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<p style="text-align: center;">THE ALBERTA ENERGY REGULATOR PROCEEDING ID NO. 436</p> <p>IN THE MATTER OF the Regulatory Appeal by Obsidian Energy Ltd. of the Alberta Energy Regulator's decision to issue an Environmental Protection Order to Obsidian Energy Ltd., pursuant to Sections 113 and 24 of the Environmental Protection and Enhancement Act On March 23, 2023 (Regulatory Appeal 1943624)</p> <hr/> <p style="text-align: center;">AER PROCEEDING VOLUME 17</p> <hr/> <p style="text-align: center;">Calgary, Alberta December 6, 2024</p>	<p style="text-align: center;">TABLE OF CONTENTS</p> <p>1</p> <p>2</p> <p>3 Description Page</p> <p>4</p> <p>5 December 6, 2024 Afternoon Session 901</p> <p>6 Final Submissions by D.P. Langen (Reply) 903</p> <p>7 Discussion 912</p> <p>8 Certificate of Transcript 915</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>
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<p>1 Proceedings taken at the Govier Hall, Calgary, 2 Alberta</p> <hr/> <p>3</p> <p>4 December 6, 2024 Afternoon Session</p> <p>5</p> <p>6 A. Bolton The Chair</p> <p>7 B. Zaitlin Hearing Commissioner</p> <p>8 T. Stock Hearing Commissioner</p> <p>9</p> <p>10 B. Kapel Holden AER Counsel</p> <p>11 O. Chijioke AER Counsel</p> <p>12 A. Huxley AER Counsel</p> <p>13 (Via Videocast)</p> <p>14 A. Lung AER Staff</p> <p>15 A. Stanislavski AER Staff</p> <p>16 F. Hamdan AER Staff</p> <p>17</p> <p>18 P. Fitzpatrick For Regulatory Compliance 19 Branch</p> <p>20 J. Allison For Regulatory Compliance 21 Branch</p> <p>22 A. Hall For Regulatory Compliance 23 Branch</p> <p>24</p> <p>25 D.P. Langen For Obsidian Energy Ltd.</p> <p>26 A. Barrington For Obsidian Energy Ltd.</p>	<p>1 K. Di Rocco, CSR(A) Official Court Reporter</p> <hr/> <p>2</p> <p>3 (PROCEEDINGS COMMENCED AT 1:57 PM)</p> <p>4 THE CHAIR: Okay. Thank you.</p> <p>5 I think we're back in the public session now.</p> <p>6 Thank you for your oral argument,</p> <p>7 Mr. Fitzpatrick. The Panel has no questions 8 for you.</p> <p>9 P. FITZPATRICK: Very good. Thank 10 you very much.</p> <p>11 THE CHAIR: Mr. Langen, do you 12 want an opportunity for reply, and, if so, do 13 you want a bit of break before that occurs, or 14 are you prepared to proceed?</p> <p>15 D.P. LANGEN: Thank you, 16 Mr. Chair.</p> <p>17 We will have some reply. I would like a 18 break to confer with our folks, and so if we 19 could have 20 minutes maybe. We're in your 20 hands on that point.</p> <p>21 THE CHAIR: Okay. Sure. Let's 22 take a 20-minute break. Let's resume at 2:20. 23 (ADJOURNMENT)</p> <p>24 THE CHAIR: Thank you. Please 25 be seated.</p> <p>26 Whenever you're ready, Mr. Langen.</p>

<p style="text-align: right;">903</p> <p>1 Final Submissions by D.P. Langen (Reply)  2 D.P. LANGEN: Thank you,  3 Mr. Chair.  4 Sorry for the delay. I'll be dealing with  5 a different -- a few different pieces of media  6 or -- as I go through this reply.  7 First up, Dr. Verdon's induced assessment  8 ratio. Mr. Fitzpatrick, in his argument just  9 now, stepped you through parts of Dr. Verdon's  10 application of the Verdon assessment  11 methodology or framework. In doing so,  12 Mr. Fitzpatrick offered his own view of how  13 certain inputs -- if certain inputs were  14 changed, what the result would be.  15 With respect, he did not pursue those  16 hypotheticals with Dr. Verdon in  17 cross-examination, and it is an -- it is  18 completely inappropriate to do so now in  19 argument. For that reason, you should dismiss  20 those portions of his submissions.  21 We also heard from Mr. Fitzpatrick  22 something along the lines of if you find the  23 Belloy well caused the seismicity in the EPO,  24 you must find the Obsidian well has also  25 contributed. That was surprising. That's the  26 first we heard of any of that in this</p>	<p style="text-align: right;">904</p> <p>1 proceeding. It's new opinion evidence from  2 counsel. CLM's witnesses did not once raise  3 this possibility. Those witnesses, as you  4 know, are adamant that there was only one cause  5 of the seismic events in the EPO, and that's  6 the 14-18 well. Inappropriate, late-breaking,  7 evolving position from counsel should not be  8 considered by you.  9 We heard from Mr. Fitzpatrick that it would  10 not be appropriate to issue an order against  11 the operators of the -- I believe he was  12 referring to the 13-11 well and the 6-14 well  13 as a result of this proceeding. He may have  14 been referring to the operators of the  15 high-volume injection wells to the north.  