Court of King's Bench of Alberta

Citation: APL Oil & Gas (1998) Ltd v Alberta, 2025 ABKB 201

Date: 20250331
Docket: 2201 13461, 2401 03738
Registry: Calgary

Between:

APL Oil & Gas (1998) Ltd.

Applicant

- and -

His Majesty the King In Right of Alberta, As Represented by the Alberta Minister of Energy and Minerals and the Alberta Ministry of Energy and Minerals

Respondent

Reasons for Judgment
of the
Honourable Justice R.A. Neufeld

I. Introduction

[1] The Applicant, APL Oil and Gas 1998 Ltd. ("**APL**") is a privately-owned corporation that explores for and produces oil and gas resources in western Canada.

[2] The Respondent is His Majesty the King in Right of Alberta, as represented by the Alberta Minister of Energy and Minerals (the "**Minister**") and the Alberta Ministry of Energy and Minerals ("**Alberta Energy**"). The Minister is responsible for administration of the *Mines and Minerals Act*, RSA 2000, c M-17 (the "***Act***") and the *Petroleum and Natural Gas Tenure Regulation*, Alta Reg 263/1997 (the "***Regulation***").

[3] APL applies for judicial review of two decisions made by Alberta Energy. Specifically, Alberta Energy decided not to continue certain lands that were part of a petroleum and natural gas licence held by APL, which then reverted to the Crown. APL argues that these decisions were unreasonable and procedurally unfair, and asks the Court to set aside the decisions and direct the Minister to reconsider APL's continuation applications. In argument, APL asked the Court to direct the Minister to grant the continuation applications. For the reasons that follow, I

quash both decisions made by Alberta Energy, and remit the First and Second Continuation Applications back to Alberta Energy for reconsideration.

II. History of Dealings between the Parties

[4] On August 14, 2013, APL successfully bid for and paid approximately $1.3 million to acquire a petroleum and natural gas licence from the Minister under the *Act* and the *Regulation*. The licence was granted pursuant to PNG Agreement #5413080235 on lands in northwestern Alberta. The lands are legally described as M5 R17 T065: Sections 10, 11, 15, and 16 (collectively, the "**Lands**"). The Lands are in the productive Duvernay oil fairway. According to APL, it planned to use horizontal drilling and hydraulic fracturing to develop the Lands. It would use a surface location in Section 11 and then drill through Sections 15 and 16 to the northwest, where the well would bottom out.

[5] The licence's initial term was four years. It granted APL the right to drill for and remove petroleum and natural gas from a subsurface location underlying the Lands, an area below the base of the Winterburn geological group.

[6] In December 2013, APL drilled a well, legally described as 100/14-09-065-17W5/00 (the "**Section 9 Well**"), which was not part of the Lands, but immediately adjoined Sections 10, 15, and 16. This Section 9 Well allowed APL to receive an additional, intermediate term of five years for the Lands, upon the expiration of the initial licence term in 2017. The Minister also amended the licence location as the subsurface area below the base of the Winterburn Group to the base of the Beaverhill Lake Group. This intermediate licence term was set to expire on August 15, 2022.

A. First Continuation Application

[7] To avoid cancellation of APL's leases and reversion of the Lands to the Crown, APL needed to secure a continuation from the Minister, pursuant to s. 14(1) of the *Regulation*. On April 27, 2021, APL submitted an application to Alberta Energy requesting continuation with respect to the Lands under ss. 15(1)(a) or 15(1)(e) of the *Regulation* (the "**First Continuation Application**").

[8] Section 15 of the *Regulation* sets out the qualifications for continuation of a lease. Specifically, ss. 15(1)(a) and (e) read as follows:

> [...] a lease qualifies for continuation [...] as to a part of its location that is within any of the following:
>
> (a) the spacing unit for a well that is
>
> (i) productive from a zone in the location, in the case of section 14, or
>
> (ii) producing petroleum or natural gas from a zone in the location, in the case of section 14.1 or 14.2; [...]
>
> (e) a spacing unit all or part of which is productive from a zone in the location.

[9] Section 1(r) of the *Regulation* offers the following definition of productive: "'productive', in relation to a well or zone, means capable, in the opinion of the Minister, of producing petroleum or natural gas from the well or zone in paying quantity".

[10] Section 17 of the Regulation allows a licensee to apply for a short-term continuation for potentially productive lands. This continuation can be used to prove productivity of the spacing unit in question by drilling, and if successful can form the basis of subsequent ss. 15(1)(a) and (e) continuations for that spacing unit and adjacent or contiguous spacing units: *Regulation*, s 17(1)(b).

[11] In support of the First Continuation Application, APL submitted technical information, from both internal sources and outside consultants, which suggested that the Lands contained paying quantities of oil and gas. To gather additional information that Alberta Energy might require, APL applied pursuant to s. 14(1)(b) of the *Regulation* for an advance ruling on its continuation application.

[12] On June 7, 2021, Alberta Energy sent APL a continuation offer, indicating that it would grant one year's continuation under s. 17 of the *Regulation* for Section 10 of the Lands, but would deny continuation for Sections 11, 15, and 16. Alberta Energy informed APL that it could submit additional evidence of productivity to support its application before the licence expired on August 15, 2022. Alberta Energy provided APL with the Technical Guidelines for Continuation (the "**Technical Guidelines**") and the Information Letter 2018-05 (the "**Information Letter**"), indicating that the latter contained best practices for continuation applications.

[13] With respect to continuation under s. 15(1)(e) of the *Regulation*, the Technical Guidelines define "productive" as follows:

> A spacing unit is considered productive for oil and gas if:
>
> - there is at least one productive well in the pool,
> - mapping supported by other technical information is supplied by the lessee (Alberta Energy will not generate mapping for the lessee) that demonstrates the presence of a productive pool, and
> - the mapped productive pool underlies the spacing unit in the opinion of Alberta Energy [...]
>
> Pool
>
> Defined in the *Oil and Gas Conservation Act* as a natural underground reservoir containing or appearing to contain an accumulation of oil or gas or both separated or appearing to be separated from any other such accumulation.

[14] As for the Information Letter, it included the following statement with respect to continuation under s. 15(1)(e) of the *Regulation*:

> A section 15 continuation is an indefinite continuation for rights that are proven productive in paying quantities.
>
> Technical data such as interpreted seismic, isopach and isochron maps, remaining reserves, pressure data etc. are required with a continuation application for proven productivity under section 15(1)(a) and deemed productive under section 15(1)(e).
>
> [...]

> If the applicant does not receive the validation or continuation requested, or needs clarification regarding Alberta Energy's technical review, best practice is to have the applicant's technical staff contact Alberta Energy's technical staff prior to responding to the offer.
>
> [...]
>
> An applicant may request a meeting with Alberta Energy to ensure understanding of the data or to share information on large drilling programs.

