

--SENT VIA ELECTRONIC MAIL--

July 17, 2014

Ms. Sheri Young
Secretary of the Board
National Energy Board
517 10th Ave SW
Calgary, AB T2R 0A8
Canada

Re: The National Energy Board's (NEB) decision to grant Imperial Oil Resources Venture Limited's (IORVL) and Chevron Canada Limited's (Chevron) requests for advance rulings on "equivalent" approaches to satisfying the NEB's Same Season Relief Well (SSRW) Policy for projects planned within the areas covered by exploration licences 476, 477, and 481

Dear Ms. Young:

The Natural Resources Defense Council (NRDC) writes to express its concerns regarding a recent decision by the NEB to grant IORVL and Chevron an advance ruling on each developer's proposed SSRW "equivalency" strategy. NRDC has been an active participant in the process currently underway with the Environmental Impact Review Board (EIRB), and has provided comments on the draft Terms of Reference that will eventually guide IORVL's environmental review of its proposed project. Generally, NRDC is concerned with the issue of offshore oil and gas development throughout the Arctic Ocean and is heavily engaged in monitoring developments in U.S. Arctic waters. NRDC became engaged in the Canadian Beaufort Sea after learning of IOVRL's proposal to begin oil and gas exploration activities within Canadian Arctic waters. Because IORVL and Chevron's proposals represent a precedent-setting foray into deep water offshore drilling in Arctic waters, it is critical they be subjected to close local, regional, national, and international scrutiny.

Though NRDC respectfully disagrees with the NEB on the propriety of granting this advance ruling (and explains its rationale below), we wish to provide specific recommendations about the process going forward, given the significance of this issue not only for Canada but for all circumpolar nations. At the outset, and to truly incorporate the public interest in this threshold matter, we recommend that the NEB extend the period for public commentary on its List of Issues for an additional 30 days. This extension will allow stakeholders within the Inuvialuit Settlement Region (ISR) time to consider the implications of the NEB's unprecedented action and expand their focus to this NEB advance ruling as well as the EIRB process, which is well underway. It will also allow time for groups throughout Canada, the U.S., and the rest of the Arctic to consider engaging in an issue they have closely followed over the past year.

This advance ruling sets a dangerous precedent for the Arctic

The concept of SSRW "equivalency" itself is highly contentious in light of several high profile accidents, one of which required SSRW capability to finally stop the flow of oil from an out-of-

control well for good. During the Macondo disaster in the Gulf of Mexico in 2010, the Deepwater Horizon drill rig was lost in the explosion and resulting fire. This meant that mitigation and containment methods possibly available on the rig were no longer an option. In 2012, Shell had numerous mishaps implementing their exploratory drilling plan in the Chukchi and Beaufort Seas and ultimately lost the Kulluk drill rig when it went aground while being towed south through a winter storm in the Gulf of Alaska. Each incident highlights the risks, challenges, and unknowns in offshore oil and gas development, and provide examples for why increased protection against unforeseen accidents is necessary in Arctic waters. Indeed, U.S. regulators have indicated that they want third party audits of Shell’s 2012 mishaps, a move that shows greater caution – although still insufficient – than the NEB appears to be taking at this time. Meanwhile, as Shell continues to pursue its offshore plans, it has been required to demonstrate SSRW capability in addition to multiple other well control redundancies. The fact that the NEB has granted IORVL’s and Chevron’s requests for an advance SSRW “equivalency” ruling suggests that it entertains the notion that SSRW “equivalency” is possible, despite a lack of evidence and testing, especially in Arctic environments.

The concept of SSRW “equivalency” itself is highly contentious, especially in light of the Macondo disaster in the Gulf of Mexico and the difficulties experienced by Shell with its Kulluk drill rig, which had been drilling in the Beaufort Sea and ran aground in the Gulf of Alaska. Indeed, U.S. regulators appear to be moving in a more cautious – although still insufficient – direction than the NEB, upholding the requirement that Shell demonstrate SSRW capability in addition to multiple other well control redundancies.¹ The fact that the NEB has granted IORVL’s and Chevron’s requests for an advance SSRW “equivalency” ruling suggests that it at least entertains the notion that SSRW “equivalency” is possible, despite a lack of evidence and testing, especially in Arctic environments.