16 I want to be very clear on this point. A  17 notice of hearing was issued. Those operators  18 had an opportunity to intervene and participate  19 in this proceeding. They're not here. They  20 chose not to.  21 Simply put, if you conclude that the  22 high-volume Leduc injection or the 6-14 well  23 caused or contributed to the seismic events,  24 your decision should say so. You have evidence  25 on you on those points, detailed -- a detailed  26 suite of independent evidence.</p>
<p style="text-align: right;">905</p> <p>1 It follows that then -- once a decision has  2 been made, it follows that CLM has a decision  3 to make. Does it exercise its discretion --  4 once you've determined, if you do, that those  5 are the causes of the seismic events, it has to  6 decide whether it issues an EPO to those  7 operators like it did to Obsidian. And as you  8 know, Obsidian got two days' notice and no  9 process. It's as simple as that.  10 So my friend's suggestions that the fact  11 that those operators are not present in the  12 hearing should not factor in any way in your  13 decision-making. Your obligation is to assess  14 all the evidence before you and reach a  15 conclusion.  16 If you find that there are other causes of  17 the induced seismicity, you are obligated to  18 say so in your decision. What regulatory  19 action falls out of that decision is up to the  20 AER and/or CLM. It's very simple.  21 My friend spoke about since the  22 traffic-light protocol has been implemented and  23 the -- flowing out of the EPO, seismicity has  24 not been seen at such high levels since the  25 EPO. And he goes on the say that would -- you  26 should infer that CLM got it right because the</p>	<p style="text-align: right;">906</p> <p>1 seismicity -- the magnitude of the seismicity  2 has dropped off.  3 First, the 13-11 well that also injects  4 into the Leduc, as you know, was -- undertook a  5 voluntary -- sorry -- implemented a voluntary  6 mitigation plan right around the same time as  7 the EPO being issued. So my friend's  8 suggestion could just as easily be applied to  9 that well: CLM got it right in asking the  10 operator of the 13-11 well to voluntarily  11 mitigate. Which is it? Or is there some other  12 reason why we haven't seen a large event since  13 the EPO?  14 The point is the issue of seismicity and  15 its cause is complicated. Given the evidence  16 you have before you, it is evidence -- it is  17 evident that it is not nearly as simple as  18 drawing the inference my friend is asking you  19 to draw. To do so undermines this entire  20 process, frankly.  21 Flexibility of the Verdon framework --  22 THE COURT REPORTER: Sorry, sir. Your  23 mic.  24 D.P. LANGEN: Sorry.  25 Flexibility of the Verdon framework.  26 Mr. Fitzpatrick has revisited a portion of his</p>

<p style="text-align: right;">907</p> <p>1 cross-examination of Dr. Verdon regarding how 2 to apply the Verdon framework, but my friend 3 admitted the answers Dr. Verdon provided. 4 The Verdon framework, as Dr. Verdon 5 testified, at the time he and his coauthors 6 wrote it, they allowed for flexibility; but 7 since then, they have found that other users 8 have used the scheme with the questions and 9 scorings that Dr. Verdon recommends. That's 10 starting at line 136 of Transcript Volume 1. 11 Mr. Fitzpatrick -- I think he effectively 12 tried to suggest that you should draw an 13 adverse inference because there was no reply to 14 certain portions of Mr. Virues' report. I 15 want to clarify for the record that both 16 comments that he referred to in his -- in his 17 argument-in-chief are -- were indeed replied 18 to, and they're located at Exhibit 81.7 in the 19 last paragraph of PDF 24 and the first 20 paragraph of PDF 25. 