

**By email only**

February 13, 2024

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[www.aer.ca](http://www.aer.ca)

Brenda Goettel and Mark Haldane  
**Attention: Brenda Goettel**

TAQA North Ltd.  
**Attention: Pamela Giesbrecht  
Ashlin Ray**

Dear Sir and Mesdames:

**RE: Request for Regulatory Appeal by Brenda Goettel & Mark Haldane  
TAQA North Ltd.  
Well Licence Nos.: 0509564 & 0509565  
Location: SE-30-33-5-W5M  
Request for Regulatory Appeal No.: 1946025**

The Alberta Energy Regulator (**AER**) has considered Brenda Goettel & Mark Haldane (**Requesters**) request under section 38 of the *Responsible Energy Development Act* (**REDA**) for a regulatory appeal of the AER's decision to approve well licence nos. 0509564 and 0509565 on June 2, 2023 (**Approvals**). The AER has reviewed the Requesters' submissions and the submissions made by TAQA North Ltd. (**TAQA**).

For the reasons that follow, the AER has decided that the Requesters are not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

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]...

## Background

On June 2, 2023, TAQA applied to the AER for two well licences, pursuant to *Directive 056: Energy Development Applications and Schedules (Directive 056)*, for wells to be located at SE-30-33-5-W5M. The applications were registered as Application Nos. 32377811 and 32377685 (**Applications**) and were automatically approved the same day as they were received. On June 2, 2023, well licence nos. 0509564 and 0509565 (**Well Licences**) were issued to TAQA.

On July 5, 2023, the AER received a request for regulatory appeal in relation to the decision to issue the Well Licences to TAQA.

Upon review of the request, it was determined that it was missing some information and that it had been filed outside of the 30-day timeline for requesting a regulatory appeal of a well licence approval that had been issued on June 2, 2023.

On July 5, 2023, the AER issued correspondence to the Requesters identifying the deficiencies in the request and requesting additional information with regard to the late filing (**Deficiency Letter**). The Deficiency Letter also included a timeline for TAQA to respond to the late filing of the request.

On July 6, 2023, the Requesters submitted the missing information to the AER completing their request for regulatory appeal (**Request**). TAQA did not file any submissions in response to the late filing of the Request.

On July 28, 2023, the AER exercised its discretion to extend the filing deadline and accepted the Request.

## Submissions of the Parties

### *Requesters*

The Requesters submitted that they have concerns related to:

- **Incorrect survey information** – their residence was not included, and they are the closest residence to the well sites.
- **Lack of communication** – the original courtesy notice arrived in late 2022, when they called to follow up with TAQA about their concerns (water, noise, distance of wells, etc.) they submitted that they were told additional information be provided, but none was ever received. The Requesters submitted that they reached out again at the end of May and received a call back from TAQA who indicated that the Requesters did not need to be notified as they are outside of the 200m radius.

- Someone was sent out to GPS the Requesters location.
  - Requesters submitted that they contacted the AER and were told that TAQA did not have a well licence, but someone would follow up to answer their questions once information was received from TAQA. No callback was received.
  - When the Requesters followed up again, they found out that TAQA had received a well licence.
- **Drilling through aquifer and water quality/flow concerns** – The Requesters submitted that they are concerned about potential impacts to water, and when they asked TAQA about this they were told that “TAQA has insurance for that”. The Requesters have cattle and horses on the property and submitted that their neighbour to the west is being paid by TAQA to haul drinking water to his home after TAQA drilled/fracked into his aquifer; they submitted that is not an option for them. The Requester submitted that they asked the AER what the process is for reporting poor experiences, and no one has followed up to advise them.
  - **Harmful/negative effects on animals, wildlife and humans** – The Requesters submitted that the increased traffic, noise, flaring activities, etc. is detrimental to the surrounding inhabitants. They further submitted that the expected duration of the noise and the activity, 50-60 days for the 2 wells, will impact wildlife’s ability to cohabitate in the area and their cattle and horses that graze in the pasture right across from the well-sites.
  - **Emergency Response Plans for sour gas, sweet gas, fire, etc.** – The Requesters submitted that they are not aware of any [Emergency Response] plans in place and were told that if they were within a certain radius they would be contacted. They submitted that their cattle graze right across the street from the wellsite and that they are the closest residence to the site.
  - **Process for approvals, follow-up and impacts to neighbouring residences** – The Requesters submitted that even after they and their neighbours filed complaints with both the AER and TAQA, a well licence was issued. They submitted that the process, in their experience, has been disappointing: lacking information, rehearsed expressions of concern and reminders that because they are outside of the 200m radius their opinions and concerns do not matter. They submitted that it’s “inherently warped” to allow the landowner who is being compensated to consent to the location and approval for the AER to issue a licence.