[15] To supply Alberta Energy with additional evidence of productivity, APL hired two independent energy consulting firms, Sproule Associates Limited ("**Sproule**") and McDaniel & Associates Consultants Ltd. ("**McDaniel**"). Sproule prepared a report, dated June 30, 2022, to provide supporting information for the First Continuation Application (the "**Sproule Report**"). The Sproule Report evaluated the Lands as being underlain by total proved undeveloped reserves of 328.8 thousand barrel of oil equivalent (MBoe) and total probable undeveloped reserves of 369.1 MBoe, with an undiscounted net present value before taxes of $26,408,000.00. The Sproule Report stated that if APL was granted an indefinite continuation, Sproule would be in a position to certify the undeveloped reserve estimates.

[16] In preparing its report, dated July 22, 2022, McDaniel used historical production data from both public and APL sources and applied a geological model (the "**McDaniel Report**"). The McDaniel Report concluded that if APL was granted continuation and demonstrated "intent to develop any of these sections within the next 10 years, McDaniel & Associates (McDaniel) would be in a position to assign undeveloped proved + probable reserves on these lands." McDaniel also estimated that the Duvernay reservoir exists across the Lands and is uniform in thickness at approximately 23 metres of gross pay.

[17] In a memorandum to file dated June 17, 2022, William Orr, a professional geologist and the manager of geosciences at Alberta Energy, noted he had mentioned to APL that additional technical data "would add confidence to the deemed productivity of the referenced lands" (the "**2022 Orr Memo**"). APL submitted additional technical information, including the Sproule Report and the McDaniel Report, to Alberta Energy on August 4, 2022. Specifically, the technical information included seismic data showing a productive pay zone of Duvernay Formation oil and gas underneath the Lands.

[18] On August 12, 2022, Alberta Energy provided a second continuation offer to APL. The letter stated the following:

a. Indefinite continuation was granted to 065-17W5: Section 10, pursuant to s. 15 of the *Regulation*;

b. One-year continuation was granted to 065-17W5: Sections 15 and 16, pursuant to s. 17 of the *Regulation*; and

c. Continuation was denied for 065-17W5: Section 11, as it was not considered productive.

[19] Alberta Energy also amended the location of the licence as the subsurface area below the base of the Winterburn Group to the base of the Duvernay-Majeau Lake Formation. The offer advised APL that it could submit additional evidence of productivity to support its application by the offer expiry date of September 12, 2022.

[20] On August 18, 2022, APL contacted Alberta Energy through its legal counsel and asked to meet to discuss the technical information provided by APL. On August 29, 2022, APL's legal counsel also asked for a meeting with counsel present, "as policy questions may arise which your team can assist us in answering." A government lawyer responded to this email to say that it would be "unusual" for legal counsel to be present at a technical meeting regarding a continuation decision, that the presence of lawyers would delay matters, and that APL was encouraged to meet directly with Alberta Energy staff, without lawyers present. In this email, Alberta Energy, by way of its lawyer, agreed to a preliminary technical discussion without counsel. APL's counsel responded, asking that Alberta Energy provide its availability for a second meeting with counsel.

[21] On September 1, 2022, the day before the preliminary technical discussion, Alberta Energy advised APL that due to a vacation, another lawyer was being assigned to APL's matter and the new lawyer would "address [APL's] request for a second meeting" with counsel present. It asked APL's counsel to provide a written summary of APL's legal concerns and questions that APL's counsel "would like us to discuss at the second meeting."

[22] On September 2, 2022, the parties' technical and administrative staff met without counsel via video conference (the "**September 2022 Meeting**"). Notes from this meeting were recorded in an internal department memorandum. These notes indicate that APL was confused as to why the technical data was insufficient, given that it revealed no geological difference between the various sections of the Lands. They also indicate that Alberta Energy stated that the Section 9 Well supported continuation under s. 17 of the *Regulation* for Sections 15 and 16. Alberta Energy also clarified that Section 11 was too far away from this well to satisfy continuation under s. 17. Alberta Energy elaborated that it had made a policy decision years ago not to allow s. 17 applications based on "mapping." APL later indicated that in this meeting, Alberta Energy advised that Section 11 was not considered productive because it was not within one spacing unit (in this case, a section) of a productive well.

[23] In emails sent on September 6 and 7, 2022, APL asked to meet with Alberta Energy, with counsel present, to discuss "policy-based questions". APL submitted a list of written questions. These questions related to the requirements for continuation under ss. 17 and 15(1)(e), as well as Alberta Energy's opinion that Section 11 was not productive, despite the technical evidence. Alberta Energy responded to APL's request the following day and advised that no second meeting was warranted, since "APL has received an offer in accordance with current regulations." As for APL's questions, Alberta Energy's lawyer characterized them as a "request for detailed reasons" behind the continuation decision and stated that Alberta Energy does not engage in policy discussions with continuation applicants.

[24] On September 9, 2022, APL emailed a letter to Alberta Energy staff in which it reiterated its understanding that the September 2022 Meeting was a preliminary technical discussion to be followed by a more fulsome discussion with counsel present. APL also observed that Alberta Energy had not answered its questions, so APL did not know what additional material was needed as part of the review process. APL specifically asked whether the s. 17 proximity requirement (*i.e.* less than one intervening section from) also applies to s.15(1)(e). Further, APL requested another meeting, and expressed its concern that denying continuation for Section 11 would prohibit it from developing the Lands in the way it had intended. Alberta Energy acknowledged receipt of the email and said that it would respond in due course. It also reminded APL of its obligation to submit a request for review by September 12, 2022.

[25] On September 12, 2022, APL accepted Alberta Energy's offer with respect to Sections 10, 15, and 16, but initiated a request for review with respect to Section 11. In the request for review, APL sought continuation of Section 11 pursuant to s. 15(1)(e) of the *Regulation*. According to the technical information that APL had submitted, Section 11 is underlain by the Duvernay oil fairway, an area of well-established productivity. Thus, APL understood Section 11 to satisfy s. 15(1)(e) of the *Regulation* because it is "capable [...] of producing petroleum or natural gas from the well or zone in paying quantity". APL opined that nothing in s. 15(1)(e) required that a section be in proximity to a productive well to be eligible for continuation. It also noted the Technical Guidelines indicate that a lessee may supply mapping and technical data showing that a spacing unit is underlain by a productive pool in support of a continuation application. APL asserted that it had provided such evidence of a pool underlying Section 11.

