

**Via Email Only**

June 11, 2018

Stikeman Elliott LLP

Bennett Jones LLP

**Attention: Keith F. Miller**

**Attention: Deirdre A. Sheehan**

Dear Sir and Madam:

**RE: Request for Regulatory Appeal by Secure Energy Services (Secure)  
Newalta Corporation (Newalta)  
Application No.: 1898203; Licence No.: 0487981  
Location: 10-09-067-05W6M  
Request for Regulatory Appeal No.: 1907189**

The Alberta Energy Regulator (AER) has considered Secure's request under section 38 of the Responsible Energy Development Act (REDA) for a regulatory appeal of the AER's decision to approve the well licence issued to Newalta for the location cited above. The AER has reviewed Secure's submissions and the submissions made by Newalta.

Secure also requested a stay of the well licence pending the completion and disposition of the regulatory appeal. Newalta agreed to voluntarily suspend the drilling of its well pending a decision on Secure's regulatory appeal request. Secure submitted that based on that commitment, it was satisfied that the requested stay was not needed.

For the reasons that follow, the AER has decided that Secure is not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

The applicable provision of REDA in regard 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. [emphasis added]

The term "eligible person" is defined in section 36(b)(ii) of REDA to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment]...

## Reasons for Decision

In its regulatory appeal request, Secure makes reference to the “Decision” it seeks to regulatory appeal as being the decision not to go to hearing as provided in its letter of February 2, 2018 and the approval of the well. Secure cannot seek a regulatory appeal of the decision to not go to a hearing as that decision was made under REDA. As per sections 36 and 38 of REDA, the only decisions that can be regulatory appealed are decisions made under the energy enactments, the specified enactments or any other decision or class of decisions described in the regulations. Decisions as to whether to go to a hearing or not are not described as appealable in the regulations. Accordingly, the AER’s letter of February 2, 2018 is not an appealable decision.

The AER notes that the request for regulatory appeal was filed within 30 days of the issuance of the well licence. The decision to issue the well licence is an “appealable decision” as required by section 38(1) of REDA as that decision was made pursuant to an energy resource enactment, the *Oil and Gas Conservation Act* (OGCA), and without holding a hearing. In order for to be an “eligible person” to request a regulatory appeal of the well licence, Secure must demonstrate that it is a person who is directly and adversely affected by the AER’s decision to issue the licence.

Newalta’s well approval only permits it to drill the well and no other activities can be carried out without future approvals. Secure operates two disposal wells located at surface locations 07-20-67-5W6M and 6-8-67-5W6M. The distance from Newalta’s well to Secure’s wells is about 1.6 km.

Secure submits that if drilled, Newalta’s well will create a significant drilling safety and environmental risk when Newalta enters the Leduc Reservoir due to significantly elevated pressures. It states that in the event of a kick or blow out related to the proposed drilling operation, Secure would be directly and negatively affected at its existing offset operations. It adds that the impacts could escalate to a prolonged shut-in period and the costs would be unrecoverable by Secure and industry. The alleged impacts include there being no available disposal capacity within 100 kms should Secure have to shut in its two disposal wells. The safety and environmental risks can only be mitigated by increasing the spacing between a Newalta disposal well and Secure’s existing wells.

Secure also submits that the granting of the well licence and the drilling of the well prior to a substantive technical review of the appropriateness of the current location relative to Secure’s two operating wells is premature and causes prejudice to Secure. At the time that Newalta files its future *Directive 51: Injection and Disposal Wells - Well Classifications, Completion Logging and Testing Requirements* and *Directive 65: Resources Applications for Oil and Gas Reservoirs* applications, the location of its injection well will have been fixed and Secure will be denied a reasonable opportunity to make its technical case that Newalta’s proposed disposal well should be located no closer than approximately 3.0 km from Secure’s two wells. Secure submits that the D56 application should not be de-linked from and precede consideration of the inextricably related D51 and D65 applications which require consideration of the careful placement of Newalta’s proposed well relative to the two existing Secure wells.

