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May 8, 2014

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Our Matter Number: 1118789

Sent By Electronic Mail

National Energy Board
444 Seventh Avenue S.W.
Calgary, AB T2P 0X8

Attention: Ms. Sheri Young, Secretary of the Board

Dear Madam:

Re: Chevron Canada Limited ("Chevron") Exploration License EL 481
Staged Application Process for Drilling Authorizations

We represent Chevron regarding its drilling plans for exploration license EL 481 ("EL 481"). EL 481 is located in the Beaufort Sea approximately 250 kilometres northwest of Tuktoyaktuk in the Northwest Territories. For the reasons that follow, we request confirmation from the National Energy Board ("NEB" or the "Board") that a staged application process for drilling authorizations for EL 481, as described in this letter, is acceptable. That process would provide for an initial determination of equivalency to the NEB's same season relief well ("SSRW") requirement in advance of applications for drilling authorizations through the federal and Inuvialuit processes. We submit that such a staged application process would allow for informed and efficient decision-making, encourage responsible development and be in the overall public interest.

Legal Framework for Drilling Authorizations in the Arctic Offshore

Drilling in the Arctic offshore in Canada is a highly regulated activity. In order to drill an exploration well, a company requires a variety of regulatory approvals, including authorizations from the NEB under sections 5 and 10 of the *Canada Oil and Gas Operations Act* ("COGOA") as well as under the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012"). In the Beaufort Sea, environmental assessment approvals are also required from the Inuvialuit Environmental Impact Screening Committee and, potentially, the Inuvialuit Environmental Impact Review Board under the Inuvialuit Final Agreement, which includes consideration of a "worst case scenario" event. The filing requirements for the above regulatory approvals are extensive and involve detailed information on topics such as:

- The proposed drilling operation, including drilling schedule, casing equipment, redundancy and reliability of the well secure systems (including blowout

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preventers), and an outline of the well completion, suspension and abandonment programs;

- Declarations and certificates of fitness, confirming that the equipment and associated operating procedures to be used for the proposed work are fit and appropriate for their intended purposes;

- Safety and emergency response, including contingency plans to respond in the event of a worst case scenario;

- Financial responsibility requirements demonstrating that the applicant has sufficient financial resources to pay for the costs to safely carry out the drilling operation, as well as the costs associated with controlling, cleaning up and compensating in the event of a worst case scenario;

- Environmental effects of the drilling operation, including effects associated with a worst case scenario;

- Socio-economic effects and benefits associated with the drilling operation, including employment and contracting opportunities for local communities; and

- Information about the applicant's consultation with stakeholders and community members.

These detailed and comprehensive regulatory processes ensure that all aspects of a drilling program are carefully considered. However, for those processes to be engaged, Chevron must first determine if the well secure system that it plans to incorporate into the drilling program satisfies the NEB's SSRW policy.

Same Season Relief Well Policy

The NEB currently requires offshore drilling project proponents to demonstrate the capability to drill a relief well within the same drilling season as an out-of-control well blowout event (i.e., the SSRW requirement).[1] This requirement is based on a federal policy that originated in 1976 and that was revisited by the NEB in 2011 in the Arctic Offshore Drilling Review ("AODR") process. During the AODR process several companies, including Chevron, made submissions to the NEB on why a SSRW may not be operationally feasible or desirable for certain offshore locations. To reflect these

[1] National Energy Board, "Filing Requirements for Offshore Drilling In the Canadian Arctic", online: <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/rctcffshrdrllngrvw/rctcrvwflngrqrmnt/rctcrvwflngrqmnt-eng.html> at s 4.17(c) ["*Arctic Filing Requirements*"].

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concerns, the NEB's *Review of Offshore Drilling in the Canadian Arctic* (the "Report"),[2] which was issued at the conclusion of the AODR process, concluded at pg. 40 that:

> [t]he *intended outcome* of the Same Season Relief Well Policy is to kill an out-of-control well in the same season in order to minimize harmful impacts on the environment. We will continue to require that any company applying for an offshore drilling authorization provides us with specific details as to how they will meet this policy. An applicant wishing to depart from our policy would have to demonstrate how they would meet or exceed the *intended outcome* of our policy. It would be up to us to determine, on a case-by-case basis, which tools are appropriate for meeting or exceeding the intended outcome of the Same Season Relief Well Policy. [Emphasis added.][3]

Therefore, the Report clearly contemplates that the Board may grant case-by-case exceptions to the SSRW requirement if the applicant demonstrates that it can meet or exceed the *intended outcome* of the SSRW policy through other means. Such a determination is referred to as an "equivalency determination".

