Alberta Energy Regulator

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Via Email

November 21, 2019

Glen L. Nazaruk

Alberta Energy Regulator
Closure and Liability

Attention: Alana Hall, Counsel

Dear Sir and Madam:

RE: Request for Regulatory Appeal by DBS Resources Ltd. (DBS) & North Shore Resources Ltd. (North Shore)
Closure and Liability (C&L)
Notice of Abandonment Costs
Location: 07-09-040-04 W5M
Request for Regulatory Appeal No.:1922370 & 1922372

The Alberta Energy Regulator (AER) has considered DBS and North Shore's requests for regulatory appeal of their respective January 4, 2019, Notices to Pay Abandonment Costs (Notices) under section 38 of the *Responsible Energy Development Act* (*REDA*). The AER has reviewed both DBS and North Shore's submissions and the submissions made by C&L.

For the reasons that follow, the AER has decided that the requests for regulatory appeal of the Notices should be dismissed as DBS and North Shore have not met the test for eligibility under REDA and the *Alberta Energy Regulator Rules of Practice* (Rules). In particular, the requests for regulatory appeal were not filed within the specified timeframes and are therefore not made in accordance with the Rules.

Background:

On July 26, 2013, the AER Liability Management group sent a letter to the Working Interest Partners (WIP's) of Drake Energy Ltd. (Drake Energy) including DBS and North Shore. This letter enclosed a copy of Closure Order No.C2013-42 which ordered the immediate suspension and closure of Drake Energy's well licenses. The letter enclosed a list of parties who would be considered responsible and financially liable for the abandonment of the subject well and facility licenses pursuant to sections 27, 28, 29 and 30 of the *Oil and Gas Conservation Act* (*OGCA*), should an abandonment order be issued.

On September 6, 2013, the AER Liability Management group sent a second letter to the WIP's of Drake Energy. This letter enclosed Abandonment Orders and Closure/Abandonment Orders imposing a Global Refer status against Ember Resources Inc., Joe Timmons, North Shore Resources Ltd., and DBS Resources Ltd. The letter stated "Should Drake Energy fail to comply, or Drake Energy and [WIP's] fail to abandon their respective properties by the date identified in the attached Abandonment Orders and Closure/Abandonment Order, the AER will, without further notice, use its process to have the properties abandoned. The AER will exercise all remedies available to it to recover the costs from the liable parties."

On January 4, 2019, C&L sent North Shore two Notices of Abandonment Costs for the wells 02/07-09-040-04W5M and 00/07-09-040-04W5M (invoices 425 and 427). C&L also sent a separate Notice of Abandonment Costs to DBS for the above wells (invoices 426 and 428). The letters advised the parties that the AER had completed the required work to properly abandon the well sites. The letters informed the two companies the invoices were to be paid in full no later than February 4, 2019, or the AER would initiate legal proceedings to recover its costs and penalties.

On February 22, 2019 counsel for DBS and North Shore responded to the C&L letters. The letter requested a reduction of 38% of the abandonment costs or a meeting with C&L staff to discuss their concerns with the abandonment costs or an extension on the time for payment. The letter provided a number of grounds on which they disputed the amount of the abandonment costs and included a consultant report in support of some of these points.

On March 25, 2019 counsel for C&L responded to the February 22, 2019 letter. The letter outlined the AER's authority to order a well suspended or abandoned to protect the public or the environment; to require WIPs to pay for this work and extended the deadline to pay from February 4, 2019, to April 30, 2019.

On April 23, 2019, DBS and North Shore filed separate (but identical) requests for regulatory appeal (the Requests).

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]

1. **"Appealable Decision"** – Subsection 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:

> A decision of the Regulator that was made under an energy resource enactment[1], if that decision was made without a hearing

Thus, to be an "appealable decision" the decision must be made under an energy enactment and there cannot have been a hearing.

The Requests identified the date of the notice of decision or the subject of the order as: "January 4, 2019 extended to April 30, 2019." In its reply submission, counsel for DBS and North Shore identified that the March 25, 2019 letter contained many "appealable decisions." Each of these decisions will be reviewed in turn.

The Notices to Pay Abandonment Costs dated January 4, 2019 meet the definition of appealable decision and are the subject of this request for regulatory appeal. The Notices determine and allocate the abandonment costs to DBS and North Shore as WIPs of Drake Energy Ltd. pursuant to s. 30(2) of the Oil and Gas Conservation Act (OGCA). Section 30(2) provides that the Regulator may determine the suspension costs, abandonment costs and reclamation costs on its own motion and allocate those costs to each WIP in accordance with its proportionate share in the well or facility and prescribe a time for payment. The grounds for appeal that form part of the Requests make it clear that what DBS and North Shore are challenging is the reasonableness of the abandonment costs incurred and not the authority of the AER to direct a WIP to pay the abandonment costs in the case of a well abandoned by the AER or a person authorized by the AER.

