procedural or other issue: Is Mr. Roberts eligible to request a regulatory appeal?

Statute or Rule Applied: ss. 36, 38 *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDa); [Directive 60](#): *Upstream Petroleum industry Flaring, Incinerating, and Venting*; *Report of Recommendations on Odours and Emissions in Peace River*

Ruling: Mr. Roberts is not eligible to request a regulatory appeal because he is not directly and adversely affected by the decision.

Reasons: S. 38 of REDA provides that only an eligible person may request a regulatory appeal for an appealable decision. S. 36(b)(ii) defines "eligible person" as someone who is directly and adversely affected by the decision at issue.

Mr. Roberts made extensive submissions to support his claim of direct and adverse effect. He asserted that at existing Baytex well sites, atmospheric venting occurs due to equipment failure, contrary to *Directive 60*. He provided supporting data indicating Total Hydrocarbon Max spikes in the area, which demonstrates the occurrence of atmospheric venting. He asserted that the vented substances have foul and noxious odours and that he and his family suffer negative health effects. The wells for which Baytex issued licences will use the same equipment as the existing wells, and therefore more venting will occur, which will negatively affect Mr. Roberts and his family. Therefore, he stated, he is directly and adversely affected.

Baytex argued that he is not directly and adversely affected because his residence is 2.9 km from the facility; there will be no setbacks to his land as a result of the developments; Baytex has implemented the

2014 Peace River Proceeding recommendations, which address many of Mr. Roberts' concerns; and these developments will operate with full gas capture and conservation, which will ameliorate Mr. Roberts' odour and emissions concerns. Baytex meets all regulatory requirements and the AER has verified that its equipment is operating properly. As required by the *Report of Recommendations on Odours and Emissions in Peace River*, Baytex immediately shuts in wells when conditions could cause atmospheric venting. Baytex ensures safe operation of its facilities via visual inspections, daily data reviews, and regular emissions assessments. Baytex also provided an expert report showing that the data Mr. Roberts presented about hydrocarbon spikes reflect natural fluctuations and do not show contamination.

The fact that very short term atmospheric venting has occurred occasionally at the Baytex facility does not demonstrate that Baytex's facilities in the Reno area vent to atmosphere regularly, that its gas capture equipment does not work, or that it is not complying with *Directive 60*. The AER accepts Baytex's expert report. Contrary to what Mr. Roberts suggests, the evidence does not demonstrate that Baytex has vented to atmosphere at its existing facilities on multiple occasions. The evidence shows that atmospheric venting has occurred at most twice since December 2014 and those situations were extraordinary and brief events. Any odours and illness the Roberts family is experiencing on a regular basis must have a cause other than venting from Baytex well sites.

In light of the scant history of venting since gas capture equipment was installed at the Baytex well sites, the equipment to be utilized to prevent venting, and the extensive precautions taken by Baytex to ensure the safe operation of the well sites, the AER finds that Mr. Roberts has not demonstrated that he will be directly and adversely affected by the decision to issue the licences. Therefore, Mr. Roberts is not an eligible person for the purposes of s. 38(1) of REDA and the application for a regulatory appeal is dismissed.

Subject Headings: venting, directly and adversely affected, regulatory appeal, eligible person, health, emissions, regulatory requirements, appealable decision, odours, evidence, expert evidence

George and Deanna Jenner (the Jenners)/Bonavista Energy Corporation (Bonavista), Request for Regulatory Appeal, Dec 7 2015

Proponent application type: New Gas Battery Facility, 0% H₂S (Application No. 1833178)

Procedural or other issue: Are the Jenners eligible to request a regulatory appeal?

Statute or Rule Applied: ss. 36, 38 and 39 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (Rules); *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#); [Directive 056](#) - *Energy Development Application and Schedules*

Ruling: The Jenners are not eligible to request a regulatory appeal because they are not directly and adversely affected by the decision.

Reasons: S. 38 of REDA provides that only an eligible person may request a regulatory appeal for an appealable decision. S. 36(b)(ii) defines "eligible person" as someone who is directly and adversely affected by the decision at issue. S. 36(a)(iv) defines an "appealable decision" as a decision "made under an energy resources enactment, if that decision was made without a hearing."

The application was made under an energy enactment (the *Oil and Gas Conservation Act*) and the approval was issued without hearing. The decision in question is an "appealable decision." The regulatory appeal request was filed in accordance with the *Rules*. However, the Jenners are not an "eligible person."

Bonavista argued that the appeal request should be dismissed under s. 39(4) of REDA because it was frivolous, vexatious or without merit. Bonavista based its arguments on the lack of information provided in the regulatory appeal request and the fact that the Jenners did not file a Statement of Concern. The AER did not agree with Bonavista.

The Jenners met with Bonavista on two occasions. At the first meeting, Bonavista says it advised Mr. Jenner that Bonavista would file a non-routine application with the AER, and that once Mr. Jenner filed an objection the AER would discuss his issues with him. Therefore, Mr. Jenner did not file a Statement of Concern (SOC) even after receiving the AER Public Notice of Application (which states that if a party has concern about the project it must file a SOC with the AER). Mr. Jenner was waiting to be contacted by the AER to discuss his issues. The Jenners were not aware that the licence to Bonavista had been issued until Bonavista later contacted them about water sampling. Some miscommunication occurred between the Jenners and Bonavista.

The impacts of the facility that concerned the Jenners were health impacts on themselves and their purebred horses, noise and light, use of agricultural land, Bonavista's technical competency, and decreased property values. They also felt that Bonavista lied to them when it said they would be contacted by the AER. However, the information they provided on these impacts was too general and lacked detail to establish how they may be directly and adversely affected. Operational concerns such as noise should be directed to the local AER field office. Bonavista meets the AER's requirements for technical capability. Concerns about human and animal health impacts are not detailed enough, and concerns about property values are beyond the scope of the AER.

Although Bonavista's consultation and communication falls short of ideal and the AER considers this an unfortunate situation, the allegation that Bonavista lied to the Jenners does not establish a direct and adverse effect. The Jenners have some responsibility to read relevant materials provided to them and understand what is required. The AER expects Bonavista will engage with the Jenners in a meaningful way to attempt to address or mitigate their concerns about siting, noise, and impact on the horses.

Subject Headings: directly and adversely affected, regulatory appeal, eligible person, appealable decision, non-routine application, health, horses, noise, light, technical competency, property values, agricultural land, consultation, water, jurisdiction

[Chipewyan Prairie Dene First Nation \(CPDFN\)/Value Creation Inc. \(VCI\), Late Filing of Statement of Concern, Dec 3 2015](#)

Proponent application type: Athabasca Oil Sands Area, McMurray Formation, Tristar Pilot Project. OSCA Application No. 1827947, EPEA Application No. 002-00269702.

Procedural or other issue: Is CPDFN permitted to file a late Statement of Concern?

Statute or Rule Applied: Responsible Energy Development Act, [SA 2012, c R-17.3](#); Alberta Energy Regulator Rules of Practice, [Alta Reg 99/2013](#) (Rules)

Ruling: Late filing permitted.

Reasons: CPDFN did not receive a copy of the Public Notice of Application from VCI before the deadline for filing a Statement of Concern. VCI supports CPDFN's request for an extension. Extending the deadline would not cause an unreasonable delay in processing the applications.

The Alberta Surface Rights Board has jurisdiction over matters of compensation for land usage. The AER has no jurisdiction to assess the adequacy of Crown consultation with Aboriginal peoples. The AER's Alternative Dispute Resolution process is strongly recommended. S. 49 of the *Rules* requires that all documents filed with the AER be placed on the public record. However, any party may file a request for confidentiality of information under s. 49 prior to filing the information with the AER.

Subject Headings: First Nations/Métis, late filing, filing extension, consultation, jurisdiction, surface rights, filing deadline, confidentiality application, public record, Aboriginal rights

Christine & Nick Andrushuk (the Andrushuks), Fort McMurray #468 First Nation (FMFN)/Canadian Natural Resources Ltd. (CNRL), Statements of Concern, Dec 3 2015

Proponent application type: Application No. OSE140047 for a proposed wellsite

Procedural or other issue: Do Statements of Concern No. 29414 and 29400 establish a direct and adverse effect on the Andrushuks or FMFN?

Statute or Rule Applied: [Lower Athabasca Regional Plan](#) (LARP)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: The Andrushuks (Statement of Concern No. 29414): Their property is 10 km from the nearest proposed wellsite. CNRL will not drill within a 1 mile radius of their residence for this application.

FMFN (Statement of Concern No. 29400): FMFN lands are 183km from the proposed project. FMFN's Statement of Concern lacks any detail or specifics on how FMFN may be impacted. Impacts from future applications will be assessed at the time of those applications. The activities proposed in the areas of the applications are permitted under LARP.

Subject Headings: First Nations/Métis, LARP

Fort McMurray #468 First Nation (FMFN), Métis Nation of Alberta Association Fort McMurray Local Council 1935 (McMurray Métis)/Imperial Oil Resources Ventures Limited (Imperial), Statements of Concern, Dec 1 2015

Proponent application type: Applications OSE150007 and OSE1500016; 3 New Multi Well Pads, 0% H2S (Application Nos. 1841478, 1841491, and 1841589)

Procedural or other issue: Do Statements of Concern 29922, 29957, 30028, 29919, and/or 29958 establish a direct and adverse effect on FMFN or the McMurray Métis?

Statute or Rule Applied: [Lower Athabasca Regional Plan](#); *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) at para 18; s. 49 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals and licences issued.

Reasons: FMFN: FMFN's reserve lands are 50 km from the project boundary. The subject exploration activities are permitted under the *Lower Athabasca Regional Plan*. The project will result in minimal lasting disturbance or impact on the environment and natural resources. FMFN did not provide any concerns that pertain specifically to Imperial's 2015/2016 winter drilling program. It also did not provide "hard information" about locations where land within or affected by the OSE programs is used by FMFN or how its members may be directly and adversely affected. FMFN is concerned about the confidentiality of additional information it could file. The AER has an established process for parties to request confidential treatment of information under s. 49 of the *Rules*.

McMurray Métis: The McMurray Métis are located 50 km from the project area. The subject exploration activities are permitted under the *Lower Athabasca Regional Plan*. The project will result in minimal lasting disturbance or impact on the environment and natural resources. The McMurray Métis did not provide any concerns that pertain specifically to Imperial's 2015/2016 winter drilling program. It also did not provide "hard information" about locations where land within or affected by the OSE programs is used by the McMurray Métis or how its members may be directly and adversely affected. The concerns submitted by the McMurray Métis have been addressed by Imperial to the AER's satisfaction.

