

**Proceeding 436****Hearing Commissioners' Office**

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Canada

November 9, 2023

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By email only

Alberta Energy Regulator  
Compliance and Liability Management (CLM)  
C/O: **Miller Thomson**  
Attention: Patrick D. Fitzpatrick

Obsidian Energy Ltd. (Obsidian)  
C/O **Stikeman Elliott LLP**  
Attention: Dennis P. Langen

**Re: Regulatory Appeal 1943624  
Obsidian Energy Ltd. (Obsidian)  
Alberta Energy Regulator, Compliance and Liability Management (CLM)  
Regulatory Appeal of the decision to issue an Environmental Protection Order  
Decision on Hearing Issues, Date, and Process Steps**

Dear Counsel:

I am writing to you on behalf of the AER Energy Regulator (AER) panel of hearing commissioners (the panel) presiding over proceeding 436.

On October 19, 2023, the panel sent a letter to parties asking for submissions on:

- hearing issues,
- information requests,
- hearing location,
- hearing dates,
- and time estimates.

The panel has reviewed the parties' submissions received on October 26, 2023, and the reply submissions received on November 2, 2023. The panel has also received and reviewed Obsidian's sur-reply, dated November 3, 2023.

## 1. Hearing Issues

### Background

On March 23, 2023, AER issued an environmental protection order (the order) to Obsidian, under sections 113 and 241 of the *Environmental Protection and Enhancement Act* (EPEA).

Obsidian is the holder of well license W0443668 issued by the AER under the *Oil and Gas Conservation Act* at surface location 14-18-08217 W5M, approximately 40 kilometers (km) SE of the Town of Peace River. The well is authorized for disposal of water via injection into the Leduc Formation (the disposal operation).

In the order, AER concluded that the disposal operation induced the seismic events that occurred approximately 40 – 42 kms SE of the Town of Peace River between November 29, 2022, and March 16, 2023 (the seismic events). The order named Obsidian as the “person responsible” for the seismic events.

The order stated that the AER was not aware of any adverse effects to date resulting from the induced seismic events. However, it further stated that seismic activity and seismic events are vibrations and/or the release of energy into the environment and, when released, may cause adverse effects, impairment of or damage to the environment, human health or safety or property, as defined in section 1(b) of EPEA.

The order required Obsidian to take certain actions including:

- submit plans and take actions to reduce the frequency and magnitude of induced seismic events caused by the disposal operation, and
- submit information, according to the terms defined in the order.

### Parties' submissions

Obsidian submitted the issues to be considered in the proceeding should include:

1. Whether the November 29, 2022, and March 16, 2023, seismic events referred to in the environmental protection order occurred naturally or were induced by human activity.
2. Whether the seismic events can be and are spatially and temporally correlated to the disposal operations conducted by Obsidian at surface location 14-18-082-17 W5M.
3. Whether the disposal operations induced or contributed in whole or in part to, the Seismic Events.
4. Whether activities other than the disposal operations induced or contributed in whole or in part to, the Seismic Events.
5. Whether the order should be rescinded in whole or in part.
6. Whether Obsidian should be required to continue, in whole or in part, to implement the mitigation plan and information submission it was directed to under the order.

CLM stated that it understands the issues on the regulatory appeal to be:

Should the environmental protection order under section 113 of EPEA be confirmed, varied, suspended, or revoked considering:

1. Whether:
  - (a) a release of a substance into the environment may occur, is occurring or has occurred,
  - (b) the release may cause, is causing or has caused an adverse effect, and
  - (c) Obsidian is the person responsible for the substance, and
2. The measures that may be ordered pursuant to subsection 113(3) and subsection 241(1) of the EPEA.

Obsidian, in its reply, objected to including aspects of issue 1(a) proposed by CLM. Obsidian noted that the order expressly relates to specific seismic events and the order does not speak to any ongoing release of substances as CLM's proposed issue 1(a) suggests by including "a release of substance...is occurring...".