21 Now, Mr. Fitzpatrick put you in 22 Dr. Verdon's paper. And, in particular, I'm 23 going to direct you -- we don't need to pull it 24 up, but it's Exhibit 50.06, and PDF 24. And 25 it's where he directed you to a portion of the 26 paper, and he referred to the fact -- he</p>	<p style="text-align: right;">908</p> <p>1 suggested that the text suggested that you 2 shouldn't use reservoir models when you have 3 temporal correlation. 4 And, with respect, he's misread it. And 5 I'll read it in, and then I'll just suggest 6 that when you go back to deliberate, go back to 7 the paper and read that portion, and you'll see 8 that he did mischaracterize it. I quote: 9 (as read) 10 An assessment framework should 11 weigh -- weight different pieces of 12 evidence according to their 13 significance. For example, an 14 observation of strong temporal 15 correlation between injection and 16 seismicity may count as stronger 17 evidence for events being induced than 18 does a reservoir model indicating that 19 any induced pore pressure changes 20 could not have reached the hypocentre 21 location count -- counts against 22 events being induced. 23 What I'm suggesting is that he missed the part 24 about "could not have reached". 25 Just two more, sir, and the first relates 26 to my friend taking issue with my</p>
<p style="text-align: right;">909</p> <p>1 argument-in-chief in respect of reputational 2 impact. 3 I did -- as I said in my argument-in-chief, 4 I did indicate to you, sir, that I didn't 5 intend to refer to that evidence in argument, 6 but I first -- and I'll get to that. But I'll 7 first note that you were the first person, 8 Mr. Chair, who sought to ask questions on that. 9 By that point in time, my friend had sat down, 10 and so he was not in any way prejudiced by my 11 comment to you. That's my first comment. I 12 find his comment to be inappropriate in that 13 regard. I'm not sure why he raised it, but we 14 can infer why. 15 Now, I did indicate to you that I wasn't 16 going to refer to it in argument-in-chief, and 17 I did glance on it. I did acknowledge that I 18 said I wasn't going to refer to it in 19 argument-in-chief. What I can tell you is I -- 20 at the time that I gave you that commitment, I 21 had not drafted anything with respect to relief 22 in argument. 23 I purposely did not go directly to that 24 evidence in argument-in-chief. I indicated, 25 (a), that I wasn't going to, and then I said 26 that it goes without saying. You can draw the</p>	<p style="text-align: right;">910</p> <p>1 inference that there were implications. 2 So, Mr. Chair, if I've crossed you, I 3 apologize, and those are -- those are my 4 submissions on that point. 5 And, finally, Mr. Chair and Commissioners, 6 my friend took issue with Obsidian -- 7 Obsidian's argument in that given -- this is a 8 hearing de novo. I spent a great deal of time 9 in discussing the evidence and facts leading to 10 the issuance of the EPO. He said it was not 11 essential to the deliberations you are about to 12 embark on and the decision you are about to 13 make. 14 With respect, he's wrong. 15 First, that evidence shows an internal 16 process that was, in Obsidian's observation, 17 rushed and flawed. It goes to the diligence or 18 lack of diligence applied by AGS in assessing 19 the seismic events in question. It goes to the 20 process failure internally when Mr. Kuleba was 21 presented with key evidence -- his term -- that 22 Dr. Canales knew was erroneous but failed to 23 share with the decision-maker. The EPO is 24 issued in the public interest. It is in the 25 public interest to get it right. Mr. Kuleba 26 agreed to that in cross-examination. Close</p>