Subject Headings: First Nations/Métis, directly and adversely affected, confidentiality, confidentiality application

Roy and Melanie Schulze (The Schulzes)/TAQA North Ltd. (TAQA), Application to Strike Parts of Submission to Participate, Nov 26 2015

Proponent application type: Proceeding ID 337—Removal Application for a portion of TAQA's pipeline (no application number given)

Procedural or other issue: Are confidential parts of the request to participate struck from the proceeding record?

Statute or Rule Applied: s. 33 of the *Pipeline Act*, [RSA 2000, c P-15](#); *Sable Offshore Energy Inc. v Ameron International Corp.*, [2013 SCC 37](#), paragraph 11; *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: The "Chronology of Contact" submitted by TAQA will be struck from the record of the proceeding. It contains information that is confidential and privileged. Other than the dates of communications, the Chronology is irrelevant to the issue of whether TAQA is entitled to participate in the hearing and to the issues to be determined in the hearing. TAQA must withdraw the RTP and resubmit it with a new chronology of attempts to resolve issues with the Schulzes that does not reveal any substantive details of those communications.

Reasons: The Schulzes applied to have portions of TAQA's request to participate submission struck. The Panel's decision is informed by the AER's recognition of the value of dispute settlement outside the AER's hearing process. The "Chronology of Contact" will be struck from the proceeding record because it contains confidential and privileged settlement information and because the information in it is irrelevant to the question of whether TAQA should be entitled to participate in this hearing.

The Schulzes applied to the AER for removal of a portion of TAQA's pipeline pursuant to s. 33 of the *Pipeline Act*. Those wishing to participate in the hearing were required to file a request to participate in accordance with s. 9(2) of the *Rules*. TAQA made a request to participate submission (RTP) that included a document entitled "Chronology of Contact." The Schulzes' counsel requested that portions of the

TAQA RTP be struck and not relied on by the AER in its decision because the RTP referenced without prejudice and confidential statements made within the AER's Alternative Dispute Resolution (ADR) process.

Mr. Schulze indicated that he had expected substantive discussions or communications related to resolution of the issues in the application would be kept confidential. TAQA responded that because there had not been a formal ADR process, only a Site Meeting, and because the issue of confidentiality had not been specifically addressed, there was no presumption of confidentiality. Although a formal ADR meeting involving a signed confidentiality agreement did not occur, ADR staff communicated with the parties about settling the issues, engaging the ADR process. Mr. Schulze's expectation was reasonable, given the involvement of ADR staff, the content of the AER EnerFAQ described below, and the fact that by the time the Site Meeting occurred on May 6, 2015, the Schulzes had already filed the Removal Application.

The AER EnerFAQ "All About Alternative Dispute Resolution (ADR)" indicates that "ADR discussions" with the mediator and the parties are confidential and cannot be raised by the other party during a proceeding. Confidentiality does not apply only to formal ADR meetings, and there is a presumption of confidentiality in ADR discussions unless otherwise specified. Even if the settlement discussions and offers had not occurred in the context of the ADR process, they were made without prejudice. Granting privilege in this context encourages parties to settle without fear that their comments will be held against them.

For the settlement privilege to apply, a formal or "litigious" dispute must exist or be in contemplation and the communication in question must be made in furtherance of settlement and be intended not to be disclosed. In this case, a dispute existed, based on the Removal Application. The communications were for the purpose of settlement (and indeed, TAQA claimed settlement had been reached). Mr. Schulze gave evidence that he expected confidentiality and TAQA did not persuade the panel otherwise. Where there is doubt, the AER must err in favour of protecting the privileged nature of without prejudice settlement communications between the parties. Although communications were not marked "without prejudice," that is not determinative because the words "without prejudice" do not change the character of a document, especially when one party (the Schulzes) does not have legal counsel. Not protecting settlement discussions broadly could lead to parties using such discussions to obtain information from the other party to either embarrass that party or to utilize in the AER's decision making process.

Most of the content of the Chronology is irrelevant to determining whether TAQA may be directly and adversely affected by the application or, if it will not be so affected, whether there is some other reason it should be allowed to participate. S. 9(2)(h) of the *Rules* requires a list of efforts to resolve the issues directly with the applicant, but it does not require disclosure of what would otherwise be confidential or privileged without prejudice settlement communications. The information in the Chronology is also irrelevant to the ultimate issue raised by the Removal Application, i.e., whether it is in the public interest to direct TAQA to remove the pipeline.

Subject Headings: confidentiality, privilege, settlement, alternative dispute resolution, request to participate, removal application, disclosure, pipeline, without prejudice, evidence

Fort McMurray #468 First Nation (FMFN)/Devon Canada Corporation (Devon), Statements of Concern, Nov 26 2015

Proponent application type: Public Lands Applications OSE150010, OSE150011, and

OSE150012; Infrastructure Applications 1844144, 1844146, 1844147, 1844148, 1844153, 1844155, and 1844158 (all for Multiwell pads - 0.00 mol/kmol H₂S)

Procedural or other issue: Do Statements of Concern No. 29925 and 29926 establish a direct and adverse effect on Fort McMurray First Nation?

Statute or Rule Applied: [Lower Athabasca Regional Plan](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals and licences issued.

Reasons: FMFN lands are more than 90 km from the proposed project. FMFN's statements of concern lack sufficient detail or specifics to explain how the applications may impact FMFN. Impacts from future applications will be assessed at the time of those applications. The application project areas are within the *Lower Athabasca Regional Plan*, which addresses management of cumulative impacts on the environment on a regional basis and permits the proposed activities and applications. FMFN stated it may file further information and it expects that information to be confidential, but did not indicate when it would file. The AER notes the established process for parties to request confidential treatment of information prior to filing such information, and expects parties to be aware of this process.

Subject Headings: First Nations/Métis, directly and adversely affected, confidentiality application

[Cold Lake First Nation \(CLFN\), Beaver Lake Cree Nation \(BLCN\)/Imperial Oil Resources Ltd. \(Imperial\), Statements of Concern, Nov 20 2015](#)

Proponent application type: 2 New Multiwells 0% H₂S (Application Nos. 1841087 and 1841088), Oil Sands Exploration 150014

Procedural or other issue: Do Statements of Concern No. 29968 and 29990 establish a direct and adverse effect on CLFN or BLCN?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for approvals and licences issued.

Reasons: CLFN: The applications meet all regulatory requirements. The majority of the project access will occur on already disturbed lands, and CLFN reserve boundaries are 10 km from the area. CLFN submitted that its members use land in the vicinity of the project, and that 5 of the proposed wells would intersect traditional trails and historical sites. However, Imperial submitted that no existing trails were identified during surveying, and agreed to stop work and notify CLFN if they discover evidence of burial sites or historic cabins. Imperial will not place any permanent facilities over the existing trails and will clear vegetation without disturbing soil, reducing impact to trails. On November 20, 2015, Imperial removed 5 wells from its application, and CLFN has not shown that approvals for the other locations will directly and adversely affect CLFN members. Imperial will operate in frozen conditions to reduce impact on wildlife habitat and vegetation, will impose speed limits to protect the wildlife, will impose setbacks to the lakes and natural bodies of water, and will provide its natural regeneration reclamation plans after the drilling. The proposed project will have short term impacts.

BLCN: The applications meet all regulatory requirements. The majority of the project access will occur

on already disturbed lands, and CLFN reserve boundaries are 80 km from the area. BLCN provided locations where BCLN members carry out activities, but did not identify direct conflicts with areas where Imperial is proposing wells. Imperial provided satisfactory mitigation measures, such as conducting its operations in frozen conditions to reduce the impact on wildlife habitat and vegetation, imposing speed limits to protect the wildlife, agreeing to stop work and notify BLCN to discuss mitigation measures should evidence of burial sites be found, imposing setbacks to the lakes and natural bodies of water, and providing explanation of its natural regeneration reclamation plans. On November 20, 2015, Imperial removed 5 wells from its application. The proposed project will have short term impacts.

Subject Headings: First Nations/Métis, mitigation, reclamation, directly and adversely affected, wildlife, animal habitat, water, regulatory requirements, traditional lands

Bearspaw Petroleum Ltd. (Bearspaw)/AER, Extension Request, Nov 18 2015

Proponent application type: Proceeding ID 336: Crossfield Basal Quartz C & V Pools (no number given)

Procedural or other issue: Is Bearspaw permitted an extension of time to respond requests to participate?

Statute or Rule Applied: none

Ruling: Extension request granted.

Reasons: The requested extension would give Bearspaw until December 4, 2015 to file a response. The reason given by Bearspaw for the request was that “one of the principals of Bearspaw responsible for this matter will be away from November 20-27 2015.” The panel considered the potential for prejudice to any participants if the filing extension was granted. The only party to suffer potential prejudice if the hearing date is delayed is Bearspaw.

Subject Headings: filing extension, prejudice, request to participate

Darren and Kathy Simpson/Spur Resources Ltd. (Spur), Statement of Concern No. 29900, Nov 18 2015

Proponent application type: Multi well 0% H2S (Application No. 1833572)

Procedural or other issue: Does Statement of Concern No. 29900 establish a direct and adverse effect on the Simpsons?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: The Simpsons’ land and residence are 220 and 280 meters, respectively, from the nearest proposed well center. Spur will complete baseline water testing on their water well prior to any drilling activity. Surface casing will be set to a depth that is well below the Simpsons’ aquifer. The water well will be tested again prior to final drilling to confirm that the quality of water is not affected. Spur will test the quality and quantity of the Simpsons’ water within 30 days of rig release and will return 3-4 months after the well is put on production and repeat the water well tests. The Simpsons’ concerns have been addressed to the AER’s satisfaction. They are not directly and adversely affected.

Subject Headings: water, water well, directly and adversely affected

Martin Ignasiak w/ Osler, Hoskin & Harcourt LLP/Ferus Natural Gas Fuels Inc. (Ferus), Request for Notice of Hearing, Nov 17 2015

Proponent application type: New Gas Processing Plant, 0% H₂S (Application No. 1831816)

Procedural or other issue: Hearing scheduling

Statute or Rule Applied: none

Ruling: The AER will issue a Notice of Hearing once the application binder has been submitted, reviewed, and accepted.

Reasons: Mr. Ignasiak requested a Notice of Hearing that sets out a schedule for persons to file and serve requests to participate and schedules a hearing for no later than February 2016. He indicated that the application binder would be submitted by the end of November. A Notice of Hearing will be issued once the application binder has been submitted, reviewed, and accepted by the AER. However, the notice will not contain the hearing date. A second Notice of Hearing outlining the submission schedule and setting the hearing date will be issued after the Panel has determined who will be participating.

