

Via Email

November 23, 2022

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Daniel and Denise Edinger

Bob and Judy Nitschke

Attention : Denise Edinger

Attention : Judy Nitschke

Evelyn Presisniuk

Owen Law LLP

Stacked Energy Ltd.

Attention : Tom Owen

Attention : Dave Wandzura

Dear Sirs and Mesdames:

**RE: Requests for Regulatory Appeal by Evelyn Presisniuk, Bob and Judy Nitschke, and Denise and Daniel Edinger
Stacked Energy Ltd.
Application No.: 31762307
Well Licence No.: 0504829
Location: 09-27-055-26-W4M
Requests for Regulatory Appeal Nos.: 1938679, 1938682, & 1938683 (Regulatory Appeals)**

The Alberta Energy Regulator (AER) has considered the requests of Daniel and Denise Edinger, Bob and Judy Nitschke, and Evelyn Presisniuk (the Requesters) under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decision to approve application no. 31762307 and issue the well licence no. 0504829 (Well Licence) to Stacked Energy Ltd. (Stacked) on June 24, 2022 (the Decision). The AER has reviewed the Requesters' submissions and the submissions made by Stacked.

For the reasons that follow, the AER has decided that the Requesters are eligible to request a regulatory appeal in this matter. Further, the AER has declined to dismiss the request for regulatory appeal. Therefore, the request for a regulatory appeal is approved.

The applicable provisions of REDA regarding this regulatory appeal are as follows:

Eligibility to Request Regulatory Appeal

Section 38(1) of the REDA sets out the test for eligibility to request a regulatory appeal:

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]

Conducting a regulatory appeal

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

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

Background

On May 20, 2022, the AER received a non-routine well licence application from Stacked. The AER registered the application as Application No. 31762307 (Application).

On June 24, 2022, the AER approved the Application and well licence no. 0504829 was issued to Stacked.

Presisniuk Request

On July 14, 2022, the AER Law Branch (Regulatory Appeals) received a facsimile from Evelyn Presisniuk requesting a regulatory appeal (RRA) of the AER's decision to approve the Application (Presisniuk Request) which included a request for an immediate stop order (Stay Request).

During review of the Presisniuk Request, Regulatory Appeals identified that it was not clear from the submission whether a copy of the request had been provided to Stacked and the registered landowner of the lands on which the energy resource activity will be located, as required by sections 30(5)(a) and (b) of the *AER Rules of Practice* (Rules). Regulatory Appeals issued a deficiency email to Evelyn Presisniuk on July 14, 2022.

On July 15, 2022, Ms. Presisniuk called Regulatory Appeals and provided verbal confirmation that a copy of the Presisniuk Request had been mailed to Stacked and the registered landowner of the site, completing the service requirements set out in Section 30(5)(a) and (b) of the Rules. On July 15, 2022, Regulatory

Appeals issued correspondence to the parties relaying the service confirmation and requesting information regarding the Stay Request from Stacked.

On July 18, 2022, Regulatory Appeals received an additional facsimile submission from Ms. Presisniuk with respect to the RRA of the Well Licence.

Nitschke Request

On July 17, 2022, Regulatory Appeals received an RRA of the Well Licence from Bob and Judy Nitschke (Nitschke Request) which also included a Stay Request in relation to the Well Licence.

Edinger Request

On July 17, 2022, Regulatory Appeals received an RRA of the Well Licence from Daniel and Denise Edinger (Edinger Request) which also included a Stay Request in relation to the Well Licence.

Stay Request

On July 18, 2022, Regulatory Appeals requested submissions from the parties in relation to the Stay Request. The Requesters and Stacked filed their respective stay submissions on July 19, 2022.

On July 21, 2022, the AER issued its decision denying the Stay Requests.

RRA

On August 4, 2022, Regulatory Appeals requested submissions from the parties with respect to the RRAs. Stacked responded on August 18, 2022 and the Requesters' respective reply submissions were received by the AER on September 1, 2022.

The Requesters are Eligible to Request a Regulatory Appeal

Appealable Decision

The decision to issue the licence is an appealable decision, as the Decision was issued under the *Oil and Gas Conservation Act* without a hearing.

In Accordance with the Rules

The RRAs were filed in accordance with the time limits under the Rules.

Eligible persons

The remaining question is therefore whether the requesters are eligible persons, according to the definition described above. To show this, the requesters must establish that they may be directly and adversely affected by the AER's issuance of the Licence.

