

**Proceeding ID 379**

September 16, 2021

By email only

Stikeman Elliott LLP  
Attention: Dennis Langen

Osler, Hoskin & Harcourt LLP  
Attention: Martin Ignasiak

Dentons Canada LLP  
Attention: Laura Estep

Alberta Environment and Parks  
Attention: David Ardell

**Re: Ridgeback Resources Inc. and Westbrick Energy Ltd. (Applicants)  
Well License Applications near the Brazeau Dam  
September 13, 2021, letter from AEP Deputy Minister**

Dear Sirs/Madam:

On September 13, 2021, the panel received a letter from the Deputy Minister of Alberta Environment and Parks (AEP) (attached). In its letter, AEP stated the Department's view continues to be that the AER hearing process should be held in abeyance pending the province's policy response to the Brazeau Development-Induced Seismicity Assessment and Risk Mitigation Report (Report). AEP is expecting the policy engagement process to begin in September 2021 and any resulting regulatory adjustments be completed by the end of the second quarter in 2022.

The AER solicited and received responses from the Applicants, TransAlta Corporation (TransAlta), and Cenovus Energy Inc. (Cenovus) on September 15, 2021.

## Participants Responses

### Applicants

The Applicants stated that granting AEP's most recent adjournment request would "crystalize the procedural fairness issues" the panel identified in its letter dated July 23, 2020. They argued that AEP is still not a party to the proceeding, even though it has the right to full standing under the *Responsible Energy Development Act (REDA)*. The Applicants stated that instead, AEP conducted its own process in preparing the Report to the exclusion of the Applicants and their evidence, and that the only opportunity for the Applicants to challenge the Report is through this proceeding and the oral hearing. They believe that AEP, through its most recent adjournment request, now seeks to quash that opportunity. The Applicants indicated that there would be prejudice and procedural unfairness to them should a second adjournment be granted at the request of AEP.

The AEP September 13, 2021 adjournment request is premised on a process to clarify the policy framework and identify existing and additional regulatory tools. The Applicants maintained that the AER has exclusive jurisdiction under REDA and the *Oil and Gas Conservation Act (OGCA)* in respect of the applications and, specifically, in respect of hydraulic fracturing of oil and gas wells, which is the primary, if not singular, issue in Proceeding 379. The AER's Subsurface Order No. 6 (SSO6), which was issued in accordance with the *Oil and Gas Conservation Rules* and is grounded in the *OGCA*, is the existing policy and regulatory tool, which is currently in force and operation. SSO6 allows hydraulic fracturing in formations above the Duvernay Formation within three to five kilometres of the Brazeau Dam, subject to the AER approving the applications as being in the public interest.

The Applicants indicated that the AER has the benefit of a comprehensive and robust technical record, which includes not only the Report, but expert technical views in the form of evidence that critiques, analyzes and comments on the Report. They believe that the "wealth of information; the oral record of Proceeding 379; and the informed decision issued by the AER as an expert tribunal, will only serve to benefit any process to clarify the provincial policy framework."

The Applicants requested that the AEP adjournment request be summarily dismissed and the oral hearing commence as scheduled.

### TransAlta

TransAlta indicated that it strongly supports AEP's request and is of the view that the AER is obligated to adjourn the hearing. This is based on its view that the AER cannot make a decision in the public interest approving the applications when the primary regulator of dam safety in the province, AEP, has advised

the AER that it requires time to complete a process that may result in the development of additional regulatory tools to address the relationship between induced seismic earthquakes and dam safety.

TransAlta said it is important to recognize that depending on the outcome of AEP's policy process, a hearing will likely not be necessary either because: 1) AEP will establish a regulatory response that ensures dam safety and results in TransAlta withdrawing its objections to the applications; or 2) AEP's regulatory response will result in the Applicants withdrawing their applications or amending their applications to incorporate any additional mitigation measures that AEP may identify as necessary to ensure dam safety. TransAlta believed that in either case, it is clearly more efficient and orderly to await AEP's policy response before proceeding with a hearing that is likely to be unnecessary.

TransAlta requested that the AER hold this proceeding in abeyance until AEP can complete its important work and provide its policy response in the first half of 2022.

#### Cenovus

In its submission, Cenovus stated that the panel had already decided on AEP's request on April 20, 2021. It quoted the panel's view that "proceeding 379 should not continue to be held in abeyance *sine die* and that the schedule proposed herein provides several months for AEP to complete its review and provide any further update to the proceeding before the oral portion of the hearing occurs." Cenovus indicated that this was consistent with the view it expressed at the time that "a reasonable period of time for AEP to provide its forthcoming response to the report while also allowing the remaining pre-hearing process steps to be completed in parallel."

Cenovus stated that the proceeding had already been significantly delayed and should proceed, as scheduled, next week. It believed that no further delays to the proceeding were reasonable or justified based on the AEP letter.

#### **Panel Decision**

The panel notes that AEP, as the regulator of dams in the province, has consistently taken the view that this AER hearing should not be completed until a review and assessment of the potential impacts of induced seismicity is conducted and changes to the policy framework governing the relationship between induced seismic earthquakes and dam safety are implemented. This is evident in its letters dated February 26, 2021, April 15, 2021, and the most recent September 13, 2021, letter from the Deputy Minister.

To achieve that goal, the AEP has provided on the record in this proceeding the updated Report, in accordance with its proposed timelines. The panel also notes that AEP, in its latest letter, has given more details on the start of the engagement process and a concrete timeline for the completion of its policy

review. The panel is of the view that this policy review and resulting regulatory adjustments could have a major impact on well licence applications subject to not just this proceeding but also any potential future well applications in the vicinity of the Brazeau Dam infrastructure by the Applicants. Any regulatory adjustments may also address broader issues regarding energy development near dams for the entire industry in the province, which will hopefully provide more certainty to all impacted stakeholders, including the public.

The panel is cognizant of the time it took this proceeding to get to this stage of the hearing process and the desire of the Applicants, and other industry players who are closely following this proceeding, to see it completed. The panel has weighed this consideration against another adjournment of this process by approximately six months, which is the time difference between the potential date for issuing the decision should the hearing proceed under the current schedule (January 2022) and the timing for the completion of the proposed AEP policy work (end of June 2022). The panel is of the view that having an updated policy on induced seismicity and dam safety will provide greater benefits to every stakeholder in the long run, when compared to proceeding with the hearing under the current schedule. It is also possible that any policy changes may render the applications that are the subject matter of this hearing in need of adjustment or moot.

Given the above, the panel has decided to place this proceeding in abeyance until July 1, 2022. AEP is directed to provide an update on its policy framework revision process no later than July 1, 2022, at which time the panel will determine whether and how to resume the hearing.

Sincerely,

*<original signed by>*

Alex Bolton  
Hearing Panel Chair for Proceeding 379

cc: Jessica Kennedy, Osler, Hoskin & Harcourt LLP  
John Gormley, Osler, Hoskin & Harcourt LLP  
Sarah Graham, Stikeman Elliott LLP  
Kiril Dumanovski, AER  
Tara Wheaton, AER  
Andrew Lung, AER