

May 3, 2018

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By e-mail only

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MLT AIKINS
Attention: John Gruber

Torys LLP
Attention: David Wood

**Re: Pre-hearing Meeting Decision
Proceeding ID 360
Bears paw Petroleum Ltd.
Common Carrier Order and Rateable Take Order**

The Alberta Energy Regulator (AER) held a pre-hearing meeting in Calgary, Alberta on April 27, 2018 before commissioners Cecilia Low, (Presiding), Parand Meysami, and Tracy Stock.

The pre-hearing meeting was convened to consider the issues to be addressed at the hearing and to address procedural matters. The meeting was attended by Bears paw Petroleum Ltd. (Bears paw) and Harvest Operations Corp. (Harvest), on behalf of itself and Nexen Energy ULC, ExxonMobil Canada Energy and Breeze Resources Partnership, a subsidiary of Harvest.

The panel provided the parties a detailed agenda for the pre-hearing meeting. The agenda included matters that the panel wanted to discuss at the meeting and have the parties address, including

1. specific issues to be addressed at the hearing under the common carrier application and rateable take application
2. potential for an agreed statement of facts
3. potential for narrowing the issues
4. the need for a formal information request (IR) process
5. hearing dates
6. without prejudice matters

Tariffs

Tariffs were referenced in several of the statements of concern. If the proprietor of a pipeline that has been declared a common carrier and a person who wants to have gas carried on that pipeline are not able to agree a tariff, section 55(3) of the *Oil and Gas Conservation Act* provides that either party can apply to the Alberta Utilities Commission to have the tariff set. The panel advised that it has no jurisdiction over pipeline tariffs and the issue will not be addressed in this proceeding.

Common Carrier Application

Bearspaw indicated that the materials it has filed are intended to address all of the issues relevant to its applications. Bearspaw said it was incumbent on Harvest to identify which matters it did not take issue with and which matters it did.

Harvest said the following were settled or matters it did not take issue with:

- designation of the delivery point;
- the existence of producible reserves; and
- whether its pipeline is the most practical way to transport the gas.

Harvest indicated that it intended to contest the following specific issues during the proceedings:

- whether the applicant could make reasonable arrangements for the use of the pipeline
- whether there is a reasonable expectation of a market for the gas to be transported by the common carrier pipeline;
- the proportion of production to be taken from each producer or owner; and
- the effective date of the order.

Rateable Take Application

For the rateable take application, Harvest indicated the following specific issues needed to be determined;

- whether the applicant has made substantial efforts to resolve the issue; and
- the appropriate formula for allocation of production.

During the pre-hearing, both parties were confident they could provide an agreed statement of facts to the panel and could work together to further narrow the hearing issues.

Issues for the Hearing

The panel has decided that the parties are to focus their efforts on the need for the common carrier and rateable take orders and if the orders are issued, the details of the orders. The issues for the hearing are the following:

- 1) The need for the common carrier order:
 - i. producible reserves are available for transportation through an existing pipeline;
 - ii. there is a reasonable expectation of a market for the gas that is proposed to be transported by the common carrier operation;
 - iii. whether the pipeline subject to the common carrier order is the only economically feasible way, or is clearly superior environmentally; and
 - iv. whether Bearspaw tried to make reasonable arrangements to use the existing pipeline.
- 2) The proportion of production to be taken from each producer or owner to be delivered to the pipeline.

- 3) Whether the common carrier should include the field compressor at LSD 05-36-24-28 W4M.
- 4) If the common carrier order is granted, when should the order be effective?
- 5) The need for the rateable take order as to:
 - i. whether Bearspaw's reserves are being inequitably drained;
 - ii. whether the drainage would likely continue in the absence of a rateable take order; and
 - iii. whether Bearspaw has made substantial efforts to resolve the issues..
- 6) What is the appropriate formula/approach for allocation of production from the Crossfield Basal Quartz C Pool amongst the wells in the pool?
- 7) If the rateable take order is granted, when should the order be effective?

WITHOUT PREJUDICE COMUNICATIONS

During the pre-hearing meeting, Bearspaw raised the subject of without prejudice communications and how they might be dealt with in the hearing. Harvest also indicated that it would appreciate receiving some guidance from the panel.

The panel is not prepared to address without prejudice communications in the absence of specific factual context. As noted in requirement 4, section 1.3.5 of Directive 065, the panel expects that matters of confidentiality and disclosure will be addressed and determined by the parties prior to the submission of the application¹. The parties may also address and determine those matters prior to the date for written pre-hearing motions since they are encouraged to engage in or continue efforts to resolve issues between themselves.

Confidentiality of matters discussed in the course of a dispute resolution meeting facilitated or mediated by the AER (whether staff or hearing commissioner) are covered by Rule 7.7 of the *AER Rules of Practice*.

The parties are reminded that all documents filed in an AER proceeding must be placed on the public record.

¹ Directive 065: Resource Application for Oil and Gas Reservoirs, page 1-18.

In the event that disclosure of certain information becomes an issue, a party may request an order for confidentiality under Rule 49 of the Alberta Energy Rules of Practice. The AER website contains references to previous confidentiality rules by AER decision makers. A party may also bring a specific matter before the regulator by filing a motion along with supporting materials under Rule 44.

HEARING SCHEDULE

The parties requested a formal information request IR process be incorporated into the hearing process. The panel agrees, in this case, that formal information requests will provide the parties with an opportunity to further narrow the issues and assist in the development of an agreed statement of facts. Accordingly the panel has incorporated a formal IR process in the hearing schedule. If a party wants the responses received to any IRs to be included on the record, the responses will have to be filed by that party. The parties are reminded that the panel may have its own IRs and parties are to respond to the panel IRs within 10 business days of any request, as dated.

Bearspaw estimated six days would be required to hear both applications. Harvest said it was surprised to hear that Bearspaw thought its applications would need a week and a day of hearing. Both parties advised that there was a willingness to engage in Alternative Dispute Resolution (ADR). Bearspaw requested sufficient time to allow for the ADR to be meaningful. Harvest expressed concern about the hearing drifting to a date too far out into the future. Bearspaw stated that it was available either August 21, 2018 or September 25, 2018. Harvest preferred the earlier date but said it was available for the September date. The panel has consulted its schedules and has decided to hold the hearing commencing on Monday, September 24, 2018. The hearing schedule is set out below:

Proceeding 360 Hearing Schedule (all actions must be completed no later than 4:00 p.m. on the date)	
Filing Date	Action
MAY 22	Bearspaw's submission
JUNE 4	Harvest's IRs to Bearspaw
JUNE 18	Bearspaw's responses to Harvest's IRs
JULY 3	Harvest's submissions
JULY 16	Bearspaw's IRs to Harvest

JULY 30	Harvest's response to Bearspaw's IRs
AUGUST 13	Bearspaw's final reply
SEPTEMBER 10	Written pre-hearing motions
SEPTEMBER 24	The panel has set aside 5 days for the hearing but expects it to take less time.

A Notice of Hearing will be issued in due course. The panel will establish time limits for the presentation of evidence, including expert witnesses, cross examination and argument after requesting time estimates from the parties and closer to the hearing date.

Cecilia Low (on behalf of the panel)



cc: Barbara Kapel Holden, AER Counsel

Brent Prenevost, AER Counsel

Elaine Arruda, AER Hearing Coordinator

