

Via Email & Registered Mail

September 1, 2021

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Canadawww.aer.caRay & Clint Jacula
Box 3631
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Husky Oil Operations Limited

Attention: Ray Jacula**Attention: Janet Thompson
Hal Weber**

Dear Sirs and Madam:

**RE: Request for Regulatory Appeal by Clint & Ray Jacula
Husky Oil Operations Limited (Husky)
Application Nos.: 1928323, 30604693, 30604676; Licence Nos.: 0498172, 0498171,
0498170, 0498169, 0498168, 0498167, 0498166, 0498165, and F51968 (Licences)
Location: 07-18-053-07-W4
Request for Regulatory Appeal No.: 1929563**

The Alberta Energy Regulator (AER) has considered Ray and Clint Jacula's (the Jaculas) request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal (Request) of the AER's decision to approve the Licences. The AER has reviewed the Jaculas' submissions and the submissions made by Husky.

For the reasons that follow, the AER has decided that the Jaculas request for a regulatory appeal in this matter is not properly before it. Therefore, the request for a Regulatory Appeal is **dismissed**.

The applicable provision of REDA 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 36(a) of REDA defines an "appealable decision." For the present purposes, the relevant definition is contained in section 36(a)(iv), which states that an appealable decision includes:

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

The phrase “eligible person” is defined in section 36(b)(ii) of REDA to include:

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

Parties’ Submissions

The Jaculas’ Regulatory Appeal Request

In their Request, the Jaculas expressed concerns with: Husky’s failure to meet with the neighbors and the Jaculas with regard to the project; drilling under the land they own; directional drilling that may jeopardize their water; loss of livestock production; and, increased traffic and impacts on the school bus route. The Jaculas requested relocation of the drilling and compensation for potential losses to cattle production, water, hazardous chemicals and vegetation. The Jaculas also requested proof from the AER showing how, according to s. 57 of the *Law of Property Act*, it can approve drilling and removal of their clay and marl from surface drilling.

Husky’s Response Submission

In its response to the Request, Husky stated that it has been open to meeting through the AER’s Alternative Dispute Resolution (ADR) process if an ADR were to be arranged.

Husky explained that the proposed well pad and access roads are located on adjacent land owned by a different landowner and not on land owned by the Jaculas. The proposed well bores will pass under land to which the Jaculas own the surface rights but the mineral rights are held by the Crown.

With regard to the directional drilling and water concerns, Husky submitted that it is proposing to drill horizontal (HZ) and not directional wells. In addition, Husky has agreed to cover all reasonable costs for the Jaculas to retain an independent firm to test the water well for quality and quantity prior to and following drilling of the proposed HZ wells, providing the firm is located within the regional area and has expertise and experience in undertaking the required testing. Husky confirmed that this offer remains unchanged to date. Furthermore, the ground water sources are protected by the depth of surface casing and intermediate casing, both cemented in place back to the surface in order to isolate and protect ground water, as required by the AER *Directive 008: Surface Casing Depth Requirements* (Directive 008).

With regard to loss of livestock production, Husky noted that it is aware of those concerns since they have been expressed in the past, however, Husky has not been made aware that a veterinarian has inspected the Jaculas’ cattle or has provided an opinion that supports their cattle concerns.

On the traffic concerns, Husky stated that it has obtained a county approved haul route and that it anticipates 2-3 loads of fluid will be hauled per day. Initially, there may be a need for water to be trucked to a disposal facility. Once water injection commences, water will no longer be trucked away. However, one additional load of water might be required to be hauled in, to supplement the necessary water injection. As an additional safety measure, Husky's fluid hauling trucks are equipped with GPS tracking devices to ensure trucks adhere to approved haul routes and do not exceed the legal speed limits.

Husky submitted that it could not accept the Jaculas' proposal to relocate the drilling on their land because it would require utilizing two pads as opposed to one, which would, in turn, result in duplication of facilities on the two pads, as water and gas would have to be pipelined from one pad to the other. The relocation of the drilling to the Jaculas' land also carries a risk of collision with the existing HZ well bore, which would compromise Husky's ability to effectively drain the pool of oil.

