

Proceeding 409

February 10, 2022

By email only

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Fasken Martineau DuMoulin LLP	Burnet, Duckworth, & Palmer LLP	McLennan Ross LLP
Attention: Allison Sears	Attention: Evan Dixon	Attention: Sean Parker
		Ron Kruhlak
AER Oil and Gas Subsurface	Cenovus Energy Inc.	
Attention: Danielle Brezina	Attention: Dean McCluskey	
Meighan LaCasse		

**RE: Regulatory Appeal by Canadian Pacific Railway Corporation (CPRC)
Environmental Protection Order dated December 14, 2020
Regulatory Appeal 1932823
Hearing Format Decision and Schedule**

Dear Counsel:

I am writing on behalf of the panel of hearing commissioners presiding over this proceeding (the panel).

In its February 1, 2022, letter to the parties, the panel indicated that it was giving the parties a final opportunity to submit comments on preferred hearing format before finalizing hearing details. The panel requested replies by February 4, 2022.

All parties responded on February 4, 2022. The Alberta Energy Regulator, Oil and Gas Subsurface (OGS) advised that it had no additional comments on hearing format. The City of Medicine Hat (CMH) indicated that it preferred a written hearing format but was open to proceeding in whatever format the panel chooses. Cenovus Energy Inc. and Ovintiv Canada ULC (Cenovus/Ovintiv) stated that they were prepared to accommodate an oral or written hearing. CPRC stated that, following the filing of its reply submission on February 18, 2022, there should be an adequate evidentiary record on which to move to argument in the format preferred by the panel, barring any factual questions the panel may have for

witnesses. CPRC requested that if the panel chooses to receive written argument, the filings be staggered to give CPRC the final right of reply.

On February 7, 2022, OGS wrote to the panel requesting the opportunity to make a further submission on hearing process after OGS has received and reviewed CPRC's reply submission. OGS indicated that it had anticipated that a written hearing in this proceeding would "provide parties with an opportunity to test each other's written submissions." OGS advised that it does not object to a written hearing but cannot advise regarding the acceptability of moving directly to argument until it has reviewed CPRC's reply submission.

OGS Request for Further Process Submissions

The panel denies OGS' request to make a further submission on hearing process for the following reasons.

On September 29, 2021, the panel wrote to the parties proposing a written hearing process that would include a formal information request (IR) process between the parties, potential information requests from the panel, and CPRC's final reply submission. The panel invited the parties' comments and concerns on the proposed process. This was the first of three opportunities the panel gave the parties to provide input and their preferences on hearing format and process steps.

Following receipt of the parties' responses to that letter, the panel directed a formal IR process, which had been agreed to by all parties. CPRC had asked the panel to defer determining hearing format until the IR process was complete to enable CPRC to assess whether a hearing format that would enable it to cross-examine witnesses would be necessary. The other three parties all supported a written hearing process, with CMH and Cenovus/Ovintiv both suggesting final written argument.

All parties had filed their submissions before the IR process began. All parties had equal opportunity to pose IRs to each other. OGS did not ask IRs of CPRC or any other party. The IR process was a means for all parties to test each other's written submissions. The parties will have the opportunity to further address the others' submissions in final argument.

There have been three rounds of submissions on hearing format; October 2021, December 2021, and February 2022. All parties, including OGS, provided submissions in each of those rounds. CPRC's most recent input suggesting moving to argument following filing of its final reply submission is consistent with the input provided on hearing format through the three rounds of submissions. The panel believes all parties have had ample opportunity to provide input on hearing format.

Hearing Format and Process Schedule

Having considered the input on hearing format, and all submissions and IR responses filed to date in this proceeding, the panel directs that it will receive written argument from all parties according to the schedule below. If the panel identifies any specific issues that it would like the parties to address in their arguments, it will communicate those to the parties by the end of February 2022.

REVISED PROCESS SCHEDULE AS OF FEBRUARY 10, 2022

February 18, 2022	Final reply submission from CPRC
March 14, 2022	Argument from CPRC
March 28, 2022	Argument from CMH, Cenovus/Ovintiv and OGS
April 11, 2022	Reply argument (if any) from CMH, Cenovus/Ovintiv and OGS to arguments filed March 28, 2022
April 25, 2022	Final reply argument from CPRC

Please note that submissions must be filed with hearing.services@aer.ca by **noon on the stated date**. Submissions should be in PDF format, page numbered to match the PDF page number, bookmarked and searchable (optimal character recognition). Submissions must meet the requirements of section 9.2(2) of the *Alberta Energy Regulator Rules of Practice*. All submissions that are filed in this proceeding are marked as exhibits and posted in SharePoint. This forms part of the public record of this proceeding.

For questions about the above, please contact me by email at hearing.services@aer.ca.

Sincerely,

Tammy Turner

Hearing Coordinator, Hearing Services

cc: Michael Deyholos, Burnet, Duckworth, & Palmer LLP

Jamie Freeman, City of Medicine Hat

Tammy Cargan, McLennan Ross LLP

Barbara Kapel Holden, AER

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