

January 16, 2019

By e-mail only

MLT AIKINS
Attention: John Gruber

Torys LLP
Attention: David Wood

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

**Re: Proceeding ID 360
Bears paw Petroleum Ltd. (Bears paw)
Common Carrier Order and Rateable Take Order**

The hearing panel is in receipt of Bears paw’s January 4, 2019 correspondence, which was requested by the panel in its September 25, 2018 letter (Panel Letter). The Panel Letter stated:

Harvest’s motion for adjournment is granted. AER Proceeding ID 360 is adjourned; however, Bears paw or Harvest may request that the proceeding be resumed if there is a change in circumstances. Bears paw is to provide a written update to the panel on the status of its applications on or before January 4, 2019.

The panel is also in receipt of Harvest’s response to Bears paw dated January 10, 2019. The panel has reviewed and considered both submissions and has asked that I convey its decision and directions to the parties.

In its submission Bears paw asked that the hearing be resumed. The panel does not find that Bears paw’s submission describes any change that warrants resumption of the proceeding, which includes both Bears paw’s common carrier application and its rateable take application at this time. The proceeding was adjourned on the basis that Bears paw’s right and ability to produce and offer gas for transportation on the Harvest system is the subject of a dispute. The issue of whether Bears paw has the right to produce natural gas from the 102/11-24-24-28W4M (102/11-24) well continues to be litigated in the Court of Queen’s Bench of Alberta.

As was stated in the Panel Letter,

The AER and more specifically the panel, cannot resolve that dispute. Unless and until the question of whether Bears paw has the rights to produce gas from the 102/11-24 well is resolved in its favor, Bears paw does not satisfy the requirement of section 1.3.4 in Directive 065.

Bears paw submits that it and PrairieSky have been in discussions to settle the lease dispute. Should an agreement be reached, and PrairieSky confirms that Bears paw has the right to produce from the 102 /11-24 well, the Panel could consider that information as a change in circumstance in a request for resumption of this proceeding.

Bears paw asks the panel to confirm that, “until the Lease matter is resolved between PrairieSky and Bears paw either through negotiation or by a court decision that its applications remain valid and any retroactivity in any order issued by the AER will not be prejudiced.” Harvest responds to this request by stating that it, “assumes that if the dispute regarding legal entitlement to produce from the Basal Quart C Pool through the Bears paw Well is decided in Bears paw’s favour,” and the panel were to lift the

adjournment, the AER will resume consideration of the applications and expects that both parties will have an opportunity to make any arguments for and against a retroactive order. The panel agrees with Harvest's comments. If the adjournment of this proceeding is lifted, Bearspaw and Harvest may present arguments about retroactivity, based on the evidence filed in the proceeding.

The panel has decided to continue to hold Bearspaw's applications in abeyance and the proceeding continues to be adjourned *sine die*. The panel would like Bearspaw to update the panel on the status of its applications by July 4, 2019. Bearspaw's update should be limited to the status of its ongoing litigation with PrairieSky concerning natural gas rights in the 102/11-24 well and, to the extent it is able in light of any applicable confidentiality provisions, the status of ADR with Harvest. Bearspaw or Harvest may request prior to July 4, 2019 that the proceeding be resumed if there is a change in circumstances.

Yours truly,

Barbara S. Kapel Holden
Legal Counsel

cc: Brent Prenevost, AER Counsel

Elaine Arruda, AER Hearing Coordinator