The only decision contained in the March 25, 2019 letter, is that to extend the time provided to DBS and North Shore to pay their portion of the costs. This is a separate decision from that contained in the January 4, 2019 Notices and is made pursuant to s. 30(3) of the OGCA. While the decision to extend the time to pay is an appealable decision, it is not the subject of this request for regulatory appeal as there is nothing in the grounds for regulatory appeal or the reply materials to suggest that DBS and North Shore are challenging the extension of time that was granted. Accordingly, the AER finds the January 4, 2019 Notices are appealable decisions and the subject matter of the Requests.

2. **"In Accordance with the *Rules*"** – Section 30(3) requires that a request for a regulatory appeal be made within the specified timeframes after the making of the decision for which an appeal is sought.

[1] This includes: the *Coal Conservation Act*, the *Gas Resources Act*, the *Oil and Gas Conservation Act*, the *Oil Sands Conservation Act*, the *Pipeline Act*, the *Turner Valley Unit Operations Act*, a regulation or rule under and of the enactments.

Having determined that the relevant decision and the subject of the Requests are the Notices dated January 4, 2019, the requests are not filed within the specified timeframes set out in the Rules.

The decision regarding the abandonment costs was made under s. 30(2) of the OGCA. Arguably, this cost allocation was an order and therefore the 7 day timeframe in s. 30(3)(j) of the Rules would apply. While section 30(2) of the OGCA does not use the term "order" in describing the allocation of costs, later s. 30(6) of the OGCA, uses that term in describing the Regulator's determination of the costs and penalties under s. 30. If s. 30(3)(j) provides the relevant timeframe then clearly the Requests filed on April 23, 2019 are outside of the 7 day appeal period. However, even if the applicable timeframe for filing a request for regulatory appeal is the 30 days provided for in 30(3)(m) of the Rules, then the Requests are out of time as they were made well after that period.

No request has been made to allow the regulatory appeal request to be filed late; DBS and North Shore have instead taken the position that the 'true appealable decision' took place on March 25, 2019. As indicated above, the March 25th decision is a decision to extend the time to pay. DBS and North Shore have clearly appealed the AER's determination of the suspension, abandonment costs and reclamation costs under section 30(2) of the OGCA, and the notice for that decision was provided on January 4, 2019. The AER notes DBS and North Shore's acknowledgment that due to 'holiday travel' they received the notice on 'approximately' January 20th. The AER does not accept that holiday travel is a valid contributing factor or justification for missing statutory filing deadlines. Nor does it accept that the earliest opportunity that DBS and North Shore could have filed a regulatory appeal request was April 23, 2019, 108 days after the January 4th 2019 notice. It is notable that DBS and North Shore were able to send a detailed letter to the AER closure and liability staff on February 23, 2019, explaining their concerns with the abandonment costs.

Accordingly, as this request for regulatory appeal was made outside of the timeframes specified in the *Rules* it was not filed in accordance with the *Rules* and is not properly before the AER. The request for regulatory appeal is dismissed pursuant to section 39(4)(c) of the *REDA*.

Having made this finding, it is not necessary to consider whether DBS and North Shore are eligible persons under *REDA*.

The AER also considered the concerns raised by counsel for DBS and North Shore related to the reasonableness of the abandonment costs incurred. As the AER's letter of March 25, 2019 explained the abandonment work was done after the AER determined the wells to be a risk to public safety due to their proximity to populated areas and the potential for them to be vandalized. The AER notes that the costs allocated to DBS and North Shore were based on their proportionate share of the actual cost of the

abandonment work done and that this work was carried out by a reputable company experienced in abandonment operations that is routinely engaged by the AER.

Counsel for DBS and North Shore also raised concerns with respect to the failure to provide them with notice that the abandonment work had been commenced and completed on behalf of the AER, as well as the time period between the completion of the work in 2015 and demand for payment in 2019. The AER notes that the notice accompanying the September 6, 2013 order expressly provided that upon the failure of the licencee or WIPs to carry out the abandonment work the AER would do the abandonment work without any notice to DBS and North Shore and that the AER would be pursuing all available remedies to recover the costs from the liable parties. Accordingly, DBS and North Shore were put on notice that they could perform the abandonment work themselves and seek compensation for what was beyond their proportionate share. They were also advised that in the absence of doing so, the work would completed by the AER and that as WIPs, DBS and North Shore would be held responsible for their respective portion of the costs. Further, while more timely invoicing for the work done would have been desirable, this does not negate the legal obligation under section 30(1) of DBS and North Shore to pay for their proportionate share of the costs of this work.

Sincerely,

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Sean Sexton
Vice President, Law

< Original signed by>

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David Hardie
Director, Liability Strategy, Closure & Liability

< Original signed by>

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Charles Tamblyn
Director, Subsurface & Economic Evaluation,
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