[26] On October 14, 2022, the Minister rendered its decision in response to APL's request for review (Alberta Energy's 2021 and 2022 continuation offers, and its decision of October 14, 2022, following the request for review, are referred to as the "**First Continuation Decision**"). In Alberta Energy's letter, it began with a chronology of events and claimed that at the September 2022 Meeting, Alberta Energy staff had explained why some of the Lands did not qualify for a s.15 continuation. APL disputes that such explanation was given. Alberta Energy also referred to the resources on its website, such as the Technical Guidelines, information letters, and information bulletins. It also referred APL for the first time to the PNG Continuation Application Guide (the "**Application Guide**"), which states that a "spacing unit will be considered for continuation under s. 15(1)(e) if you submit technical data demonstrating that it is underlain by a pool capable of producing petroleum or natural gas in paying quantity." The letter also presented the Minister's decision, which was to uphold its refusal to continue Section 11 and to delete that section from APL's licence. The decision is final pursuant to s. 14(6) of the *Regulation*.

B. Second Continuation Application

[27] Regarding Sections 15 and 16, their one-year continuation terms, as set out in Alberta Energy's offer of August 12, 2022, were set to expire on August 15, 2023. APL again sought to continue these sections and submitted a continuation application for Sections 15 and 16, pursuant to ss. 15(1)(a) or 15(1)(e) of the *Regulation* (the "**Second Continuation Application**"). The Second Continuation Application included supporting technical data, including the Sproule Report and the McDaniel Report submitted in aid of the First Continuation Application.

[28] According to APL, the technical data demonstrated the presence of proven oil and natural gas reserves in paying quantities within the applicable zone under all the Lands, satisfying s. 15(1)(e) of the *Regulation*. In APL's opinion, Sections 15 and 16 not only fell within the Duvernay fairway, but also contained proven oil and natural gas reserves as defined under the National Reserves Reporting Instrument NI 51-101.

[29] APL also laid out how Sections 15 and 16 satisfied the requirements for s. 15 continuation, as outlined in the Technical Guidelines. APL observed that the technical data showed that the same Duvernay reservoir underlying Sections 15 and 16 also underlay the producing Murphy well 16-05-065-17W5/00 (the "**Murphy Well**"). Thus, Sections 15 and 16 satisfied the requirement that a mapped productive pool underly the spacing unit.

[30] On September 27, 2023, Mr. Orr prepared a memorandum to file (the "**September 2023 Orr Memo**"), stating the following:

a. No additional work has been conducted by the company on the location of this agreement since granting the '17' extension, and neither are there any producing wells on the location of the agreement.

b. The previously assigned 15.1.e continuation of section 10-065-17W5, remains valid with the ongoing productivity of the Murphy operated 100/16-05-065-17W5/00 Duvernay oil and gas well.

c. The provided Sproule Engineering report, effective June 30, 2022, and the previously submitted McDaniel Engineering report, effective July 22, 2022, both include provisional 'if/then' statements within the respective reports, which negate reserve assignment. Both qualified reserve evaluator firms cite that if a continuation were granted and the company provides an intent to develop any of the lands within the next ten years then reserves could be assigned.

APL did not know of this memorandum until it was disclosed as part of the Certified Record of Proceedings in this Action.

[31] On October 19, 2023, Alberta Energy, on behalf of the Minister, issued its initial decision for the Second Continuation Application. The response concluded, without providing reasons, that Sections 15 and 16 were "not considered productive". The response also indicated that APL could submit "additional evidence of productivity" to support is application within one month from the receipt date of the letter or by the agreement expiry date, whichever was longer.

[32] On November 17, 2023, APL sent a response to the initial decision, highlighting that the technical data demonstrated that Sections 15 and 16 were productive from a zone in the location and, thus, satisfied the s. 15(1)(e) continuation requirement. APL stated that the initial decision appeared to have been made in error and asked that Alberta Energy revisit the decision. APL also asked Alberta Energy to provide a detailed explanation of how the decision could be reconciled with the regulatory framework and the technical data supplied with the Second Continuation Application, if it declined to change its initial decision.

[33] On December 14, 2023, Mr. Orr prepared another memorandum to file in which he noted that APL had not provided any new information with its November 17, 2023 letter (the "**December 2023 Orr Memo**"). Moreover, Mr. Orr observed that since receiving the 2017 extension, APL had not conducted any additional work on Sections 15 and 16, nor had it drilled any producing wells on the location of the licence. He observed that only Section 10, which had been previously continued under s. 15(1)(e), remained valid because of its proximity to the Murphy Well. He also remarked that the Sproule Report and the McDaniel Report contained provisional statements, which "negate reserve assignment" because they were contingent on continuation and, in the case of the McDaniel Report, APL demonstrating an intent to develop within the next ten years. APL was similarly unaware of the December 2023 Orr Memo until it was produced as part of this Action.

[34] On February 15, 2024, Alberta Energy sent a letter informing APL that a final decision had been made (Alberta Energy's initial continuation decision of October 19, 2023, and its final continuation decision of February 15, 2024, are referred to as the "**Second Continuation Decision**"). The letter stated that Sections 15 and 16 were "deemed non-productive" and had been deleted from APL's licence.

[35] APL subsequently filed applications for judicial review of Alberta Energy's First Continuation Decision and Second Continuation Decision (collectively, the "**Continuation Decisions**").

III. Grounds for Review

A. Reasonableness Review

[36] APL argues that the Continuation Decisions were unreasonable. It says that two fundamental flaws are evident in the written reasons and record: (1) a lack of internally consistent reasoning; and (2) a lack of justification in light of the legal and factual constraints under which the Minister operated. I will deal with both of these grounds in this decision. Before doing so, however, it is useful to consider the legal framework within which continuation decisions are made.

[37] The Province of Alberta enjoys abundant oil and gas resources. Approximately 20% of Alberta is comprised of privately owned lands where petroleum and natural gas rights are subject to freehold ownership. In those areas, an energy company seeking to explore for and produce oil and gas must negotiate a lease with the landowner. While standard form leases have been developed over the years, there is nonetheless a need for negotiation of leases on a case-by-case basis. Among other things, such oil and gas leases will typically contain covenants and a *habendum* clause that require the lessee to proceed with drilling within a specified period of time and to continue to produce hydrocarbons, failing which the lease will terminate: John Bishop Ballem, *The Oil and Gas Lease in Canada*, 4th ed (Toronto: University of Toronto Press, 2008) at 149-151. This allows the owner the opportunity to enter into a lease with a different company, who may be more inclined to explore for and produce hydrocarbons for the mutual benefit of the company and the landowner.

[38] The remaining 80% of Alberta is comprised of Crown lands, where both the surface and subsurface mineral resources are owned by the province for the benefit of all Albertans.

