

Via Email

February 21, 2019

NVP Exploration Inc.

Shell Canada Limited

Calgary Head Office

Suite 1000, 250 – 5 Street SW

Calgary, Alberta T2P 0R4

Canada

www.aer.ca

Attention: Greg Parry

Attention: Korin Lemay

Dear Sirs:

**RE: Request for Regulatory Appeal by NVP Exploration Inc. (NVP)
Shell Canada Limited (Shell)
Application Nos.: 1913766, 1913920; Licence Nos.: 0488714, 0488715
Location: 08-29-063-19 W5M
Request for Regulatory Appeal No.:1915795**

The Alberta Energy Regulator (AER) has considered NVP's request under section 38 of the Responsible Energy Development Act (REDA) for a regulatory appeal of the AER's decision to approve the Shell well licence numbers 0488714 and 0488715 (the "Licences") and certain amendments to the Licences made pursuant to Application Nos. 1913766, 1913901, 1908279, 1913764 and 1913920 (the "Amending Approvals"). The AER has reviewed NVP's submissions and the submissions made by Shell. For the reasons that follow, the AER has decided that NVP is not eligible to request a regulatory appeal in this matter. Therefore, the Request for a Regulatory Appeal is dismissed for the below reasons.

Submissions

NVP submits that it has leased Gething rights from the Crown and is currently developing the area for Gething oil. It has an existing well at 102/1-29-63-19 W5M (2/1-29). NVP submits that it plans two additional wells, one 300 m west of 2/1-29 with a bottom hole location at 2-29-63-19 W5M, and one at an as yet undetermined third location. NVP submits that an anti-collision report will flag its planned drilling location 300 m west of 2/1-29 as high risk and that as a result NVP will need to move its planned drilling location further west or it will be required to take the responsibility of collision risk. NVP submits that if it moves its drilling location further west it will lose 280,000 bbls of oil.

Shell submits that the drilling locations referred to by NVP are not licensed well locations and that it is not Shell's responsibility to bear anti-collision risk between non-licensed, future NVP wells and Shell's licensed, drilled and cased wells. Shell further submits that the AER lacks sufficient information to determine if there is a reasonable potential that NVP will be affected by Shell's wells.

Shell also submits that the Request for Regulatory Appeal should be dismissed because NVP failed to file a statement of concern in accordance with the rules. NVP submits that it did file a statement of concern because one was attached to its Request for Regulatory Appeal.

Reasons for Decision

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]

An appealable decision is a decision that was made under an energy resource enactment without a hearing. Both the Licences and the Amending Approvals were issued under the *Oil and Gas Conservation Act*, which is an energy resource enactment, and were made without a hearing. Therefore, both the Licences and the Amending Approvals are appealable decisions.

To the extent that the Request for Regulatory Appeal is a request to appeal the Licences, the request was not filed in accordance with the rules. The AER *Rules of Practice (Rules)* Section 30(3)(m) require a request for regulatory appeal to be filed no later than 30 calendar days of the notice of decision of the appealable decision. As the Licences were issued on April 3, 2018, and the Request for Regulatory Appeal was not submitted until October 11, 2018, the Request for Regulatory Appeal, as it relates to the Licences, was not filed in accordance with the rules, and therefore is not properly before the AER.

In regards to the Amending Approvals, which were approved between October 2, 2018 and October 11, 2018, NVP filed within the deadline as specified in the Rules. However, for the reasons that follow, the AER has found that NVP is not an “eligible person” in respect of the Amending Approvals.

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]...

The factual part of the test set out by Court of Appeal in *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*¹ provides guidance on what indicates a person may be directly and adversely affected. In particular, the AER must consider the “degree of location or connection” between the project or its effects and the person, and whether that connection is sufficient to demonstrate the person may be directly and adversely affected by the proposed activity. Reliable information is required that demonstrates a reasonable potential or probability that the person asserting the impact will be affected. The AER also considers how the person will be individually and personally affected. Information about how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area, are important factors.

¹ 2005 ABCA 68

In this case, NVP has not provided the AER with sufficient information to establish that NVP will be directly and adversely affected by the Amending Approvals. The AER notes that the Amending Approvals had the effect of switching the surface and bottom hole coordinates of Licence No. 0488714 with those of Licence No. 0488715. NVP did not file a statement of concern in respect of either Licence.

NVP has not submitted that its existing well at 2/1-29-63-19 W5M is impacted by the Amending Approvals. NVP's submission is that its future drilling plans will be directly and adversely affected; however the AER has no way of knowing when or if these plans will come to fruition, or whether they will be impacted by the Amending Approvals. As a result, the AER is unable to determine that there is a reasonable potential or probability that NVP will be directly and adversely affected by the Amending Approvals.

Given the foregoing, the AER finds that NVP is not directly and adversely affected by the decision to issue the Amending Approvals. NVP is therefore not an "eligible person" under section 36(b)(ii) of *REDA*, and the AER dismisses the request for regulatory appeal.

The AER *Rules of Practice* Section 39(4)(b) provides that the AER may dismiss a request for regulatory appeal if the requestor did not file a statement of concern in accordance with the rules. The AER finds it unnecessary to consider this point given its finding above that NVP is not an eligible person.

Sincerely,

<original signed by>

Tom Byrnes, P. Eng.
Senior Advisor, Strategic Management

<original signed by>

Jason Brunet, MBA, PMP
Director, Science & Evaluation

<original signed by>

Kevin Parks, P. Geo.
Chief Geologist, Strategy & Regulatory