At the time of filing their reply submissions, in addition to re-iterating their original concerns, the Requesters submitted that there had been unforeseen developments since the submission of their original Request:

- **Increased noise and traffic from the wellsite construction, heavy equipment, clanking pipes, revving vehicles and they can hear alarms, horns and crews yelling at each other.** They submitted that the noise and vibrations are constant, 24 hours a day and that it will be worse during the fracking. They submitted that there has been constant noise at the site since the end of May and they were told by the AER that the project will continue until at least mid-October, which they submitted is considerably longer than the 25-30 days per well expectation that was provided in the plan.
- **Overwhelming smell of diesel** – They submitted that a complaint was filed with EDGE on August 15 (Ref. 417869). They submitted that, often, because of the noise and the smell, they must go indoors and close all the windows. They submitted that their animals are much more sensitive to the noise and vibrations and that it is evident in their behaviours that they are uncomfortable as well, but they cannot go indoors. The Requesters submitted that TAQAs well site activities have been detrimental to the quality and enjoyment of their life in the country.
- **Emergency Response Plans/Safety** – The Requesters submitted that they had an opportunity for a phone meeting with the HSSE Coordinator on July 12, and they learned that they are again outside of the emergency/notification zone. When they asked what type of plan would be in place if the well site was compromised (as their property is across the road and they have animals that graze there) they were told that a rover would be sent to talk to people in the area. The Requesters submitted that in their opinion the plan is substandard and phone notification would be more expedient. They submitted that there will always be possibilities for well site situations and their concerns in this regard will not end after the construction phase is complete.
- **Concerns regarding the approval process, follow ups and impacts to neighboring residences** – the requesters submitted that they have watched the new fence being installed around the landowner's property and know that he is collecting significant compensation and other benefits, yet they are the ones who must live with the impacts of TAQAs activities, and their residence is much closer to the well site than his is. They submitted that there should have been a much better process in place to connect with the community prior to any plans for construction, and that they find it offensive for TAQA to invade the community and tell the

people who live in close proximity to the well sites that they are outside the notification zone and their concerns are not relevant.

### ***TAQA***

TAQA responded and acknowledged the Requesters' concerns regarding the inaccurate survey plan. TAQA submitted that the radius plan that was attached to the survey plan depicts the surface pad location and residences within 0.5 km and 1.5km had shown the Haldane/Goettel residence in the wrong spot. TAQA notes that its survey crew had mistaken the Requesters' garage and another structure as a residence. TAQA further submitted that it had the radius portion of the survey plan updated and provided the updated copy to the Requesters on July 19<sup>th</sup>. TAQA also submitted that it has explained to the Requesters that they are not the closest residence as their residence is approx. 335-340 m away and the closest residence is 330m, and even though the Requesters are outside of the notification radius of 200m, TAQA was going beyond the minimum Directive 056 requirements to include them in the notification process.

TAQA submitted that it acquired the 1-30 pad for the 3-18 and 1-18 wells in October 2022. TAQA submitted that it started engaging with the Requesters in May 2023, prior to submitting its applications for the well licences. TAQA submitted that the concerns relayed in the initial meetings with the Requesters were in relation to the noise and the water well, and that the Requesters asked for a water well test, which TAQA agreed to, and they had also discussed placing a pressure transducer in the water well to measure any pressure fluctuations during TAQA's drilling activities.

With respect to the noise concerns, TAQA submitted that it had advised the Requesters that it had no plans to have permanent noise emanating from the 1-30 pad (e.g., compression) and that it also installed two thirty-two-foot engineered sound barriers on the south, east and west sides of the pad site to mitigate noise. TAQA also submitted that it has requested access to the Requesters' lands to complete sound level measurements on numerous occasions, all of which have been declined. TAQA submitted that it has continued to engage with the Requesters since it received the well licences.

With respect to the concerns raised in relation to the water well aquifer, TAQA acknowledges these concerns and submitted that it has explained the steps it takes for ground water protection during the drilling process, and it also set up a meeting with the Requesters and a hydrogeologist which occurred on July 10, 2023. During this meeting TAQA submitted that it explained how water wells are drilled vs. oil and gas wells and explained that there is no history of fracking disrupting a water well, but if something does occur TAQA has insurance in place. TAQA also submitted that the water claims of the neighbour to

the west are opinion based, not backed up by facts, and that testing is ongoing to determine the root cause of their well issues.

## **Reasons for Decision**

There are three components to section 38(1) of REDA:

- (a) The decision must be an appealable decision;
- (b) The request must be filed in accordance with the *Alberta Energy Regulator Rules of Practice (Rules)*; and
- (c) The requester must be an eligible person.