Subject Headings: notice of hearing, hearing date, request to participate

Fort Chipewyan Métis Local 125 (FCML)/Canadian Natural Resources Limited (CNRL), Request for Regulatory Appeal, Nov 12 2015

Proponent application type: Regulatory Appeal Request No. 1828882 for OSE Application 140059

Procedural or other issue: Is FCML eligible to request a regulatory appeal?

Statute or Rule Applied: s. 36, 38 *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); s. 20, 121 of the *Public Lands Act*, [RSA 2000, c P-40](#) (PLA); s. 211 of the *Public Lands Administration Regulation*, [Alta Reg 187/2011](#) (PLAR); s. 7.2(2) of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#); s. 91(1)(i) of the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#); *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) at paras 14, 18, 19 (*Dene Tha'*); *Teck Resources Limited, Application for Oil Sands Evaluation Well Licences* [2013 ABAER 017](#) at paras 110 and 112 (the Teck decision)

Ruling: FCML is not eligible to request a regulatory appeal because it is not directly and adversely affected by the decision.

Reasons: In order for FCML to appeal, this decision (the PLA decision) must be appealable under REDA s. 36(a)(iii) and PLA s. 121, which together specify that a “prescribed decision” may be appealed. PLAR s. 211 defines a “prescribed decision” as the issuance of a disposition under the PLA. The PLA decision is an authorization issued pursuant to section 20 of the PLA, is captured under the definition of disposition, and is therefore a “prescribed decision” under section 121 of the PLA.

In order to appeal the PLA decision, FCML must also be eligible to appeal a prescribed decision under s.

212 of PLAR, which says that persons who have standing to appeal are those who either were given the decision or who are directly and adversely affected by the decision.

Although FCML received a copy of the PLA decision, s. 212(1)(a) does not refer to a person who receives a copy of the decision or notice of the decision pursuant to s. 7.2(2) of the AER's *Rules of Practice*. A comparable section of legislation, s 91(1)(i) of the EPEA, gives those who receive a copy of a decision the right to appeal. PLAR's exclusion of those who received a copy of the decision in s. 212 is therefore purposeful. FCML cannot appeal based on receiving a copy of the PLA decision, so it must be directly and adversely affected in order to appeal.

FCML raised general criticism and dissatisfaction with the AER's decision on the FCML's Statement of Concern No. 29403 filed on Application 140059, but these concerns are not relevant to this request for regulatory appeal. The AER has only considered how FCML or its members are or may be directly and adversely affected by the PLA Decision.

According to *Dene Tha'*, a degree of location or connection between the work proposed and the right asserted is reasonable to establish a direct and adverse effect. That case also specified that First Nations must give hard information about the areas of land its members use. FCML provided no hard or specific information about the locations where FCML members hunt, trap, fish, or carry out other traditional activities and how the PLA decision would affect those activities. The fact that CNRL's program is located within the large tract of land that FCML refers to as its deemed territory does not, without further factual connection, establish a prima facie case of direct and adverse impact. FCML indicated that it has registered trappers in the proposed program area and that the area is used for traditional activities, but very little information was provided about the specific locations in this territory where FCML members hunt, trap, fish, or carry out other traditional activities in relation to the CNRL's program. FCML also referred to the area covered by Registered Fur Management Agreement 1275 (RFMA), which overlaps with a portion of CNRL's program area, but it was not specific about the locations within that area that its members use.

FCML did provide some specific locations where traditional activities take place, but these do not demonstrate a direct and adverse effect because of their distance from the project area. FCML also asserted that it uses a location on the bank of the Athabasca River that is 1km from the project boundary. However, it did not specify which area it uses, where it carries out traditional activities along the west bank of the Athabasca River, or the nature of the 'land use' activities referred to. Additionally, the program boundary itself will not interfere with land use activities. Throughout the submission, FCML referred to the southern portion of the RFMA as a focal point for where its members carry out traditional activities. The nearest well to this area is 9 km away, which is too far to affect traditional activities.

FCML attempted to use evidence provided for the Teck decision to support its claim of direct and adverse effect. However, in that case, the AER panel found that the effects associated with Teck's OSE Program would be 'localized, temporary, and of short duration'. The Teck decision was also entirely within the RFMA, whereas this decision only overlaps with a small portion of the RFMA. Therefore, any impacts to the RFMA area in this case would be even more localized than what the panel was considering in the Teck decision.

It is also unclear from FCML's submissions which members carry out traditional activities in the RFMA. The registered trapline holder is not himself a member of FCML, and uses the trapline for commercial purposes. His son, who is 'registered as the junior trapper' according to FCML, is described as 'having ancestry to Fort Chipewyan' but is not specifically identified as a member of the FCML community. Another individual has personal ties to the area, but this evidence does not establish which specific traditional activities and their locations FCML members use the RFMA for. Further, the AER noted in the

Teck decision that there was no evidence that any members of FCML other than the trapline holder's immediate family used the RFMA. The extent of traditional use of the RFMA area by FCML members remains unclear.

CNRL provided accurate figures, distances for specific land use features, and areas in the proposed program in advance of the filing of its request for regulatory appeal. FCML has had an opportunity to review and incorporate this information into its regulatory appeal request submissions.

No water withdrawals are authorized under the PLA decision and the applicable PLA application notification requirements had been met by CNRL. Hence, neither of these are relevant grounds for the AER to consider in the regulatory appeal request. FCML's concern about its lack of input into the Lower Athabasca Regional Plan is outside of the scope of the PLA decision and also not a relevant consideration.

The FCML's submissions do not establish a sufficient "degree of location or connection" between the work proposed and the activities of FCML and its members. They do not demonstrate that FCML is or may be directly adversely affected by CNRL's program as contemplated under section 212(1)(b) of PLAR. As such, the PLA Decision is not an 'appealable decision' and FCML is not an 'eligible person' pursuant to the REDA. Accordingly, the AER has decided to dismiss the request for regulatory appeal in accordance with subsection 39(4)(c) of REDA on the basis that it is not properly before the AER.

Subject Headings: eligible person, regulatory appeal, prescribed decision, directly and adversely affected, First Nations/Métis, traditional lands, trapping, water, appealable decision, right to appeal, evidence

Alfred Goodswimmer/Pembina Pipeline Corporation (Pembina), Late Filing of Statement of Concern, Nov 10 2015

Proponent application type: Applications No. 1806873, etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Is Mr. Goodswimmer permitted to file a late Statement of Concern?

Statute or Rule Applied: *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA) (especially s. 21); the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#)

Ruling: Late filing not permitted.

Reasons: The Notice of Application was published on the AER's website on September 2, 2014. The deadline was therefore October 2, 2014. Mr. Goodswimmer did not request an extension and has not demonstrated that the delay was reasonable in the circumstances. In addition, he expressed concerns related to Crown consultation associated with the rights of Aboriginal peoples, which the AER does not have jurisdiction to assess.

Subject Headings: consultation, Aboriginal rights, First Nations/Métis, late filing, jurisdiction, filing deadline, filing extension

Mel Glasier/Toro Oil & Gas Ltd. (Toro), Request for Regulatory Appeal, Nov 9 2015

Proponent application type: Regulatory Appeal request No. 1833486 for a B140 well (Application No.

1833046)

Procedural or other issue: Is Mr. Glasier eligible to request a regulatory appeal?

Statute or Rule Applied: s. 38 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); [Directive 056](#): *Energy Development Applications and Schedules*; [Directive 60](#): *Upstream Petroleum Industry Flaring, Incinerating, and Venting*; [Directive 038](#): *Noise Control*

Ruling: Mr. Glasier is not eligible to request a regulatory appeal because he is not directly and adversely affected by the decision.

Reasons: s. 38 of REDA provides that only an eligible person may request a regulatory appeal. S. 36(b)(ii) defines “eligible person” as someone who is directly and adversely affected by the decision at issue. Mr. Glasier is not directly and adversely affected.

The subject well is not on Mr. Glasier’s lands, and Toro complied with the notification and consultation requirements of *Directive 056*. However, Mr. Glasier submitted that the consultation that occurred was inadequate and he did not understand how close the well site would be to his residence before he signed a confirmation of non-objection. Once Mr. Glasier saw how close the well would be to his residence, Toro proposed several mitigation measures, but Mr. Glasier indicated that the only option was moving the well location. Mr. Glasier did not raise any of these concerns before signing the confirmation of non-objection or during the application phase of the project, and so Toro did not have opportunity to address them.

Some of Mr. Glasier’s concerns regard loss of quiet enjoyment of his property, but Toro indicates that all operations will meet or exceed *Directive 038* requirements. Mr. Glasier also expressed a concern about the visual blight resulting from seeing well activities from his property. The completed well will not be visible from the Glasier property, and Toro offered to relocate the Glasier family during the drilling and completion operations. Regarding concerns about traffic and safety with respect to the access trail to the project, Toro will use the existing road to avoid creating new access roads in the area and will use dust suppression techniques. With respect to concerns regarding flaring emissions, the application meets all *Directive 060* requirements.

Mr. Glasier is not directly and adversely affected, but Toro is still required to honour its commitments related to noise abatement, dust, water well testing, and noise, if the Glasiers so desire.

Subject Headings: regulatory appeal, directly and adversely affected, eligible person, noise, flaring, consultation, mitigation, traffic, dust, safety, emissions, regulatory requirements, dust

[Mikisew Cree First Nation \(MCFN\)/Value Creation Inc. \(VCI\), Late Filing of Statement of Concern, Nov 9 2015](#)

Proponent application type: Athabasca Oil Sands Area McMurray Formation Tristar Pilot Project OSCA Application No. 1827947, EPEA Application No. 002-00269702

Procedural or other issue: Is MCFN permitted to file a late Statement of Concern?

Statute or Rule Applied: s. 49 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#)

Ruling: Late filing permitted.

Reasons: MCFN did not receive a copy of the Public Notice of Application (PNOA) from Value Creation Inc. (VCI) prior to the deadline for filing a Statement of Concern. VCI supports MCFN's request for an extension of the deadline. Extending the deadline would not cause an unreasonable delay in application processing. The AER requests that VCI contact MCFN to attempt to address its concerns. The AER has no jurisdiction over matters of compensation for land usage or with respect to assessing the adequacy of Crown consultation associated with the rights of Aboriginal peoples. The AER strongly recommends its Alternative Dispute Resolution program and notes that s. 49 of the *Rules of Practice* requires that all documents filed with the AER be placed on the public record. However, any party may file a request for confidentiality of information.

