

Via email only

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July 19, 2023

Vesi Energy Corp.

Alberta Energy Regulator – Compliance and
Liability Management Branch

Attention: Clint Jensen

**Attention: Maria Lavelle, Counsel
Scott Poitras, Counsel**

Dear Sirs and Madam:

**RE: Request for Regulatory Appeal by Vesi Energy Corp.
Alberta Energy Regulator – Compliance and Liability Management Branch (CLM)
Reasonable Care and Measures Order dated January 19, 2023
Locations: 2-17-66-21 W5, 07-25-069-06 W6, 16-24-069-06 W6
Request for Regulatory Appeal No.: 1942653**

The Alberta Energy Regulator (**AER**) has considered the request made by Vesi Energy Corp. (**Vesi**) under section 38 of the *Responsible Energy Development Act* (**REDA**) for a regulatory appeal of the AER's decision to issue a Reasonable Care and Measures Order to Vesi on January 19, 2023 (**Order**), pursuant to sections 7, 26.2 and 27 of the *Oil and Gas Conservation Act* (**OGCA**) and section 140 of the *Environmental Protection and Enhancement Act* (**EPEA**). The AER has reviewed Vesi's submissions, and the submissions made by CLM.

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 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]...

For the reasons that follow, the AER has decided that Vesi is eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is approved.

Background

On February 21, 2023, the Alberta Energy Regulator (**AER**) received correspondence from Vesi requesting a regulatory appeal (**Request**). The request included a Notice of Failure to Comply Letter dated February 6, 2023 (**February 6 Letter**) and also noted that an order to abandon had been issued to Vesi on February 13, 2023.

On February 23, 2023, the AER issued correspondence to Vesi acknowledging receipt of the Request and asked Vesi to confirm whether it had received any additional orders, correspondence, or documentation in addition to the February 6 Letter.

On February 27, 2023, Vesi submitted correspondence indicating that it did not have an Abandonment Order apart from that which was mentioned in [CLM's] email stating its assets "were designated being Orphans...", and enclosed several communications between Vesi and CLM, including an email dated January 19, 2023, from CLM to Vesi, issuing an order dated January 19, 2023. Vesi further requested clarification from the AER on various compliance processes on March 8, 2023 (**March 8 Correspondence**).

On March 9, 2023, the AER issued correspondence to the parties requesting submissions on preliminary issues related to Vesi's Request, and asked the parties to provide submissions on the following preliminary matters:

1. Was an Order to Abandon issued to Vesi on February 13, 2023?
2. Is the February 6 Letter an appealable decision?

The AER also asked CLM to respond to the March 8 Correspondence in addition to providing submissions on the preliminary matters.

On March 20, 2023, CLM responded and submitted that the Order was issued to Vesi on January 19, 2023, which clearly stipulated Vesi's abandonment obligations under the Order, and that Vesi had confirmed receipt of the Order on the same day it was served. CLM also stated the February 6 Letter was not an appealable decision, but rather a letter informing Vesi of its failure to comply with the Order and the enforcement steps being taken as a result of the non-compliances.

CLM further submitted Vesi had not filed its request for regulatory appeal of the Order within the appropriate timelines set out under section 30(3) of the *Alberta Energy Regulator Rules of Practice (Rules)*; however, it would not object to an extension of the timeline to file a request for regulatory appeal given the circumstances.

On March 29, 2023, Vesi replied by email stating that it had misread the January 19 service email from CLM and was not aware it had triggered an immediate appeal based on the wording.

On March 30, 2023, the AER issued correspondence to the parties summarizing the submissions on the preliminary issues and requested Vesi confirm whether it was requesting an extension to file the Request and, if so, to provide any special circumstances which warranted allowing the filing of the late Request.

On April 3, 2023, Vesi responded and submitted that it was interested in pursuing the alternative dispute resolution (ADR) process and that it wished to be able to carry out the sale of its assets and to remove liability with the AER in the quickest timeline possible.

On April 3, 2023, the AER issued additional correspondence to Vesi requesting clarification on whether it wished to request an extension to file a request for regulatory appeal of the Order.

On April 4, 2023, Vesi submitted correspondence requesting an extension to file the Request for the following reasons:

- It did not take the January 19 email as being an issued Order, and that none of the immediate responses thereafter was the appeal process brought up until the timeline had lapsed;
- It had communicated the LOI/PSA stages along the way for each asset and had fulfilled many of the deficiencies in parallel of finding qualified buyers.
- The financial implication related to such an action has had a great impact on Vesi.

On April 6, 2023, an AER delegate exercised their discretion under section 41 of the Rules to grant Vesi an extension to the timeline to file the Request. The AER subsequently issued additional correspondence to the Parties that same day, requesting submissions on the merits of the Request.

Vesi also responded to the AER, by email, on April 6, 2023, inquiring about the ADR process and utilizing the regulator directed transfer process to transfer the assets to the potential purchasers.

CLM submitted its response on April 20, 2023.

Vesi did not file reply submissions but did submit email inquiries regarding compliance questions and ADR on April 20, 2023 and April 25, 2023, to which the AER responded to on April 26, 2023.

Reasons for Decision

1. Appealable Decision

The Order was issued pursuant to an energy resource enactment, namely the OGCA, without a hearing and is therefore an appealable decision.

2. Eligible Person

While Vesi has not expressly addressed whether it is an eligible person in its submissions, it noted that PSA agreements were in progress with “qualified purchasers” at the time the communication to abandon was issued on February 13, 2023, and the effect of the Order would have “great” financial impact on it.

The impact of the Decision on Vesi appears to be economic, however, the Court of Appeal’s recent decision in *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board* supports that an economic impact such as the one in this case, may be enough to conclude that there may be a direct and adverse effect.¹

3. In Accordance with the Rules

The Request was not filed within the required time frame, however an extension was requested and granted. Further, the AER has determined there is no justification to dismiss the Request at this stage under section 39(4) of the REDA and notes that there were no submissions from CLM to the contrary.

Sincerely,

<Original signed by>

Niki Atwal
Senior Advisor, Policy Coordination

<Original signed by>

Jeffrey Moore
Senior Advisor, Legal/Regulatory

<Original signed by>

Elizabeth Grilo
Senior Advisor, Regulatory

¹ 2020 ABCA 456.