[39] The issuance and administration of petroleum and natural gas licenses or leases for Crown lands incorporates procedures, regulations and guidance documents that apply throughout the province. This includes procedures that allow energy companies to request that oil and gas rights for specific parcels of land that have not yet been leased be posted for bids by industry through regular "land sales". A successful bidder will then have the opportunity to explore for and, if successful, produce hydrocarbons from the lands it has acquired. Within the initial term of a license, the lessee has the opportunity to drill a well within the lease location to evaluate the hydrocarbon resources that potentially exist. Upon expiry of the initial term, the lessee has the opportunity to request continuation of the lease for a further five years. If intermediate continuation is granted, the lessee has the opportunity to request an indefinite continuation of the lease or license at the end of that five-year term. Alberta Energy must then make a decision as to whether such a continuation will be granted for all or a portion of the license area based on the *Regulation* and supporting policies.

[40] It is important to note that the role played by Alberta Energy in administering the petroleum and natural gas tenure regime is commercial in nature. Like a freehold mineral owner, the Crown's primary financial interest in dealing with tenure is pertinent not only to the initial land-sale stage but also continues through to production. And, as a general proposition, royalties from production can only be obtained through drilling.

[41] Lessees who face the expiry of the lease (either freehold or Crown) due to a lack of drilling have several choices. They may accelerate their drilling plan. They may sell their leasehold interest to another company which is prepared to proceed with drilling in a more timely manner. They may enter into a farmout agreement whereby another company will agree to drill a well in return for a working interest in production. Or, they may seek a lease extension to facilitate one of these steps.

[42] With that context in mind, I will now consider whether Alberta Energy's Continuation Decisions were reasonable.

i. Did the Minister's decision's lack internally coherent reasoning?

[43] In ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65, the Supreme Court of Canada provided a new analytical approach to judicial review of administrative decisions. The central theme of that approach is that the role of courts is to review such decisions with appropriate deference, and with the aim of ensuring that administrative bodies approach decision-making in a way that will promote fairness of process and justifiable results.

[44] Where reasons are required, a court reviewing an administrative decision begins its analysis by considering the administrative decision-maker's reasons: ***Bhuiyan v Canada (Citizenship and Immigration)***, 2023 FC 410 at para 29; ***Vavilov*** at para 81. The purpose of reasons "is to demonstrate 'justification, transparency and intelligibility'": ***Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)***, 2011 SCC 62 at para 1; ***Vavilov*** at para 81. Reasons must also show consideration of the evidence before the decision maker and the governing statutory scheme, interpreted according to the principles of statutory interpretation and the common law: ***Cavendish Farms Corporation v Lethbridge (City)***, 2024 ABKB 768 at para 17.

[45] A reviewing court does not ask what decision it would have made in the circumstances. Instead, it assesses whether the decision reveals an internally coherent and rational chain of analysis that can be justified in light of the factual and legal constraints on the decision maker: ***Vavilov*** at para 85. If so, then the "reasonableness standard requires that a reviewing court defer to such a decision": ***Vavilov*** at para 85.

[46] There were three sets of reasons provided by Alberta Energy in respect of the First Continuation Application. The first was provided when the initial decision was communicated on June 7, 2021, the second was provided on August 12, 2022, and the third was provided on October 14, 2022, after the initial decision was reviewed at APL's request. Alberta Energy also points to information that was provided by departmental personnel to APL at the September 2022 Meeting, saying that at the meeting the Department explained why some of the Lands did not qualify for a s. 15 continuation. That is, they were too far away from producing offset wells to qualify.

[47] The first set of reasons, issued on June 7, 2021, were as follows:

> Alberta Energy has completed its review of your application and is prepared to offer continuation for this agreement as outlined below:
>
> - M5 R17 T065: 10

> pursuant to Section 17 [of the *Regulation*] until August 15, 2023, below the base of the Winterburn Grp to the base of the Duvernay-Majeau Lake Fm.
>
> - M5 R17 T065: 11; 15; 16
>
> is not considered productive.
>
> - You may submit additional evidence of productivity to support your application and any information you submit must have been acquired prior to the agreement expiry date on August 15, 2022.
>
> [...]
>
> - You have one month from the receipt date of this letter or by the agreement expiry date, whichever is greater, to respond. [...]
> - If no response is received, this agreement will be cancelled. [...]

[48] The second set of reasons, issued on August 12, 2022, contained much of the same information as the letter of June 7, 2021, but communicated that Alberta Energy was now prepared to offer continuation for Section 10 "pursuant to Section 15 [of the *Regulation*] in the Duvernay-Majeau Lake Fm," and for Sections 15 and 16 "pursuant to Section 17 [of the *Regulation*] until August 15, 2023, below the base of the Winterburn Grp to the base of the Duvernay-Majeau Lake Fm." As for Section 11, Alberta Energy advised that it was "not considered productive." Alberta Energy again advised APL that it could submit additional evidence of productivity to support its application, but clarified that "any information you submit must relate to operations conducted prior to the agreement expiry date on August 15, 2022."

[49] The third set of reasons, issued on October 14, 2022, were as follows:

> [...]
>
> In response to the Review Request, Alberta Energy has reviewed the information provided and our decision remains unchanged. As a result, the agreement has been continued as follows:
>
> - M5 R17 T065: 10, pursuant to Section 15 [of the *Regulation*] in the Duvernay-Majeau Lake Fm.
> - M5 R17 T065: 15, 16, pursuant to Section 17 [of the *Regulation*] until August 15, 2023, below the base of the Winterburn Grp to the base of the Duvernay-Majeau Lake Fm.
> - The balance of the agreement comprising M5 R17 T065: 11 is deemed non-productive and has been deleted from our records.
>
> [...]

[50] APL argues that the reasons provided by Alberta Energy were conclusory and failed to address the key question raised by the First Continuation Application, namely whether Section 11 is productive within the meaning of the *Regulation*.

[51] I agree with APL that the reasons provided by Alberta Energy with respect to the First Continuation Decision were inadequate. Among other things, the reasons failed to provide coherent reasoning for reading into s. 15(1)(e) a requirement that the lands to be continued be

less than one section from a spacing unit containing a productive well. Such a requirement is not apparent from the plain language of that subsection of the *Regulation*. Moreover, APL's position was very clearly premised on its interpretation of the subsection. This is reinforced by APL's requests to have legal counsel present at the September 2022 Meeting and to have the meeting recorded, both of which were denied. This is also evident in the questions submitted by APL's counsel regarding the manner in which Alberta Energy was interpreting s. 15 (1)(e). It was reasonable for APL to expect, and is reasonable for the Court to require, that a thoughtful explanation of Alberta Energy's position be provided so that the decision can be properly understood and evaluated.

