

Proceeding 397

August 10, 2020

By email only

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ISH Energy Ltd.
Attention: Laura-Marie Berg

Canadian Natural Resources Limited
Attention: JoAnn P. Jamieson

**RE: Regulatory Appeal 1927181
Canadian Natural Resources Limited (Canadian Natural) - Request for Confidential Filing**

Dear Counsel:

Introduction

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.

The panel has reviewed Canadian Natural's August 7, 2020 request to file responses to four information requests from ISH Energy Ltd. (ISH) on a confidential basis pursuant to section 49(3) of the *Alberta Energy Regulator Rules of Practice (Rules)*. The panel has also reviewed ISH's August 10, 2020 response to that request. For the reasons that follow, the panel has decided to grant Canadian Natural's request.

Reasons

The information for which confidentiality is sought is described by Canadian Natural as follows:

- ISH-CNRL-001 – access to the cores and / or digital copies of the analyses done on the core for the wells highlighted in Tab 7 – Cored Wells Evaluated of the Canadian Natural hearing submission;
 - ISH-CNRL-002 – copies of GCMS data relied on by Canadian Natural;
 - ISH-CNRL-003 – copies of image logs for the 20 wells referenced in paragraph 125 of Canadian Natural's submission; and
 - ISH-CNRL-004 – access to Canadian Natural's propriety 3D seismic data as referenced in paragraph 111 of Canadian Natural's submission (including acquisition parameters and processing details).
- (Confidential Information)

Canadian Natural submits that the Confidential Information is technical and that its disclosure on the public record could reasonably be expected to put it at a competitive disadvantage among its third-party competitors exploiting oil sands resources in the Kirby North area of Alberta.

ISH did not object to the request and said it would provide a confidentiality undertaking for the information outlined in Canadian Natural's request.

Section 49(4) of the Rules sets out the test the Regulator is to apply when a request for confidentiality is made. The relevant provision for this request is section 49(4)(b)(i), which states that:

- (4) The Regulator may, with or without a hearing, grant a request for confidentiality on any terms it considers appropriate...
 - (b) if the information is commercial, financial, scientific or technical in nature and the Regulator is of the opinion that disclosure of the information on the public record of the proceeding could reasonably be expected
 - (i) to cause significant harm to the competitive position of a party

The panel is of the opinion that disclosure of the Confidential Information on the public record of this proceeding could reasonably be expected to cause significant harm to Canadian Natural's competitive position vis-a-vis other companies developing oil sands resources in the Kirby North area.

Direction

Pursuant to section 49(5) of the Rules, "If the Regulator grants a request for confidentiality under subsection (4), a party may receive a copy of the document only if the party files an undertaking stating that the party will hold the document in confidence and use it only for the purpose of the proceeding."

In their respective submissions, Canadian Natural and ISH set out specific provisions they would include in an undertaking. The panel directs that:

- i. Canadian Natural and ISH are to finalize the form of an undertaking acceptable to both that complies with section 49(5).
- ii. Canadian Natural is to file the Confidential Information in a filing marked "Confidential", that is separate from the rest of its IR responses, by the previously set deadline of August 14, 2020.
- iii. Canadian Natural is to provide the Confidential Information to ISH once ISH has executed and filed the undertaking referred to in i) above.

The panel will provide further direction about how the Confidential Information will be handled in the context of the electronic hearing in due course. In the meantime, a separate SharePoint file will be set up for the Confidential Information. Only the AER and Canadian Natural will have access until ISH's confidentiality undertaking, in a form acceptable to both companies, has been filed with the AER. At that time, the Hearing Coordinator will give ISH access to the SharePoint file as well.

AER Regulatory Applications Group has previously indicated it does not intend to actively participate in the hearing. It has filed no submissions and issued no IRs to either ISH or Canadian Natural. If the AER Regulatory Applications Group will require access to the SharePoint file containing the Confidential Information for the purposes of this proceeding, please advise the undersigned as soon as possible so the panel can consider and issue an appropriate direction.

For questions about the above, please contact me at 403-297-3232 or by email at hearing.services@aer.ca.

Sincerely,

Tammy Turner

Hearing Coordinator, Hearing Services

cc: Karen Lilly, AER Counsel for Regulatory Applications

Alana Hall, AER Counsel for the panel