Subject Headings: First Nations/Métis, late filing, consultation, jurisdiction, filing deadline, filing extension, confidentiality application, public record, alternative dispute resolution, Aboriginal rights

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 29972, Nov 6 2015

Proponent application type: Amendment Multiwell Bitumen Battery, 0.15% H₂S, to change maximum continuous flaring and continuous sulphur emissions. (Application No. 1837571)

Procedural or other issue: Does Statement of Concern No. 29972 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: This is an amendment application to an existing facility that will not result in additional wells or facilities. Approval of the amendment will eliminate venting at this facility. Ms. Dahm's and Mr. Plowman's lands are located 22 km and 23 km from the existing facility. The facility is fully compliant with *Directive 060*, which does not permit venting, as well as the requirements specific to the Peace River area. Regarding wetlands concerns, the existing facility, which will not be expanded to use additional land, is located on Crown land, and impact on water bodies was assessed at the time of the original Land Use application. Penn West will use mitigation measures to protect the muskeg and the dry draw bordering the lease. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Penn West has met all applicable consultation and notification requirements.

Subject Headings: amendment application, venting, wetlands, mitigation, consultation, directly and adversely affected, water

Donna Dahm and Bob Plowman/Penn West Petroleum Limited (Penn West), Statement of Concern No. 30010, Nov 6 2015

Proponent application type: New single well bitumen facility, 0.15% H₂S; amendment to existing facility (Application No. 1840350)

Procedural or other issue: Does Statement of Concern No. 30010 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: This is an amendment application to an existing facility that will not result in additional wells or facilities at the site. Approval of the amendment will eliminate venting at this facility. Ms. Dahm's and Mr. Plowman's lands are located 24 km and 25 km from the existing facility. The facility is fully compliant with *Directive 060*, which does not permit venting, as well as the requirements specific to the Peace River area. Regarding wetlands concerns, the existing facility, which will not be expanded to use additional land, is located on Crown land, and impact on water bodies was assessed at the time of the original Public Land Use application. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Penn West has met all applicable consultation and notification requirements.

Subject Headings: amendment application, venting, wetlands, consultation, directly and adversely affected, water

Donna Dahm and Bob Plowman/Penn West Petroleum Limited (Penn West), Statement of Concern No. 30007, Nov 6 2015

Proponent application type: New single surface horizontal well for crude bitumen production, 0% H₂S (Application No. 1839769)

Procedural or other issue: Does Statement of Concern No. 30007 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence issued.

Reasons: Ms. Dahm's and Mr. Plowman's lands are located 24 km and 25 km from the proposed well surface location. Pursuant to *Directive 060*, venting is not permitted at any site in the Peace River area. Regarding wetlands concerns, the facility is located on Crown land, and impact on water bodies was assessed at the time of the Public Land Use application. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Penn West has met all applicable consultation and notification requirements.

Subject Headings: venting, wetlands, consultation, directly and adversely affected, water

Donna Dahm and Bob Plowman/Baytex Energy Limited. (Baytex), Statements of Concern, Nov 6 2015

Proponent application type: New single oil sands evaluation wells, .28% H₂S (Application Nos. 1836303, 1836306, 1836313, 1836314, and 1836997)

Procedural or other issue: Do Statements of Concern No. 29936, 29937, 29939, and 29940 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#),

at para 14 (*Dene Tha'*); *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*, (03 April 2013), [Appeal No. 12-033-ID 1 \(A.E.AB.\)](#) at para 28 (*Tomlinson*)

Ruling: No direct and adverse effect established. No hearing required. Applications approved, applied-for licences issued.

Reasons: The factual part of the test in *Dene Tha'* sets out types of information that can indicate a direct and adverse effect. There must be some degree of location or connection between the work proposed and the right asserted. *Tomlinson* further clarifies that there must be an individual and personal effect. The concerns expressed are general and regard the impact of oil sands development on wetlands and ecosystems; cumulative effects of the project; adverse effects of emissions on human health, animal health and the environment; infrastructure concerns; and a lack of consultation with stakeholders and affected people. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Though the wells are within a few km of Ms. Dahm and Mr. Plowman's lands and residences, all of the wells are located on freehold land, and the landowner has consented to the applications. There will be minor land disturbances and temporary, localized impacts on the land and other natural resources. The wells will be abandoned after drilling. Though applicants are not required to demonstrate no negative cumulative effects, here will be no or minimal lasting disturbance or impact on the environment and natural resources. Baytex has met all applicable consultation and notification requirements. There is no direct and adverse effect.

Subject Headings: directly and adversely affected, consultation, health, emissions, landowner, wetlands

[Donna Dahm and Bob Plowman/Murphy Oil Company Limited \(Murphy\), Statement of Concern No. 29981, Nov 6 2015](#)

Proponent application type: New Multiwell, 0.03% H₂S (Application No. 1837505)

Procedural or other issue: Does Statement of Concern No. 29981 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting; [Directive 056](#): Energy Development Applications and Schedules

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Ms. Dahm's and Mr. Plowman's lands are located 45.4 km and 47 km from the project location, and neither of them owns land on which the project is located. Pursuant to *Directive 060*, venting is not permitted at any site in the Peace River area. Regarding wetlands concerns, the facility is located on Crown land, and impact on water bodies was assessed at the time of the original application. All *Directive 56* requirements have been met. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Murphy has met all applicable consultation and notification requirements.

Subject Headings: venting, wetlands, consultation, water

[O'Chiese First Nation \(OCFN\)/Shell Canada Limited \(Shell\), Statement of Concern No. 29933, Nov](#)

6 2015

Proponent application type: New DPT single wells, 3% H2S (Application Nos. 1835552 and 1835553)

Procedural or other issue: Does Statement of Concern No. 29933 establish a direct and adverse effect on OCFN?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: OCFN's reserve boundaries are 24 km from the proposed project. OCFN did not provide information to establish a sufficient connection between the Application and impacts on Treaty and Aboriginal rights. There is no direct and adverse effect.

Subject Headings: directly and adversely affected, First Nations/Métis, treaty rights, Aboriginal rights

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30008, Nov 6 2015

Proponent application type: New Multi-Well Bitumen Facility, 0.15% H2S (Application No. 1840332)

Procedural or other issue: Does Statement of Concern No. 30008 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Ms. Dahm's and Mr. Plowman's lands are located 25 km and 27 km from the proposed facility. The facility is fully compliant with *Directive 060*, which does not permit venting at the facility site, as well as the requirements specific to the Peace River area. Regarding wetlands concerns, the facility is on Crown land, and impact on water bodies was assessed at the time of the original application. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Penn West has met all applicable consultation and notification requirements.

Subject Headings: directly and adversely affected, wetlands, consultation, venting, water

Donna Dahm and Bob Plowman/Penn West Petroleum Limited (Penn West), Statement of Concern No. 29975, Nov 6 2015

Proponent application type: Amendment Single Well Bitumen Battery, 0.15% H2S (Application No. 1837600)

Procedural or other issue: Does Statement of Concern No. 29975 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: This is an amendment application to an existing facility that will not result in additional wells or facilities. Approval of the amendment will eliminate venting at this facility. Ms. Dahm's and Mr. Plowman's lands are located 43 km and 44 km from the facility. The facility complies with *Directive 060*, which does not permit venting at the facility site, as well as the requirements specific to the Peace River area. Regarding wetlands concerns, the application will not use or impact new land, and impact on water bodies was assessed at the time of the original application. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Penn West has met all applicable consultation and notification requirements.

Subject Headings: directly and adversely affected, wetlands, consultation, equipment spacing, venting, water, amendment application

Donna Dahm and Bob Plowman/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 30009, Nov 6 2015

Proponent application type: New Multi-Well Bitumen Facility, 0.15% H₂S (Application No. 1840328)

Procedural or other issue: Does Statement of Concern No. 30009 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): *Upstream Petroleum Industry Flaring, Incinerating, and Venting*

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Ms. Dahm's and Mr. Plowman's lands are located 23 km and 25 km from the proposed facility. The facility is compliant with *Directive 060*, which does not permit venting at the facility site, as well as the requirements specific to the Peace River area. Regarding wetlands concerns, equipment spacing and mitigation measures are satisfactory, and impact on water bodies was assessed at the time of the original Public Land Use application. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Penn West has met all applicable consultation and notification requirements.

Subject Headings: directly and adversely affected, wetlands, consultation, venting, water, mitigation, equipment spacing

O'Chiese First Nation (OCFN)/Shell Canada Limited (Shell), Statement of Concern No. 29932, Nov 6 2015

Proponent application type: New DPT single wells, 1.9% H₂S (Application Nos. 1835409 and 1835410)

Procedural or other issue: Does Statement of Concern No. 29932 establish a direct and adverse effect on OCFN?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: The wells will be drilled on freehold lands on an already-existing lease, which OCFN does not have permission to enter and use. OCFN's reserve boundary is 25 km from the proposed project. The lands on which the wells are proposed are 1400 metres from the North Saskatchewan River, which OCFN members use to fish and along which members gather plants and medicines. OCFN has not explained how these activities may be directly and adversely affected by the applications.

Subject Headings: directly and adversely affected, First Nations/Métis

Donna Dahm and Bob Plowman/Baytex Energy Limited (Baytex), Statement of Concern No. 29976, Nov 6 2015

Proponent application type: Amendment to existing site to change maximum licenced inlet rates (none are changing, but flaring is changing from 9.00 to 20.00) and to change maximum continuous sulphur emissions from 0.03 to 0.05 t/d (Application No. 1837324)

Procedural or other issue: Does Statement of Concern No. 29976 establish a direct and adverse effect on Ms. Dahm and Mr. Plowman?

Statute or Rule Applied: [Directive 060](#): Upstream Petroleum Industry Flaring, Incinerating, and Venting

Ruling: No direct and adverse effect established. No hearing required. Applied-for licence amendment issued.

Reasons: This is an amendment application to an existing facility that will not result in additional wells or facilities. Ms. Dahm's and Mr. Plowman's lands are located 23.6 km and 25.6 km from this facility. The facility is compliant with *Directive 060*, which does not permit venting at the facility site, as well as the requirements specific to the Peace River area. Regarding wetlands concerns, no new land will be used or impacted, equipment spacing and mitigation measures are satisfactory, and impact on water bodies was assessed at the time of the original application. There is no information to indicate that Ms. Dahm and Mr. Plowman use lands or resources that the project may affect, or that the project may have the impacts they assert. Baytex has met all applicable consultation and notification requirements.

Subject Headings: directly and adversely affected, amendment application, wetlands, consultation, water, mitigation, venting, equipment spacing

Greg and Janis Clegg/Ferus Natural Gas Fuels Inc. (Ferus), Request for information, Nov 2 2015

Proponent application type: LNG facility (New Gas Processing Plant, 0% H₂S) (Application No. 1831816)

Procedural or other issue: Procedure for making a request for information, submission of confidential information

Statute or Rule Applied: none

Ruling: Documents can be requested through the AER Products and Services Catalogue "Applications & Approvals." The letter and the five other attachments contain personal information that the AER is not authorized to collect or retain.

