

**Via Email**

March 8, 2023

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Osler, Hoskin and Harcourt LLP

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**Attention: Sander Duncanson****Attention: Keely Cameron**

Dear Sir and Madam:

**RE: Request for Reconsideration filed by NOVA Chemicals Corporation (NOVA) of the June 1, 2006, Decision of the Alberta Energy and Utilities Board (AEUB) approving the Transfer of Pipeline Licence No. 47468 to AlphaBow Energy Ltd.'s (AlphaBow) predecessor Glencoe Resources Ltd. (Glencoe)  
Pipeline Licence No.: 47468 (PL47468 or Pipeline)  
Request for Reconsideration No.: 1941310**

The Alberta Energy Regulator (AER) received a letter and written submissions from NOVA on September 9, 2022, pursuant to section 42 of the *Responsible Energy Development Act* (REDA), for reconsideration and revocation of a decision made by the AER's predecessor, the AEUB, on June 1, 2006, approving the transfer of PL47468 from NOVA to Glencoe (2006 Decision). NOVA requests that the AER reconsider and revoke the 2006 Decision with the effect of NOVA being restored as the holder of PL47468.

This letter addresses NOVA's request for reconsideration.

The AER has considered NOVA's request and the submissions filed by NOVA dated September 9, 2022, November 22, 2022 and January 6, 2023, as well as AlphaBow's submissions filed December 23, 2022. For the reasons that follow, the AER has determined that this is not an appropriate case in which to exercise its discretion under section 42 of REDA to reconsider the 2006 Decision. NOVA's reconsideration request is therefore denied.

**Background**

After receiving NOVA's September 9, 2022 request for reconsideration, the AER sent a letter to NOVA on November 9, 2022, providing NOVA with information about the transfer history of PL47468, including information about two intervening transfers of the Pipeline since the 2006 Decision, first from

Glencoe to OES Corporation in 2015, and then from OES Corporation to AlphaBow in 2017. The AER also noted that according to its records, while the AER was aware AlphaBow was a working interest partner with Glencoe in some of its assets, it is a separate licensee, and the AER had no information that AlphaBow is the corporate successor of Glencoe. The AER invited NOVA to provide additional information to support its request for reconsideration. NOVA provided additional submissions on November 22, 2022.

On December 2, 2022, counsel for AlphaBow requested that it be copied on all communications with respect to NOVA's reconsideration request.

On December 6, 2022, the AER wrote to NOVA and AlphaBow and requested submissions from each of them and set timelines for these submissions. AlphaBow subsequently requested a one-week time extension, which NOVA opposed, but the AER granted. AlphaBow provided its submissions on December 23, 2022, and NOVA provided reply submissions on January 6, 2023.

The AER's records indicate that the original pipeline (on lands located at 13-32-038-25W to 15-19-39-25W4) was licensed to NOVA as P20031 on April 10, 2001 (Application 1091479). NOVA amended the license on March 11, 2006 to split the lines and change the substance, resulting in the creation of PL47468 (on lands located from 3-4-39-25W4 to 2-30-39-25W4) (Application 1449390). NOVA transferred PL47468 to Glencoe on June 1, 2006 (Application 1453376). This is the Decision that NOVA is seeking to have reconsidered. Glencoe transferred PL47468 to OES Corporation on July 10, 2015 (Application 1833303). OES Corporation changed the Pipeline's substance through an amendment application on September 23, 2016 (Application 1867118). OES Corporation amended the Pipeline to discontinued status on October 31, 2016 (Application 1871340). OES Corporation transferred PL47468 to 1994450 Alberta Inc. on January 13, 2017 (Application 1877123). Glencoe entered receivership on January 23, 2017. 1994450 Alberta Inc. changed its name to Sequoia Operating Corp. on February 6, 2017. Sequoia Operating Corp. changed its name to AlphaBow Energy Ltd. on June 1, 2018.

The AER's records demonstrate that PL47468 has been transferred twice since the June 1, 2006 transfer from NOVA to Glencoe. NOVA was not a party to any of these transfers. AlphaBow is the current holder of PL47468 and the Pipeline is currently discontinued and has been since 2016.

