

Proceeding ID 409

June 15, 2021

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By email only

Burnet, Duckworth, & Palmer LLP	McLennan Ross LLP	Fasken Martineau DuMoulin LLP
Attention: Evan Dixon	Attention: Sean Parker Ron Kruhlak	Attention: Allison Sears

AER Oil and Gas Subsurface	Cenovus Energy Inc.
Attention: Danielle Brezina	Attention: Dean McCluskey

**RE: Request for Regulatory Appeal by Canadian Pacific Railway Corporation (CPRC)
Environmental Protection Order dated December 14, 2020
Request for Regulatory Appeal 1931995
Regulatory Appeal 1932823
Participation Decisions**

Dear Counsel:

I am writing to you on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners presiding over this proceeding (the panel). Please note that Mr. Tracey Stock recused himself from the panel and was not part of the decision-making process regarding participation.

On May 11, 2021, the AER issued a notice of hearing for a regulatory appeal of the AER's decision to issue the environmental protection order (EPO) on December 14, 2020, naming Canadian Pacific Railway Company as the “person responsible” to undertake remedial measures regarding the presence of methane gas in proximity to the well, licence WX0000225, located at LSD 02, Section 31, Township 12, Range 5, West of the 4th Meridian within the city boundaries of Medicine Hat.

The purpose of the hearing is to determine whether the AER should confirm, vary, suspend, or revoke its decision to issue the EPO.

The notice of hearing explained how to file a request to participate in the hearing and set a filing deadline of May 25, 2021. Pursuant to section 1(j)(ii) of the *Alberta Energy Regulator Rules of Practice (Rules)*, the notice of hearing identified Canadian Pacific Railway Corporation (CPRC) and the AER's Oil and Gas Subsurface Group (OGS) as parties to the regulatory appeal. As parties, they did not need to submit a request to participate. However, they were required to confirm their intention to participate in the hearing and the nature and scope of their participation in writing by May 25, 2021.

In its May 19, 2021, response to the notice of hearing, CPRC advised that it intends to participate fully in the hearing including presenting evidence and argument and by cross-examining witnesses.

In its May 19, 2021, response to the notice of hearing, OGS also advised that it intends to participate fully in the hearing.

On May 25, 2021, the AER received a joint request to participate from Cenovus Energy Inc. (Cenovus) and Ovintiv Canada ULC (Ovintiv). The request states that CPRC has sought to have Cenovus and potentially Ovintiv named as persons responsible under the EPO, and that Cenovus and Ovintiv would be clearly directly and adversely affected if they were named in a varied EPO resulting from the appeal. Cenovus and Ovintiv also submit that they would make a substantial contribution to the hearing by providing evidence and submissions on the various legal issues, including novel arguments advanced by CPRC. Cenovus and Ovintiv request that the appeal be dismissed, and in the alternative, if the EPO is varied, that neither of them be named. Cenovus and Ovintiv said they intend to fully participate in the hearing including filing evidence, making legal arguments, cross examining witnesses and may present their own witnesses.

On May 26, 2021, the AER received a request to participate from the City of Medicine Hat (CMH). The request states that CMH is not the licensee of the well described in the EPO and the EPO correctly names CPRC. CMH is, "concerned about the negative impacts that any decision to vary, suspend, or revoke the EPO could have on the environment, on the remedial measures, the safety of the City, its employees, residents, and the financial health and wellbeing of the municipal organization and its taxpayers." CMH also stated that as the local authority within the municipal boundaries of where the well is located, it is concerned about the well's present condition. It stated that if the EPO is not confirmed, this could prolong the well's remediation and increase risks, as well as cause delays and added inconveniences to the residents of CMH. Furthermore, if the EPO were varied to name CMH as a person responsible, then CMH would be directly and adversely affected. CMH requested that the appeal be dismissed and indicated that should there be a hearing, it intends to be a full and active participant.

