

Via Email

September 2, 2016

DLA Piper (Canada) LLP

Bennett Jones LLP

Attention: Peter S. Jull, Q.C.**Attention: Blake Williams**Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca

Dear Mr. Jull and Mr. Williams,

**Re: Proceeding ID. 341
Shell Canada Limited (Shell) Rocky 7 Pipeline Project
Application Nos. 1823846 and PLA 150215**

On August 29, 2016, the Alberta Energy Regulator (AER) received a motion from O’Chiese First Nation (OCFN) objecting to the hearing panel participating in a site visit to the proposed project area without the parties in attendance. The AER received Shell’s response to OCFN’s motion on August 31, 2016 and OCFN’s reply to Shell’s response on September 1, 2016.

The panel has considered these submissions and asked that I communicate its decision to the parties. As outlined below, the panel has decided that it will proceed with a site visit to the proposed Rocky 7 pipeline project area and that the parties will be given the opportunity to observe that visit.

Background

On August 12, 2016, counsel for the parties were advised that a site visit was being contemplated by the panel. On August 18, 2016, counsel for the AER and the parties had a telephone conversation in relation to procedural matters, including the process for the panel’s site visit.

On August 26, 2016, the AER sent a letter to counsel for the parties to confirm the procedural matters discussed during the August 18, 2016 conversation. In relation to the site visit, the letter stated:

The panel will conduct a site visit in preparation for the hearing. During this site visit, the panel will tour the project area primarily by vehicle and utilizing the existing roads adjacent to the proposed pipeline right-of-way. As provided for in section 40 of the *Alberta Energy Regulator Rules of Practice*, the panel will conduct the site visit without the parties in attendance. Counsel were advised of this process during the discussion on August 18, 2016.

In its submissions, OCFN requests that the panel only conduct a site visit with input from, and attendance of, the parties. In its September 1, 2016 submission, OCFN stated its objection “to the Panel participating in a site visit to the proposed Rocky 7 Pipeline areas in the absence of the parties” and made a request “that if the site visit proceeds that it is done in the presence of the parties.”

It its submission of August 31, 2016, Shell submitted that the panel is entitled to conduct the site visit without the parties, but that allowing counsel from both parties to attend on an observational basis would appropriately address OCFN's concerns regarding procedural fairness and natural justice.

The parties also debated the question of the purpose of the site visit. OCFN asserted that the purpose of the site visit is to gather evidence and Shell asserted that the purpose is to better understand the evidence being submitted by the parties.

Decision

Section 61 of the *Responsible Energy Development Act* provides the AER with authority to make rules governing the conduct of a hearing on an application and generally in respect of the AER's practices and procedures. Section 40 of the *Alberta Energy Regulator Rules of Practice* (Rules) states the following:

On-site visits

40 The Regulator may, with or without the parties, conduct an on-site visit of lands, water bodies or facilities to better determine any matter relevant to a proceeding before it.

Section 40 of the Rules permits an AER hearing panel to conduct a site visit with or without the parties in attendance to better determine any matter relevant to a proceeding before it. It is a common and well established practice of the AER and its predecessors to conduct site visits without the parties in attendance.

However, in exercising its authority to conduct a site visit under section 40 of the Rules, the panel recognizes that it must ensure that the site visit and the conditions in which it is taken are procedurally fair to the parties. The panel is satisfied that this will be achieved under the conditions outlined below.

The purpose of this site visit is for the panel to observe and gain a better understanding of the landscape surrounding the proposed project. This understanding of the context and setting of Shell's Applications will enable the panel to better understand and apply the evidence presented by the parties. This context will also allow counsel for the parties to more effectively present evidence. As a result, the panel will be in a position to better determine matters relevant to this hearing.

The panel will exercise its authority under section 40 of the Rules to conduct a site visit under the conditions outlined below:

- The site visit will occur on Friday, September 9, 2016.
- The panel will commence the site visit at 11:00 am, departing from Tim Hortons (5207 – 48 Street) in Rocky Mountain House.
- The parties are invited to follow the panel's vehicle to observe the site visit. **If the parties wish to do so, they must arrange their own transportation and be present on the date and at the time and location set out above.** The AER will not be providing the parties with transportation for the site visit and the parties will not be in the same vehicle as the panel.

The panel asks that the parties confirm whether they will be observing the site visit by **no later than 4:00 pm on Tuesday, September 6, 2016**.

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- There will be no interaction between the panel and the parties before, during or after the site visit.
- A map and description of the site visit route has been attached to this letter. If the parties have any comments on the site visit route, please provide them by **no later than 4:00 pm on Tuesday, September 6, 2016**. The panel will take into consideration any comments received and advise if there will be any modifications to the route thereafter.
- The site visit will be conducted by vehicle along existing roads. The panel will not exit their vehicle or leave the existing roads.
- The site visit will be limited to visual observation only. Only AER counsel and a hearing services driver will travel in the vehicle with the panel.
- At the hearing, the panel will briefly describe the site visit on the record (e.g. date, time, who attended, the area viewed) and a map of the route will be marked as an exhibit.
- The parties may add to the hearing record and present any information they wish in relation to the site visit.

Regardless of how the purpose of the site visit is characterized (be it to assist in understanding the evidence or gathering evidence), in the circumstances, the panel remains satisfied that the site visit and the conditions in which it will be taken satisfy the principles of natural justice and procedural fairness. The parties are provided with a map and description of the panel's site visit route and an opportunity to observe the site visit so that they can see what the panel sees. The site visit will involve visual observation only. At the hearing the parties will be given an opportunity to add to the record of the hearing and present any information they wish in relation to the site visit. The parties will know what is before the panel and have an opportunity to make relevant submissions. Thus, the parties will be granted procedural fairness.

Sincerely,

<Original signed by>

Alison Koper

Legal Counsel

cc: Sharilyn Nagina, DLA Piper (Canada) LLP
Tim Myers, Bennett Jones LLP
Meighan LaCasse, AER
Greg McLean, AER