[52] Alberta Energy's reasoning in respect of the Second Continuation Decision is somewhat more expansive than what was provided during the First Continuation Application. While the initial decision of October 19, 2023, concluded, without providing reasons, that Sections 15 and 16 were "not considered productive," Alberta Energy's review decision of February 15, 2024, provided more rationale for the decision. In this letter, the Department stated as follows:

> AEM issues continuation decisions under the authority of the Regulation. APL had applied for continuation for the Lands under section 15. Under sections 15(1)(a) and 15(1)(e) of the Regulation, a section 15 continuation is an indefinite continuation for rights that are proven productive in paying quantities. The Lands are not proven productive in paying quantities, since *there are no producing wells* on the Lands (as per section 15(1)(a) of the Regulation), *or within a spacing unit of the Lands* (as per section 15(1)(e) of the Regulation).
>
> To provide further clarity, an excerpt from this section of the Regulation states:
>
> - **15(1)** Subject to subsection (2), a lease qualifies for continuation pursuant to section 14, 14.1 or 14.2 as to a *part of its location that is within* any of the following:
>
> (a) the spacing unit for a well that is
>
> (i) productive from a zone in the location, in the case of section 14, or
>
> (ii) producing petroleum or natural gas from a zone in the location, in the case of section 14.1 or 14.2; or
>
> ...
>
> (e) *a spacing unit all or part of which is productive from a zone in the location.*
>
> Further details on the conditions under which a continuation will be considered can be found in the AEM's Technical Guidelines for Continuation (the "**Guidelines"**).
>
> Each company is responsible for appropriately managing their resources and satisfying the Regulation's continuation obligations. As outlined in the Guidelines, it is the applicant's responsibility to provide AEM with all information necessary to support the continuation application. APL's application did not demonstrate that additional work was conducted on the location of the Lands to meet the requirements for the rights to be proven productive in paying quantities. Based on

> our review, there are no producing wells on the Lands to warrant a section 15 continuation and therefore, due to the lack of proven productive wells on the Lands, APL's request for a section 15 continuation is denied.
>
> AEM applies the Regulation in a consistent manner to provide predictability to industry, and provides resources including the PNG Continuation Application Guide, Technical Guidelines for Continuation, Information Letters, and Information Bulletins that may be useful reference material for future application submissions. Therefore, in response to your review request M5 R1 7 T65: 15 and 16 are deemed non-productive and have been deleted from our records. The attached Amended Appendix is provided for the purposes of insertion in your copy of the agreement document.
>
> [emphasis in original]

[53] It appears from this decision that Alberta Energy interprets s. 15(1)(e) to require proof that there is a producing well no further than one spacing unit away from the land to be continued. To that extent, the reasons offered in support of the Second Continuation Decision are somewhat clearer than those originally provided. The problem is that s. 15(1)(e) does not contain the wording that Alberta Energy posits. It provides that "a lease qualifies for continuation [...] as to a part of its location that is within [...] a spacing unit all or part of which is productive from a zone in the location": *Regulation*, s 15(1)(e). This does not connote any requirement to base a continuation application solely on wells within a spacing unit (which is dealt with under subsection 15(1)(a) in any event), nor on productive wells within a certain distance.

[54] In result, while the Second Continuation Decision was somewhat more detailed than the first, it is similarly incoherent and fails to grapple in a thoughtful manner with the central argument advanced by APL. This is unfortunate. As noted in ***Vavilov***, the articulation of reasoning behind a decision is necessary for affected parties to understand why the decision was made and how it is justified. It can also be of great assistance to the decision-maker itself as it works through the factual and legal issues at play.

ii. Was the Minister's decision unjustified in light of the legal and factual constraints?

[55] APL argues that the second fundamental flaw in the Continuation Decisions is that they fail to conform with the legal and factual constraints under which Alberta Energy was operating. To begin with, it says that Alberta Energy avoided the critical issue before it, which was whether a continuation application under s. 15(1)(e) must be supported by any evidence other than geological and geophysical mapping. Put another way, is there room under that subsection for a continuation application to be refused based solely on the distance between the land involved and the nearest producing well? Absent a rational discussion of that issue, APL says that the Continuation Decisions simply failed to recognize an obvious legal constraint, as well as the preponderance of technical evidence regarding the magnitude of productive resources underlying the Lands.

[56] Justifiability in light of legal and factual constraints is dealt with at length in ***Vavilov***. In that discussion, the Court acknowledges the "constellation" of legal and factual constraints that may be relevant to decisions by administrative tribunals or other decision-makers: at para 105. It then discusses a number of elements that will generally be relevant in evaluating whether a given

decision is reasonable. These include the governing statutory scheme, other relevant statutory or common law constraints, the principles of statutory interpretation, the evidence before the decision-maker, the submissions of the parties, the decision-maker's past practices and past decisions, and the potential impact of the decision on the individual to whom it applies: ***Vavilov*** at paras 105-138.

[57] In discussing legal constraints, the Majority of the Court recognized that administrative decision-makers cannot be expected to approach issues of statutory interpretation in every case, nor in the same manner that a court would: ***Vavilov*** at para 119. Nonetheless, where called on to interpret the statute, the merits of the administrative decision-maker's interpretation "must be consistent with the text, context and purpose of the provision" and "[w]here the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements": at para 120.

[58] An administrative decision-maker cannot adopt an interpretation it knows to be inferior but plausible, merely because such an interpretation is available and is convenient. The decision-maker's "responsibility is to discern meaning and legislative intent, not to 'reverse-engineer' a desired outcome": ***Vavilov*** at para 121.

[59] As for factual constraints, the Court began its discussion by acknowledging the need for deference before explaining that a reasonable decision is one that is "justified in light of the facts", opening the door for judicial intervention if the Court concludes that the decision-maker misapprehended or failed to account for the evidence before it: ***Vavilov*** at para 126.

[60] In this case, the Minister argues that both Continuation Decisions were made in accordance with the *Regulation*. It says that the language used in s. 15(1)(e) incorporates a one-section separation distance between lands for which continuation is sought, and the nearest producing well. It also argues that in any event, the Minister correctly decided that certain of the Lands in question were not productive. The reserves reports submitted by APL opined that the reserves could be "booked" if continuation was granted and, in the case of the McDaniel Report, if it was assumed that APL would develop the Lands within the next ten years. Accordingly, they were properly given little weight.

[61] As discussed earlier, the Minister's interpretation of s. 15(1)(e) is not consistent with the wording of that provision when it is considered in isolation. This is not necessarily fatal to the ultimate decision. As first articulated in ***Rizzo & Rizzo Shoes Ltd (Re),*** 1998 CanLII 837 (SCC) at para 21, and elaborated upon in ***Vavilov*** at paras 117-118, and more recently in ***Benchwood Builders, Inc v Prescott***, 2025 ONCA 171 at para 15, the modern approach to statutory interpretation mandates consideration of the text, context, and purpose. This interpretative approach applies to the statute as a whole, as well as discrete segments of a statutory or regulatory regime, such as the continuation provisions of the *Regulation* in this case.