Obsidian submitted that CLM's proposed issue 1(b) should not be considered in the proceeding for the following two reasons:

1. the seismic events are causing or have caused an adverse effect did not form the factual basis of the order, which is the subject of the proceeding. Therefore, the seismic events are causing or have caused an adverse effect should not form the subject matter of the proceeding. The order does not speak to any adverse effects occurring because of the seismic events as the CLM proposed issue 1(b) suggests.
2. Given the magnitude of the Seismic Events, Obsidian does not intend to dispute during the proceeding, whether in certain circumstances the seismic events at the time of occurrence had the potential to cause an adverse effect.

Obsidian submitted that CLM's proposed issue 2 has no place in the proceeding as it appears to be directed at the scope of measures that can be imposed under the operative provisions of the EPEA, which the order was issued under. The proceeding constitutes a regulatory appeal of the order and Obsidian has not challenged the jurisdiction of CLM to issue the order nor intends to challenge the jurisdiction of the CLM to issue the order or the scope of measures that are permitted to be ordered under the operative provisions of the EPEA.

CLM did not object to Obsidian's proposed issues 1, 2, and 3 being included as issues for the hearing. However, CLM noted that Obsidian's proposed issues 1 through 3 are framed more narrowly than the provisions of subsection 113(1) of the EPEA and are also framed more narrowly than the terms of the order. CLM also submitted that Obsidian's proposed issue 5 is stated too narrowly than the regulatory appeal panel's jurisdiction is defined in subsection 41(2) of *Responsible Energy Development Act* (REDA). CLM noted that Obsidian's proposed issue 6 is stated too broadly than subsection 41(2) of REDA, and using the language of the act is more appropriate.

## **Panel's Decision**

Under section 41(2) of REDA, in a regulatory appeal decision, the panel's task is to confirm, vary, suspend, or revoke the appealable decision. The appealable decision in this matter is the AER's decision of March 23, 2023, to issue the order to Obsidian, under sections 113 and 241 of the EPEA. Therefore, the issuance of the order and its entire content form the appealable decision.

With that in mind, and after considering all the submissions made by the parties about the issues, the panel sets the issue of the hearing as:

- Whether the order, including all of its content, should be confirmed, varied, suspended, or revoked.

The panel is of the view that the detailed issues proposed by the parties inform this overarching issue and that the parties' submissions about their proposed issues for the hearing are assessing the merits of the order. The parties will be given ample opportunity to submit detailed evidence and legal arguments to support their position on "Whether the order, including all of its content, should be confirmed, varied, suspended, or revoked."

To focus the parties' submissions in the proceeding, the panel invites the parties to also address the following questions:

1. Were the seismic events specified in the order induced by human activity?
2. Is Obsidian's disposal operation responsible for the seismic events?

The panel may consider additional questions that arise during the proceeding, which are relevant and material to the overarching issue, and may assist the panel in deciding the regulatory appeal before it. In making its decision the panel must follow the applicable requirements provided in the REDA, the EPEA, and any other relevant legislation under the AER's regulatory framework.

## **2. Information Request**

### **Parties' submissions**

Obsidian requested a formal information request process be included because the subject matter of the hearing is highly technical, and the information request process would facilitate the efficiency of the hearing process and may narrow the technical issues considered in evidence.

CLM submitted that it does not see a need for a formal pre-hearing information request process. CLM stated that it has provided all the information the decision maker had before him when he issued the decision, as well as the supporting data, and has continued to provide Obsidian with data from the nodal array. According to CLM, any questions on the record, supporting data, or subsequent data can be asked and answered at the hearing.

In its reply submission, Obsidian noted that it is unsure what nodal array CLM is referring to. Obsidian emphasized that the highly technical subject matter of the proceeding and the prejudicial nature of the order to Obsidian supports allowing Obsidian an opportunity to discover CLM beyond the Record of the Decision Maker to determine, *inter alia*, how CLM reached its decision in the order. Such discovery should initially be conducted through a formal information request process as it will assist Obsidian in fully understanding the data and analyses relied on by CLM (i.e. the case to meet) and may assist in narrowing the technical issues to be considered in evidence.

