

Via Email

November 10, 2022

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Samuel Doonanco

Canadian Natural Resources Limited

**Attention: Heather Sampson
Doug Zarowny**

Dear Sirs and Madam:

**RE: Request for Regulatory Appeal by Samuel Doonanco
Canadian Natural Resources Limited
Application Nos.: 1937615, 31733013 & 31749320
Licence Nos.: F52766, 0504523, 0504524, 0504525, 0504526, 0504527 & 0504528 (Licences)
Location: 10-20-063-06W4 (Site)
Request for Regulatory Appeal No.: 1938479 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered Mr. Doonanco's request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve the Licences. The AER has reviewed Mr. Doonanco's submissions, and the submissions made by Canadian Natural Resources Limited (Canadian Natural).

For the reasons that follow, the AER has determined that Mr. Doonanco is eligible to request a regulatory appeal in this matter. Therefore, the request for a regulatory appeal is granted.

Background

On May 2, 2022, the AER received correspondence from Canadian Natural submitting non-routine applications for a sweet multi-well bitumen pad site and associated battery to be located at the Site. Canadian Natural's application correspondence dated April 14, 2022, indicated that the applications were being submitted as non-routine as a resident within 500 metres of the proposed multi-well pad site, Mr. Doonanco, had raised concerns.

On May 3, 2022, the AER registered Canadian Natural's applications as Application No. 1937615 (Facility Application) and Application Nos. 31733013 and 31749320 (Well Licence Applications) (collectively, the Applications). On June 7, 2022, the Applications were granted, and the Licences were issued to Canadian Natural.

On June 15, 2022, Mr. Doonanco submitted the request for regulatory appeal with respect to the Licences issued to Canadian Natural (RRA). Initially, the RRA was missing some of the information required to be submitted in a request for regulatory appeal, as per section 30 of the *AER Rules of Practice (Rules)*. Regulatory Appeals issued a deficiency letter to Mr. Doonanco on June 15, 2022.

On June 17 and 20, 2022, Mr. Doonanco provided additional submissions completing his RRA, and on June 27, 2022 Regulatory Appeals issued correspondence to Mr. Doonanco and Canadian Natural requesting submissions or comments on the merits of the RRA.

Canadian Natural submitted its response on June 29, 2022, and Mr. Doonanco's reply submissions were received by the AER on July 5. On August 8, 2022, Regulatory Appeals received an additional reply submission from Mr. Doonanco.

Mr. Doonanco's RRA raises concerns about his health and safety, as well as the health and safety of his girlfriend, with whom he resides, and their pets and livestock, living in close proximity to the Site during drilling and operation of the wells. Mr. Doonanco notes that the Site is approximately 275 m from their residence.

Mr. Doonanco submits that the proximity of their residence to the Site raises health and safety concerns, and other concerns relating to their quality of life, which can be summarized generally as follows:

- Noise concerns during drilling and production operations;
- Impacts on sleep as well as mental and emotional health associated with the operations;
- Air pollution due to gases released from the operations, and associated toxicity and flammability;
- Potential impacts on groundwater and Mr. Doonanco's nearby shallow water well;
- Impacts to surface water flows due to the construction associated with the Licences;
- Negative impacts on property value due to the proximity of the property to the operations;
- Potential interruptions to, or impacts on Mr. Doonanco's farming operations associated with any of the identified hazards; and
- Impacts to local roads and traffic due to operations associated with the Licences.

Mr. Doonanco also raised concerns with Canadian Natural's participant involvement program and Canadian Natural's representations to the AER with respect to his concerns. Mr. Doonanco indicated that he was unaware of Canadian Natural's intent to submit the Applications.

In response, Canadian Natural described the contact it had made with Mr. Doonanco prior to submitting the Applications, and the fact that Canadian Natural submitted the Applications for "additional review" due to the outcome of its participant involvement program and outstanding stakeholder concerns.

Canadian Natural's response requests that the AER dismiss the RRA based on Canadian Natural's description of the engagement that occurred with Mr. Doonanco prior to submitting the Applications. Canadian Natural did not otherwise dispute the concerns outlined in the RRA.

