

Via Email

December 7, 2015

George and Deanna Jenner

Dear Sir and Madam:

**Re: Request for Regulatory Appeal by George and Deanna Jenner (Jenners)
Bonavista Energy Corporation (Bonavista)
Application No. 1833178
Licence No 48746
Location: 15-20-042-04W5M
Regulatory Appeal No. 1838470**

The Alberta Energy Regulator (AER) has considered your regulatory appeal request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to issue Licence 48746. The AER has reviewed the Jenner's submissions and the submission made by Bonavista.

For the reasons that follow, the AER has decided that you are 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.

Section 30 of the AER *Rules of Practice (Rules)* sets out the requirements for a request for regulatory appeal including, in this case, a request for a regulatory appeal must be no later than 30 calendar days after the notice of decision is issued.

Section 36(a) of *REDA* defines an "appealable decision". For the present purposes, the relevant definition is contained in subsection 36(a)(iv). It says an appealable decision includes:

(iv) a decision of the Regulator that was made under an energy resources enactment, if that decision was made without a hearing.

"Eligible person" is defined in section 36 (b)(ii) as:

A person who is directly and adversely affected by a decision referred to in clause (a)(iv).

Reasons for Decision

The decision to approve the application was made pursuant to an energy enactment (the *Oil and Gas Conservation Act*) and was made without hearing. You have met the requirement that the decision in question is an "appealable decision". The decision was made on July 30, 2015 and you filed the regulatory appeal request on August 28, 2015, and therefore it was filed in accordance with the Rules. The question then is whether you are an "eligible person" and have established you are directly and adversely affected.

Bonavista argues that the AER should dismiss the regulatory appeal pursuant to section 39(4)(a) of *REDA* which states:

- 39(4) The Regulator may dismiss all or part of a request for regulatory appeal
(a) if the Regulator considers the request to be frivolous, vexatious or without merit

Bonavista states you did not provide any information in support of your request for regulatory appeal. It also states that you were provided the information about the project but did not file a statement of concern (SOC) despite being advised that upon filing an objection you would be contacted by the AER. The AER does not consider your request to fall within any of those categories and has not dismissed your request on that basis.

While you do not speak to having received the AER Public Notice of Application (PNoA), you discuss what occurred on the two occasions Bonavista representatives met with you. One of these meetings was prior to you receiving the Directive 056 information package from Bonavista and one was after. These meetings took place in February and March 2015. In the March meeting, Bonavista says it advised Mr. Jenner that Bonavista would file a non-routine application with the AER, and that once Mr. Jenner files an objection the AER will discuss his issues with him.

In July 2015 you received the AER PNoA. The notice states that if a party has concern about the project it must file a SOC with the AER. Instructions on how to file and what to include in a SOC are set out in the PNoA. AER contact information is also provided for parties to contact for information on AER procedures. You did not file an SOC, and state that you were waiting to be contacted by the AER to discuss your issues. You indicate the first you were aware of Bonavista's application and licence was when Bonavista contacted you at the end of August about water sampling.

It is apparent that some miscommunication occurred between yourselves and Bonavista.

Regarding the impacts from the facility, the information you provided can be summarized as follows:

- you are concerned about health impacts on yourselves and your animals, in particular your purebred horses which pasture next to the drill site;
- you would like the site moved further back into the trees to help with noise and reduce the use of agricultural land;
- you are concerned with noise and light from the site and Bonavista's technical competency;
- because you can see the site from your house you are concerned with decreased property values; and
- you were waiting to be contacted by the AER to discuss your concerns in more detail, and you feel Bonavista lied to you.

Bonavista responded stating its representatives told Mr. Jenner that the AER would contact you after you filed an objection. Bonavista said it offered to move the well 30-40 metres east of the property line but you refused that offer. It said it could not move the site into the trees as you requested because the location would be too far off target and because of ground conditions. Bonavista submitted that the concerns you raised are vague and unsupported.

The AER finds the information you provided is general and lacks detail to establish how you may be directly and adversely affected. You had the opportunity within the request for regulatory appeal and your response to Bonavista's submission to provide details on impacts from the facility.

One of your primary concerns is about noise and operation of the facility. Operational concerns such as noise should be directed to the local AER field office. You expressed concern with Bonavista's technical capabilities. Like all AER licensees Bonavista must meet the AER's requirements. If Bonavista failed to do so that may result in non-compliances issued against the company.

You provided little detail regarding the human and animal health impacts you are concerned about and the information you did provide does not establish how you may be directly and adversely affected by the facility. Your concern regarding property values is beyond the scope of the AER.

While you provided some description of your siting concern, you have not established that the existing location may directly and adversely affect you. The other allegation that Bonavista lied to you does not go to establishing how you may be directly and adversely affected by the decision to approve the facility. While Bonavista's actions met minimum AER requirements as set out in *AER Directive 056 – Energy Development Application and Schedules*, the AER considers Bonavista's consultation and communication with you falls short of ideal. At the same time, you also bear some responsibility to read the information you are provided (in particular the PNoA), and ask questions if you do not understand what is required. Regarding this project or any other Bonavista projects on or adjacent to your property, the AER expects Bonavista will engage with you in a meaningful way to attempt to address or mitigate your concerns including siting, noise and any possible sensitivity of your horses to nearby activity. The AER encourages Bonavista to make use of AER field staff resources (from the Red Deer Field Office) in engaging with you. Likewise, the AER encourages you to contact AER field staff with any questions about AER processes or any operational concerns. Given the miscommunication that has occurred between the parties, assistance from AER field staff may help the flow of information and improve the relationship between Bonavista and yourselves going forward.

The AER considers this to be an unfortunate situation but has concluded that you have not established that you are directly and adversely affected. Therefore, the AER has dismissed the request for regulatory appeal.

Sincerely,



Doug Boyler, P.Eng.
Chief Operations Engineer



Robert J. Willard, P.Eng.
Senior Advisor



Greg Gilbertson
Senior Advisor

cc: Counsel for Bonavista - Burnet Duckworth & Palmer, Patricia Quinton-Campbell