

November 2, 2022

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Via email only

ATCO Energy Solutions Ltd.

5302 Forand St SW

Calgary AB, T3E 8B4

Attention: Donna Venzi

Dear Ms. Venzi:

**Re: Request for confidentiality pursuant to section 49 of the *Alberta Energy Regulator Rules of Practice (Rules)*
Application by ATCO Energy Solutions Ltd. (ATCO) under section 39 of the Oil and Gas Conservation Act for ATCO Hydrogen Salt Cavern Development Program (Application)**

The Alberta Energy Regulator (AER) has considered your email dated July 20, 2022 in which ATCO requested that certain information be held confidential under section 49 of the *Rules*. ATCO supplemented the July 20 email with further information provided in letters received by the AER on August 8, September 21, and October 25, 2022.

The AER was also assisted in its review of ATCO's request for confidentiality by counsel for ATCO, Keely Cameron of Bennett Jones LLP, notably by phone calls on September 20 and October 17, 28, and 31, 2022.

Based on the correspondence with ATCO and ATCO's counsel (the **Correspondence**), the AER understands that ATCO is seeking to maintain the confidentiality of certain appendices submitted in support of the Application, the details and terms of which request are outlined in the table below (the **Requested Confidential Information**).

	All / Part	Requested Duration
Appendix B - Subsurface Risk Assessment of Underground Hydrogen Storage in a Bedded Salt Cavern	Pages 2-13, 17-99	5 years
Appendix G - Feasibility Study for Underground Hydrogen Storage in the Lotsberg Salt formation, ATCO Storage Facility, Near Fort Saskatchewan, Alberta, Canada	All	5 years

Appendix I - Mechanical Properties Testing of Salt and Nonsalt Core from ATCO Utility Redwater Wells 9-28-55-21 and 11-27-55-21 Alberta, Canada	All	5 years
Appendix J - Summary of Results for ATCO Energy Solutions	All	In perpetuity, subject to review conditions
Appendix N - Testing Reporting ATCO Utility S Redwater 11-27-55-21 Pilot - Cavern Well Project	All	5 years

ATCO submitted that the Requested Confidential Information consists of confidential and proprietary technical information developed in support of ATCO's Hydrogen Salt Cavern Storage Development Program (the **Program**), which looks at the feasibility of hydrogen storage in cavern formations. ATCO indicated that the Program is the first of its kind in Canada and developed at significant cost to ATCO.

ATCO stated that the Requested Confidential Information includes detailed technical data that ATCO has consistently treated, and continues to treat, as confidential. ATCO submitted that disclosure of the Requested Confidential Information would result in significant harm to the competitive commercial position of ATCO as the first mover in this space and cause undue financial loss to ATCO. ATCO stated that disclosure of the Requested Confidential Information would undermine its competitive advantage and have the potential to disincentivize investment in new clean energy technologies.

ATCO referred to an agreement it has entered with the United States Department of Energy (**USDOE**). In relation to Appendices B and J, ATCO submitted that without the consent of the USDOE, the release of the Requested Confidential Information would be a breach of ATCO's confidentiality agreement with the USDOE (the **USDOE Confidentiality Agreement**).

The AER has considered ATCO's submissions, and for the reasons below grants the request for confidentiality in part. A summary of the AER's disposition in respect of ATCO's request for confidentiality is outlined in the table below.

Disposition Notes

Appendix B - Subsurface Risk Assessment of Underground Hydrogen Storage in a Bedded Salt Cavern	Granted in part	Information that is subject to the USDOE Confidentiality Agreement, term of three years. ATCO can apply under s. 49 of the Rules for an extension prior to expiration.
Appendix G - Feasibility Study for Underground Hydrogen Storage in the Lotsberg Salt formation, ATCO Storage Facility, Near Fort Saskatchewan, Alberta, Canada	Denied	
Appendix I - Mechanical Properties Testing of Salt and Nonsalt Core from ATCO Utility Redwater Wells 9-28-55-21 and 11-27-55-21 Alberta, Canada	Granted in part	Same terms of confidentiality as provided to Program samples submitted by ATCO to the Core Research Centre.
Appendix J - Summary of Results for ATCO Energy Solutions	Denied	
Appendix N - Testing Reporting ATCO Utility S Redwater 11-27-55-21 Pilot - Cavern Well Project	Granted	Three-year term.

It is AER policy and a requirement under section 49 of the *Rules* that all documents filed in respect of a proceeding, including an application, be placed on the public record. Section 12.150 of the *Oil and Gas Conservation Rules (OGCR)* also provides that records, reports, and information submitted to or acquired by the AER are available to the public on request. In the absence of very compelling reasons, all materials filed in connection with the application are publicly available.

This approach to disclosure is consistent with the AER’s role as an administrative tribunal, its obligation to be transparent and to provide procedural fairness to all parties who participate in its process, and its statutory mandate to act in the public interest. Making the information used by decision makers available assists in understanding the AER’s decisions. In other-words, transparency and disclosure of relevant information are fundamental to be procedurally fair, efficient, to promote credible hearing and decision-making processes, and to act in the public interest.