911	<p>1 enough is not sufficient.</p> <p>2 Second, the evidence and information</p> <p>3 leading up to the issuance of the EPO, the</p> <p>4 diligence or lack thereof, the fact that the</p> <p>5 process appears to have failed all goes to</p> <p>6 weight or credibility to be assigned to the</p> <p>7 de novo evidence.</p> <p>8 The apparent lack of diligence where the</p> <p>9 arbitrariness by which AGS led --</p> <p>10 arbitrariness -- sorry -- arbitrariness by AGS</p> <p>11 leading up to the issuance of the EPO has only</p> <p>12 continued into the de novo evidence. That was</p> <p>13 the root of our submissions. That's why the</p> <p>14 argument was structured the way it is. And</p> <p>15 when you read it, you'll understand that.</p> <p>16 Finally, to suggest, as Mr. Fitzpatrick</p> <p>17 has, that because this is a hearing de novo,</p> <p>18 you wipe the slate clean and you just look at</p> <p>19 the de novo evidence does a disservice to the</p> <p>20 public, the AER as an organization, the</p> <p>21 regulator, and is certainly not in the public</p> <p>22 interest.</p> <p>23 CLM and AGS, in issuing the EPO in the</p> <p>24 first instance, need to be held to account.</p> <p>25 You can't sweep it away and say, Don't look at</p> <p>26 that; just look at the de novo evidence. You</p>	912	<p>1 need to look at what happened. You can't sweep</p> <p>2 away its actions leading to the EPO on the</p> <p>3 basis that you are -- you are considering this</p> <p>4 anew. That would not be in the public</p> <p>5 interest. Industry and the public deserve</p> <p>6 better.</p> <p>7 Those are our submissions.</p> <p>8 Discussion</p> <p>9 THE CHAIR: Thank you,</p> <p>10 Mr. Langen.</p> <p>11 Mr. Fitzpatrick, you stood up at one point.</p> <p>12 Do you have something you want to say?</p> <p>13 P. FITZPATRICK: Simply that, in my</p> <p>14 submission, my friend was going well beyond</p> <p>15 reply and restating his argument, but you've</p> <p>16 heard it now, so the horse is out of the barn.</p> <p>17 THE CHAIR: Mr. Langen.</p> <p>18 D.P. LANGEN: Mr. Chair, you'll</p> <p>19 read our reply argument. I was rooted in</p> <p>20 statements that he made. It was proper reply.</p> <p>21 With that, though, I will thank you,</p> <p>22 Mr. Chair and Commissioners, on behalf of</p> <p>23 Obsidian for holding the proceeding and</p> <p>24 considering the appeal.</p> <p>25 I'll also thank commission -- or --</p> <p>26 sorry -- Regulatory staff and Counsel for the</p>
913	<p>1 work putting [sic] into this hearing. Thank</p> <p>2 you very much.</p> <p>3 THE CHAIR: Thank you,</p> <p>4 Mr. Langen.</p> <p>5 So I think that does bring us to about the</p> <p>6 end of our business. So just one housekeeping</p> <p>7 item we talked about at the start of today's</p> <p>8 session.</p> <p>9 So my understanding is counsel for Obsidian</p> <p>10 as well as for CLM will provide kind of an</p> <p>11 annotated version of their oral argument and --</p> <p>12 with the references. Once we receive that, we</p> <p>13 will assign an exhibit number and put it on the</p> <p>14 record.</p> <p>15 But, again, for clarity, it's only going to</p> <p>16 be used for the purposes of identifying</p> <p>17 relevant parts of the record, that your oral</p> <p>18 argument here on the transcript is what the</p> <p>19 Panel will have regard for. So once we have</p> <p>20 that, we'll close the record. So I'm expecting</p> <p>21 that would probably be early next week sometime</p> <p>22 when that occurs.</p> <p>23 Is there any other business that we need to</p> <p>24 take care of before we adjourn? Seeing none.</p> <p>25 Okay. Thank you very much for everybody's</p> <p>26 participation in this proceeding. We will</p>	914	<p>1 issue our decision within 90 days of the close</p> <p>2 of the record. And have a great day. Thanks,</p> <p>3 everybody.</p> <hr/> <p>4</p> <p>5 PROCEEDINGS CONCLUDED</p> <hr/> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>

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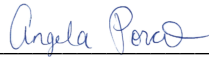
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We, K. Di Rocco and A. Porco, certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by us in shorthand and transcribed from our shorthand notes to the best of our skill and ability.

Dated at the City of Calgary, Province of Alberta, this 6th day of December 2024.



K. Di Rocco, CSR(A)  
Official Court Reporter  
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