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December 12, 2016

Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, AB T2P 0R4

via email to RegulatoryAppeal@aer.ca

Attention: Helen Bowker

Dear Ms. Bowker:

**Re: Request for Regulatory Appeal by the Braun Land Owners
Penn West Petroleum Ltd. (“Penn West”)
Application No. 1832419
Approval No. 12447 dated August 26, 2016 (the “Approval”)
Regulatory Appeal No. 1869031**

The following submission is in response to the Alberta Energy Regulator (“AER”)’s letter of November 18, 2016 requesting that Penn West respond to Mr. Mark Dorin’s submission on behalf of the Braun Land Owners (as such party has been defined in your letter to be Dale Murray Braun, Coleen Braun, Daneve Marie Lucas, Lillian Evanoff, Guy Arthur Lewis and Elizabeth Irene Storochuk) in respect of a request to the Alberta Energy Regulator (“AER”) for regulatory appeal of the Approval.

Background

On August 26, 2016, the AER issued a Notice of Decision in respect of Penn West’s Application No. 1832419 (the “**Application**”), after having considered Statements of Concern, including Statement of Concern No. 30235 (“**SOC 30235**”) filed by Mr. Dorin on behalf of the Braun Land Owners and others, and Penn West’s responses thereto. Penn West understands that Mr. Dorin made submissions in respect of this request for regulatory appeal on September 24, October 19, October 31 and November 9, 2016 and has purposefully restricted this response to those submissions insofar as same are relevant to the decision to issue the Approval and the request for regulatory appeal only. On October 12, 2016, the AER requested Mr. Dorin to provide further clarification in respect of the request for regulatory appeal, and on November 18, 2016, the invitation to Penn West to respond to Mr. Dorin’s submissions of September 24 and October 31, 2016. Except as explained below, Penn West does not believe that the issues raised in Mr. Dorin’s request for regulatory appeal materially differ from the issues he raised in SOC 30235.

Request to Dismiss the Request for Regulatory Appeal pursuant to REDA

For the reasons set out below, Penn West as current licence holder for the 00/03-04-052-25W4/0 well (the “Well”) which is the subject of the Approval for Penn West’s enhanced oil and gas recovery by injection, is opposed to the regulatory appeal request and submits that the AER ought to exercise its discretion to dismiss same, as a result of the express operation of the provisions of the *Responsible Energy Development Act* (“*REDA*”).

1. The Braun Land Owners are not “eligible person(s)” for the purpose of requesting a regulatory appeal.

Penn West submits that the Braun Land Owners are not eligible to file a regulatory appeal request in respect of the Approval. Section 38 of the *REDA* states:

38. An eligible person may request a regulatory appeal of an appealable decision by filing a request for a regulatory appeal with the Regulator in accordance with the rules [emphasis added].

Paragraph 36(b) of the *REDA* defines an "eligible person" as follows:

36(b) "eligible person" means

(i) a person referred to in clause (a)(i), (ii) or (iii),

(ii) a person who is directly and adversely affected by a decision referred to in clause (a)(iv) [*subparagraph 36(a)(iv) refers to “a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing”*],
or

(iii) any other person or class of persons described in the regulations.

In order to be an "eligible person" for filing the regulatory appeal request, the Braun Land Owners are required to demonstrate that they are “directly and adversely affected” by an appealable decision. Penn West submits that the Braun Land Owners have failed to present any substantiated claim as to how they, or any of them, are directly and adversely affected by the activities authorized by the Approval and the request for regulatory appeal only reiterates those issues raised in Statement of Concern 30235, which the AER has already determined does not demonstrate that the Braun Land Owners are directly and adversely affected. Therefore, Penn West submits that the Braun Land Owners are not eligible to file a regulatory appeal request in respect of the Approval as they are not “eligible persons” as defined in section 36(b)(ii) of the *REDA* as they are not directly and adversely affected by the decision of the AER without hearing in respect of the Approval, and are not an “eligible person” within the meaning of section 38 of the *REDA*.

