

By email only

April 17, 2024

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E3 Lithium Ltd.

Enhance Energy Inc.

**Attention: Michelle MacDonald
Leigh Clarke**

Attention: Laura Mislán

Dear Parties:

**RE: Request for Regulatory Appeal by E3 Lithium Ltd.
Enhance Energy Inc.
Application No.: 32729022
Well Licence No.: 0512681
Location: 04-36-39-25W4
Regulatory Appeal No. 1950108**

The Alberta Energy Regulator (AER) has considered the request of E3 Lithium Ltd. (E3 Lithium) under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve Licence No. 0512681 (Licence). The AER has reviewed E3 Lithium's submissions and the submissions made by Enhance Energy Inc. (Enhance).

For the reasons that follow, the AER has determined that E3 Lithium is 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]

Background

On January 25, 2024, Enhance applied to the AER under the *Oil and Gas Conservation Act (OGCA)* to construct and operate a well with a maximum hydrogen sulphide (H₂S) concentration of 132 mol/kmol at the surface location of 036-039-25W4M. Enhance's application was registered in OneStop as Application No. 32729022 (Application), was approved the same day it was received, and Well Licence No. 0512681 (Well Licence) was issued to Enhance (Decision).

On February 22, 2024, the AER received a request for regulatory appeal of the Decision from E3 Lithium. E3 Lithium also requested that the Well Licence be stayed pending the outcome of the regulatory appeal.

On February 26, 2024, the AER received correspondence from Enhance confirming that the well was spudded on February 9, 2024, and had reached total depth on February 20, 2024. On February 28, 2024, Enhance advised that it would not voluntarily stay any further construction work or permitted activities pursuant to the Well Licence.

Submissions

E3 Lithium's Request

E3 Lithium submits that it is directly and adversely affected by the issuance of the Well Licence as any injection of carbon dioxide (CO₂) into the Leduc Formation in the Bashaw District, for which E3 Lithium holds a rock-hosted mineral licence, could directly and adversely affect the technical and economic feasibility of lithium development from the formation. E3 Lithium also requests a stay of the decision to issue the Well Licence to allow for the potential impacts to E3 Lithium's interests to be addressed before any CO₂ injection occurs.

E3 Lithium further submits that, pursuant to section 3.2.1(4) of *Directive 056: Energy Development Applications and Schedules*, Enhance was required to include in its participant involvement program persons it was aware of who have concerns about the proposed well. E3 Lithium states that it had advised Enhance about its concerns on multiple occasions and Enhance had assured E3 Lithium that its concerns would be resolved through consultations prior to Enhance filing applications with the AER. Nonetheless, E3 Lithium states that it was not aware of Enhance's application for the Well Licence until it was submitted and approved on January 25, 2024.

Enhance's Response

In response to E3 Lithium's request for regulatory appeal, Enhance submits that it is conducting evaluations and testing to the Woodbend Group formations to determine suitability for the sequestration of captured carbon dioxide and the operations conducted under the Well Licences have not impacted the brine-hosted minerals in the Leduc reservoir. It argues that E3's request for regulatory appeal is related to concerns that are subsurface in nature, and there is not yet enough information (i.e. such as the information that would be contained in a *Directive 65: Resources Applications for Oil and Gas Reservoir* application for a CO₂ sequestration scheme approval) to evaluate and address these subsurface issues. Enhance submits that it has not yet applied for a CO₂ Scheme Approval.

Enhance also submits that s. 2.020(4)(a) of the *Oil and Gas Conservation Rules* requires that the licensee “notify any landowners or residents as necessary of the applicant’s plans to drill a well, in accordance with D056”. Enhance states that it followed the requirements of *Directive 056* and notified landowners and occupants regarding the well-site location, but there is no requirement to notify mineral lessees under the directive.

Enhance states that mineral lessees must be notified under *Directive 065* before an application for approval of a CO₂ sequestration scheme is filed. Enhance submits that it will adhere to all consultation and notification requirements if it does apply for a *Directive 065* approval for a CO₂ sequestration scheme.