Public disclosure in service of procedural fairness and transparency, and the public's interest in disclosure, are the overriding principles reinforced by subsection 49(1) of the *Rules*. Hence, in the AER's view there is a general presumption in favour of public disclosure and against granting confidentiality of documents filed with the AER.

The AER also recognizes the legitimate need, when established, of a party to protect confidential or commercially sensitive information where disclosure of that information is likely to result in harm to that party's financial or personal interests and such harm outweighs the benefit to the public interest in disclosure. While Section 49 of the *Rules* reinforces the principle of public disclosure, it also establishes a formal mechanism by which parties can seek confidentiality. However, exceptions to disclosure ought to be granted only in clear and compelling cases and should be limited to situations where the party requesting confidentiality has positively and demonstrably met the criteria established under subsections 49(3) and (4) of the *Rules*. Importantly, a confidentiality ruling is highly fact and situation specific.

The provision most applicable to ATCO's request for confidentiality is subsection 49(4)(b) of the *Rules*, which applies to information that is commercial, financial, scientific or technical in nature and requires a reasonable expectation that disclosure of the information could "cause significant harm to the competitive position of a party", or "result in undue financial loss or gain to any person or organization". This test creates a high threshold that must be met before confidentiality will be granted.

The AER has identified certain points of analysis that apply to multiple Appendices contained in the Requested Confidential Information, as described in the following sections.

Novelty of the Program

The AER appreciates that ATCO has invested a significant amount of time and capital into the Program, and ATCO's submission that the Requested Confidential Information relates to ATCO's proprietary business plans to advance the first hydrogen salt cavern storage project in Canada utilizing proprietary designs.

Notwithstanding ATCO's submissions about the novelty of the Program as a basis for confidentiality, the AER must still base its decision on the criteria set out in section 49(4)(b) of the *Rules*. In this regard, ATCO's reasons must positively and demonstrably indicate that the release of the Requested Confidential Information would meet these criteria.

An assertion of the novelty of geological analysis relating to hydrogen storage does not, on its own, show that the release of such analysis could reasonably be expected to cause significant harm to ATCO's competitive position, or to result in undue financial loss or gain to any person or organization. With some exceptions, the reasons provided by ATCO in support of its request for confidentiality did not provide further explanation to the AER regarding how its competitive position could be significantly harmed by the

release of the Requested Confidential Information or how the release of the Requested Confidential Information could result in undue financial loss or gain.

Information that is disclosed to the AER in support of applications, which information may represent a significant investment of time and money by the applicant in support of an innovative geological analysis or technology, is part of the public record. The AER appreciates and understands that all applicants have likely dedicated a significant amount of time and money to the documents, information and materials that are submitted in support of their application. Further, many applicants will understandably want to protect the knowledge gained through such an investment from exploitation by their competitors. However, this desire to maintain confidentiality of such information is not enough, on its own, to meet the criteria in section 49(4)(b) of the *Rules*.

The AER has reviewed previous decisions, submitted by ATCO, which ATCO states are analogous to the present request for confidentiality. The AER finds that the Ridgeback and Canadian Natural Decisions can be distinguished from the present request as these decisions were issued in the context of disputed applications before a hearing panel requiring detailed geological information and in-depth geological analysis from the parties involved. This detailed information met the section 49(4)(b) criteria.

More commonly, the AER has denied requests for confidentiality in respect of geophysical information and proprietary data relating to an anomaly map and net pay map,¹ as well as a reserve report and internal financial model and business plan.²

Duration of confidentiality requested

With respect to the duration of the confidentiality requested, through the Correspondence ATCO clarified that it seeks a term of five years of confidentiality of the Requested Confidential Information, with the exception of Appendix J, for which confidentiality is requested to endure in perpetuity. In the AER's view, the duration of the requested confidentiality is linked to ATCO's reasons for the request, as ATCO's submissions relate largely to securing the competitive position of the Program with respect to other similar projects that ATCO speculates may be assisted by reviewing the Requested Confidential Information if it is released.

This aspect of the request raises at least two concerns. First, as noted above, ATCO's concern for its competitive position is speculative. ATCO has not identified any projects or proponents that could be assisted by the release of the Requested Confidential Information, and provided minimal explanation for how the Requested Confidential Information could be used. The AER sets a high threshold that must be

¹ Letter Decision re Kelt Exploration, Directive 065 Pool Delineation Application No. 1846297 (Application), Location 04-09-054-24W5, Confidentiality Application, January 26, 2016.

² Letter Decision re Midstream Canada Limited Confidentiality Request – Section 49 of the AER Rules of Practice, November 30, 2018.

met before confidentiality will be granted, and in this case, the threshold is not met without some explanation of the significant harm that may be done to ATCO's competitive position, or the basis of an undue financial loss or gain that may occur.