Chevron's Drilling Plans and the Need for an Advance Ruling on Equivalency

The facts set out below are contained in the affidavit of Bill Scott dated May 7, 2014, attached as "**Exhibit A**" to this letter.

Chevron is currently advancing plans to drill an exploration well, subject to acceptable economic prospectivity, on EL 481 in the 2020 timeframe.[4] As discussed in the AODR process, Chevron has determined that, in the unlikely event of an uncontrolled blowout, the lengthy duration associated with a SSRW for EL 481 would result in an unacceptably high release of hydrocarbons into the environment.[5] In addition, a SSRW for EL 481 may, in certain combinations of ice conditions and well complexity, prove to be very challenging and, in some cases, impractical.[6] As a result, an integral part of the drilling system Chevron proposes to use is an alternative well secure system to that offered by a relief well that Chevron submits will achieve the intended outcome of the SSRW policy.[7]

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[2] Available online: <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/rctcffshrdrllngrvw/fnlrprt2011/fnlrprt2011-eng.pdf> [the "*Report*"].

[3] *Report*, at pg. 40

[4] Affidavit of Bill Scott dated May 7, 2014, attached as "Exhibit A" to this letter, at para. 5 ["*Scott Affidavit*"].

[5] *Scott Affidavit*, at para. 6.

[6] *Scott Affidavit*, at para. 6.

[7] *Scott Affidavit*, at para. 6.

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Given the NEB's SSRW policy, this must be confirmed by the Board through an equivalency determination.

To drill an exploration well on EL 481 using Chevron's proposed well secure system, Chevron will require an Arctic capable drillship as well as up to three high ice class icebreaking/multi-functional vessels.[8] Both the Arctic drillship and the icebreaking marine support vessels previously mentioned are in extremely short supply globally and, as such, Chevron expects that in order to secure such highly specialized equipment for a 2020 drilling program, it will most likely be required to enter into 5-year contracts starting in the 2016/2017 timeframe to either lease an existing drillship and marine support equipment or construct "new build" equipment.[9] Given Chevron's experience elsewhere in the Arctic, it expects that these capital commitments will be highly significant.[10] Chevron cannot make these significant capital commitments for specialized drilling and marine equipment without an advance NEB determination that the key building block upon which its' drilling plans are being developed, the alternative well secure system proposed for use on EL 481, will satisfy the intended outcome of the SSRW policy.[11]

Proposed Staged Application Process

Chevron proposes that its applications for drilling authorizations from the NEB be considered in a two-phase process, each of which would be treated as a separate application (or as a single, two-part application) to the NEB and would follow the standard NEB review process (including a public hearing, as necessary), consisting of the following:

1. Phase 1 – Advance ruling on SSRW equivalency, pursuant to s. 5.31(1)(b) of COGOA.

2. Phase 2 – Authorizations to drill an exploration well, pursuant to ss. 5 and 10 of COGOA, as well as the CEAA 2012.

A Figure depicting Chevron's proposed staged application process is attached as "**Exhibit B**" to this letter.

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[8] *Scott Affidavit*, at para. 7.

[9] *Scott Affidavit*, at para. 8.

[10] *Scott Affidavit*, at para. 8.

[11] *Scott Affidavit*, at para. 9.

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In Phase 1, Chevron would seek confirmation from the NEB that the proposed well secure system is "equivalent" to SSRW capability. This determination would be limited in scope to whether the proposed well secure system is the same as, or better than, SSRW capability in terms of spill duration/quantity, reliability, deployment capability, permanency and safety.

In Phase 2, if the NEB determines that Chevron's proposed well secure system satisfies the intended outcome of the SSRW policy, Chevron would be in a position to then prepare detailed applications for drilling authorizations based on the proposed well secure system. At this stage, the Board (as well as the Inuvialuit review bodies) would consider technical, economic, environmental and socio-economic factors (including consideration of the "worst case scenario") to determine whether approval of the proposed exploration well is in the overall public interest.

Chevron's current intent is to prepare a SSRW equivalency application during 2014 with a view to submitting this to the NEB in early 2015 with the assumption that the NEB can provide an equivalency determination by early 2016.[12] If the NEB determines by early 2016 that the proposed well secure system does or does not satisfy this policy, Chevron will then be able to make an informed decision on whether or not to proceed with a drilling program for EL 481.[13]

For the reasons that follow, we submit that this staged process would be consistent with public policy, would encourage responsible development, and would be in accordance with the NEB's legislative scheme.