In 2009, the NEB responded to a similar request from IORVL for an advance SSRW ruling in which it stated: “the Board will not decide Imperial’s SSRW capability application prior to the comprehensive review.”² Given the subsequent history of offshore drilling in conditions far superior to those existing in the Canadian Beaufort Sea, it is surprising and troubling that the NEB’s position on this issue would have changed. Because SSRW capability is an integral part of an offshore project’s overall design, consideration of an SSRW “equivalency” approach should be based on a complete project proposal that allows the NEB and public stakeholders to consider how IORVL’s and Chevron’s well control systems fit within their overarching project operations. Without this, any review of SSRW “equivalency” will remain a hypothetical exercise.

¹ See, e.g., Letter from U.S. Dept. of the Interior, Bureau of Ocean Energy Management, to Susan Childs, Shell Offshore, Inc. (April 16, 2012), *available at* http://www.boem.gov/uploadedFiles/BOEM/About_BOEM/BOEM_Regions/Alaska_Region/Leasing_and_Plans/P lans/2012-04-16_Shell_Clarification_of_Camden_Bay_EP.pdf.

² Letter from the NEB to IORVL, File OF-EP-GEN-PA-10170 (December 15, 2009), *available at* https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90463/589151/594086/594087/586927/A1R0S7_-_Letter_to_Imperial_Oil_Resources_Ventures_Limited_regarding_Application_for_Advance_Ruling_on_Policy_fo r_Same_Season_Relief_Well_Capability_in_the_Beaufort_Sea.pdf?nodeid=586928&vernum=1.

Further, given that the NEB undertook a complete review of its Arctic offshore drilling regulations following the Macondo disaster and subsequently reaffirmed the necessity of SSRW capability, it is surprising that the NEB would, in its first review of a project proposed under those regulations, immediately consider departing from its policy.³ Any decision concerning a departure from demonstrating SSRW capability, especially outside the normal review process and before the EIRB has even commenced its own review, undermines a thorough and accurate examination of this threshold issue.

The advance ruling is not in the public interest

NRDC submits that this decision is not in the public interest because the public is now required to engage in at least three separate processes, all of which will require considerable time and expense. The public interest would be best served by ensuring that SSRW capability is part of the Project Application review undertaken pursuant to the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s.52 (“CEAA, 2012”), the *National Energy Board Act*, R.S.C. 1985, c. N-7, and the *Canada Oil and Gas Operations Act*, R.S.C. 1985, c. O-7 (*COGOA*). Indeed, the only interests served by this request are those of IORVL and Chevron, private entities who are not representatives of the broader public. Despite this, the NEB, in two letters dated July 11, 2014, agreed to provide both IORVL and Chevron with advance rulings in regard to each company’s planned well control system for projects proposed or anticipated in the Canadian Beaufort Sea. In each letter, the NEB cites the public interest, regulatory certainty, efficiency, and public access to information as the key reasons for its decision to grant these requests. As such, we strongly urge the NEB to ensure sufficient channels for public participation in the forthcoming process, with the goal of fully incorporating and integrating the public interest into this pivotal decision. Specific recommendations to achieve this objective are articulated below to guarantee each “equivalency” proposal receives a full public vetting before the Canadian public and the international community.

Ensuring a substantive review of all pertinent issues

According to the July 11, 2014 letters, the NEB has committed to “commence a process to determine whether the approach proposed by IORVL [and Chevron] meets or exceeds the intended outcome of the NEB’s SSRW Policy.” Since the NEB has chosen to issue an advance ruling to IORVL and Chevron outside of the typical project review process and before receiving a complete Project Application from either company, we strongly recommend that the NEB ensure it collects all of the necessary information to fulfill the relevant *Filing Requirements*. Section 4.17 of the *Filing Requirements* elaborates on section 6 of the *COGOA*, specifying the information to be submitted with a Project Application for offshore drilling in the Arctic with respect to “the Contingency Plan for an uncontrolled release of reservoir fluids or a blowout

³ The Filing Requirements were drafted less than three year ago, following extensive consultations carried out by the NEB with industry, the Inuvialuit, other Aboriginal Peoples, independent experts, and other interested persons during the Arctic Offshore Drilling Review. See National Energy Board, *Filing Requirements for Offshore Drilling in the Canadian Arctic* (2011) at 4.17(c). They are a companion document to the Report on Offshore Drilling in the Canadian Arctic, in which the NEB identifies key filing requirements that it expects to be met if and when applications are filed in the future. National Energy Board, *Review of Offshore Drilling in the Canadian Arctic* (December 2011) at 4.

event.”⁴ This includes worst-case scenario incident response, capping and containment methods, and SSRW capability.