Reasons: The Cleggs requested, via letter, copies of the original Application at issue, all associated reports, the complete hearing transcripts, the decision and any other information on the record. Requests of this type go through the Products and Services Catalogue. The Cleggs also provided attachments containing personal information, including the personal information of a third party. The documentation contained information regarding confidential without prejudice settlement discussions between Ferus and a third party. The AER will be destroying the letter and the attachments, and any information contained therein that is not confidential can be resubmitted.

Subject Headings: request for information, confidentiality, settlement, without prejudice

John Malcolm/Athabasca Oil Corporation (AOC), Late Filing of Statement of Concern, Nov 2 2015

Proponent application type: OSCA Application No. 1762708, EPEA Application No. 002-289664

Procedural or other issue: Is Mr. Malcolm permitted to file a late Statement of Concern?

Statute or Rule Applied: *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#)

Ruling: Late filing not permitted.

Reasons: The deadline to file a Statement of Concern was May 30, 2014. Mr. Malcolm's letter was received Sept. 4, 2015. In making its decision, the AER considered that Mr. Malcolm filed an SOC with the AER dated March 7, 2014. He did not request an extension before filing his current Statement of Concern.

Subject Headings: late filing, filing deadline, filing extension

Canadian Natural Resources Limited (CNRL)/Alberta Energy Regulator--Public Lands, Request for Regulatory Appeal, Oct 28 2015

Proponent application type: Regulatory appeal request from Canadian Natural Resources Limited for an AER application refusal, Pipeline Agreement No PLA 150406

Procedural or other issue: Resolution agreement reached that requires revocation of Public Lands' decision to deny CNRL's pipeline application

Statute or Rule Applied: ss. 36(a)(iii) and 41(2) of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); ss. 211 and 212 of the *Public Lands Administration Regulation*, [Alta Reg 187/2011](#) (PLAR); s. 121(1) of the *Public Lands Act*, [RSA 2000, c P-40](#) (PLA)

Ruling: Appealable decision revoked and request for regulatory appeal approved. Pipeline Agreement No. PLA 150406 is reinstated.

Reasons: Public Lands Staff and CNRL agreed to a resolution agreement resolving CNRL's concerns. The Agreement requires the revocation of Public Lands' decision to deny CNRL's application for a pipeline. The decision is appealable under REDA, PLAR, and PLA. CNRL is an eligible person under REDA. CNRL's regulatory appeal has not been dismissed, but since its concerns have been resolved,

there is no requirement to hold a hearing. Appealable decision revoked.

Subject Headings: regulatory appeal, resolution agreement, eligible person, appealable decision, pipeline

O’Chiese First Nation (OCFN)/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 29934, Oct 27 2015

Proponent application type: New OE pipeline, 0% H2S (Application No. 1839298); Pipeline - New Pipeline Other, 0% H2S (Application No. 1836037)

Procedural or other issue: Does Statement of Concern No. 29934 establish a direct and adverse effect on OCFN?

Statute or Rule Applied: Energy Ministerial Order [105/2014](#); Pipeline Act, [RSA 2000, c P-1](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: OCFN did not provide specific information to demonstrate how Penn West’s applications may interfere with the exercise of Aboriginal and treaty rights or otherwise directly and adversely affect OCFN. The project will be located partially on Crown land and partially on privately owned land, not on OCFN lands. OCFN reserve boundaries are 12km from the proposed activities. Concerns related to the *Energy Ministerial Order 105/2014* (the Order) are irrelevant to this energy enactment (the *Pipeline Act*) because the Order does not apply to Pipeline Act applications. No direct and adverse effect.

Subject Headings: Aboriginal rights, treaty rights, First Nations/Métis, directly and adversely affected, pipeline

Alexander First Nation (Alexander)/Pembina Pipeline Corporation (Pembina), Motion to Exclude Affidavit Evidence, Oct 22 2015

Proponent application type: Applications No. 1806873, etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Can the Arcand Affidavit be admitted as evidence?

Statute or Rule Applied: ss. 21 and 47 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA)

Ruling: The AER will admit the Arcand Affidavit for the purposes of considering its jurisdiction over issues identified in the Notice of Questions of Constitutional Law (NQCL).

Reasons: Pembina moved to exclude portions of the Affidavit of Colleen Arcand (Arcand Affidavit). S. 47 of REDA provides that the AER is not bound by the rules of law concerning evidence applicable to judicial proceedings. The panel will consider fairness to the parties and relevance of the evidence when deciding whether to include or exclude it. Prior to Pembina’s motion, the panel provided direction to hearing participants regarding issues on which it would not consider evidence or submissions: adequacy of Crown consultation (per s. 21 REDA), the Aboriginal Consultation Office (ACO), and Crown accommodation and/or compensation flowing from the consultation process. The impugned provisions of the Arcand Affidavit relate to these issues. However, because the Arcand Affidavit has some relevance in

determining the AER's jurisdiction to hear the issues in the NQCL, the panel will admit the entire affidavit. At the hearing, it will not consider evidence in the Arcand Affidavit about Crown consultation or the ACO.

Subject Headings: Aboriginal Consultation Office, constitutional questions, evidence, consultation, First Nations/Métis, pipeline, jurisdiction

Alexander First Nation, Gunn Métis Local 55, Driftpile First Nation, Derek Nielsen, Grassroots Alberta Landowner Association/Pembina Pipeline Corporation, Hearing Timing and Schedule, Oct 22 2015

Proponent application type: Applications No. 1806873, etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Time limits of each party for direct evidence, cross-examination and final argument; proposed hearing schedule

Statute or Rule Applied: s. 19.1 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: Panel established time limits but will consider requests for more time; it proposed a schedule for the three-week hearing.

Reasons: s. 19.1 of the *Rules* says that in the case of an oral hearing, the AER shall establish time limits for presentation of evidence, questioning of witnesses, argument, and any other procedural items.

Subject Headings: hearing timing, procedural items, schedule, First Nations/Métis, pipeline, evidence, cross-examination

Alexander First Nation (Alexander)/Pembina Pipeline Corporation (Pembina); Minister of Justice and Solicitor General of Alberta, Notice of Questions of Constitutional Law Re: Application nos. 1806873 etc., Oct 22 2015

Proponent application type: Applications No. 1806873, etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Can the AER consider AFN's constitutional submissions or grant its requested relief?

Statute or Rule Applied: ss. 10(d), 12 of the *Administrative Procedures and Jurisdiction Act*, [RSA 2000, c A-3](#) (APJA); s. 21 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) (REDA); Schedule 2 of the *Designation of Constitutional Decision Makers Regulation*, [Alta Reg 69/2006](#) (DMR.); *R. v. Aberdeen*, [2006 ABCA 164](#) at paras. 9, 11-12; *R. v. Morrow*, [1999 ABCA 182](#) at para 12; s. 91(24) of *The Constitution Act, 1867*, [30 & 31 Vict, c 3](#); *Derrickson v. Derrickson*, [1986] [1 SCR 285](#); *Tsilhqot'in Nation v. British Columbia*, [2014] [2 SCR 257](#), see especially para 140; Energy Ministerial Order [105/2014](#) Environment and Sustainable Resource Development Ministerial Order [53/2014](#); *Haida Nation v. British Columbia (Minister of Forests)*, [2004] [3 SCR 511](#); *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#), at para 14; *Standing Buffalo Dakota First Nation v. Enbridge Pipelines Inc.*, [2009 FCA 308](#); s. 15 of the Canadian Charter of Rights and Freedoms. (The Constitution

Act, 1982, [Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)); [Directive 56](#): Energy Development Applications and Schedules

Ruling: The AER does not have jurisdiction to consider Alexander’s submissions or grant the relief requested.

Reasons: The Alberta Energy Regulator (AER) received a Notice of Questions of Constitutional Law (NQCL) from Alexander First Nation (Alexander) laying out five questions. Gunn Métis Local 55 (GML), the Minister of Justice and Solicitor General of Alberta (Alberta), Pembina Pipeline Corporation (Pembina), and Driftpile First Nation (Driftpile) filed written submissions.

The AER will not consider any of Alexander’s questions, because notice requirements under APJA were not met, sufficient particulars are not provided for questions 1, 2, and 5, the AER does not have jurisdiction to consider questions 3 and 4, and the AER does not have jurisdiction to grant the relief sought.

Alexander raised a new issue regarding the ordering of a stay in its written submissions. Pembina objected to the introduction of a new issue and thus the panel did not consider the portion of Alexander’s submission that relates to a stay.

Legal Framework: Two mandatory threshold tests must be met before the AER can consider a constitutional question. First, the question must come within the definition of “question of constitutional law” in subsection 10(d) of the APJA. Second, section 12 of the APJA and Schedule 2 of the DMR require the filer of a NQCL to provide Alberta and Canada with certain specific information, including grounds of the argument, the law in question, the documents that will be filed, and the witnesses. A notice meeting all of the foregoing criteria must be given to the panel, Pembina, Alberta and Canada so that all affected parties are able to fully consider and respond to the constitutional issues being raised. A further purpose of the strict requirements of the APJA and DMR is to ensure that designated decision makers consider constitutional questions within a clearly defined factual matrix where the questions and the facts fall within their area of expertise and necessarily arise from matters that their enabling legislation empower and or require them to consider.

Overarching Considerations: The Driftpile and GML submissions assert that the AER has the jurisdiction to consider the questions posed by Alexander. Pembina and Alberta raise concerns regarding the adequacy of notice. Pembina also submits that Questions 1 and 2 are not valid questions of constitutional law as defined in the APJA. The NQCL lacks specificity in terms of the evidence that will be presented and the witnesses that will be called. For these reasons alone the AER may not exercise jurisdiction over the questions posed in the NQCL, though the decision does not rest solely on this technical point.

The Specific Questions in the Notice:

[1] Is the AER’s jurisdiction over Alexander constitutionally inoperative or irrelevant under the doctrine of federal paramountcy and dual compliance?

There is no evidence to suggest that the federal government has also exercised powers over Alexander or that there is a conflict. It appears that what Alexander is really seeking is an order or declaration that would cause the Canadian Environmental Assessment Agency (CEAA) to engage in this review process. The question of whether CEAA must engage or be engaged is not a “question of constitutional law.” Even if it is, Alexander has not provided sufficient particulars: Question 1 does not challenge the applicability of a specific provincial enactment, or of sections of a specific provincial enactment, resulting from a specifically identified conflict with provisions of a federal enactment. It is not possible to discern from Question 1, or the particulars provided, what conflict Alexander is alleging. The panel does not have jurisdiction to consider Question 1.