Public Policy and Encouraging Responsible Development

The NEB advocates "smart regulation" that creates a clear, predictable and efficient regulatory environment conducive to investment.[14] In order for companies to be able to make informed and efficient investment decisions, they need to understand the regulatory landscape that applies to them. For investments in the Arctic offshore, this includes understanding whether the Board considers a proposed well secure system consistent with the intended outcome of the SSRW policy. In our view, this is a discrete issue that can be considered in advance of detailed drilling plans and environmental assessment applications. Chevron should not be required to make highly significant capital commitments to secure specialized drilling and marine support equipment and prepare detailed drilling plans without confirmation from the Board that the proposed well secure

[12] *Scott Affidavit*, at para. 10.

[13] *Scott Affidavit*, at para. 11.

[14] National Energy Board, 2002 Annual Report at pgs. 6-7.

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system will be acceptable. Acceptance or rejection by the NEB of the proposed well secure system will be critical to Chevron's decision to make the capital commitment required to secure this drilling and marine support equipment. We submit that an advanced ruling on this critical element is consistent with the intent of the legislature and good public policy.

A staged process involving an advance determination of preliminary matters that will be determinative of how the Board considers later issues is not foreign to the Board. In the context of NEB-regulated pipelines, the Board has consistently held that toll design plays a key role in the assessment of a proposed pipeline's economic viability (among other things), and that tolling methodology may be considered through an advance application before the applicant incurs significant expenditures and enters into long-term commitments to develop a pipeline facilities application.[15] These advance determinations on toll design provide the applicant with sufficient certainty on the economic underpinnings of the project to justify the investments necessary to advance the project to a facilities application. Similarly, an advance determination on SSRW equivalency would provide certainty to the offshore proponent on the acceptability of a well secure system to allow it to make the capital commitments necessary to plan for a particular drilling program. Otherwise, the proponent has no certainty on both the economic and technical viability of the drilling program to justify making significant capital commitments in the required drilling system.

Predetermining SSRW equivalency would also ensure that the resources of all parties (including the applicant, the Board, the Inuvialuit and interveners) are focused at the appropriate stage of the process. It would be extremely inefficient for parties to invest significant resources preparing and reviewing studies for details of a drilling program such as financial responsibility, local benefits plans or emergency response, for example, when the drilling program is subsequently rejected because the well secure technology fails to satisfy the SSRW policy. Since SSRW equivalency can be determined in advance without consideration of these factors, a staged process would ensure that parties expend their resources efficiently and only as needed.

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[15] *TransCanada PipeLines Limited*, Gros Cacouna Receipt Point Application, National Energy Board Reasons for Decision RH-1-2007, July 2007 ["*RH-1-2007*"]. See also *Interprovincial Pipe Line Inc.*, National Energy Board Reasons RH-2-91, June 1992; *Interprovincial Pipe Line Limited*, Application dated 5 September 1986 for new tolls effective 1 January 1987, National Energy Board Reasons for Decision RH-4-86, June 1987; National Energy Board Order TO-5-96 and *Interprovincial Pipe Line Inc.*, Facilities, National Energy Board Reasons for Decision OH-4-96, April 1997; *TransCanada PipeLines Limited and TransCanada Keystone Pipeline GP Ltd.*, Transfer of Facilities, National Energy Board Reasons for Decision MH-1-2006, February 2007 ["*MH-1-2006*"]; *TransCanada PipeLines Limited*, National Energy Board Reasons for Decision GH-5-89, November 1990; and *NOVA Gas Transmission Ltd.*, Northwest Mainline Komie North Extension, National Energy Board Report GH-001-2012, January 2013.

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Similarly, as with staged applications for pipeline projects, an advance determination on SSRW equivalency should not consider environmental impacts of the potential future drilling program. Since the Phase 1 process would consider whether the proposed well secure system is the same as, or better than, SSRW capability, any well secure system that is equivalent to a SSRW in terms of spill duration/quantity would also be equivalent in terms of environmental effects. In addition, Phase 2 would involve a detailed assessment of environmental effects of the proposed drilling program, in accordance with the COGOA, CEAA 2012 and the Inuvialuit Final Agreement. These assessments would be based on the detailed drilling plans (i.e., drilling schedule, plans for local employment/contracting, contingency plans, etc.) that are developed once the well secure system is confirmed after Phase 1. As a result, assessing environmental effects in Phase 1 of the process would duplicate work that would be done in Phase 2, and would be based on premature and incomplete information. Further, until equivalency is determined by the Board, the scope of the project to be assessed is uncertain, and may lead to a multiplicity of environmental and economic studies that would not otherwise be required if the Board rejects the proposal on equivalency, all of which would occur in a timeline that would prevent the proponent from having a reasonable opportunity of reapplying. Again, these outcomes would be contrary to public policy.

