

**AER Proceeding 382
Application 1914582**

August 21, 2019

Via Email Only

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.caTrace Water Solutions Ltd.
Attention: Renée MarxKMSC Law LLP
Attention: Erik Compton**RE: Panel Decision on Hearing Issues and Hearing Schedule**

Dear Sir/Madam:

In response to its August 1, 2019, correspondence, the panel has considered the submissions received from Mr. Horsman on August 8, 2019, from Trace Water Solutions Ltd. (Trace) on August 9, 2019, from Mr. Compton on behalf of the Landowners¹ on August 9, 2019, and the reply submission filed by Trace on August 15, 2019.

On August 15, 2019, Mr. Compton filed a response to Trace's reply on behalf of the Landowners (the August 15 Letter). The August 15 Letter was filed outside of the process timelines outlined in the panel's August 1, 2019, correspondence. Consequently, the panel did not consider the August 15 Letter when making its decisions.

I. Proposed Hearing Issues

The panel has determined the issues in this proceeding will be:

1. Whether the proposed facility is consistent with the purposes of the *Oil and Gas Conservation Act*, particularly those set out in subsections 4(b), (c) and (f).

¹ In this correspondence, "Landowners" refers to George and Georgina Albert, B4 Farms Ltd. (Dimitri & Marianne Boychuk), Pavilion Holdings Ltd. (Larry Horsman), Ervin and Linda Murray, and Squires Farms Ltd. (Ryan and Danialle Squires).

2. Whether the proposed facility is consistent with the purposes of the *Responsible Energy Development Act (REDA)*, particularly those set out in subsections 2(1)(a) and 2(1)(b)(ii).
3. The economic effects of the proposed facility.
4. The social effects of the proposed facility, particularly
 - a. the impacts of increased heavy truck traffic on the safety of other road users; and
 - b. the impacts of dust, emissions, odours, light pollution and noise from the facility and increased heavy truck traffic on air quality, human health and quality of life.
5. The effects of the proposed facility on the environment, particularly
 - a. the impacts of the proposed facility and associated heavy truck traffic on wildlife; and
 - b. the impacts of potential leaks and releases from the facility and associated truck traffic on neighbouring quarter sections and surface or subsurface water in shallow aquifers, water wells, springs and Kakut Lake.
6. The impacts the proposed facility may have on neighbouring landowners, particularly
 - a. the impact on farming operations; and
 - b. the impact on land values.
7. The need for the proposed facility, including the appropriateness of the applied-for location.

The panel is of the opinion that issues related to municipal and land use bylaws are outside the scope of this proceeding and the AER's jurisdiction, and will not hear evidence or submissions related to them.

With respect to Trace's questions in its August 9, 2019, letter, the panel notes that section 15 of the *REDA* and section 3 of the *Responsible Energy Development Act General Regulation* require the panel to consider the social, economic and environmental impacts of Trace's proposed facility, as well as the effect the facility may have on the Landowners. The panel will consider evidence of potential impacts of

the project that relate to the aforementioned list of hearing issues and fit within these specified legislative provisions.

The panel notes that AER hearing panels have previously considered the impacts of energy developments on land values.² That being said, the panel confirms that it does not have authority to order compensation should it determine that the value of the Landowners' properties may be negatively affected by the proposed facility.

II. Canadian Environmental Assessment Agency

The panel understands that the Canadian Environmental Assessment Agency (the Agency) received a request from Mr. Horsman on June 28, 2019, to designate Trace's proposed facility for an environmental assessment under subsection 14(2) of the *Canadian Environmental Assessment Act, 2012*. To date, the Agency has not made a determination with respect to Mr. Horsman's request. Until such time as the Agency does so, the AER hearing process will proceed as planned.

III. Scheduling of Hearing

The panel has considered the information provided by the parties regarding hearing timing and availability. While the panel acknowledges Trace's request to maintain the proposed November hearing dates, due to AER staffing constraints and proximity to the Christmas holidays, the panel was unable to find subsequent hearing dates in November or December 2019 that also provided the Landowners with sufficient additional time to complete their farming operations and consult with the appropriate experts. Accordingly, the panel has determined that the hearing will commence on January 14, 2020. In doing so, the panel has set the following deadlines for process steps:

Trace's Submission	October 16, 2019
Landowners' Submission	November 6, 2019

² *Value Creation Inc. (Applications to Amend the Heartland Upgrader Project Approvals)*, 2018 ABAER 003; *Canadian Natural Resources Limited (Application for a Single-Well Bitumen Battery)*, 2018 ABAER 004.

Trace's Reply Submission	November 20, 2019
Information Requests (IRs) to all Parties	November 27, 2019
All Parties IR Responses	December 11, 2019
All Parties Replies to IR Responses	December 18, 2019
Last Day for Pre-hearing Motions	January 8, 2020
Hearing Commences	January 14, 2020

Submissions should be in PDF format, page numbered to match the PDF page number, bookmarked, and searchable (optical character recognition). Submissions are due by **12:00pm** on the prescribed date, and should be sent to Hearing.Services@aer.ca and copied to all parties.

The above schedule also provides for a formal IR process. The IR dates identified above are for the parties to ask for more information from one another.

As set out in section 12(1) of the *Alberta Energy Regulator Rules of Practice* (the *Rules*):

- ... a party may request another party, within the time limit set out by the Regulator, to provide information necessary
 - (a) to clarify any documentary evidence filed by the other party,
 - (b) to simplify the issues,
 - (c) to permit a full and satisfactory understanding of the matters to be considered, or
 - (d) to expedite the proceeding

The parties are instructed to ensure that they refer to and comply with the *Rules* when submitting and providing IRs and responses to IRs. All parties will have an opportunity to submit a reply to information submitted in IR responses. Note that IRs cannot be directed towards the panel.

IRs, responses to IRs, and replies to IR responses are due at **12:00 pm** on the prescribed dates. They should be copied to Hearing.Services@aer.ca as well as all of the parties, and they will be placed on the public record of this proceeding.

The panel would also like to remind the parties that the panel may direct a party to provide additional information to the AER, or direct a party to make further submissions on their original submission. Any

such requests from the panel, and the party's response, will be placed on the public record of this proceeding.

It is the panel's intention to conduct this hearing in Rycroft, Alberta, beginning on January 14, 2020. The panel has allocated up to three days to hear evidence and closing arguments from the parties on the aforementioned issues. A notice of Scheduling of Hearing will be issued shortly.

Sincerely,

Dean Campbell for *Tara Wheaton*
Hearing Coordinator

cc: Franco De Luca, AER
Larry Horsman
Ervin and Linda Murray
Ryan and Danialle Squires
George and Georgina Alberta
Dmitri and Marianne Boychuck