[62] To properly interpret s. 15(1)(e) of the *Regulation* and the argument advanced by APL regarding the sufficiency of mapping, the decision-maker ought to have considered the purpose and objectives of the continuation provisions as a whole, the manner in which the continuation provisions work together, how and why decisions on productivity are made, and how Alberta Energy's various information letters and guidelines inform those processes. With that foundation, the ultimate decision either to accept or reject APL's argument that the technical data was determinative of eligibility for indefinite continuation under s. 15(1)(e) could have been articulated in a transparent and justifiable way, as required by ***Vavilov***.

[63] In this case, APL went to considerable lengths to invite Alberta Energy to explain the considerations that would go into its decisions. It articulated a series of questions that could have been used for discussion purposes or in the formulation of reasons. These attempts by APL were rebuffed by counsel for Alberta Energy on the basis that policy matters are not open for discussion with continuation applicants and, impliedly, that applicants are not entitled to "detailed reasons".

[64] The result was a set of decisions which lacked coherency and transparency in respect of the legal and policy framework within which continuation decisions are made. Alberta Energy also avoided addressing the merits of the legal argument advanced by APL, even though there may be several reasons why APL's interpretation would be inconsistent with the continuation process as a whole, the objective of encouraging resource development through drilling and production, and the power of the Minister to determine in any given case whether, in their opinion, a zone or well is capable of producing in paying quantities.

[65] I conclude therefore that both Continuation Decisions were unreasonable as that term is used in the ***Vavilov*** framework. They may have been correct in the result, but they did not meet the standard of justification and transparency required by our Supreme Court.

B. Procedural Fairness

[66] In addition to being unreasonable, APL argues that the decision-making process for the Continuation Decisions was procedurally unfair. An administrative decision that affects the rights, privileges, or interests of a person triggers a duty of fairness: ***Baker v Canada (Minister of Citizenship and Immigration)***, 1999 CanLII 699 (SCC) at paras 20, 22. To answer a question of procedural fairness, the Court first determines the scope of the decision-maker's duty of fairness and then decides if the decision-maker met the duty: ***Cenovus TL ULC v Alberta (Energy)***, 2019 ABQB 301 at para 19.

[67] The duty of fairness is flexible, variable, and contextual: ***Vavilov*** at para 77. The Supreme Court of Canada in ***Baker*** listed the following non-exhaustive factors that a court may consider when determining the scope of a decision-maker's duty:

> 1. The nature of the decision being made and the process followed in making it; the more the process resembles judicial decision-making, the more likely it is that procedural protections closer to the trial model will be required: at para 23;
>
> 2. The nature of the statutory scheme; for example, greater procedural protections will be required when the decision is determinative of the issue and further requests cannot be submitted: at para 24;
>
> 3. The importance of the decision to the individual or individuals affected; the more important the decision to the lives of the person(s), the more procedural protection is necessary: at para 25;
>
> 4. The legitimate expectations of the person challenging the decision; this is a procedural, not substantive right and these expectations may arise in cases of promises or regular practices of administrative decision-makers, where it would be unfair to renege on representation as to procedure, or "to backtrack on substantive promises without according significant procedural rights": at para 26; and

> 5. The decision-maker's choice of procedure, particularly when the legislation gives the decision-maker discretion as to procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances; at para 27.

[68] With respect to the First Continuation Decision, APL argues that the Information Letter and communication from Alberta Energy's counsel in advance of the September 2022 Meeting gave APL a legitimate expectation that there would be a second meeting with counsel present to address APL's policy questions. Regarding both Continuation Decisions, it argues that the Technical Guidelines, Information Letter, and Application Guide provided by Alberta Energy to APL gave rise to a legitimate expectation that the Minister would consider and grant continuation under s. 15(1)(e) based on technical data. The Minister, APL contends, owed a duty to APL to follow the procedure in the Technical Guidelines, the Information Letter, and the Application Guide.

[69] Regarding the Second Continuation Decision, APL asserts that the Minister had a duty to provide the September 2023 Orr Memo, so that it could tailor its response of November 17, 2023, to address Mr. Orr's concerns. Finally, APL asserts that the lack of reasons responsive to APL's central concern—why APL's evidence of productivity was inadequate for continuation under s. 15(1)(e)—demonstrates Alberta Energy's failure to discharge its duty of fairness.

[70] Alberta Energy argues that the duty of procedural fairness is lower in this case, given the administrative nature of the decision, the nature of the statutory scheme, and the fact that individual liberties are not implicated. In response to APL's argument regarding the First Continuation Decision, Alberta Energy takes the position that the Technical Guidelines and Information Letter set out a process which Alberta Energy followed. Alberta Energy met with representatives of APL at the September 2022 Meeting to discuss its continuation offer. It also gave APL the opportunity to provide additional information prior to expiry of the licence, and Alberta Energy considered that information before making the First Continuation Decision. Thus, APL did not have a legitimate expectation of a different procedure than that which was followed. Moreover, it emphasises that courts must defer to an administrative decision-maker's expertise and discretion regarding procedure.

[71] Regarding the Second Continuation Decision, Alberta Energy argues that it did not deviate from regular practice: it provided APL an opportunity to request a review, and it reviewed the additional information that APL submitted. Alberta Energy notes that APL did not submit any new information; instead, it provided the same information that it had supplied with the First Continuation Application. Thus, for both Continuation Decisions, Alberta Energy met its duty of fairness.

i. Applying the *Baker* factors, what is the scope of Alberta Energy's duty of fairness?

[72] Regarding the first and second ***Baker*** factors, the Continuation Decisions were administrative decisions made pursuant to the *Regulation* and *Act*. Such decisions are not "judicial" in nature, do not give rise to a *lis inter partes*, and require commensurately fewer procedural protections: ***Baker*** at para 23. For instance, a court has found that the issuance of a permit to explore and develop oil and gas resources is a decision that falls at the low end of the procedural-fairness scale: ***Margaree Environmental Association v Nova Scotia (Environment)***, 2012 NSSC 296 at para 17. The *Regulation* provides continuation applicants with an opportunity

to respond to Alberta Energy's initial determination and to provide further information before a final determination is made, which also indicates that fewer procedural safeguards are required.

[73] As individual liberties are not implicated, the third ***Baker*** factor does not apply: ***Cenovus*** at para 22. The fourth and fifth ***Baker*** factors apply, since the procedural and administrative nature of continuation decisions are set out in the *Act*, *Regulation*, and procedural documents (the Information Letter, Technical Guidelines, and Application Guide). These factors demand limited judicial interference in and judicial deference for Alberta Energy's decision-making process: ***Cenovus*** at para 22.

ii. Were APL's legitimate expectations breached?