In an AER decision respecting participatory rights for the Canadian Natural Resources Limited (“CNRL”) Kirby Application No. 1712215 dated March 27, 2014 (AER Letter Decision in respect of the Oil Sand Environmental Coalition (“OSEC")), the AER dismissed OSEC's requested to participate in a hearing of CNRL's Kirby Application pursuant to section 9(3) of the *Rules* on the

basis that OSEC had not demonstrated that it may be directly and adversely affected by a decision of the AER regarding the application. The AER cited with approval the following passage from the Environmental Appeals Board ("**EAB**") decision in *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission* (03 April 2013), Appeal No. 12-033-ID-1 (A.E.A.B.):

[28] What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected. The more ways in which the appellants is affected, the greater the likelihood of finding that person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their proximity), the more likely the person is directly affected.

Penn West submits that the same test applies to the AER's assessment of the Braun Land Owners' regulatory appeal request, given that they are similarly required to specifically establish how they are directly and adversely affected by the AER's decision to grant the Approval. Having regard to the foregoing considerations, it is respectfully submitted that it has not been established that the Braun Land Owners are directly and adversely affected by the Approval.

2. The request for regulatory appeal raises no issues that the AER has not already adequately considered.

Section 31(3) of the *Alberta Energy Regulator Rules of Practice* (the "**Rules**") states that a "regulatory appeal shall not include any matters already adequately dealt with through another hearing, regulatory appeal or review under any enactment." Penn West respectfully submits that in reviewing the submissions made by Mr. Dorin in respect of Statement of Concern No. 30235 and subsequently issuing the Approval, the AER has already adequately dealt with all of this issues raised by Mr. Dorin in his request for regulatory appeal. In its letter to Mr. Dorin dated August 26, 2016, which accompanied Approval No. 12447, the AER lists the following factors it considered in reviewing the issues raised by Mr. Dorin:

- "You, and the individuals you state you represent, do not own mineral rights in the area of application.
- The application would convert a disposal scheme to an enhanced recovery scheme. This would result in the gas currently being flared to be re-injected into the formation to facilitate oil production.
- The application is a resource application involving subsurface matters and examining whether the reservoir is appropriate for enhanced recovery methods. The application would not affect any surface rights or authorize activities that could impact the surface.

- Based on the information in the application, there are no additional surface facilities needed for the implementation of the enhanced recovery scheme and as such the application does not affect surface rights.
- Your concerns about surface lease agreements are outside of the AER's jurisdiction. These concerns are under the jurisdiction of the Surface Rights Board.
- You raise operational concerns, such as odours, which are outside the scope of this application and should be directed to the AER Edmonton Field Centre. Gas currently being flared is to be re-injected into the formation to facilitate oil production.
- With respect to your concerns about emergency planning, Penn West has updated its emergency response plan and the AER is satisfied that Penn West has met all requirements under *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry*.
- Concerns regarding Regional and Government Policies which Dorin Land had stated in its submission are beyond the scope of the application and the authority to make such policies is held by the Government of Alberta.
- The AER is satisfied that Penn West has met all *Directive 065* consultation and notification requirements for this application.”

The only additional concerns that we understand to be raised by Mr. Dorin in the request for regulatory appeal that are not specifically mentioned in the above list of factors that the AER duly considered in deciding to issue the Approval are as follows:

- Among other interests, Penn West assigned all of its surface interests relating to the Braun Land Owners to Cedar Creek Energy Ltd. (“**Cedar Creek**”) effective August 30, 2016, and Cedar Creek is presently contract operating Penn West's licenced operations relating to such lands. Such transfer is irrelevant to the request for regulatory appeal. Notwithstanding same, Penn West is of the view that Cedar Creek is a viable operator and meets the required post-transfer liability threshold and, therefore, is eligible to receive the licences proposed for transfer by Penn West. Upon the AER agreeing to transfer the licence for the Well, Penn West will assign the Approval to Cedar Creek. The same legal and regulatory requirements that ensure safe and responsible operations and fulfilment of reclamation obligations are applicable to both Penn West and Cedar Creek, such that if the licence transfer applications are granted by the AER, the Braun Land Owner's interests will be protected when the licences are held by Cedar Creek, just as they were when the licences were held by Penn West.
- The “Demand Notice” letter dated October 31, 2016 sent by Mr. Dorin to Penn West and Cedar Creek and referenced in Mr. Dorin's October 31, 2016 submission to the AER is not relevant to the present request for regulatory appeal.