The NEB must remain vigilant to avoid a narrow and technical treatment of this issue. Individual project components cannot be evaluated in isolation but must be considered in the environmental and technological context in which they will be employed. The intended outcome of the SSRW policy “is to minimize harmful impacts on the environment” and to “kill” an out-of-control well during the same season where control was lost.⁵ In order to properly assess whether these outcomes can be attained, SSRW capability or any alternative approach can only be properly considered with complete information about the scope and design of the project, contingency and worst-case scenario plans, and social and environmental context.

Because the NEB’s SSRW policy is premised on minimizing harmful environmental impacts, an advance ruling on SSRW “equivalency” cannot avoid consideration of these impacts. Issues relating to best- and worst-case scenarios must be considered, as IORVL’s and Chevron’s plans must be viewed in a context where they actually need to be deployed, and various operating scenarios that might increase environmental impacts are considered. Thus, well control methods must be evaluated alongside spill mitigation methods, with the environmental impacts of each thoroughly studied before any ruling on SSRW “equivalency” is given. Additionally, issues relating to operating conditions and spill timing are likely to significantly impact the efficacy of any well control method, with a late-season loss of well control likely to seriously undermine the plausibility of any well control method.

NRDC is encouraged by the Board’s commitment to “ensur[ing] that it obtains all the information it considers necessary to make its determination in the SSRW proceeding.” As such, we again recommend that the NEB extend the public comment period on the draft List of Issues which will form the basis for the Board’s considerations during its advance ruling. As mentioned above, we submit that an extension of at least 30 days is warranted here, given the complexity and precedential nature of any decision. NRDC agrees with the necessity of considering the proposed List of Issues and will provide additional commentary in a subsequent letter.

Procedural matters

To ensure the gravity of this decision is considered and the public interest is properly weighed, we recommend the NEB hold a complete public hearing. As Chevron made clear in affidavits appended to its request to the NEB, it cannot justify the expense of investing in Arctic offshore drilling equipment without assurance from the NEB that its well control plan will be accepted.⁶ While regulatory hurdles to development are certainly a concern to industry players, IORVL’s and Chevron’s fears about development costs and regulatory uncertainty have nothing to do with the public interest.

⁴ *Supra* note 3 at 4.17.

⁵ *Supra* note 3 at s 4.17(c).

⁶ Affidavit of Bill Scott, General Manager, Arctic Center for Chevron Canada Limited, *available at* https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90463/2456475/2462314/2462233/Exhibit_A_-_A3X1L1.pdf?nodeid=2462234&vernum=-2.

In the Beaufort Sea region and within the ISR, the public interest would seem to favor a cautious and deliberate approach that allows for significant public participation in the review process. The NEB's move to provide an advance ruling, in a forum well-removed from the ISR, has the potential to undermine this approach. A ruling in either direction would unnecessarily undermine the EIRB's independence and place pressure on the EIRB to reach a similar conclusion on the efficacy of each company's SSRW "equivalency" plan in regard to potential environmental impacts.

Given the deep concern expressed by numerous interested groups who have been carefully following developments in Arctic exploratory drilling, the need for a robust and thorough process concerning the issue of SSRW "equivalency" cannot be understated. This issue is not limited to local or even national attention, as the NEB's decisions about SSRW "equivalency" could have international ramifications that place Canada at odds with its Arctic neighbors⁷ and expose the entire Arctic region to the risk of harmful environmental impacts. Thus, we ask that the NEB proceed with extreme caution by declaring an open and rigorous public review of IORVL's and Chevron's proposals. Such a review would include, but not be limited to:

1. Public funding for interested parties under the NEB's Participant Funding Program
2. Public disclosure of all documents filed by IORVL and Chevron in support of their well control system plans
3. Maintenance and publication of a complete record of correspondence between the NEB and all interested parties and including a complete record of decision compiled by the NEB
4. Sufficient time for public review of all documents filed by IORVL and Chevron
5. Sufficient time for public comment in response to review of all documents filed by IORVL and Chevron
6. Public hearings involving all relevant stakeholders following the chance for public comment
7. Publication of draft or initial findings by the NEB, followed by a period of public review and comment
8. Publication of final findings by the NEB, followed once more by a period of public review and comment
9. Issuance of a clear statement by the NEB, no matter its final position, that the EIRB not be bound by the NEB's decision on SSRW "equivalency," and encouraging the submission of alternative viewpoints on the issue prior to completion of the EIRB's review

We thank the NEB for the opportunity to express our position on this critical issue and trust that the NEB will take our concerns into consideration. We applaud the NEB's desire to take the public interest seriously, and sincerely hope that the NEB will honor this commitment by providing the public with a significant voice as the NEB begins its review.

Sincerely,

⁷ See, e.g., *supra* note 1.

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