Notably, neither the Requestors or TAQA have addressed the test for eligibility to appeal the Decision in their submissions.

## **Is the Decision an Appealable Decision**

The applicable REDA provision outlining what an “appealable decision” is found under s. 36(a)(iv), which defines an “appealable decision” as a decision of the Regulator that was made under an energy resource enactment if that decision was made without a hearing. The decision to issue Licence Nos. 0509564 and 0509565 (**Licences**) was made under the *Oil and Gas Conservation Act*, which is an energy resource enactment, and made without a hearing. Therefore, the decision to issue the Licences is an appealable decision.

## **Is the Request filed in Accordance with the Rules?**

When filed, the Requestors’ regulatory appeal request did not meet all relevant requirements of section 30 of the Rules: specifically, it was missing information and was filed outside of the 30-day timeline for requesting a regulatory. However, the Requestors were provided the opportunity to rectify this error and they provided the missing information. The AER also exercised its discretion to allow the request to be filed outside of the 30-day time period. Accordingly, for the purpose of this decision only, the Request shall be deemed to have been filed in accordance with the Rules.

## **Are the Requestors an “Eligible Person”?**

For the purposes of requests for regulatory appeal of decisions made under energy resource enactments without a hearing, an “eligible person” is defined in section 36(b)(ii) REDA as a person who is directly and adversely affected by the decision.

Whether the Requestors are a person who is directly and adversely affected by the decision to issue TAQA's Licences is the principal question to be decided in this regulatory appeal request.

In order to establish that they are an eligible person, the Requestors must show that they are "directly and adversely affected" by the AER's issuance of the Licences.

In cases such as this, where the development or activity in question has not yet occurred and therefore the actual impacts are not yet known, the AER's approach is to take the position that the phrases "is directly and adversely affected" or "is directly affected" do not require certain proof that the person will be affected. What is required is reliable information in the regulatory appeal request that demonstrates a reasonable potential or probability that the person asserting the impact will be affected.

In *Court v Alberta (Environmental Appeals Board)*<sup>1</sup>, the Court of Queen's Bench examined the interpretation of the phrase "is directly affected" as it is used in s. 95 of the *Environmental Enhancement and Protection Act (EPEA)*. Subsection 95(5)(a)(ii) of EPEA allows the EAB to dismiss a notice of appeal submitted under certain provisions of EPEA if the EAB is of the opinion that the person submitting the notice of appeal is not directly affected by the decision.

The reviewing Justice found that, in order to establish eligibility for appeal, "the appellant must prove, on a balance of probabilities, that he or she is personally directly affected by the approval being appealed". Further, the Justice found that "the appellant need not prove, by a preponderance of evidence, that he or she will in fact be harmed or impaired by the [decision]. The appellant need only prove a 'potential' or 'reasonable probability' for harm."

The AER is of the view that the Requestors have not demonstrated that they are directly and adversely affected by the AER's decision to issue the Licences.

Their concerns raised are general in nature, and they do not provide sufficient information detailing how they will be directly and adversely impacted. As a result, the Requestors are not an "eligible person" as required by section 36(b)(ii) of REDA and have failed to meet this requirement to request a regulatory appeal. Accordingly, the AER has decided to dismiss the Requestors request for a regulatory appeal.

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<sup>1</sup> *Court v. Alberta Environmental Appeal Board*, 2003 ABQB 456([CanLii](#))

### **Merits of the Request**

While the AER has concluded that the Requestors have not met the test to demonstrate that they are “an eligible person”, in the event that the AER is wrong in this regard, it has also considered whether the Requestor’s request should be dismissed pursuant to section 39(4) of REDA:

39(4)

(a) If the Regulator considers the request to be frivolous, vexatious, or without merit,

...

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

The Requestors have provided no specific evidence to support their concerns and as such appear to be without merit.

TAQA has been open to the addressing the Requestors concerns in the past and continues to be open to resolving the concerns of the Requestors outside of a formal AER process. The AER encourages stakeholders and industry to establish and maintain neighbourly relationships and is hopeful that any meaningful concerns which may arise in relation to the Licences can be addressed through continued communication between the parties.

### **Conclusion**

The AER finds that the Requestors are not an “eligible person” and that their appeal is without merit. Consequently, the request for regulatory appeal is dismissed.

Yours truly,

*<Original signed by>*

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Anita Lewis  
Senior Advisor, Liability Strategy



*<Original signed by>*

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Paul Ferensowicz  
Principal, Regulatory Advisor

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Michael Bevan  
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