In reply, Mr. Doonanco described that he did not receive the public notice of the Applications until June 11 due to his work schedule, and if he had received the notice before June 3, he would have immediately submitted a statement of concern in response to the Applications.

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]

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 term "appealable decision" is defined in section 36(a)(iv) of *REDA* to include:

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

Section 38(1) creates a three-part test for a regulatory appeal. First, the requester must be an eligible person as defined in section 36(b) of *REDA*. Second, the decision from which the requester seeks regulatory appeal must be an "appealable decision" as defined in section 36(a) of *REDA*. Third, the request must have been filed in accordance with the *Rules*.

1. Appealable Decision

The Applications were approved under the *Oil and Gas Conservation Act*, which, in accordance with subsection 1(1)(j) of *REDA*, is an energy resource enactment. The approvals were issued without a hearing. Therefore, the Applications are appealable decisions under section 36(a) of *REDA*.

2. Eligible Person

In order for Mr. Doonanco to be eligible for regulatory appeal, he must demonstrate that he may be directly and adversely affected by the AER's decisions to issue the Licences. The AER is satisfied, and Canadian Natural has not meaningfully disputed, that Mr. Doonanco is directly and adversely affected by the issuance of the Licences. The information provided by Mr. Doonanco indicates that his property value, quality of life, and health and safety may be negatively affected because of the development associated with the Licences. Further, there will be a significant increase in traffic in close proximity to Mr. Doonanco's personal property as a result of the development associated with the Licences.

In reaching this conclusion, the AER was guided by the Court of Appeal's decision in *Kelly v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 325. In this decision, the Court examined whether a landowner who falls outside of the emergency planning zone (EPZ) could still be directly and adversely affected. The EPZ was 2.11 km and the landowners resided 6.5 km and 5.4 km from the well site. The Court concluded that the landowners were directly and adversely affected.

The Court also went on to state that:

... At some point the Board must decide whether the magnitude of the risk is such that the applicant has become "directly and adversely affected". But the applicant need not demonstrate that the perceived risk is a certainty, or even likely. Nor need the applicant prove an adverse effect greater than that suffered by the general public, nor that any adverse effect would be life-threatening. Those in the tertiary evacuation area may not have an absolute right to standing in all cases, but they have a strong prima facie case for standing. The right to intervene in the Act is designed to allow those with legitimate concerns to have input into the licensing of oil and gas wells that will have a recognizable impact on their rights, while screening out those who have only a generic interest in resource development (but no "right" that is engaged), and true "busybodies".

[emphasis added]

In the case of Mr. Doonanco, the concerns raised highlight that he has more than a generic interest in resource development. The AER is satisfied that he is an "eligible person".

3. In Accordance with the *Rules*

The RRA was filed in accordance with the time requirements under the *Rules*.

Non-filing of a statement of concern and section 39(4)(b)

Section 39(4) of *REDA* provides, in part, as follows:

39(4) The Regulator may dismiss all or part of a request for regulatory appeal

... (b) if the request is in respect of a decision on an application and the eligible person did not file a statement of concern in respect of the application in accordance with the rules,

The AER has considered the submissions of the parties and declines to exercise its discretion to dismiss any part of Mr. Doonanco's RRA due to the fact that Mr. Doonanco did not file a statement of concern in respect of the Applications.

Canadian Natural has not raised any other grounds pursuant to which the AER should exercise its discretion dismiss all or part of the RRA.

For the above reasons the request for regulatory appeal is granted.

Conclusion

In conclusion, the AER has decided to grant Mr. Doonanco's RRA in respect of the Applications and will request the Chief Hearing Commissioner to appoint a panel of hearing commissioners to conduct a hearing of the same.

Sincerely,

<Original signed by>

Stephanie Latimer
Vice President, Law & Associate General Counsel

<Original signed by>

Michael Brown, P.Eng., M.Eng.
Senior Advisor, Air

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Paul Ferenowicz
Principal Regulatory Advisor