

**Proceeding 379**

February 2, 2024

By email only

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**Re: Saturn Oil & Gas Inc. and Westbrick Energy Ltd. (collectively the Applicants)  
Well License Applications/Brazeau Dam  
Panel Decision on the Applicants' Motion to Adjourn and Reschedule the Oral Hearing**

Dear Representatives:

On January 29, 2024, the Applicants filed a motion to adjourn and reschedule the oral hearing for this proceeding for April 2025 (exhibit 414.01). The motion was filed pursuant to sections 44 and 46 of the *Alberta Energy Regulator Rules of Practice*. The motion requests that we:

1. adjourn the oral hearing and all remaining procedural steps, except for the Applicants' January 18, 2024, motion to compel TransAlta Corporation to disclose Dr. Atkinson's information request responses; and
2. reschedule the oral hearing of this proceeding to April 2025 and establish a new procedural schedule associated with the new hearing date ("New Procedural Schedule").

For the reasons that follow, we grant the adjournment of the oral hearing and all remaining procedural steps, except for the Applicants' January 18, 2024, motion related to Dr. Atkinson's information request responses. We will seek submissions from all parties, and Alberta, before setting a new hearing date and new procedural schedule.

## Background

The Applicants advise:

- TransAlta commenced a civil action in the Court of King’s Bench of Alberta in 2022 (KB Action), in which TransAlta and Alberta are parties and Cenovus is an intervenor (KB Parties).
- The Applicants have been informed that the KB Parties have been engaged in and are continuing a mediation in respect of the KB Action which, if successful, may result in the KB Parties changing their positions with respect to the Proceeding and may significantly streamline the Proceeding.

The Applicants have been asked by the KB Parties to adjourn and reschedule the oral hearing of this proceeding to allow time for the KB mediation to run its course and the Applicants have agreed to do so, provided the AER reschedules the oral hearing for April 2025 and immediately establishes a new procedural schedule.

In coming to our decision, we considered all submissions made by the parties in this matter, as well as submissions made by Alberta. We received submissions from Cenovus, TransAlta and Alberta supporting the Applicants’ motion.

TransAlta and Cenovus advised that their senior executives have been engaged for many months in mediation with Alberta Assistant Deputy Ministers, to develop a broader long-term solution to address concerns about induced seismicity and provide for the safe and timely development of mineral rights in proximity to the Brazeau Dam. TransAlta and Cenovus both advised that an adjournment is required to allow those negotiations to continue to progress.

Alberta confirmed it has been working closely with executives from TransAlta and Cenovus to address concerns about induced seismicity and provide for the safe and timely development of mineral rights in proximity to the Brazeau Dam. Alberta stated the KB parties have made significant progress and Alberta is optimistic that, with additional time, they will be able to resolve these matters in a manner that is in the public interest and acceptable to all the parties. Alberta further stated that an adjournment in this proceeding is necessary to allow the parties’ work towards a resolution to continue.

In its response on January 30, 2024 (exhibit 418.01), O’Chiese First Nation advised that it is not a party to the KB Action and was only made aware of these discussions when this motion was filed.

O'Chiese First Nation objected to the Applicants' motion for the following reasons:

1. O'Chiese First Nation has continually asserted that Crown consultation is required with respect to the issues of induced seismicity, dam safety and potential impacts to O'Chiese First Nation's Treaty No. 6 Rights.
2. The mediation appears to be focused on the very issue for which O'Chiese First Nation has requested consultation from the Crown. From O'Chiese First Nation's perspective, Alberta seems willing to address TransAlta and Cenovus' concerns but not O'Chiese First Nation's concerns.
3. In light of the fact that Alberta has not engaged with O'Chiese First Nation on the issue of induced seismicity and dam safety and because Alberta has indicated to O'Chiese First Nation that it will be relying on the AER process to fulfill the honour of the Crown and its consultation obligations, it is the expectation of O'Chiese First Nation that AER Proceeding 379 will proceed as scheduled.
4. A delay in the hearing will deprive the O'Chiese First Nation of its right to be consulted in a timely manner on the issue of dam safety and induced seismicity.

