

VIA Email:

May 9, 2016

McLennan Ross LLP

Attention: Mr. Gavin S. Fitch, Q.C.

Dear Sir:

**RE: Request for Regulatory Appeal by Patricia & Patrick Alexander and Evelyne Heringer
(Alexanders and Heringer)
Bonavista Energy Corporation (Bonavista)
Application Nos. 1831564; 1831567 (Applications)
Licence Nos. 476069; 476070
Location: 15-22-041-05W5M
Regulatory Appeal No. 1834939 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered your request, on behalf of Patricia and Patrick Alexander and Evelyne Heringer (Requesters) under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the above-noted licences issued by the AER to Bonavista. The AER has reviewed the submissions filed by both the Requesters and Bonavista.

For the reasons that follow, the AER has decided to grant the Requesters request for a regulatory appeal.

The applicable provision of *REDA* in regards to regulatory appeals, section 38 states,
38(1) 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.

Applicable to this case, “appealable decision” is defined under section 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.

“Eligible person” is defined in section 36(b)(ii) of *REDA* as,
A person who is directly and adversely affected by a decision referred to in clause 36(a)(iv).

Section 30(3)(m) of the *AER Rules of Practice (Rules)* requires a request for a regulatory appeal to 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 SOC 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 AER notes the request for regulatory appeal was filed within 30 days of issuance of the well licences and that both parties agree that the definitions of appealable decision and eligible person are met in this case.

Reasons for Decision

Bonavista argues the Requesters should have filed an SOC and that the Regulatory Appeal should be dismissed because of their failure to do so. Alternatively, Bonavista argues that the Regulatory Appeal is frivolous, vexatious, or without merit.

On the grounds that the request is frivolous, vexatious, or without merit, the AER notes the Requesters, who are the landowners where the wells would be drilled, raised concerns about, among other things, the need to expand the existing wellsite. Given the proposed wells are located on the Requesters' lands, and in light of the other extenuating circumstances noted below, the AER does not agree the Regulatory Appeal is frivolous, vexatious, or without merit.

That said, the AER is troubled by, and needs to specifically address, the Requesters' failure to file an SOC. Initially, counsel for the Requesters advised they were not aware of the requirement in Directive 056 that Bonavista provide an information package and were not aware of any registered mail from Bonavista providing notice of the Applications as required under *REDA*. These were the reasons provided by the Requesters for not filing an SOC.

In their reply submission, the Requesters conceded they were aware of the D056 application information, even if it was through their neighbour, and that one of the Requesters specifically refused the registered mail that contained notice of the Applications. This is very concerning to the AER. The AER has stringent pre-application notification and public consultation and public notice requirements. One of the purposes of these requirements is to allow concerns to be brought to the attention of applicants and the AER prior to decisions being made on oil and gas development, so they can be considered and, if possible, addressed, prior to disposition of applications. 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 section 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, which are outlined below.

The Requesters contend they retained a lawyer to receive correspondence from Bonavista and advised Bonavista's landman of this. Bonavista alleges it was first advised the Requesters had retained counsel through the filing of the request for regulatory appeal. Bonavista was aware that the Requesters were hiring counsel and in fact did so in April 2015, prior to the submission of the Applications. It does not appear 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 Requesters' would have filed an SOC on the Applications. This finding is supported by the fact that the Requesters 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 AER finds that 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 in this case.

Further, the AER notes 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 AER notes that the filing of the well applications and the pipeline application separately and at different times led to confusion on the part of the Requesters and inefficiencies in the AER's process. The AER requests that, in future, Bonavista file related applications together and at the same time so that potentially impacted parties and the AER can consider all aspects of a proposed development at once.

The AER is not prepared to dismiss the Regulatory Appeal for failure to file an SOC as there are extenuating circumstances in this case as outlined above.

The AER hereby grants the 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.

Yours truly,



Patricia M. Johnston, Q.C.
Executive Vice President, Law and General Counsel



Doug Boyer, P. Eng.
Chief Operations Engineer

cc: Burnet Duckworth & Palmer, Attention: Patricia Quinton-Campbell