- Reference to the AER's mandate under the *Environmental Protection and Enhancement Act* is not relevant to the present request for regulatory appeal, nor to the Application.

3. The regulatory appeal request is incomplete.

In its letter to Mr. Dorin dated October 12, 2016 responding to the regulatory appeal request, the AER required “a concise and clear explanation as to why the person who is seeking the request should be considered an “eligible person” under section 36(b) (ii) of *REDA*” and to “Specifically, describe the Applicant’s interests and concerns in relation to Approval No. 12337, keeping in mind that the approval is a subsurface authorization.” It is submitted that Mr. Dorin’s submissions fail to be concise or clear and fail to substantiate why the Braun Land Owners should be considered eligible persons under the *REDA*, and specifically how their interests and concerns are affected by the Approval as a subsurface authorization. As such, Penn West submits that Mr. Dorin has not provided the information required within the time period specified in order to make the regulatory appeal request complete. Subsection 30(7) of the *Rules* states:

(7) If the person who files a request for regulatory appeal does not supply the information in order to make the request for regulatory appeal complete within the time period specified, the Regulator may dismiss the request.

4. The regulatory appeal request is frivolous, vexatious or without merit.

Penn West believes that the request for regulatory appeal is frivolous, vexatious or without merit and should be dismissed by the AER in accordance with Section 39(4)(a) of *REDA* for the following reasons:

- a. The Braun Land Owners are not mineral owners and are non-resident owners of surface lands adjacent to but not including the lands upon which the Well is situated, and have failed to identify any surface or mineral impacts resulting from the implementation of the enhanced recovery scheme. The Braun Land Owners have instead raised concerns regarding the effect that the enhanced injection scheme will have on their ability to develop and sell their lands for increased profit, as production from this reservoir may be prolonged. Further, Penn West notes that the subject Braun Land Owners lands were acquired with oil and gas facilities present.
- b. The Braun Land Owners continue to raise concerns about emissions in the vicinity of the 06-04-052-25 W4 Battery, however such concerns would be minimized by the implementation of the very proposed enhanced recovery scheme which the Braun Land Owners are opposing, as the opportunity for unplanned emissions is significantly reduced due to the direct injection of gas into the formation to facilitate oil production.
- c. The Braun Land Owners continue to raise concerns about flaring at the 06-04-052-25 W4 Battery being performed by Penn West in accordance with the criteria outlined in Directive 60, however such concerns would be fully mitigated by the implementation of the very proposed enhanced recovery scheme which the Braun

Land Owners are opposing, as any gas which may have been previously flared would be reinjected into the formation to facilitate oil production.

Conclusion

In view of the operation of the relevant provisions of the *REDA*, as described above, Penn West respectfully request that the AER dismiss the request for regulatory appeal of the Approval by the Braun Land Owners based on the grounds cited above.

Penn West has purposefully restricted our submission to respond to the submissions made by Mr. Dorin to the AER on September 23, 2016 and October 31, 2016 that are relevant to the decision to issue the Approval and the request for regulatory appeal only. To the extent that we have neglected to address any issue that the AER had expected our response to include, we apologize as such omission is wholly inadvertent due to the voluminous nature of Mr. Dorin's correspondence and we would be pleased to respond further as necessary.

Request for Extension

As indicated in Penn West's letter of November 28, 2016, Penn West, in good faith, has not taken any action on the Approval pending the outcome of the regulatory appeal process. As such, Penn West respectfully repeats its request for an extension of the Approval for a period of ninety (90) days, commencing upon the conclusion of the request for regulatory appeal process, if resolved in favour of Penn West.

As stated in our letters of May 12, May 18 and July 22, 2016 in respect of the Application, and Penn West will continue to work in good faith to respond to any issues raised by the Braun Land Owners that have not been previously addressed, in relation to the proposed injection scheme or otherwise, and of course in response to any direction from the AER Field Centre, AER Regulatory Appeals or other AER department.

Please do not hesitate to contact the undersigned at Shawn.Milligan@pennwest.com or (403)920-4331 with any questions or concerns.

Best regards,

PENN WEST PETROLEUM LTD.



Shawn Milligan
Manager, Regulatory