[74] APL argues that it had a legitimate expectation that the Minister would consider and grant continuation under s. 15(1)(e) based on technical data. It also asserts that it had a legitimate expectation that it would receive a second meeting after the September 2022 Meeting.

[75] Legitimate expectations relate to procedure, not substance: ***Baker*** at para 26. The Supreme Court of Canada has stated that "[w]here a government official makes representations within the scope of his or her authority to an individual about an administrative process that the government will follow, and the representations said to give rise to the legitimate expectation are clear, unambiguous and unqualified, the government may be held to its word, provided the representations are procedural in nature and do not conflict with the decision maker's statutory duty": ***Mavi v Canada (Attorney General)***, 2011 SCC 30 at para 68.

[76] The Information Letter and Technical Guidelines indicate that technical data, such as seismic, isopach and isochron maps, remaining reserves, etc., apply to applications for continuation under s. 15(1)(e). The Information Letter directs that best practice is to ensure that the quality and quantity of technical data is sufficient to support the type of continuation being requested. The Information Letter also states that "[s]uccess of applications is based on the type and detail of documentation and the acceptability of the applicant's technical data and discussion." Similarly, the Technical Guidelines indicate that an applicant may supply mapping and other technical data demonstrating that a spacing unit is underlain by a productive pool.

[77] APL provided this type of technical data, in the form of the Sproule and McDaniel Reports. For both Continuation Decisions, Alberta Energy considered the technical data provided by APL. As evidenced by the various memoranda of Mr. Orr, Alberta Energy had concerns with the technical data, particularly the provisional statements which "[negated] reserve assignment" because they were contingent on continuation and APL demonstrating an intent to develop within the next ten years. As legitimate expectations relate to procedure, not to the substance of the decision, the evidence does not support a finding that Alberta Energy breached APL's legitimate expectations by not granting continuation based on the technical data. Alberta Energy considered APL's technical data, in accordance with the process set out in the Information Letter and Technical Guidelines. The fact that Alberta Energy found that APL's technical data was insufficient to support continuation is not a breach of its duty of procedural fairness.

[78] Similarly, Alberta Energy did not breach APL's legitimate expectations by not providing a second meeting following the September 2022 Meeting. The Information Letter and Technical Guidelines do not indicate that a second meeting is standard practice for continuation decisions. Moreover, Alberta Energy staff did not clearly represent to APL that it would be provided with a second meeting. After APL, in late August 2022, requested a meeting with counsel present to

discuss policy questions, Alberta Energy noted that the request was "unusual." Alberta Energy invited APL to provide a written summary of its legal concerns and questions that APL wanted to discuss at a second meeting, but it did not clearly, unambiguously, and unqualifiedly represent that it would provide such a meeting. After considering APL's summary of concerns and questions, Alberta Energy responded that it would not grant a second meeting, since APL appeared to be seeking detailed reasons and it was not Alberta Energy's practice to engage in policy discussions with continuation applicants.

[79] This was not a breach of APL's legitimate expectations. APL had a technical meeting without counsel present, which accorded with the standard practice set out in the Information Letter and Technical Guidelines. While it asked for another meeting with counsel present, such a meeting would have been unusual and a deviation from standard practice. Absent a clear, unambiguous, and unqualified representation from Alberta Energy that APL would be given a second meeting, APL could not legitimately expect Alberta Energy to follow a different procedure than the one set out in the Information Letter and Technical Guidelines.

iii. Was Alberta Energy's failure to provide the September 2023 Orr Memo procedurally unfair?

[80] APL also argued that Alberta Energy's failure to provide the September 2023 Orr Memo was procedurally unfair. Mr. Orr prepared the September 2023 Orr Memo while Alberta Energy was considering APL's Second Continuation Application. Mr. Orr expressed concern with the fact that Sproule and McDaniel made their reserve assignments contingent on continuation being granted and, in the case of McDaniel, APL demonstrating an intent to develop within the next ten years. Mr. Orr reiterated these concerns in the December 2023 Orr Memo. The Sproule Report and the McDaniel Report contained APL's evidence that Sections 15 and 16 were underlain by the productive Duvernay reservoir and were therefore integral to the Second Continuation Application. The issue, therefore, is whether fairness demanded that Alberta Energy disclose that it gave little weight to APL's technical data because of the "if/then" statements in the Sproule and McDaniel Reports.

[81] An administrative decision-maker is not required "to disclose every element it considered or that had an impact on its decision, unless it is crucial to the decision": ***Cenovus*** at para 30 [emphasis added]. In ***Cenovus***, this Court held that Alberta Energy did not breach its duty of procedural fairness by not providing an Oil Sands Royalty ("**OSR**") project applicant an internal economic analysis and an internal engineer's report. Both of the reports were prepared by Alberta Energy when considering applications made for approval of an OSR project under the *Oil Sands Royalty Regulation, 2009*, Alta Reg 223/2008. Because these internal reports were not "key to [Alberta Energy's] decision, but merely one of many factors," there was no breach of the lower duty of procedural fairness that attached to this type of administrative decision: at para 32.

[82] In cases involving other administrative decisions, courts have found that failures of government decision-makers to disclose internal memoranda were not breaches of procedural fairness. In ***Coldwater First Nation v Canada (Indian Affairs and Northern Development)***, 2016 FC 595 at paras 222-232, rev'd on other grounds 2017 FCA 199, the Federal Court held that the failure of the Minister of Indian Affairs and Northern Development ("**IAND")** to provide the applicants with an internal IAND staff memorandum and recommendation was not a breach of procedural fairness, since the memo did not contain any information not already known to the Applicants. The decision in that case was a "discretionary, administrative decision" in which the

Minister consented to an assignment of an indenture granting a pipeline right-of-way through a reserve, an expropriation grant under s. 35 of the *Indian Act*, RSC 1985, c I-5: at para 227. The Federal Court found that the Minister's duty of procedural fairness was satisfied; while the Applicants did not know the nature of the staff recommendation, they had all the information before the Minister and had been given the opportunity to respond to that information: at paras 230-232.

[83] Similarly, in ***Elguindi v Canada (Minister of Health)*** (1997), 75 CPR (3d) 344 at 362-363, 1997 CanLII 26783 (FCA), the Federal Court of Appeal held that the failure of the Director of the Bureau of Drug Surveillance to disclose certain documents to the appellant was not a breach of procedural fairness, since the Director never referred to any of the extraneous documents in arriving at his decision. The decision under review was the issuance of a prohibition notice pursuant to the *Narcotic Control Regulations,* CRC 1978, c 1041, prohibiting pharmacists and licensed narcotic dealers in Ontario from selling narcotics to the appellant, a licensed pharmacist who had failed to account for missing narcotic drugs. Of the undisclosed documents, five of them were internal submissions of draft letters and requests for comments. The Federal Court of Appeal found that the papers were "in essence working papers from the office of the director himself.": at 363. As they did not contain new evidence, the Director's failure to disclose them to the appellant before reaching his decision was not a breach of procedural fairness.