We received reply submissions from the Applicants, TransAlta, Cenovus, and Alberta in response to O'Chiese First Nation's submission. The Applicants submit that this proceeding relates to the ten applications for well licences before the AER and is not as broad as O'Chiese First Nation asserts. Through the proceeding O'Chiese First Nation may raise concerns specific to the applications and any potential impacts on O'Chiese First Nation rights. The purpose of the proceeding is not to consider a framework for the broader long-term solution relating to the potential for induced seismicity from hydraulic fracturing activities in the vicinity of the Brazeau facility. The Applicants further submitted that adjourning and rescheduling the oral hearing in the proceeding in no way prevents any Crown consultation with the O'Chiese First Nation.

### **Reasons and Decision**

Section 46 of the *Alberta Energy Regulator Rules of Practice* reads as follows:

46 The Regulator may, on its own initiative or on motion by a party, adjourn a proceeding on any terms that the Regulator considers appropriate.

It is within the discretion of the panel to grant an adjournment on terms that it considers appropriate. However, we must consider whether doing so results in prejudice that deprives any party of its legal rights.

We find that granting the adjournment results in no such prejudice. Our reasons are as follows:

1. This panel will retain its authority to decide the applications under the *Oil and Gas Conservation Act*

The Applicants in this proceeding have jointly requested an adjournment for the KB Parties to achieve a mutually acceptable resolution of the issues between them. It is significant that this motion is brought by the Applicants, suggesting there is a real and genuine opportunity for settlement.

However, the wells cannot be drilled without approval from the AER, regardless of the outcome of the mediation. The panel is still required to consider and decide the well licence applications filed under the *Oil and Gas Conservation Act* following the conclusion of the KB Parties' wider settlement discussions. The AER will still be required to hear and consider any issues that remain between the parties at the rescheduled April 2025 hearing.

2. Adjourning the hearing may result in meaningful resolution of some of the issues

The history of this proceeding is long and complicated. We acknowledge that the adjournment may be inconvenient, and result in further delays. The outcome of the mediation process, however, could narrow the issues or change the positions of the parties in this proceeding. The outcome of the mediation related to the KB Action could have a substantial impact on this proceeding such that it would be inefficient and impractical to proceed with the hearing at this time.

3. There is no significant prejudice to O'Chiese First Nation

We acknowledge O'Chiese First Nation's concern that it is not a party to the KB Action and is not involved in the mediation related to that action. O'Chiese First Nation states that it has been preparing for the hearing for many months and a delay in the hearing will deprive it of its right to be heard. O'Chiese First Nation was granted participation on the basis that it may be directly and adversely affected by the AER's decisions on the applications and that its participation would materially assist the panel.

However, regardless of the outcome of the mediation between TransAlta, Cenovus, and Alberta, the Applicants cannot proceed with any drilling without the AER's approval. Accordingly, O'Chiese First Nation will have an opportunity to call evidence, cross-examine and make submissions following the adjournment. We are therefore not convinced that an adjournment of the oral hearing causes significant prejudice to O'Chiese First Nation because the opportunity to fully participate in this proceeding remains.

## Conclusion

Having considered the Applicants' motion and all related submissions, we grant the adjournment request for the reasons stated above.

The hearing dates for this proceeding commencing on March 18, 2024, are hereby vacated along with any upcoming submission deadlines related to the March hearing. We will establish a new procedural schedule for an oral hearing to occur in April 2025, as soon as possible and after seeking further submissions from the parties and Alberta.

We will issue our decision on the Applicants' January 18, 2024, motion separately.

Alex Bolton, Presiding Member

M.A. (Meg) Barker, Panel Member

Brian A. Zaitlin, Panel Member

cc: Jessica Kennedy, Erin Anderson, Bennett Jones LLP  
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