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July 28, 2023

Canada Energy Regulator
Suite 210 – 517 Tenth Avenue SW
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Attention: Michael Van Appelen
VP, Energy Adjudication

Dear Sir:

Re: Imperial Oil Resources N.W.T. Limited ("Imperial")
Norman Wells Operations ("NWO")
Renewal of Operations Authorization 1210-001 (the "OA")

Introduction

Imperial has received and reviewed the letter from the Canada Energy Regulator ("**CER**") dated June 28, 2023 (the "**CER Letter**")¹ in which the CER refers to several anticipated applications regarding Imperial's NWO, including an application to address the upcoming expiration of the OA on December 31, 2024. In this regard, the CER Letter requests that Imperial provide a Project Description, as set out in the CER's Transparency Guidelines for *Information under the Canada Oil and Gas Operations Act* (the "**Guidelines**"), to allow the CER to plan an efficient process and explore potential coordination opportunities with other regulators. In response to the CER Letter, Imperial provides the following comments regarding its continued operations at NWO following the expiration of the current OA on December 31, 2024.

At the outset, Imperial notes that the Guidelines refer to the CER's expectation that "applicants for authorizations" file a Project Description. Imperial respectfully submits that a Project Description is not expressly required in the context of applications related to an existing authorization. Accordingly, and as discussed in greater detail below, Imperial's view is that a Project Description is not necessary to address the upcoming expiration of the OA; however, Imperial has endeavoured to provide fulsome responses to the requests made in the CER Letter, as well as other relevant information contemplated in the Guidelines. Imperial's comments herein also address the expected timing for Imperial's submission to the Sahtu Land and Water Board ("**SLWB**") to address the upcoming expiration of Water Licence S13L1-007 (the "**Water Licence**") on March 1, 2025.

The purpose of this letter is limited to providing the CER with information regarding Imperial's plans for an application to address the upcoming expiration of the OA. While the CER Letter also references other submissions relative to the expiration of the Water Licence and Imperial's plans to replace a portion of Line 490, Imperial has not addressed these matters in detail herein and will provide the CER with information regarding these applications separately and in due course.

¹ [C25202-1](#) Letter to Imperial Oil Resources N.W.T. Limited – Letter Regarding Anticipated Applications - A8R2I8.

While the nature and contents of Imperial's forthcoming application to address the expiration of the OA is discussed below, Imperial wishes to emphasize that any such application will not involve physical or operational changes at NWO, and will instead be limited to a temporal extension of the CER's authorization for NWO in its current state. As noted in the CER Letter, further and other proceedings beyond the extension of the OA will be required to address future closure and abandonment activities at NWO.

Details of Application for Continued Operations at NWO

I. Timing for Application to the CER

Imperial anticipates filing an application to address the upcoming expiration of the OA in fall 2023. Imperial's requested decision date with respect to this application will be on or before December 31, 2024 in order to align with the expiration date of the existing OA. With respect to the CER's concerns regarding the legislated time limits for decision-making in respect of this application, Imperial notes that the existing OA was applied for and issued within a period of approximately five months. In Imperial's view, a similar timeline is both reasonable and feasible in the present case given the lack of operational changes at NWO since the existing OA was issued, the authority of the Chief Conservation Officer ("**CCO**") to address the expiration of the OA (as was the case when the OA was initially issued in 2014), and the straightforward nature of the Imperial's application to address the expiration of the OA.

Consistent with guidance available from the CER, Imperial plans to submit an application in a form similar to its application filed in 2014 with respect to the current OA in order to meet the requirements of the *Canada Oil and Gas Operations Act* ("**COGOA**"),² the *Canada Oil Gas Drilling and Production Regulations*,³ and incorporating relevant aspects of the CER's Filing Manual.

II. Relief Requested from the CER

The relief that will be sought by Imperial is a variance of the existing OA pursuant to subsection 5(6) of the *COGOA* and section 383 of the *Canadian Energy Regulator Act* ("**CER Act**").⁴ Specifically, Imperial's application will seek a variation of the expiry date contained in the existing OA to allow for Imperial's operations at NWO to continue. Imperial is not planning to request changes to the terms and conditions of the OA. In Imperial's view, a variance of the existing OA represents the most efficient and practical means of allowing operations at NWO to continue in their present state beyond December 31, 2024. As referenced above, Imperial would propose to submit this application to the CER's CCO given that the CCO issued the existing OA in 2014 and is familiar with Imperial's operations at NWO, as discussed below.

Given the variance provisions discussed above, Imperial submits that it is not necessary to apply to the CCO for a re-issued or renewed OA under paragraph 5(1)(b) of the *COGOA*.

III. Timing for Application to the SLWB

As noted above, the Water Licence has an expiration date of March 1, 2025. Imperial also plans to apply for approval of the SLWB to continue operations at NWO under the Water Licence, and the form of this submission is currently being developed for coordination with the SLWB. The timing of Imperial's submission to the SLWB has yet to be confirmed, but will allow sufficient time

² RSC 1985, c O-7 [COGOA].