[2] Is the AER's jurisdiction over Alexander constitutionally inapplicable by reason of the doctrine of interjurisdictional immunity, due to the federal government's exclusive jurisdiction under s. 91(24) of the Constitution Act 1867?

There is no reference to specific provisions or a factual matrix. The particulars provided for Question 2 amount to a general statement regarding section 91(24) and a reference to the SCC's decision in *Derrickson v. Derrickson*. The notice provides no particulars about how any of the listed provincial statutes is alleged to impair Aboriginal or treaty rights. Because the particulars provided are not specific enough and somewhat unclear it is not possible to understand what, specifically, Alexander is asking. As a result, it is not possible to find that there is a "question of constitutional law." The panel does not have jurisdiction to consider Question 2.

[3] Does the Alberta Aboriginal Consultation Office's (the ACO's) failure to consider portions of Alexander's lands in its determination of the existence and/or scope of the duty to consult constitute a breach of Alexander's constitutional rights under section 35 of the Constitution Act, 1982?

[4] Does the Crown's failure to negotiate in good faith and/or in a manner consistent with the Honour of the Crown at any point prior to the commencement of the Hearing constitute a breach of Alexander's constitutional rights pursuant to section 35 of the Constitution Act, 1982?

The AER does not have the jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples. As a result, the AER cannot entertain questions 3 or 4. Alexander argued that under s. 21 of REDA, the AER has the jurisdiction to determine and must determine whether there is an obligation to consult and the scope required, and only lacks jurisdiction in considering the adequacy of consultation. However, case law, REDA, and Ministerial Orders do not indicate that the AER may determine whether consultation should have occurred and whether it did. In light of the remedies Alexander sought, determining whether a duty exists and whether any consultation has been carried out cannot be parsed from assessing the adequacy of consultation. As confirmed by the *Dene Tha'* and *Standing Buffalo* cases, the AER has jurisdiction over *Directive 56*, where project proponents are required to engage with potentially affected parties, but not over the ACO process. The ACO identified potential adverse impacts on Alexander, and so the process on this project is still ongoing. Even if the AER had jurisdiction to consider Questions 3 and 4, any consideration of the Crown's consultation process would be premature at this time. Lastly, Alexander used the terms "non-site specific" and "non green area" rights in its reply argument without defining the meaning of those terms. The panel does not have jurisdiction to consider Questions 3 or 4.

[5] Would the approvals Pembina seeks result in a disproportionate effect on those who reside on Alexander's lands, based on their membership in an enumerated or analogous group under s. 15 of the Charter? If "yes" to the infringement question, is the infringement justified under section 1 of the Charter?

Question 5 is not a "question of constitutional law" because it does not ask for a determination of a right as required in subsection 10(d) of the APJA. The particulars in this question are insufficient; they do not assist in identifying the specific question being asked or enable the respondent Crown to know the essential sub questions that would be raised. Even if question 5 is constitutional, it is premature. Consideration of the projects' impact on Alexander's s. 15 rights would be speculative at this stage. If the ultimate decision raises concerns about potential impacts to Alexander's s. 15 rights then they will have the opportunity to pursue the appropriate relief. The panel does not have jurisdiction to consider Question 5.

Alexander sought relief in the form of a Joint Review Panel, which would coordinate the regulation of the approval process for the proposed project. It also sought that the Crown engage with Alexander to determine the existence and scope of the duty to consult and to report to the Joint Review Panel before the

hearing. The AER does not have jurisdiction to grant this relief.

Subject Headings: constitutional questions, jurisdiction, consultation, joint review panel, First Nations/Métis, pipeline, evidence, written submissions, Aboriginal Consultation Office, Aboriginal rights

Donna Dahm/Baytex Energy Ltd. (Baytex), Statements of Concern, Oct 22 2015

Proponent application type: Applications No. MSL102827, LOC101999, MSL102421, LOC101633, and MSL102771

Procedural or other issue: Do the Statements of Concern establish a direct and adverse effect on Donna Dahm?

Statute or Rule Applied: *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#), at para 14 (*Dene Tha' First Nation*); *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*, (03 April 2013), [Appeal No. 12-033-ID 1 \(A.E.AB.\)](#) at para 28 (*Tomlinson*);

Ruling: No direct and adverse effect established; no hearing required. Applied-for approvals issued.

Reasons: The factual part of the test set out in *Dene Tha'* gives the type of information that can indicate a direct and adverse effect. There must be some degree of location or connection between the work proposed and the right asserted. *Tomlinson* further clarifies that there must be an individual and personal effect. Ms. Dahm's lands are 7 km from the closest proposed project. Her concerns are general in nature and not directly related to the project. She did not demonstrate that she actually uses the lands affected by the project. The applications are for conversion of short-term dispositions to long-term dispositions, and she did not file SOC's in relation to the original dispositions. No new impacts are proposed to occur. There is no direct and adverse effect. Baytex is not required to demonstrate that there will be no negative cumulative effects of the project. However, the AER is not prepared to assume Ms. Dahm will be affected, in the absence of hard evidence.

Subject Headings: directly and adversely affected

Grassroots Alberta Landowners Association (Grassroots)/Pembina Pipeline Corporation (Pembina), Motion Re: Attendance of landowners, Oct 21 2015

Proponent application type: Applications No. 1806873, etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Are all landowners identified in the Grassroots Submission required to attend the hearing and provide oral evidence?

Statute or Rule Applied: s. 20 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#) (the *Rules*)

Ruling: Pembina has not provided sufficient reasons why the panel should compel the attendance of all of the landowners Grassroots represents to this hearing.

Reasons: Pembina expressed concern that some landowners identified in the Grassroots Submission and represented by Grassroots are not intending to appear as witnesses at the hearing. Under s. 20 of the *Rules*, the AER may require parties to attend a hearing.

Grassroots responded that all of the landowners have filed written evidence. Grassroots indicated which landowners intend to attend if they are able to present evidence. The landowners are represented by a negotiating team and steering committee that are knowledgeable and aware of all the concerns of their neighbours. This committee can provide evidence on behalf of landowners not in attendance at the hearing.

In response, Pembina reiterated its argument and further submitted that the conduct of the "represented" landowners is abusive of the AER process and that the requested notices must be issued to discourage such conduct.

The panel found that for it to consider compelling the attendance of a witness, it must be convinced that the evidence which would be adduced is critical for the panel to understand the issues it is charged to address. There must be no other reasonable way to obtain this evidence. Pembina submitted that site-specific concerns should require landowners to be present, but the panel did not find this or any of their other reasons compelling enough to require landowner attendance. It is open to Pembina to make further argument as to the weight to be applied to the evidence that is presented by Grassroots. Arguments regarding conduct and the AER process are more appropriately made in the context of costs.

Subject Headings: hearing attendance, evidence, pipeline, landowner, oral submissions

[Driftpile First Nation \(Driftpile\)/Pembina Pipeline Corporation \(Pembina\), correspondence re: draft procedural direction for hearing traditional knowledge evidence at Driftpile First Nation, Oct 21 2015](#)

Proponent application type: Applications No. 1806873, etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Can expert evidence be presented at the traditional knowledge hearing?

Statute or Rule Applied: None

Ruling: Presentation of expert evidence not permitted at traditional knowledge hearing.

Reasons: To ensure consistency with the panel's original intention for the community sessions, expert evidence will not be permitted. Additionally, there will not be staff or other resources available at the Driftpile community session to deal with expert evidence. The expert witness is welcome to attend the hearing as an observer and to present his evidence at the official hearing. At the traditional knowledge hearing, the presenters may sit as one panel, and the AER may choose to extend the time limits set out in the procedural direction if the circumstances warrant.

Subject Headings: First Nations/Métis, evidence, traditional knowledge, pipeline, procedural direction, expert evidence

[Mikisew Cree First Nation, Fort McMurray #468 First Nation, Athabasca Chipewyan First Nation/Teck Resources Limited, Statements of Concern, Oct 20 2015](#)

Proponent application type: New OSE Wells, 0% H2S (Application Nos. 1830281, 1830284, 1830285, 1830287, 1830288, 1830289, 1830290, and 1830291); New Multiwell, 0% H2S (Application No. 1832083); New Single Well, 0% H2S (Application No. 1832084); Oil Sands Exploration applications 150003 and 150004

Procedural or other issue: Do any of the Statements of Concern establish a direct and adverse effect on any of the three Nations?

Statute or Rule Applied: [Lower Athabasca Regional Plan](#) (LARP); *Teck Resources Limited, Application for Oil Sands Evaluation Well Licences* [2013 ABAER 017](#); *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons:

Mikisew Cree First Nation (MCFN), Statements of Concern 29767 and 29833: The LARP permits the subject exploration activities. The applications are within MCFN's traditional lands, which MCFN members use for traditional activities. Teck's oil sands exploration program will result in minimal lasting disturbance or impact on the environment and natural resources, and is not expected to contribute to cumulative effects. The information MCFN provided does not indicate how MCFN land would be specifically affected by the project. The 2013 decision on Teck's winter drilling program addresses many of MCFN's concerns. The Aboriginal Consultation Office advises that consultation was adequate. No direct and adverse effect.

Fort McMurray #468 First Nation (FMFN), Statements of Concern No. 29761, 29762, and 29812: The LARP permits the subject exploration activities. Teck's oil sands exploration program will result in minimal lasting disturbance or impact on the environment and natural resources, and is not expected to contribute to cumulative effects. Concerns regarding impacts from Teck's Frontier project should be raised in the context of that proceeding. FMFN did not provide any concerns that pertain specifically to Teck's 2015/2016 winter drilling program. The information FMFN provided does not indicate how FMFN's land and members would be specifically affected by the project. No direct and adverse effect.

Athabasca Chipewyan First Nation (ACFN): The LARP permits the subject exploration activities. The applications are within ACFN's traditional lands, which ACFN members use for traditional activities. Teck's oil sands exploration program will result in minimal lasting disturbance or impact on the environment and natural resources, and is not expected to contribute to cumulative effects. Although Teck's applications are intended to further delineate the area for its Frontier project to assist in efficient and environmentally responsible development, concerns regarding impacts from Teck's Frontier project should be raised in the context of that proceeding. The information ACFN provided does not indicate how ACFN's land and members would be specifically affected by the project. The 2013 decision on Teck's winter drilling program addresses many of ACFN's concerns. The Aboriginal Consultation Office advises that consultation was adequate. No direct and adverse effect.