[84] In this case, the fact that Sproule and McDaniel had qualified their reserve assignments was not crucial to Alberta Energy's Second Continuation Decision. What was crucial was the lack of producing wells on the Lands, or within a spacing unit of the Lands. While the September 2023 Orr Memo states that the experts' provisional "if/then" statements negated reserve assignment, the memo also states that "[n]o additional work has been conducted by the company on the location of this agreement since granting the '17' extension, and neither are there any producing wells on the location of the agreement". It is this latter point that is ultimately key to Alberta Energy's decision, as revealed by the reasons (deficient as they were) set out in Alberta Energy's initial decision letter and final decision letter, as described below.

[85] When Alberta Energy issued its initial decision on October 19, 2023, it informed APL that it would accept "additional evidence of productivity" that must relate to "operations conducted on or before" the continuation application date. While "additional evidence of productivity" is broadly worded, it is then limited in that it "must relate to <u>operations</u> conducted" before the application date" [emphasis added]. It does not say that the "additional evidence of productivity" must not be qualified, or contingent on continuation being granted. This suggests that Alberta Energy's decision turned on whether APL could provide evidence of "operations" that showed the Lands were productive in paying quantities, rather than on whether APL's consultants would certify their *undeveloped* reserve estimates without any "if/then" statements.

[86] Moreover, in the final decision letter of February 15, 2024, Alberta Energy informed APL that its initial decision remained unchanged because the Lands were not proven productive in paying quantities "since *there are no producing wells* on the Lands (as per section 15(1)(a) of the Regulation), *or within a spacing unit of the Lands* (as per section 15(1)(e) of the Regulation)." It also stated that "APL's application did not demonstrate that additional work was conducted on the location of the Lands to meet the requirements for the rights to be proven productive in paying quantities." These reasons indicate that the key factor in the Second Continuation Decision was the absence of a producing well on Sections 15 and 16, or within one

spacing unit from those sections, rather than Mr. Orr's opinion that the conditional statements in the Sproule and McDaniel Reports negated their reserve assignments.

[87] Given the lower duty of procedural fairness that Alberta Energy owed in this instance, it did not breach its duty of procedural fairness by not providing APL with the September 2023 Orr Memo. The September 2023 Orr Memo was an internal document that contained no new evidence. While Mr. Orr focused on an element in the Sproule and McDaniel Reports—the conditional reserve assignments—to which APL had not had an opportunity to respond, this element was not crucial to the Second Continuation Decision. With or without the conditional language in the Sproule and McDaniel Reports, the technical data was not the key element in the Second Continuation Decision; it was the proximity of a producing well that was crucial to this decision.

iv. Did Alberta Energy fail to discharge its duty of fairness by not providing reasons responsive to APL's central concern?

[88] Finally, APL argued that Alberta Energy breached its duty of fairness by failing to provide reasons responding to APL's central concern, namely why the technical data was inadequate to support continuation under s. 15(1)(e), since it showed that the Lands were underlain by the Duvernay reservoir.

[89] The question of whether reasons are adequate can have both procedural and substantive elements: ***Vavilov*** at para 81. However, the adequacy of reasons is not a procedural fairness question, unless no reasons were provided: ***Newfoundland and Labrador Nurses' Union*** at paras 14, 19-22; ***RNL Investments Ltd v British Columbia (Agricultural Land Commission)***, 2021 BCCA 67 at para 68; ***Chantale v Canada (Citizenship and Immigration)***, 2021 FC 544 at para 7. For instance, in ***Chavero Ramirez v Canada (Public Safety and Emergency Preparedness)***, 2025 FC 358 at para 33, the applicants argued that the administrative decision at issue in that case did not adequately address the complexity of legal and factual issues raised. The Federal Court in ***Chavero Ramirez*** found that the applicants had "conflated reasonableness and the hallmarks of reasonableness with procedural fairness": at para 35.

[90] As framed, APL's argument suggests that Alberta Energy's reasons were inadequate because they did not respond to APL's central concern. APL's argument goes to the substantive reasonableness of the Continuation Decisions, rather than whether the Continuation Decisions were procedurally unfair. As I have already discussed substantive reasonableness in relation to both Continuation Decisions, I need not repeat that analysis here.

IV. Remedies

[91] The Continuation Decisions were made two years apart and form the subjects of two separate Originating Applications. The applications requested the Court to set aside the Continuation Decisions and remit the applications back to the Minister for reconsideration. In argument, APL went somewhat further, and requested (among other things) that I direct the Minister to grant the continuation applications as applied for in respect of the Sections 11, 15, and 16 of the Lands.

[92] As explained earlier, the Continuation Decisions did not comply with the standard of reasonableness mandated in ***Vavilov***. They may have been correct in the result, but they were not sufficiently coherent, transparent, and justifiable. Put more succinctly, they were not thoughtful.

[93] For many years, administrative law has been under chronic tension: the need and oft-stated promise for deference by the Court to administrative decision-makers, and the temptation of judges to intervene in those decisions by directing the result, particularly where questions of statutory interpretation are involved. ***Vavilov*** demonstrates that tension by expressing the need for deference—even in relation to the interpretation of statutes—while at the same time requiring a depth of analysis in decision-making that may be challenging to even the most diligent and experienced of administrative tribunals and other decision-makers.

[94] For these enhanced standards of decision-making to be effectively implemented, I consider it important for reviewing courts to exercise restraint in deciding a remedy for an unreasonable decision, as defined in ***Vavilov***. Unless a decision turns on a very straightforward question of law, the Court should respect the expertise and specialized knowledge of the decision-maker by remitting the decision back for reconsideration, without dictating the analytical approach to be used or the result. If, after thoughtful reconsideration, a decision is reached in a transparent and organized way, that decision should withstand any further judicial review. In the long run such an approach will improve the quality of administrative decision-making and reduce the need for judicial intervention for the benefit of all involved..

[95] Accordingly, I will quash both decisions , and remit the First and Second Continuation Applications back to Alberta Energy for reconsideration. Pending reconsideration, the location of APL's former licence and licensed substances, granted pursuant to PNG Agreement #5413080235 (*i.e.*, M5 R17 T65: 10, 11, 15, and 16; petroleum and natural gas in the Duvernay-Majeau Lake Formation), shall not be reposted for sale.

Heard on the 12th day of December, 2024.
Dated at Calgary, Alberta this 31st day of March, 2025.

R.A. Neufeld
J.C.K.B.A.

Appearances:

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For the Respondent