³ SOR/2009-315.

⁴ SC 2019, c 28, s 10 [CER Act].

for the SLWB to consider and decide on the application prior to the expiration date for the Water Licence.

IV. Public Interest and Engagement

Based on Imperial's recent engagement with Indigenous groups and other stakeholders in the area surrounding NWO, an application seeking either of the two forms of relief discussed above is not likely to be a cause of significant public concern. In this regard, Imperial would note the CER's Guideline⁵ for determining whether the CCO exercising authority delegated under subsection 4.1(1) of the COGOA should refer a particular application back to the CER on the basis that the application is likely to be a cause of significant public concern. The CCO is required to consider the following factors when determining whether Imperial's application will be a cause of significant public concern:

1. the CCO's past and/or the CER's experience with similar applications or applications relating to similar issues;
2. the degree to which the application is novel or unusual; and
3. the level of interest shown in the application by Indigenous peoples, non-governmental organizations, government officials, the media, or the public.

In Imperial's submission, the first two factors clearly weigh in favour of any application to address the upcoming expiration of the OA remaining with the CCO. Specifically, the CCO is intimately familiar with Imperial's operations at NWO and was tasked with reviewing and approving Imperial's original application for the OA in 2014. In addition, while Imperial is not aware of any previous applications to vary or re-issue an operations authorization under the COGOA, the subject matter of the application is not novel or unusual, and has been subject to regulation by the CER, its predecessor, and other regulatory agencies for decades. Given the similarities between Imperial's forthcoming application to address the expiration of the OA and its original application for the OA in 2014, Imperial submits that the CCO is the most appropriate adjudicator in the present case.

Regarding the third factor, as mentioned above, Imperial has been operating NWO for many years. Regular engagements between Imperial and the communities associated with NWO have occurred throughout the term of the current OA. These include, but are not limited to: (i) Neighbour Week open houses; (ii) annual Chapter 9 meetings (scheduled by CIRNAC); (iii) communications from Imperial about specific topics related to NWO; (iv) neighbour news; (v) meetings with community leadership; (vi) regulatory submissions and review; (vii) working group meetings, (viii) facility tours; and (ix) sponsorships and career programs to support Sahtu workers.⁶

Through Imperial's engagement with communities and other stakeholders to date, Imperial has not been made aware of any specific concerns regarding continued operations at NWO beyond the current term of the OA or the Water Licence. Imperial will continue with its routine community engagement, collaborative work with stakeholder groups (such as the Aquatic Effects Monitoring Program working group) and will engage in additional OA-specific community and stakeholder events through the OA variance application process.

⁵ Record of Decision – Delegation of powers under the *Canada Oil and Gas Operations Act* and the *NWT Oil and Gas Operations Act* (File: Ad-GA-ActsLeg-Fed-COGOA 01) (17 August 2020); see attached Guideline.

⁶ The COVID-19 Pandemic resulted in disruptions to the timing of certain engagement activities.

V. Preliminary Screening Requirement

With respect to the relief sought, being a variance of the current OA pursuant to subsection 5(6) of the *COGOA* and section 383 of the *CER Act*, Imperial submits that Part 5 of the *Mackenzie Valley Resource Management Act* ("**MVRMA**")⁷ is not engaged. In particular, with respect to sections 118 and 124 of the *MVRMA*, an application to vary the OA does not constitute an application for a "licence, permit or other authorization"⁸ given that the required authorization is already in existence. In other words, the preliminary screening and environmental assessment processes established under the *MVRMA* are not triggered by an application to extend the term of an existing authorization such as the OA. Imperial would also note that variance applications are not listed in Schedule 1 to the *Preliminary Screening Requirement Regulations*⁹ made under the *MVRMA*, and therefore do not necessitate a preliminary screening.

As noted above, Imperial is of the view that paragraph 5(1)(b) of the *COGOA* is not engaged simply for an extension to an existing operations authorization. Regardless, an application under paragraph 5(1)(b) would also be exempt from the application of Part 5 of the *MVRMA* in this case for the following reasons:

- Looking to the definition of "development" under subsection 111(1) of the *MVRMA*, Imperial's application will not propose that any undertaking be "carried out" as NWO will simply continue to operate in its present state. Similarly, the definition of "preliminary screening" provided under subsection 111(1), as well as numerous other provisions under Part 5 of the *MVRMA*, contemplates a "proposal for a development" being subject to the preliminary screening process. In this regard, Imperial's application will not contain a "proposal for a development" and will instead contain a request for the CER's continued authorization of a previously approved, and already developed, project, and would be exempt on this basis alone. Section 114 of the *MVRMA* states that the purposes of Part 5 include "to ensure that the impact on the environment of **proposed developments** receives careful consideration **before actions are taken** in connection with them". [emphasis added] This is consistent with the fundamental purposes of environmental assessment processes, which are to assess the impacts of proposed developments before they are approached, constructed and in-operation. Imperial also notes that the exclusion of existing projects from environmental assessment processes is a concept that is recognized and applied under other legislation.¹⁰
- Both the CER and the SLWB have concluded on previous occasions that NWO is exempt from the preliminary screening process under the *MVRMA*. In particular, the SLWB's reasons for decision issued in connection with its renewal of the Water Licence on December 31, 2014¹¹ note that a preliminary screening process was conducted for NWO on April 28, 1999, and that the application at issue was exempt from further preliminary screening by operation of the *Exemption List Regulations*.¹² The National Energy Board ("**NEB**") also determined that, based on the results of the 1999 preliminary screening

⁷ SC 1998, c 25 [*MVRMA*].

⁸ *MVRMA*, ss 118(1) and 124(1).

⁹ SOR/99-12.

¹⁰ See, for example, *Bennett Environmental Inc. v. Canada (Minister of the Environment)*, 2004 FC 1150 at paras 23 and 24, where the Court reasoned that a facility ceases to be a "project" under the *Canadian Environmental Assessment Act* once the construction process begins, or potentially earlier.

¹¹ SLWB [Reasons for Decision](#) – Type "A" Water Licence Renewal – Norman Wells Operations (31 December 2014) at PDF page 4.

¹² SOR/99-13 [*Exemption List Regulations*].

process and a confirmation that the scope of activities at NWO had not changed, Imperial's application for the current OA was similarly exempt.

- Section 2 (under Schedule 1, Part 1) of the *Exemption List Regulations* provides that a development for which renewal of a permit, licence or authorization is requested that: (a) has not been modified; and (b) has fulfilled the requirements of the environmental assessment process established by the *MVRMA*, does not require a preliminary screening. Given the determinations made by both the SLWB and the NEB in 2014, as noted above, any subsequent application to renew the OA is similarly exempt where no modifications to NWO have occurred since the 1999 preliminary screening process was conducted.
- Finally, section 157.1 of the *MVRMA* provides that Part 5 does not apply in respect of an authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984.¹³ Commencing in 1980, NWO was granted approvals for, and underwent, a significant expansion and has since remained in substantially the same state. In this regard, NWO in its present state is effectively "grandfathered" by section 157.1 and is not subject to Part 5 of the *MVRMA* unless abandonment, decommissioning, or significant alterations occur, none of which will form part of any application by Imperial to vary the OA.

VI. Other Requirements under the Guidelines

The Guidelines also set out the expectation that a Project Description include information regarding the scope, purpose, location, timing, and nature of the proposed work or activity; however, given that no works or activities are being proposed beyond those that currently exist at NWO, Imperial views these requirements as being inapplicable in the present case.

The scope of NWO activities covered under the current OA and in the upcoming application to address its expiry include:

- the operation of the Central Processing Facility,
- field operations on the mainland field infrastructure including the regular servicing and maintenance of wells, gathering systems and associated infrastructure;
- field operations on the natural and artificial islands including the regular servicing and maintenance of wells, gathering systems and associated infrastructure;
- potential drilling activities which will continue to be evaluated as pattern reviews are completed and new data is incorporated, however there are no current plans for drilling any further production, injection or observation wells at NWO;
- well work conducted on a continuous basis;
- integrity and maintenance activities, routine project work, well work; and
- progressive reclamation work occurring on an ongoing basis while the facility is in operation.

Conclusion

For the foregoing reasons, Imperial submits that the CER can, and should, review the application to authorize continued operations at NWO through the variance process described above that

¹³ This exemption does not apply in respect of a licence, permit or other authorization for an abandonment, decommissioning or other significant alteration of the project.

does not involve a preliminary screening of Imperial's application under Part 5 of the *MVRMA*. In addition to the numerous legal grounds discussed above, which support the conclusion that NWO in its current state is exempt from the application of Part 5, the practical realities also favour an exemption. That is, a preliminary assessment is not required where Imperial is not proposing to develop or carry out any new activities beyond those already occurring at NWO.

Imperial looks forward to further engaging with the CER relative to Imperial's efforts to address the upcoming expiration of the OA and facilitate continued operations at NWO. Notwithstanding the anticipated filing date referenced above, Imperial will wait to receive further correspondence from the CER on this matter before filing any application to address the expiration of the OA.

Please contact Jaclyn Mersereau (jaclyn.mersereau@esso.ca or 587-962-4573) with any questions and copy Nathan Baines (nathan.a.baines@esso.ca) on any correspondence.

Sincerely,



John Gregory

Conventional Operations Superintendent, Imperial

cc: J. Mersereau – Environment and Regulatory Technical Lead, Imperial
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