E3 Lithium’s Reply

E3 submits that a stay is required as the available evidence shows that CO₂ causes a direct, adverse, and irreparable impact on brine mineral resources and formations containing those resources, and Enhance has not provided any evidence to the contrary.

E3 further submits that it is of the understanding that the Well Licence allows Enhance to conduct a CO₂ injectivity test, should it choose to do so, and that Enhance has not denied that it intends to inject CO₂ into the Leduc Formation. E3 states that the introduction of CO₂ into the formation will impact E3’s planned well-network, pipeline, inlet separation, gas compression, and disposal infrastructure, and compromise E3’s ability to economically recover lithium.

With respect to Enhance’s compliance with the requirements of *Directive 056*, E3 submits that those requirements are designed to include parties who may be directly and adversely affected by the nature and extent of the proposed energy development application, including mineral title holders. E3 further submits that section 3.2.1(1) requires the applicant to develop and complete its participant involvement program prior to filing an application and to include all parties with a direct interest, including “other affected industry players,” and any parties with “known concerns.”

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.

a) *Is the Decision an Appealable Decision?*

Section 36(a)(iv) of *REDA* 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. Here, the Decision was made under the *OGCA*, which is an energy resource enactment, without a hearing. The Decision is, therefore, an appealable decision.

b) *Was the Decision Filed in Accordance with the Rules?*

When filed, E3 Lithium’s request for regulatory appeal did not meet all of the requirements of section 30 of the *Rules*, as it had not been served on the registered owner of the land on which the proposed well authorized by the Well Licence was or would be located, nor had it been served on Enhance, as required by subsections 30(5)(a) and (b), respectively. When prompted, however, E3 Lithium served the request for regulatory appeal as required, within the 30 days provided by section 30(3)(m), so the request was ultimately filed in accordance with the *Rules*.

c) *Is E3 Lithium an Eligible Person?*

Section 36(b)(ii) of *REDA* defines an “eligible person” as a person who is directly and adversely affected by the decision. Whether E3 Lithium is a person who is or may be directly and adversely affected by the Decision is the principal question to be decided on this request for regulatory appeal.

E3 Lithium submits that it is an eligible person because it holds the rights to the lithium in the Leduc Formation in the area in which the well authorized by the Well Licence is located. The purpose of the well is to evaluate the suitability of the Woodbend Group, which includes the Leduc Formation, for the sequestration of captured CO₂.

E3 Lithium identifies a number of direct and adverse impacts to its lithium resource that it submits would occur from injection of CO₂ into the Leduc Formation; however, the Well Licence alone does not permit Enhance to inject any CO₂. Before Enhance can proceed with injecting CO₂, including for an injectivity test, Enhance must apply under *Directive 065* for the appropriate authorization. Should Enhance decide to submit a *Directive 065* application in the future, notice of that application will be posted on the AER’s website and E3 Lithium will have the opportunity to provide a statement of concern on that application.

As E3 Lithium's request focuses on the impacts to E3 Lithium's resource from injection of CO₂ into the Leduc Formation and the Decision does not allow for such injection, E3 Lithium has not demonstrated that it is directly and adversely affected by the Decision.

Participant Involvement

E3 Lithium's concerns about Enhance not meeting the participant involvement requirements under *Directive 056* were referred to the AER's Audit Team to be addressed in accordance with the AER's *Integrated Compliance Assurance Framework*. The AER expects Enhance to comply with all applicable participant involvement requirements going forward.

Conclusion

The AER has determined that E3 Lithium is not an eligible person as it has not demonstrated that it is directly and adversely affected by the Decision. Accordingly, the request for regulatory appeal is dismissed and there is no need to consider the stay request.

Sincerely,

<Original signed by>

Alexandra Robertson
Principal Engineer

<Original signed by>

Scott Fallows
Senior Advisor, Business Intelligence &
Performance Reporting

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David Helmer
Senior Advisor, Regulatory Efficiency