Subject Headings: First Nations/Métis, directly and adversely affected, consultation, traditional lands, Aboriginal Consultation Office, LARP

[Gunn Métis Local 55 \(GML\), Driftpile First Nation \(Driftpile\), Alexander First Nation \(Alexander\)/Pembina Pipeline Corporation \(Pembina\), Hearing Sessions in First Nations](#)

Communities (re Application Nos. 1806873 etc), Oct 20 2015

Proponent application type: Application Nos. 1806873 etc.: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion

Procedural or other issue: Procedural directions that apply to hearing sessions in the Driftpile First Nations community

Statute or Rule Applied: None

Ruling: Procedural directions issued, intended to apply to the session in the Driftpile Community and the presentation of traditional knowledge evidence by elders.

Reasons: The procedural document specifies how formal hearings will be carried out at the relevant First Nations communities.

It defines “elders” as “traditional knowledge holders” and defines traditional knowledge, for the purpose of the hearings, as “information that is traditionally shared orally by elders in First Nation communities.” Traditional knowledge in this context does not include scientific facts, opinions, specific or detailed views about the decision the panel should make, recommendations about the project, or questions about the project (excluding rhetorical questions).

Five days before the hearing, the AER will require the names of those presenting traditional knowledge, a brief outline on what they intend to speak about, and confirmation that the information to be presented complies with the definition of “traditional knowledge” and that this has been explained to the presenter. It will also require the name of interpreters, if any, and whether interpretation will be simultaneous or serial, as well as the name of a person who will be responsible to confirm the accuracy of the transcript if not the interpreter. An interpreter is required if a presentation will be given in a language that is not English or French. Only the English version will appear in the transcript.

The community will have one full day for presentations. Elders giving traditional knowledge presentations may be seated together as a panel.

Presenters will be asked to affirm the truth or accuracy of their information by swearing on a Bible or an item sacred to them, or prior participation in a ceremony or ritual.

Pembina will have the opportunity to ask questions following each presentation, as will the Hearing Panel. Elders and community members will not have the opportunity to ask questions.

The public is permitted to be present, and the hearing will be transcribed and webcast. Use of visual aids should be discussed with the AER beforehand to ensure fairness to all parties.

Subject Headings: First Nations/Métis, procedural direction, traditional knowledge, pipeline, evidence

Grassroots Alberta Landowners Association (Grassroots)/Pembina Pipeline Corporation (Pembina), Motion re: Written Submissions, Oct 19 2015

Proponent application type: Application Nos. 1830281, 1830284, 1830285, 1830287, 1830288, 1830289, 1830290, 1830291, 1832083, 1832084, OSE150003 AND OSE15000. HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion.

Procedural or other issue: Is Grassroots permitted to include documents in its written submissions that it obtained from Pembina via the AER Alternative Dispute Resolution (ADR) process?

Statute or Rule Applied: ss. 7.7, 12, 14 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#);

Ruling: Grassroots is not permitted to include documents in its written submissions that were obtained via the ADR process. In this case, the documents at issue were agreements between Pembina and individual landowners. Grassroots must remove such documents and refile its written submissions. No party may reference these materials during the hearing. The motion to order Pembina to disclose these documents is denied.

Reasons: The documents at issue were provided on a without prejudice basis and were subject to confidentiality agreements in the context of an ADR process. Therefore, these documents and any reference to them during this proceeding are inappropriate.

Grassroots argued that the documents were not confidential because they were not signed. In addition, it filed a motion for an order that Pembina provide the final signed copies of the documents in concern. It submitted that the documents are relevant, available, and not confidential, and that pursuant to s. 14 of the *AER Rules of Practice*, the documents must be produced. It intended to use the documents on cross-examination. In response, Pembina requested that the motion be denied, characterizing Grassroots' request an information request, for which the deadline had passed. Pembina submitted that using settlement documents for cross-examination would have a chilling effect on the AER's ADR initiatives. Grassroots responded that the documents should be filed because transparency in the dealings between companies and landowners should be encouraged.

The panel responded that s. 7.7 of the *Rules* applies here, and made it clear that a dispute resolution meeting and any materials arising from the ADR process may not form part of the record of a hearing. Discussions within the ADR process are confidential and without prejudice. Distinctions between signed and unsigned documents are irrelevant. No such documents are admissible in a hearing or other proceeding without the consent of all persons participating in the particular ADR meeting.

Subject Headings: alternative dispute resolution, written submissions, information request, cross-examination, landowner, pipeline, filing deadline, confidentiality, settlement, without prejudice

[Elsie & Henry Neumann; Ken & Dianna Mattson, Holly Boles and Allen & Dianne Pukanski/NEP Canada ULC \(NEP\), Request for Regulatory Appeal, Oct 15 2015](#)

Proponent application type: Regulatory Appeal Request on C370 well & C370 well amendment (Applications No. 1833476 and 1836640)

Procedural or other issue: Are the landowners eligible to request a regulatory appeal?

Statute or Rule Applied: s. 36 and 38 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#); s. 30 of the *AER Rules of Practice*, [Alta Reg 99/2013](#); *Court v. Alberta Environmental Appeal Board*, [2003 ABQB 456](#); s. 95 of the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#); *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission*, (03 April 2013), [Appeal No. 12-033-ID 1 \(A.E.AB.\)](#); [Directive 56](#): Energy Development Applications and Schedules; [Directive](#)

[83](#): Hydraulic Fracturing – Subsurface Integrity; [Directive 44](#): Requirements for Surveillance, Sampling, and Analysis of Water Production in Hydrocarbon Wells Completed Above the Base of Groundwater Protection

Ruling: The landowners are not eligible to request a regulatory appeal because they are not directly and adversely affected by the decision.

Reasons: According to s. 36(a) of REDA, an appealable decision is one that was made under an energy resources enactment, if that decision was made without a hearing. This decision was made under the Oil and Gas Conservation Act, [RSA 2000, c O-6](#), and is therefore appealable. The regulatory appeal request was filed on time. The Landowners submitted that it is unfair that the test for submitting a Statement of Concern is that an individual may be directly and adversely affected, whereas the test for being eligible for regulatory appeal is that an individual is directly and adversely affected.

Court v. Alberta Environmental Appeal Board established that an appellant must demonstrate “potential or reasonable probability that he or she will be harmed by the approved project” in order to establish a direct and adverse effect. The *Tomlinson* decision gives guidelines for determining “how the appellant will be individually and personally affected.” These decisions establish that a higher standard of demonstrating actual effect is not required when determining “is directly and adversely affected”. In order to be an “eligible person”, the Landowners simply have to show that there may be a potential or reasonable probability that they may be harmed by NEP’s well licences.

NEP has met requirements under *Directive 56*. The landowners say they should have been notified about the project and argue that NEP has not met *Directive 56* requirements. *Directive 56* may sometimes require notification or consultation, though this is not an acknowledgement that the person getting notice may be directly and adversely affected. Through the information exchanged and the discussion that occurs during personal consultation, potentially affected parties are able to make an informed decision about objecting to proposed development. In this case, a potential failure to notify under *Directive 56* is not relevant to the landowners’ eligibility for regulatory appeal. The AER therefore need not consider the question of whether the landowners were entitled to notice.

Mr. Mattson asserts that because he filed a previous Statement of Concern about a nearby NEP well, NEP ought to have known about his concerns and consulted on the current well application. However, the AER has no record of any previous SOC’s filed by Mr. Mattson in this area prior to NEP filing its application for the current wells on July 6, 2015. There is nothing to suggest that the NEP ought to have known of Mr. Mattson’s concerns prior to filing its application.

The landowners argue they are directly and adversely affected because there may be contamination or destruction of their water wells, there may be potential adverse health effects from flaring or possible contamination of their wells, there is interference with the quiet enjoyment of their property, there may be negative effects on property values, and they are impacted by noise and vibration. Though the properties in question are located over a large aquifer, NEP does not anticipate any impacts to the landowners’ water wells given the depth of the wells and the fact that any tracking will occur east of the landowners’ properties. The fact that NEP conducted water well testing does not indicate NEP believes the landowners may be directly and adversely affected. NEP references *Directive 083* and *Directive 044* as addressing the landowners’ concerns about water sources. NEP has met regulatory requirements, and water well concerns have been addressed.

The AER issued a low risk enforcement action to NEP for contraventions of *Directive 38*. NEP has subsequently installed, and will install additional, sound attenuation walls and has committed to undertake tracking operations only during daylight hours. Based on this mitigation, NEP states it does not anticipate

any further exceedances of *Directive 38*. The NEP has addressed noise and vibration concerns.

The landowners have health concerns from flaring. They note that parts of some of their lands are within the Emergency Protection Zone. Regardless, they did not provide sufficient information to establish that they may be directly and adversely affected.

Concerns about impact on property values are outside the scope of the AER.

Because the landowners are not eligible to request an appeal, it is not necessary to consider their request for a stay.

Subject Headings: regulatory appeal, eligible person, request for stay, directly and adversely affected, consultation, water, flaring, noise, property values, health, jurisdiction, regulatory requirements, mitigation, appealable decision, landowner, amendment application

Alexander First Nation/Pembina Pipeline Corporation (Pembina), request for a time adjustment for the Reply re: Notice of Questions of Constitutional Law, Oct 15 2015

Proponent application type: Application No. 1806873, HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion (part of August industry meeting; applications being done concurrently with EPEA, PLA, etc.).

Procedural or other issue: Is Alexander permitted an extension of time regarding the Reply re: NQCL?

Statute or Rule Applied: s. 41 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013 (the *Rules*)

Ruling: Extension permitted.

Reasons: There is no prejudice to Pembina, so the extension is allowed.

Subject Headings: filing extension, First Nations/Métis, pipeline, prejudice, constitutional questions

Paul First Nation (PFN), O'Chiese First Nation (OCFN)/Penn West Petroleum Ltd., Statements of Concern, Oct 7 2015

Proponent application type: Public Lands Act application 150882

Procedural or other issue: Do Statements of Concern No. 29910 and 29894 establish a direct and adverse effect on PFN or OCFN?

Statute or Rule Applied: [Petty Trespass Act](#), RSA 2000, c P-11

Ruling: Neither PFN nor OCFN has established a direct and adverse effect. No hearing required. Applied-for approval issued.

Reasons:

PFN: PFN's reserve lands are 68 km from the proposed project boundary. The Aboriginal Consultation Office advised that consultation with PFN was adequate. Although the proposed project is on PFN's

traditional lands, PFN did not provide specific evidence about how the proposed project would interfere with its use of those lands, citing a lack of information and funding. However, Penn West offered capacity funding and project information. There is no direct and adverse effect.

OCFN: OCFN's reserve lands are 37 km from the proposed project location. The Aboriginal Consultation Office advised that consultation with OCFN was adequate. Although the proposed project is on OCFN's traditional lands, OCFN did not provide specific evidence about how the proposed project would interfere with its use of those lands. Regarding concerns about access and the *Petty Trespass Act*, Penn West does not anticipate enclosing or fencing the right of way, or otherwise restricting OCFN's access to the lands, except for approximately 3 weeks during construction of the pipeline. Penn West provided information regarding impacts to OCFN when it submitted the Applicant Supplement on First Nations Consultation. OCFN did not file a Statement of Concern about the related application 1836903 for New Oil Effluent, 0% H₂S. There is no direct and adverse effect.