### **Panel's Decision**

The panel notes that the matters decided by panels of hearing commissioners are often complex, technical, and include a substantial volume of technical evidence. The panel agrees with Obsidian's submission that for a technical proceeding such as this regulatory appeal, a formal information request process can facilitate an efficient proceeding.

The order of presentation at a hearing on a regulatory appeal is defined by Section 32.3(1) of *Alberta Energy Regulator Rules of Practice* (Rules) to be (a) the requester, (b) the approval holder, and (c) the decision maker. Therefore, Obsidian, as the regulatory appeal requester has the onus to file its evidence first, followed by CLM as the decision-maker. Furthermore, as per section 12(2) of the Rules, a formal information request is to ask specific questions for clarification about the other party's evidence, documents or other material that is in the possession of the party and relevant to the proceeding.

Therefore, in the panel's view, any information request process would be most beneficial if it is applied to clarify documentary evidence filed by the parties and would serve little purpose in advance of filed evidence. With that in mind, deadlines for a formal information request process will be after the parties' submissions have been filed.

## **3. Hearing Date**

### **Parties' submissions**

The panel asked the parties to hold May 13 through 17, and May 27 through 30, 2024, for the hearing. While CLM's counsel is unavailable on May 30, 2024, the parties stated that they are generally available May 13 through 17, 2024, and May 27 through 29, 2024. This amounts to a total of eight days.

The parties also provided preliminary time estimates for different elements of the oral hearing.

### **Panel's Decision**

Based on the time estimates provided by the parties, it appears that a total of eight days should be more than sufficient for the hearing. Therefore, the panel confirms the hearing will begin on May 13 and continue through May 17, 2024. The panel notes that at this stage in the proceeding, the technical nature

of this proceeding could make time estimates difficult. Therefore, in addition to May 13 through 17, the panel also asks parties to reserve May 27 through 29, 2024, as contingent dates.

#### 4. Submission Schedule

##### Panel's Decision

Obsidian noted that the nature of this regulatory appeal is technical, and it requires sufficient time for filing evidence. To provide sufficient time for preparing its evidence, the panel is allowing approximately two months from the issuance of this letter to Obsidian's filing date of its submissions. Furthermore, the panel is allowing multiple weeks between each step of the process. To maintain an efficient process and avoid any delays to the established hearing dates, the panel expects the parties to adhere to the process schedule, as outlined below.

Obsidian Submissions	January 10, 2024
CLM Submissions	February 12, 2024
IRs by each party	February 29, 2024
Responses to IRs	March 21, 2024
Obsidian Reply Submission	April 17, 2024
Hearing Begins	May 13, 2024

#### 5. Hearing Format and Location:

##### Parties' submissions

Obsidian confirmed that an in-person hearing in Calgary is satisfactory. Obsidian noted that it has at least one expert witness retained who resides out of the country and who will need to travel to Calgary to attend an in-person hearing, and thus it may request that one or more witnesses appear remotely during the oral hearing.

CLM stated it has no concerns with an in-person hearing at Govier Hall.

##### Panel's Decision

The panel will hold the hearing in-person at Govier Hall in Calgary.

Govier Hall is equipped with audio-visual technology that allows for witnesses to attend remotely via video conferencing. Therefore, should any witness need to attend remotely, the panel will consider accommodating their request.

Please send your submissions no later than **4:00 pm on the dates specified above**, to [hearing.services@aer.ca](mailto:hearing.services@aer.ca), copying all other parties.

Sincerely,

Parand Meysami  
Presiding Hearing Commissioner

cc: Barbara Kapel Holden and Amanda Huxley, AER counsel for the panel  
Amy Barrington, Stikeman Elliott LLP