Newalta’s well is an injection well which will be directionally drilled from a surface location at 10-09-67-5W6M to a bottomhole location of 8-17-67-5W6M in Newalta’s leased lands. The total vertical depth is 3912 meters and the total measured depth is 4360 meters. Newalta intends to drill the well to determine if a disposal well is viable at this location. The AER notes that Secure does not hold the surface or subsurface rights related to Newalta’s well.

Secure's concern about there being a risk to its disposal well operations is based on the assumption that there will be a loss of well control during drilling of the well because of the high reservoir pressure likely to be encountered at this location. Secure's alleged direct and adverse effect would only occur if there was a blowout during drilling. However, the evidence does not persuade the AER that those impacts will occur in this instance. Newalta is aware that during drilling it may encounter significantly elevated reservoir pressure in the Leduc Reservoir and has submitted this pressure will be mitigated without risk of a kick or blowout (or other drilling safety or environmental event) because it has designed a drilling and completion program to address anticipated reservoir conditions.

When planning resource development programs, operators must take into consideration unusual or atypical reservoir scenarios that exist or may exist in the future. In this case, the potential for pressure and fluids impacts within the area of influence of Secure's existing disposal wells will be addressed by Newalta's operational compliance with all AER requirements and approval conditions. Specifically, Newalta will have to follow the requirements in *Directive 056: Energy Development Applications and Schedules*, *Directive 008: Surface Casing Depth Requirements*, *Directive 009: Casing Cementing Minimum Requirements*, *Directive 010: Minimum Casing Design Requirements*, *Directive 036: Drilling Blowout Prevention Requirements and Procedures*, *Directive 013: Suspension Requirements for Wells*, and *Directive 020: Well Abandonment*. These directives and other AER requirements are directed at ensuring well control issues throughout the entire life cycle of the activity, including the prevention of well blowouts. The AER finds that Secure's concerns regarding Newalta encountering a highly pressured reservoir can be mitigated by Newalta designing an adequate drilling and completions program by following the AER's applicable regulations and requirements.

With respect to Secure's submission that drilling of the well is premature and causes prejudice to it, the AER notes that Secure previously filed a statement of concern (SOC) regarding the well and its location and the SOC was considered by the AER. In its regulatory appeal application, Secure has raised similar concerns about the location of the well, but also concerns with disposal into the well. The regulatory appeal process has provided Secure with the opportunity to bring its concerns forward as it relates to the approval of the well and its location. Whether the well should be used for disposal is only an issue if Newalta chooses to proceed with filing a disposal application in accordance with Directive 65. If the application is filed, public notice of the application will be issued by the AER and Secure will have the opportunity to file a SOC at that time and make any technical arguments as to why Secure is directly and adversely affected by the AER's decision on the disposal application, this includes why Newalta's disposal application should not be approved. Secure's SOC will then be considered by the AER. Furthermore, the AER notes that issuance of the well licence provides no implicit approval for any future applications; there is no certainty that should Newalta file a disposal application after the drilling of its well, that the application will be approved.

In summary, the AER finds that even if increased pressures in the Leduc reservoir are encountered during drilling, Newalta's drilling and completions program and the AER requirements described above will mitigate the risk of a kick or blowout such that the impacts described by Secure will not occur. Furthermore, as described above, the drilling of the wells will not prejudice Secure's ability to challenge future applications.

For the above reasons, the AER finds that Secure has not demonstrated it is directly and adversely affected by the decision to issue the well licence to Newalta. Secure is therefore not an "eligible person" under section 36(b)(ii) of the REDA and has failed to meet one of the requirements for a regulatory appeal of the decision. Accordingly, the AER dismisses the request for regulatory appeal.

As the request for regulatory appeal is dismissed, it is not necessary to consider Newalta's request that the AER dismiss the regulatory appeal request under section 39(4) of REDA on the basis it is frivolous, vexatious and without merit.

Sincerely,

*<original signed by>*

Tom Byrnes, P. Eng.  
Senior Advisor, Industry Operations

*<original signed by>*

Anita Lewis, P. Eng.  
Senior Advisor, Technical Strategy & Sol, Closure & Liability

*<original signed by>*

Robert Keeler, P. Eng., P.Geol.  
Senior Advisor, Regulatory Efficiency & Innovation, Authorizations