For all of the above reasons, a staged application process for drilling authorizations would allow for informed decision-making and efficient investment of resources, and would encourage responsible development without any diminution of the environmental and socio-economic assessment that must be undertaken to ensure that the ultimate drilling application (in Phase 2) is acceptable. A preliminary determination on equivalency in no way presupposes approval in Phase 2 (similar to tolling and facilities decisions), it simply clarifies the project for which the assessment must be conducted, and a public interest determination made. Such outcomes are consistent with public policy and the overall public interest.

Legal Basis for Phased Application Process

Section 12 of the *National Energy Board Act* ("NEB Act") and s. 5.31(1)(b) of the COGOA grant the NEB broad jurisdiction to hear and determine matters within the scope of its mandate. Paragraph 5.31(1)(b) of the COGOA states:

> 5.31 (1) The National Energy Board has full and exclusive jurisdiction to inquire into, hear and determine any matter
>
> [...]
>
> (b) if it appears to the National Energy Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any act, matter or thing that is

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> prohibited, sanctioned or required to be done by this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5.

The broad powers afforded to the NEB under s. 12 of the NEB Act and s. 5.31(1)(b) of the COGOA grant the Board wide discretion to hear or determine any matter "where it appears to the Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval...with respect to any matter, act or thing that is prohibited, sanctioned or required to be done by this Act". Since drilling in the Arctic offshore is clearly a matter, act or thing that is sanctioned by the COGOA, in our view the NEB has broad jurisdiction to provide any order or direction in relation to Arctic offshore drilling that it deems necessary and in the public interest, including an advance ruling on equivalency.

This interpretation is supported by the Supreme Court of Canada's decision in *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, where the Court held that:

> the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature.[16]

Since an advance ruling on equivalency would promote efficient investment decisions by proponents, and would simultaneously ensure that the Board's goals of resource conservation, environmental protection and safety[17] are protected (given that Phase 2 of the process would involve a full environmental assessment of the drilling proposal), we submit that the Board's broad powers allow it to institute a staged application process to make an advance ruling on equivalency if the Board determines that making such a ruling is in the public interest. This interpretation is consistent with the NEB's AODR process (where the Board on its own initiative undertook a review of Arctic offshore drilling practices), as well as the NEB's historic willingness to consider "staged" applications in the context of pipeline projects (discussed above).

Conclusion

In summary, we submit that SSRW equivalency is a discrete issue that should be considered by the NEB in advance of detailed drilling plans and environmental assessment applications. This will ensure that companies understand whether a particular

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[16] *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140 at para 51 (as quoted in Robert and Donna Siebert – Alliance Pipeline Ltd., Land Reclamation, Reasons for Decision MH-R-1-2007, October 2007 at pg. 19).

[17] *Canada Oil and Gas Operations Act*, R.S.C., 1985, c. O-7, s. 2.1.

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well secure system satisfies the SSRW policy before companies are required to make highly significant capital commitments to secure specialized drilling and marine support equipment and prepare detailed drilling plans. This will also ensure that the resources of all parties (including the applicant, the Board, the Inuvialuit and interveners) are focused at the appropriate stage of the process and that parties do not spend significant resources preparing and reviewing studies for details of a drilling program that is subsequently rejected because the well secure technology fails to satisfy the SSRW policy. In our view, these outcomes would be consistent with public policy, would encourage responsible development, and would be in accordance with the NEB's legislative scheme.

For these reasons, Chevron requests confirmation from the Board that the staged application process for drilling authorizations for EL 481, as described in this letter, is acceptable.

If you have any questions or concerns please do not hesitate to contact the undersigned.

Yours truly,

Shawn H. T. Denstedt, Q.C.
AD

Enclosures

cc: Inuvialuit Game Council, Frank Pokiak
Inuvialuit Regional Corporation, Nellie Cournoyea
Imperial Oil Resources, Sherry Becker
ConocoPhillips Canada, Sheila Reader
Canadian Association of Petroleum Producers, Paul Barnes
Canadian Association of Petroleum Producers, Aaron Miller
Aboriginal Affairs and Northern Development Canada, Paula Isaak
Chevron Canada Limited, Bill Scott