

**Proceeding ID 379**

March 26, 2020

By email only

Stikeman Elliott LLP  
Attention: Dennis Langen

Osler, Hoskin & Harcourt LLP  
Attention: Martin Ignasiak

Dentons Canada LLP  
Attention: Laura Estep

**Re: Ridgeback Resources Inc. and Westbrick Energy Ltd.  
Well License Applications near the Brazeau Dam  
Panel Decision on Cenovus Request for Confidentiality**

Dear Counsel:

I am writing on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners assigned to this proceeding (panel).

On February 24, 2020, Cenovus Energy Inc. (Cenovus) filed a confidentiality request pursuant to subsection 49(2) of the *Alberta Energy Regulator Rules of Practice* (Rules). Cenovus requested the AER order that certain information that Cenovus intends to file on the record of the proceeding be treated as confidential and that the AER take steps to preserve the confidentiality of such information once filed.

The confidential information that Cenovus intends to provide (the Information) includes:

- 3D seismic structural interpretations of the Cardium and Mannville formations, which are directly related to the applications at issue in the proceeding;

- a structural interpretation of the Cardium and Mannville formations from its proprietary and partner 2D lines that cross in close proximity to the applied-for wells, where no 3D seismic exists; and
- parameters for geomechanical analysis of any faults derived from seismic mapping.

Cenovus submitted that the information it intends to provide is scientific and technical in nature and is considered commercially sensitive about the quality of the resource and, by extension, the value of Cenovus' assets in the area covered. Disclosure of the information on the public record would cause significant harm to Cenovus' competitive position and, the competitive position of Cenovus' partners from whom it licences the information.

Some of the information is not owned by Cenovus but, rather, is licenced from a third party. Cenovus has requested permission from the third party to file the information on the record of this proceeding on the condition that the information be kept strictly confidential and not be used by any party to this proceeding except for the purposes of addressing issues raised in this proceeding. Cenovus and the third party have consistently treated the information as confidential and disclosure of the information on the public record of the proceeding would result in undue financial loss to Cenovus and its partners. Cenovus would be unable to produce this relevant information unless the AER grants this confidentiality request.

As a result, Cenovus has requested that the AER order confidential treatment of the entirety of any information Cenovus files on the record of this proceeding that fits the description set out above. Cenovus has indicated that it has generally discussed the need for confidential treatment of such information with the other parties and, based on that discussion, reasonably anticipates that the other parties will not object to this request for confidentiality.

Cenovus submitted that pursuant to subsection 49(5) of the Rules, if the AER grants a request for confidentiality, parties may receive copies of the document only if they file an undertaking stating that they will hold the document in confidence and use it only for the purposes of this proceeding. The confidential information will only be available to registered parties and their experts who file on the record of this proceeding a signed copy of the undertaking. After filing a signed copy of the undertaking, Cenovus will then provide the confidential information to those parties.

Cenovus submitted that it understands that the AER does not use a standard form of confidentiality undertaking but allows the parties to negotiate a form of undertaking. Commensurate with the filing of this request, Cenovus will initiate discussions with the other parties on a form of undertaking.

On February 25, 2020, TransAlta advised that it does not object to Cenovus' request for confidentiality subject to agreement as between the parties on the form of the confidentiality undertaking.

On February 26, 2020, Ridgeback Resources Inc. and Westbrick Energy Ltd. (Applicants) filed a letter stating that they take no position in respect of the Cenovus request provided that: the Applicants' representatives and experts obtain access to the Cenovus confidential material upon execution of an agreed to undertaking of confidentiality; and, the Applicants' representatives and experts are able to use the Cenovus confidential material for the purposes of AER Proceeding 379, in accordance with the undertaking.

### **Panel Decision**

It is AER policy and a requirement under section 49 of the *Rules* that information filed in respect of a proceeding including an application and any statements of concern are available on the public record. Section 12.150 of the *Oil and Gas Conservation Rules* also provides that records, reports, and information submitted to or acquired by the AER are available to the public on request. In the absence of very compelling reasons and subject to the AER's rules, all materials filed in connection with the application are publicly available. This approach to disclosure is consistent with the AER's role as an administrative tribunal and its obligation to be transparent and to provide procedural fairness to all parties who participate in its process. Making the information used by decision makers available assists in understanding the AER's decisions. In other words, transparency and disclosure of relevant information are fundamental to be procedurally fair, efficient and to promote credible hearing and decision making.

In this case, the provisions most applicable to the confidentiality request are contained in section 49(4)(b) of the *Rules*, which require a reasonable expectation that the disclosure of the information would result in undue financial harm to a person or cause significant harm to Cenovus' competitive position. Considering the nature of the Information and the reasons for the confidentiality request, the panel finds that Cenovus has established that the Information it wishes to submit on the record in this proceeding meets the criteria in section 49(4)(b) of the *Rules*. Consequently, the panel grants Cenovus' request for a confidential treatment of the Information in this proceeding.

Pursuant to section 49(5) of the *Rules*, the parties may receive a copy of the Information only if the parties file on the record in this proceeding an undertaking stating that the party will hold the Information in confidence and use it only for the purpose of this proceeding. Consistent with the AER's prior practice, the

panel expects the parties to negotiate, finalize and execute the confidentiality undertakings that must be filed on the record in accordance with section 49(5) of the Rules.

The panel notes that the evidence, including the Information, provided in this proceeding is subject to the *Freedom of Information and Protection of Privacy Act* (FOIP). In case of a FOIP request in relation to the Information, the AER will follow the applicable provisions of FOIP, including giving written notice of the Information access request to Cenovus, pursuant to section 30 of FOIP.

Sincerely,

*Tara Wheaton*  
Hearing Coordinator

cc: Carolyn Dahl Rees, TransAlta  
Andrea Sam, TransAlta  
Jessica Kennedy, Osler, Hoskin & Harcourt LLP  
Sarah Graham, Stikeman Elliott LLP  
Annie Belecki, Ridgeback Resources Inc.  
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