### **Reasons for Decision**

NOVA argues that AlphaBow has no legal interest in or contractual right to use or operate the Pipeline, gains no benefits under PL47468, and has no ability to comply with its obligations as the licensee. NOVA relies on contractual agreements it had with Glencoe, and with AlphaBow due to two subsequent assignment and novation agreements, including a pipeline lease agreement which NOVA states has since

been terminated, triggering a number of contractual obligations, including requiring AlphaBow to transfer PL47468 back to NOVA. NOVA states that AlphaBow has refused to cooperate with NOVA in making a joint application to the AER to transfer PL47468 back to NOVA pursuant to section 18 of the *Pipeline Act* and *Directive 088: Licensee Life-Cycle Management*. NOVA argues that the 2006 Decision was premised on AlphaBow's predecessor Glencoe having the ability and legal entitlement to use and operate the Pipeline. Nova states that circumstances have changed such that AlphaBow no longer has any legal right to operate or use the Pipeline, and that this is an extraordinary circumstance that provides exceptional and compelling grounds for the AER to reconsider the 2006 Decision. In its January 6, 2023 submissions, NOVA submits that premise on which the Decision was made no longer exists and that if these facts were before the AEUB in 2006, the Decision "would almost certainly have been different and the transfer would have been refused." NOVA's position is that this is a material change of circumstances, and this fact, plus the fact that there are no other AER review or appeal mechanisms available to address the situation, support the AER reconsidering the 2006 Decision.

AlphaBow submits that NOVA is seeking extraordinary relief from the AER, namely expropriation of an AER license and its associated benefits and obligations. AlphaBow submits that it is aware of no precedent for such a request, and that the pipeline at issue is subject to ongoing litigation between the parties, "which NOVA is seeking to circumvent through this process."<sup>1</sup> AlphaBow submits that NOVA's reconsideration request should be dismissed, as this is not an appropriate situation for the exercise of the AER's discretionary authority, and that the matters raised in the reconsideration request pertain to complex contractual legal issues that are before the Court of Kings Bench. AlphaBow states there is a live issue between the parties regarding NOVA's entitlement to the Pipeline and that the existence and availability of a court process supports dismissal of NOVA's request. AlphaBow argues that the AER's jurisdiction in relation to contractual disputes is limited and does not extend to provide authority to the AER to determine ownership disputes.

In its reply submissions, NOVA provides additional details about the court proceedings, including copies of the pleadings. NOVA argues that its entitlement to the Pipeline is not subject to the ongoing litigation and that the court proceedings will not deal with the issues raised in the request for reconsideration. NOVA states that neither AlphaBow nor any of its predecessors have ever owned the Pipeline, and while NOVA previously allowed those parties to use and operate the Pipeline pursuant to the pipeline lease, that agreement has been terminated and NOVA is no longer consenting to them operating or using the Pipeline. NOVA submits the 2006 Decision should be reconsidered because there has been a material change in circumstances and there is no other review or appeal mechanism to address this situation.

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<sup>1</sup> AlphaBow's December 23, 2022 letter at para 2

Section 42 of the *Responsible Energy Development Act* (REDA) sets out the authority for the AER to reconsider its decisions:

42 The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision. [underlining added]

As indicated by section 42, the AER has the sole discretion to reconsider a decision made by it. Section 42 does not provide an appeal mechanism to be used by industry or members of the public; other provisions in REDA are available for that purpose. Further, section 42 does not provide a mechanism to address pipeline compliance issues; other provisions in REDA and the *Pipeline Rules* are available to address and respond to pipeline compliance matters.

The AER will only exercise its discretion to reconsider a decision under the most extraordinary circumstances, where it is satisfied that there are exceptional and compelling grounds to do so. The AER considers that the reconsideration power in section 42 of REDA should be used sparingly and only in the most compelling cases where no other review power exists to address a situation that is in obvious need of remediation. The AER will reconsider a decision where there is new information, or where there is an error in the decision, that is so profound that to not reconsider the decision would make it without any value or merit, such that it would be absurd not to reconsider it.

