

**Proceeding 397**

June 8, 2020

**Calgary Head Office**  
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Canada[www.aer.ca](http://www.aer.ca)

By email only

ISH Energy Ltd.

(ISH)

Attention: Veronique Giry &amp; Jennifer Clee

Canadian Natural Resources Limited

(Canadian Natural)

Attention: JoAnn P. Jamieson

**RE: Regulatory Appeal 1927181**

Submissions, Issues and Hearing Format

Dear Mesdames:

I am writing to you on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners (the panel) assigned to the above-noted regulatory appeal.

**Submissions and Issues**

The first issue identified for consideration in this proceeding is the presence or absence of a seal (in the KN06 box and zone of influence). To permit a full and satisfactory understanding of the matters to be considered in this proceeding and to further narrow the issues, the panel would like the parties to address the following:

1. Whether the sealing layer(s) relevant to potential impact on ISH's petroleum and natural gas rights are the McMurray A2 and B2 mudstones.
2. Where Canadian Natural and ISH agree about the relevant characteristics of the sealing layer(s) and where they disagree. Be as specific as possible on the points of disagreement.
3. Whether and to what extent the criteria established in EUB decision 2005-122, particularly those set out in sections 3.2.1 and 3.3.3, are relevant to this proceeding.

The panel encourages the parties to provide a joint submission on the three matters itemized above. If a joint submission on all three matters is not possible, the parties should provide a joint submission for the matter or matters where they are able and address the remaining issue(s) in their separate submissions.

Joint submissions are due no later than noon on July 31, 2020 to [hearing.services@ aer.ca](mailto:hearing.services@ aer.ca). Individual submissions are due no later than noon on June 19, 2020 (ISH) and July 3, 2020 (Canadian Natural) as previously scheduled.

The panel would also like the parties to provide a map or maps and representative cross-sections showing the presence/absence of the A2 and B2 mudstones in the KN06 box and zone of influence. The map control points should include well data that was not available at the time of the EUB Athabasca Wabiskaw-McMurray Regional Study (December 31, 2003) or EUB decision 2005-122 (the Phase 3 Addendum, December 2005). The map should clearly show where core samples were reviewed or are available to correlate the corresponding well's logs.

The map(s) and cross-sections are to be submitted to [hearing.services@ aer.ca](mailto:hearing.services@ aer.ca) no later than noon on July 31, 2020.

### **Hearing Format**

In light of the ongoing uncertainty and concerns relating to COVID-19, and in order to deal with this matter as efficiently as possible while ensuring fairness for all involved, the panel proposes to proceed as follows:

Opening statements (the parties may be referring to this portion of the hearing as direct evidence) will be written.

Questioning (of one party by the other and of parties by the panel and AER hearing counsel on behalf of AER staff supporting the panel), including any redirect, will be oral via electronic platform. We anticipate using Zoom.

Reply evidence, if any, will be oral via the electronic platform.

Final argument is expected to be written. At the end of the evidentiary portion of the hearing the panel will revisit this with the parties and may choose to proceed via oral argument through the electronic platform.

The panel notes that AER Regulatory Applications (Regulatory Applications) has communicated that it is not available to participate in a hearing before September 15, 2020. It has also said that it will not be participating in the oral hearing. The panel will be considering new evidence and is not approaching this

as a review of the original decision for error. Both ISH and Canadian Natural have had the opportunity to direct information requests to Regulatory Applications. The panel is therefore proposing to schedule questioning for Canadian Natural and ISH before September 15, 2020. If ISH or Canadian Natural has concerns about proceeding with questioning without the participation of Regulatory Applications please let us know as soon as possible. If we are not able to proceed with the early September dates we may not be able to schedule oral questioning before November 2020.

For now, we have set aside 4 days when questioning may be scheduled: September 1 and 2 and September 8 and 9, 2020. The panel anticipates that each question session will last for about 1.5 to 2 hours maximum with a break of at least 1 hour between sessions. So, there may be up to 3 question sessions each day. The panel is considering scheduling the questioning by issue rather than each party putting up a witness panel to be questioned on all of the issues in a single session. This is to facilitate the participation of only the necessary individuals at each scheduled session. The panel will seek the parties' views on scheduling of witnesses and order of questioning before finalizing the questioning schedule.

ISH and Canadian Natural provided estimates of the time they would require for the different stages of an oral hearing. Both estimated 2 hours for direct evidence. The panel reminds the parties that direct evidence must be included in their submissions to be filed on June 19 and July 3, 2020 respectively (and possibly July 24, 2020 if ISH files reply submissions). In their opening statements the parties may summarize and highlight evidence and submissions already filed. They should also identify which witness will adopt and be prepared to answer questions about which portion of that party's submissions. You can expect that the panel will have read your submissions and that it is not necessary for evidence to be repeated in the opening statements.

Each party will be required to file and serve its opening statement, if any, on a date to be determined once the dates for questioning are finalized. In addition, the parties will be required to provide to the hearing coordinator an electronic bundle of any documents it intends to put to a witness in the course of questioning that are not already on the record of this proceeding. The electronic bundle must be provided at least one full business day before that witness is scheduled to be questioned.

Further procedural details and guidance will be provided in due course. In the meantime, if you have any questions or concerns you wish to raise with the panel please email [hearing.services@ aer.ca](mailto:hearing.services@ aer.ca) and copy the other parties. If you have process related questions you may contact me at 403-297-3232 or at [hearing.services@ aer.ca](mailto:hearing.services@ aer.ca).

Regards,

*Tammy Turner*

Tammy Turner, Hearing Coordinator

cc Karen Lilly, AER Legal Counsel Regulatory Applications

Alana Hall, AER Legal Counsel