On May 31, 2021, OGS submitted a response to the requests to participate made by Cenovus and Ovintiv and CMH. In its response, OGS states that, “full participation of CMH, Cenovus and Ovintiv would best enable all relevant evidence to be presented and tested, and all relevant arguments to be made to the Panel.”

On May 31, 2021, CPRC filed a response stating that it shares the views of OGS and that, “full participation of the City of Medicine Hat and Cenovus/Ovintiv in this Regulatory Appeal will be of assistance to the Panel in its deliberations.”

Participation Decision

As noted above, CPRC and OGS are parties to this regulatory appeal pursuant to section 1(j)(ii) of the *Rules*. The panel has considered the responses from CPRC and OGS regarding the nature and scope of their intended participation in this proceeding. CPRC and OGS may participate fully in this proceeding, including the ability to provide oral and written evidence, cross-examine witnesses, and make representations and argument.

Persons other than those listed in section 1(j)(ii)(A) - (D) of the *Rules* who wish to participate in the hearing of a regulatory appeal must file a request to participate in accordance with section 32.1 of the *Rules*. Subsection 32.1(2) of the *Rules* specifies what must be included in a request to participate. The panel has discretion to grant participation status to persons who demonstrate that they may be directly and adversely affected by a decision of the AER in the proceeding and persons (i) whose participation will materially assist the panel in deciding the matter that is the subject of the regulatory appeal, (ii) who have a tangible interest in the matter, (iii) whose participation will not unnecessarily delay the regulatory appeal and (iv) who will not repeat or duplicate evidence.

The panel has considered Cenovus and Ovintiv’s joint request to participate and the submissions referred to above. The panel finds that given CPRC’s submissions that Cenovus and possibly Ovintiv should be named persons responsible under the EPO and in light of the relief CPRC requested in its request for regulatory appeal, Cenovus and Ovintiv may be directly and adversely affected by the decision to confirm, vary, suspend or revoke the AER’s decision to issue the EPO. In addition, the panel finds that (i) Cenovus and Ovintiv’s participation in the regulatory appeal hearing will materially assist the panel; (ii) Cenovus and Ovintiv have a tangible interest in the subject matter of the hearing because of the relief requested by CPRC; and (iii) there is no information before us to suggest Cenovus and Ovintiv’s participation will unnecessarily delay the proceeding or result in duplicate evidence. For the above reasons and subject to further directions or rulings issued by the panel, Cenovus and Ovintiv are permitted

full participation in the hearing, including the ability to provide oral and written evidence, cross-examine witnesses, and make representations and argument.

The panel has also considered the CMH's request to participate and the submissions referred to above. The panel finds that given the geographic location of the well, which is the subject of the EPO, CPRC's submissions that CMH should be named a person responsible under the EPO and the relief CPRC requested in its request for regulatory appeal, CMH may be directly and adversely by the decision to confirm, vary, suspend, or revoke the AER's decision to issue the EPO. In addition, the panel finds that (i) CMH's participation in the regulatory appeal hearing will materially assist the panel; (ii) CMH has a tangible interest in the subject matter of the hearing because the project is within the municipality and the relief requested by CPRC; and (iii) there is no information before us to suggest CMH's participation will unnecessarily delay the proceeding or result in duplicate evidence. For the above reasons and subject to further directions or rulings issued by the panel, CMH is permitted full participation in the hearing, including the ability to provide oral and written evidence, cross-examine witnesses, and make representations and argument.

Further details regarding the hearing process including the submission schedule are forthcoming. In the meantime, the panel encourages CPRC, CMH, OGS, Cenovus and Ovintiv to work together to provide an agreed statement of facts. Finally, although no hearing commissioner has been assigned to facilitate ADR discussions at this point, that option is available to the parties throughout the hearing process.

If you have any questions, please contact me at hearing.services@aer.ca.

Sincerely,

Tammy Turner

Hearing Coordinator, Hearing Services

cc: Jamie Freeman, City of Medicine Hat
Tammy Cargan, McLennan Ross LLP
Alison Doebele, AER
Scott Poitras, AER