Parties' Positions

A summary of Daniel and Denise Edinger's submissions is as follows:

- They are landowners that live across the road from the well-site.
- They are concerned about the long-term health effects from H₂S emissions. They own, breed and board horses as a business, which could be affected by H₂S emissions.
- The proposed well will require trucking, which will have an impact on the road's deterioration and will result in dust. Further there are several children who live nearby and play on the road.
- The well is installed in a very populated area.
- The well's construction resulted in excessive noise.

A summary of Bob and Judy Nitschke's submissions is as follows:

- They live right across from the site; the well site is 500 meters from their doorstep.
- There are many children, young adults, seniors, and families that could lose their livelihood over the well site.
- The well's construction resulted in excessive noise.
- The road to the site is a dust bowl for the people who live next to it.

A summary of Evelyn Presisniuk's submissions is as follows:

- The well is located too close to a dense population;
- H₂S is toxic to all forms of life. The well will be in an area with young children, seniors, and people with compromised health issues. Further, there is livestock, an apiary, and a greenhouse in the area.
- The well will lead to decreased land values. A letter of opinion from a realtor stated that the realtor's clients are opposed to buying a property with a pump jack on or near the land as they:
 - are visually unattractive;
 - reduce the use of the area surrounding the well-site;
 - result in potential environmental concerns such as spillage or leakage; and
 - dissuade individuals with livestock from purchasing land, as these individuals are particularly cautious about and opposed to a well on or near their property.

- The realtor also mentioned that there are concerns with the time it takes to remediate and reclaim these well sites.
- The drilling of the well resulted in excessive noise.

Stacked did not directly dispute the requesters' eligibility, although, its submissions on the merit (or lack thereof) of the requesters' claims apply equally to their eligibility.

In its submission, Stacked stated that:

- The Leduc formation was not present and thus the possibility of H₂S production was removed.
- Stacked ensured that residents would not experience noise levels more than the permissible sound levels throughout the drilling operation. Stacked added additional measures, such as pseudo-continuous noise level monitoring, to provide nearby residences with safe surroundings, without interfering with their livelihood during drilling.
- Upon the installation of wellsite facility equipment, the production phase is anticipated to involve one tanker truck every 3-4 days. The tanker truck will not run during school bus times or at night.

Analysis

To be eligible for a regulatory appeal, a requester must demonstrate that they are directly and adversely affected by the appealable decision: section 36(b)(ii) of REDA. The AER is satisfied that the Requesters are directly and adversely affected by the issuance of the Licence. Specifically, the Requesters presented evidence from a realtor that the presence of a pumpjack near a rural property might affect the property's marketability. The Requesters also noted that the presence of the well-site would lead to increased traffic on the road, which might lead to the road's deterioration and the presence of dust on their properties.

The Requesters' Requests for Regulatory Appeal Should Not Be Dismissed

Stacked submitted that the Requesters' RRAs are without merit and should be dismissed pursuant to section 39(4) of REDA. Further, Stacked highlighted that the Requesters failed to file statements of concern on the Application.

The Requesters submitted that they had fully intended on submitting statements of concern against the project. Unfortunately, however, while their legal counsel received Stacked's Application, due to their lawyer changing jobs at the same time of the Application, their legal counsel never sent them a copy of the Application.

Legislation

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,
- (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, or
- (c) if for any other reason the Regulator considers that the request for regulatory appeal is not properly before it.

Analysis

For the same reasons that the AER found that the Requesters were directly and adversely affected by the Licence's approval, the AER finds that their Request has merit:

- potential decrease of property marketability,
- dust and noise,
- road safety concerns and deterioration of the road due to trucking.

The AER also declines to dismiss the RRAs simply because the Requesters did not file statements of concern on the well's application. It is clear to the AER that had it not been for the Requesters' lawyer changing jobs around the time of the Applications' submission, that the Requesters would have very likely filed statements of concern.

Conclusion

Accordingly, the AER approves the Requesters' RRA. The Requesters are eligible persons, and their appeal is not without merit. The AER also exercises its discretion to accept the Requester's RRA in spite of the fact that the Requesters' failed to file statements of concern.

Sincerely,

<Original signed by>

Gary Neilson
Senior Advisor, Crown Liaison

<Original signed by>

Jennifer Zwarich
Senior Advisor, Mandate Expansion

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Jeff Moore
Senior Advisor, Legal/Regulatory