NOVA has not established that this is such a case. NOVA has not established that there are exceptional and compelling grounds to justify the AER reconsidering the 2006 Decision. The 2006 Decision was made 16 years ago, with NOVA's consent, and without conditions. There have been a number of subsequent transfers of PL47468 since then to other parties, the Pipeline status has changed, and the Pipeline is currently discontinued, and has been for many years. NOVA seems to assume that if the 2006 Decision is reconsidered and revoked, PL47468 will automatically revert to NOVA. However, the AER could not reconsider and revoke the original 2006 Decision without also unwinding a series of transfers and pipeline amendments in the intervening years, and there is no compelling reason to do so. The length of time since the 2006 Decision, the multiple intervening transfers and amendments that have occurred since then is one of the reasons why the AER declines to exercise its extraordinary power to reconsider the 2006 Decision.

The AER appreciates that contractual disputes have arisen between NOVA and AlphaBow, the current licensee of the Pipeline, and these contractual disputes are the subject of ongoing court litigation. NOVA relies on a pipeline lease it says it had with Glencoe to argue that it only ever transferred its interest in PL47468 temporarily pursuant to the pipeline lease and that the pipeline lease has been terminated. NOVA has not provided the AER with a copy of the referenced contractual agreements, the pipeline lease

or the termination of that lease. NOVA has not provided the AER with clear and unequivocal evidence or information to demonstrate that AlphaBow is contractually required to transfer PL47468 back to NOVA. The AER does not have sufficient information at this time to determine whether a change in ownership or entitlement to the Pipeline has occurred.

The AER does not regulate private contractual agreements between parties, nor does it determine contractual disputes that arise between parties. The AER is not obliged to utilize its reconsideration power to address contractual issues or disputes between parties that are more appropriately resolved by the courts. The courts are the proper forum to consider the evidence and make factual findings and interpret and determine the legal impact of contractual agreements and the resulting relief that might be appropriate.

The AER notes that while it has been given the court pleadings by NOVA, neither party has advised the AER if the matter has gone to trial, or if a final court decision has been rendered. The fact that there are contractual disputes before the court between these parties is another reason why the AER has decided not to exercise its extraordinary power of reconsideration in this case. The parties should engage the courts to determine the contractual disputes that exist between them and seek the appropriate relief. The AER does not agree with NOVA that there is no other available mechanism to address this situation. The court has inherent jurisdiction to grant necessary relief to parties when they have established entitlement to it. It is open to NOVA to seek court declarations or orders to address the current situation.

The AER also notes that Part 10 of the AER's *Pipeline Rules* set out the AER's rules for the discontinuance, abandonment, removal or resumption of pipelines. Section 82(9)(h) of the *Pipeline Rules* provides that a licensee must abandon a pipeline if the licensee has sold or disposed of the licensee's interest in the pipeline and has not transferred it to a person who is eligible to hold a licence for the pipeline. Thus, if AlphaBow does not have an interest in P47468, as is alleged by NOVA, the AER's compliance assurance program is a mechanism that NOVA could consider using if NOVA has clear and unequivocal evidence or information to support a compliance complaint, and this is another reason why the AER has decided not to exercise its discretion to reconsider the 2006 Decision.

Finally, NOVA's submissions include a discussion of AlphaBow's eligibility status. The AER finds those submissions irrelevant to this reconsideration request. As noted above, it is open to NOVA to access the AER's compliance assurance program if it has concerns about AlphaBow's compliance with its regulatory obligations associated with PL47468.

## Conclusion

In conclusion, NOVA has not established that there are exceptional or compelling grounds, or extraordinary circumstances to justify a reconsideration of the 2006 Decision in these circumstances. Accordingly, the AER will not exercise its discretion and reconsider the 2006 Decision under section 42 of REDA.

Sincerely,

*<Original signed by>*

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David Hardie  
Director, Liability Management

*<Original signed by>*

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Anita Lewis  
Senior Advisor, Liability Strategy

*<Original signed by>*

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Alexandra Robertson  
Principal Engineer