

Via Email

December 16, 2015

Shell Canada Limited
400 – 4th Avenue SW
P.O. Box 100, Station M
Calgary, AB T2P 2H5**Attention: Jodie Didow**

Dear Madam:

Application Nos. 1823846, PLA150215 (Rocky 7 Applications)
Shell Canada Limited (Shell)
Statement of Concern Nos. 29479, 29611

The Alberta Energy Regulator (AER) acknowledges receipt of correspondence from Shell, dated December 3, 2015, wherein Shell requests that the AER reconsider its decision contained in its letter dated November 30, 2015 (the process letter). The process letter advised Shell that the AER was in the process of making its decision whether to conduct a hearing on the Rocky 7 Applications under section 7 of the *AER Rules of Practice*. Therefore, the AER would not accept for consideration in making that decision two reports received from Shell on November 26, 2015. The letter also advised that the AER would consider the reports when making a decision on the merits of the Rocky 7 Applications.

The AER has considered Shell's request and asked that I communicate its decision to Shell. For the reasons that follow the AER has decided that it will not reconsider its determination conveyed to Shell in the process letter.

Under section 42 of the *Responsible Energy Development Act (REDA)*, the AER may, in its sole discretion, reconsider a decision made by it. This discretion is exercised by the AER only in the most extraordinary and compelling of circumstances.

Section 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.

The AER has discretion to determine what will or will not form part of the record for a particular decision. It notes that Shell was provided with timelines in which to respond to the information provided in the statements of concern filed by O'Chiese First Nation (OCFN) in respect of the Rocky 7 Applications. In particular, the AER requested that Shell respond to the *O'Chiese First Nation Project-Specific Site Observation Report: Shell Canada Limited Proposed Natural Gas Projects* (Calliou Group, January 2015) by March 27, 2015. Shell provided its response to this report within that time period and did not indicate that it intended to file further materials.

A proponent is not prohibited from providing supplementary information in respect of its applications nor is it required to provide advance notice of its intention to do so. However, waiting extended periods of time to submit further materials and not providing notice of the intention to file further materials creates the risk that AER decision making may commence or that a decision may be made before any further materials are submitted to the AER. It is evident that Shell recognized this risk in its letter dated December 3, 2015, where it stated that, "By not providing advance notice, Shell risked the AER making a decision on the applications prior to the reports being submitted..." 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 this risk.

The AER has decided to 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.

The process letter referenced application nos. PIL 150134 and 150150. These applications are not under consideration in this matter and can be disregarded in the process letter.

Sincerely,

[original signed by]

Alison Koper
Legal Counsel

cc: Andrew Scott, O'Chiese First Nation
David Miles, AER
Greg Thompson, AER