In relation to hazardous chemicals, Husky stated that it provided all stakeholders with Material Safety Data Sheet (MSDS) information, which indicates that there is no risk to health and safety for the Husky workers on the site. Once the additives are mixed and diluted into the drilling fluid risks identified in the MSDS sheets are further mitigated. This is supported by the fact that Husky's workers on the site do not need special personal protective equipment (PPE), in addition to the standard PPE required for this kind of operations. Husky clarified that it is not possible to provide a list of chemicals that might be used by operations throughout the production life of the well.

Jaculas' Reply Submission

The Jaculas did not file a reply submission even though they were provided with the opportunity to do so in this regulatory appeal process.

Reasons for Decision

Eligibility to request a regulatory appeal

The decisions were made under the *Oil and Gas Conservation Act* (OGCA), which is an energy resource enactment, and without a hearing. Consequently, the well licences are appealable decisions. The proposed project is not located on the Jaculas' land but on adjacent land which they do not own. In addition, certain portion of the drilling will take place under the land owned by the Jaculas, which may potentially impact their water quality. This makes the Jaculas potentially directly and adversely affected by the decisions and eligible to request a regulatory appeal of the licences.

Merits of the Request

While the AER has concluded that the Jaculas are eligible to request regulatory appeal of the licences, the AER must decide if the Jaculas' request should be dismissed pursuant to section 39(4). Section 39(4) of REDA provides the AER with discretion to dismiss all or part of a request for a regulatory appeal in the following circumstances:

- (a) if the Regulator considers the request to be frivolous, vexatious, or without merit,
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- (c) if for any other reason the Regulator considers that the request for regulatory appeal is not properly before it.

With regard to the failure to meet concern, the AER encourages the stakeholders and industry to establish and maintain ongoing neighborly relationships. Husky has been open in the past and continues to be open to resolving the Jaculas' concerns outside of a formal AER process.

The concerns in relation to compensation are outside of the AER's jurisdiction. In addition, the Jaculas have not provided any specific evidence that supports the claim for potential losses to cattle production or that shows damage from hazardous chemicals in general and to vegetation in particular. All of these concerns are general in nature and cannot be properly assessed in this process due to lack of evidence.

The Jaculas have expressed concerns with directional drilling, while at the same time also proposing relocation of the drilling on their land. According to Husky, drilling relocation, as proposed by the Jaculas, would result in duplication of resources and increased safety risk, which is contrary to the efficient, safe, orderly and environmentally responsible energy recourse development in Alberta in accordance with section 4 (c) of the OGCA and section 2(1) of REDA.

The traffic concerns are also outside of the AER's jurisdiction. However, the AER expects Husky to comply with its county approved haul route for the project and to regularly monitor the additional GPS tracking safety devices on its fluid hauling trucks to ensure trucks adhere to approved haul routes and do not exceed the legal speed limits.

Regarding the request for proof from the AER to show how, according to s. 57 of the *Law of Property Act*, it can approve drilling and removal of their clay and marl from surface drilling, the AER notes that there is no such approval issued by the AER since the AER does not have jurisdiction to issue approvals in relation to clay and marl.

In relation to the concern of the water being jeopardised, Husky must comply with the requirements in AER's Directive 008 and *Directive 009: Casing Cementing Minimum Requirements*, the primary

purpose of which is to design appropriate depths of surface casing and meet the casing cement requirements to assist with well control and groundwater protection. Furthermore, Husky has offered to cover all reasonable costs for the Jaculas to retain independent consultant to test the water well for quality and quantity prior to and following drilling to ensure that the Jaculas' water remains protected.

Conclusion

Given the above, the AER finds that, while the Jaculas are eligible persons, their appeal is without merit and not properly before the AER. Consequently, the request for regulatory appeal is dismissed.

Sincerely,

<Original signed by>

Paul Ferensowicz
Principal Regulatory Advisor

<Original signed by>

Gary Neilson
Sr. Advisor, Crown Liaison

<Original signed by>

Michael Bevan
Sr. Advisor, Water