Subject Headings: First Nations/Métis, directly and adversely affected, trespass, consultation, pipeline, Aboriginal Consultation Office

Alexander First Nation (Alexander)/Pembina Pipeline Corporation (Pembina), request for extension of time to file expert report, Oct 6 2015

Proponent application type: Application No. 1806873, HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion (part of August industry meeting; applications being done concurrently with EPEA, PLA, etc.).

Procedural or other issue: Is Alexander permitted an extension of time to file an expert report?

Statute or Rule Applied: s. 15 of the [Responsible Energy Development Act](#), SA 2012, c R-17.3; s. 53 of the [Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013

Ruling: Extension permitted.

Reasons: Alexander requested an extension for filing an expert report, arguing the nature of the expert evidence was significant with respect to the AER's ability to evaluate the potential cumulative effects of this Project. It argued Pembina did not provide enough additional information addressing the cumulative effects in its Project Updates, which Alexander received on August 25 and Sept 1 2015. After Sept 1, Alexander began seeking an expert who could perform a risk assessment.

Pembina responded that the request for late filing prejudiced it severely, as it would be faced with either foregoing its right to file written evidence in reply or adjourning the hearing. It asserted that the information in the Project Updates had been available since at least May 2015, certainly no later than August 2015, and that Alexander should have looked for an expert earlier. Pembina did not object to late filing of evidence provided it was filed all at once, but did object to the timing. It asked for a filing extension of no later than Oct 9 and that Pembina be given until Oct 26 to file reply evidence.

Alexander responded that the AER must consider its unique land interests under REDA s. 15, which says the regulator must consider the interests of landowners. It notified Pembina of its unique land interests in March 2014, but Pembina nonetheless moved ahead with a project that did not account for potential impacts on the community of Alexander or its rights and interests. Alexander submitted that the expert report may provide significant evidence to inform the AER's assessment of the project's merits.

S. 53 of the *Rules* governs late filing. A request to file late evidence will be granted if that request can be accommodated in a manner such that there is no prejudice to the party required to respond to the late evidence. If a request is granted regarding the late filing of evidence, there may be cost implications associated with the difficulties required to accommodate the late evidence. The panel agreed with Pembina that Alexander should have been aware of the issues for which it required expert evidence earlier in the process. It could have made efforts to retain an expert as early as May 2015. Extension until October 13 2015 allowed, with time for Pembina to file reply evidence until Oct 23 2015. The late filing does not prevent Pembina from making submissions at the hearing regarding relevance of the late evidence and the appearance of witnesses.

Subject Headings: filing extension, expert evidence, First Nations/Métis, pipeline, landowner, late filing, prejudice, evidence

O'Chiese First Nation (OCFN)/Penn West Petroleum Ltd. (Penn West), Statement of Concern No. 29935, Oct 6 2015

Proponent application type: New Single Wells, 0% H2S (Application Nos. 1835955 and 1835959)

Procedural or other issue: Does Statement of Concern No. 29935 establish a direct and adverse effect on OCFN?

Statute or Rule Applied: [*Energy Ministerial Order 105/2014*](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: OCFN did not provide specific evidence (such as locations) demonstrating how the applications would affect its Aboriginal or treaty rights or otherwise directly and adversely affect it. The reserve boundary is 13 km from the project. Concerns related to the *Energy Ministerial Order 105/2014* are not applicable to this application, which is made pursuant to an energy resources enactment, the *Oil and Gas Conservation Act* and *Rules*, because the *Ministerial Order* only applies to specified enactment applications and not those made under energy resource enactments. No statements of concern were filed against the two associated applications.

Subject Headings: Aboriginal rights, treaty rights, directly and adversely affected, First Nations/Métis

Gary Pliska/Brion Energy Corporation (Brion), Statement of Concern No. 29889, Oct 5 2016

Proponent application type: New Single Wells, 0% H2S (Application Nos. 1834661 and 1834657)

Procedural or other issue: Does Statement of Concern 29889 establish a direct and adverse effect on Mr. Pliska?

Statute or Rule Applied: [*Alberta Land Stewardship Act*](#), SA 2009, c A-26.8

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Mr. Pliska has a registered trap line, but that does not give him exclusive use of the lands in question. His cabin is located 15 km east of the proposed wells. He has not demonstrated how his cabin or his use of it may be directly or adversely affected by the applications. Brion will construct in the winter,

minimizing environmental impacts. It will not disturb soil that would affect marshlands. There is no evidence that the project will affect the abundance and distribution of fur-bearing animals in a way that would impact Mr. Pliska, and it is not sufficient that the project is located partially on the same land where he traps animals. Concerns regarding other projects and their cumulative effects are beyond the scope of this application and relate to broader government policy matters dealt with under laws like the *Alberta Land Stewardship Act*. Mr. Pliska should request compensation for losses related to industrial activity in this area from the Trappers Compensation Board.

Subject Headings: trapping, directly and adversely affected, application scope

Laverne Dyck/Husky Oil Operations (Husky), Statement of Concern No. 29806, Oct 5 2015

Proponent application type: New Single wells, 0% H2S (1831970, 1831971, and 1831972)

Procedural or other issue: Does Statement of Concern No. 29806 establish a direct and adverse effect on Ms. Dyck?

Statute or Rule Applied: [*Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*](#); [*Directive 038: Noise Control*](#)

Ruling: No direct and adverse effect established. No hearing required. Applied-for licences issued.

Reasons: Ms. Dyck does not own the land the project is located on. Her lands are .56 km from the project. Regarding odour concerns, Husky must meet the requirements in *Directive 60*. Regarding noise concerns, Husky will use silent shacks and hospital grade mufflers, and is expected to comply with *Directive 38*. Other odour and noise concerns should be reported to the AER Wainwright Field Centre. There is no direct and adverse effect.

Subject Headings: directly and adversely affected, noise, odours

Marion Bell/Direct Energy Marketing Limited, Statement of Concern No. 29916, Oct 1 2015

Proponent application type: Application 1832919 to produce gas without segregation in the wellbore from the Glauconitic E and Ellerslie L pools in the Watelet field well

Procedural or other issue: Does Statement of Concern No. 29916 establish a direct and adverse effect on Marion Bell?

Statute or Rule Applied: none

Ruling: No direct and adverse effect established. No hearing required. Approval issued.

Reasons: The well on Ms. Bell's lands (Section 8) was drilled to produce gas, then abandoned after it was discovered to be wet. The other two wells in the Glauconitic and Ellerslie zones (Section 5) were also not completed. Evidence suggests that the well to be commingled and the well on Ms. Bell's lands encountered separate gas pools. Based on this information, the Watelet Glauconitic E and Ellerslie L pools are pools that do not extend into Section 8. Ms. Bell has not demonstrated that she may be directly and adversely impacted by the application to commingle gas because the subsurface data for her lands is already available through well 08-08 and sufficient for potential lessees to evaluate the production

potential of the land. Further, her concerns are not directly related to the applied-for project as they are speculative and relate to a potential future benefit of leasing her mineral rights.

Subject Headings: mineral rights

Gunn Métis Local 55 (GML)/Pembina Pipeline Corporation (Pembina), Application for Confidentiality, Sept 30 2015

Proponent application type: HVP (D530) New Pipelines (21 segments) for Fox Creek Expansion (part of August industry meeting; applications being done concurrently with EPEA, PLA, etc.).

Procedural or other issue: Is GML permitted to keep submitted information confidential under s. 49(4)(b) of the *Rules*?

Statute or Rule Applied: s. 49 of the [*Alberta Energy Regulator Rules of Practice*](#), Alta Reg 99/2013 (the *Rules*)

Ruling: The request for confidentiality is granted in respect of the maps that are appended to the Study. The request for confidentiality regarding the remainder of the Study is denied.

Reasons: GML requested that the whole or parts of a document titled the “Lac Ste. Anne Métis Traditional Land Use and Ecological Knowledge Study” (the Study) be kept confidential pursuant to s. 49 of the *Rules*. GML also requested that the relevant parts of the hearing of this matter be held in camera to maintain the confidentiality of the Study. GML argued that the Study meets the tests for personal information and information that is commercial, financial, scientific or technical in nature in ss. 49(4)(a) and 49(4)(b) of the *Rules*.

Pembina indicated that it did not object to the GML request provided certain conditions were met regarding timing and completion of an appropriate confidentiality undertaking. Pembina provided a form of undertaking worked out between it and GML that Pembina was prepared to sign in the event the request was granted in whole or in part. Pembina also agreed that it would keep its copy of the Study confidential and not use it for any purpose other than responding to the application.

The AER had previously granted a confidentiality order with respect to maps forming exhibits to two affidavits filed in support of GML’s Statement of Concern. The request was granted on the basis that the information in the maps was “commercial, financial, scientific or technical in nature, and its disclosure could be expected to cause significant harm to the competitive position of a party.” Confidentiality was not sought with respect to the affidavits themselves, which contained information relating to patterns of use and occupation of their traditional territory.

The onus is on the participant making the request to show how the information for which the request is made meets the criteria set out in section 49 of the *Rules*. The information in the study does not fit easily into the s. 49 categories, but the *Rules* should be given a liberal interpretation when dealing with Aboriginal or indigenous traditional knowledge, given the unique nature of the information. The information is not related to a particular individual, so it is not personal under 49(4)(a). GML argued that if the information were to become part of the public record, third parties could use the information to harm GML and its members. However, the Study does not, except for the maps, reveal anything more detailed or personal than is already on the record. There is also no evidence that information such as this has consistently been treated as confidential. In the second part of the test under 49(4)(a), the applicant must satisfy the Regulator that their interest in confidentiality outweighs the public interest in a fully

open, public process. GML submitted that the less tangible, unquantifiable harms to GML's cultural heritage resulting from unfettered public access to information not already on the record would not outweighed by the public interest in a fully open process. However, the s. 49(4)(a) test is not met.

Under the section 49(4)(b) test, interpreted liberally, the maps appended to the Study contain information that is commercial, financial, scientific or technical in nature, if viewed together with the maps which are the subject of the original confidentiality order. They reveal information that could be used by others in ways that are inconsistent with the value of that information to GML, and could result in undue harm to the competitive position of GML harvesters or undue hardship. Therefore, the confidentiality order is granted with respect to the maps.

Subject Headings: First Nations/Métis, confidentiality application, maps, traditional lands, pipeline, undue harm, disclosure, public record