Second, ATCO's reasons for requesting confidentiality tend to support a shorter duration of confidentiality than the five years that has been requested. In relation to Appendix B, ATCO submitted that as a result of the release of the Requested Confidential Information "ATCO could lose to its competitors its technical, and scientific knowledge gained through investments of capital and three years of study." In relation to Appendix G, ATCO submitted that "this study comprises multiple years of effort..." while in relation to Appendix I, ATCO submitted that "the core analysis collection and testing program was developed over a period of two years and the evaluation itself took place over an additional six months."

Furthermore, in relation to Appendix I, the data and samples submitted to the Core Research Centre will be made available to the public well before five years have passed, in accordance with section 12.150 of the *OGCR*. ATCO indicated in the Correspondence that it has made a separate request to the Core Research Centre to extend this period of confidentiality but did not provide the status or details of this request. ATCO's own submissions in relation to Appendix I suggest that it expects the standard confidentiality period of one year to apply to the materials submitted to the Core Research Centre.

Based on the AER's review of the reasons provided by ATCO in the Correspondence related to potential for significant harm to ATCO's competitive position, the AER finds that the longest duration of confidentiality that could be supported by these unique facts and circumstances is three years from the date ATCO submits the Requested Confidential Information to the AER in support of the Application.

ATCO did not provide the AER with the details of the USDOE Confidentiality Agreement. As described in the analysis related to Appendix B, the AER has allowed ATCO the opportunity to make a request under section 49 of the *Rules* to extend the term of confidentiality where the AER understands that the request relates to the USDOE Confidentiality Agreement.

Nature of the Requested Confidential Information

ATCO's submissions make it clear that the Requested Confidential Information is commercial, financial, scientific or technical in nature. The relevant question is therefore whether the release of the Requested Confidential Information could reasonably be expected to cause significant harm to the competitive position of ATCO, or result in undue financial loss or gain to a person or organization.

The AER has reviewed the reasons provided for each of the individual Appendices making up the Requested Confidential Information, to assess the fact and situation specific context for the confidentiality sought for each Appendix. The remaining sections contain the AER's findings and disposition in respect of each Appendix.

Appendix B

In relation to Appendix B, ATCO submitted that the risk assessment refers to details of proprietary technical design and cavern development plan, and the results of studies including those referenced in Appendix J, which cannot be released without consent of the USDOE as a result of the USDOE Confidentiality Agreement.

ATCO's reasons for seeking confidentiality of Appendix B primarily referred to the USDOE Confidentiality Agreement. ATCO did not provide other reasons why the release of Appendix B could reasonably be expected to cause significant harm to ATCO's competitive position, or undue financial loss or gain to any person or organization.

The Requested Confidential Information in Appendix B includes only pages 2-13 and 17-99. Based on the Correspondence the AER understands that these are the portions of Appendix B that include information that is subject to the USDOE Confidentiality Agreement.

The AER finds that ATCO has not established that the release of Appendix B could be reasonably expected to significantly harm ATCO's competitive position. However, the AER finds that the disclosure of the information that is subject to the USDOE Confidentiality Agreement could reasonably be expected to cause undue financial loss to ATCO, the USDOE, or others. The AER therefore grants ATCO's request for confidentiality only in respect of those sections of Appendix B that are subject to the USDOE Confidentiality Agreement, for a period of three years from the date of the submission of Appendix B to the AER in relation to the Application.

ATCO may request that that AER extend the term of confidentiality applied to Appendix B by making a request in writing to the AER prior to the expiration of the initial three year term, which request must comply with section 49 of the *Rules*.

Appendix G

In respect of Appendix G, ATCO submitted that it is a geomechanical study that underpins the technical and scientific aspect of the Program. The geomechanical model integrates the core analysis information and the chemical properties of hydrogen to evaluate the feasibility of the Program. ATCO's reasons for requesting confidentiality of the entirety of Appendix G include that competitors could use its contents to shorten the feasibility and development schedules for future cavern assets in the same target formation.

Notwithstanding that the present request relates to the storage of hydrogen instead of other gases, the AER finds that ATCO's description of the information found in Appendix G is more analogous to the routine interpretation of geological data that is typically part of the public record in the AER's public proceedings. The AER notes that seismic data, interpretation of seismic data, well logs and interpretation of well logs

are submitted routinely and become part of the public record in AER proceedings. It is common in many AER proceedings for information to be part of the public record that could be used by competitors to locate and evaluate underground assets.

The AER finds ATCO has not provided adequate reasons in the present circumstances to distinguish the Requested Confidential Information in Appendix G from information the AER routinely collects and makes public in the context of its public proceedings. Further, the AER finds ATCO has not established that disclosure of the geomechanical study could cause significant harm to ATCO's competitive position or undue financial loss or gain, given the interpretative and speculative nature of the information. It is common in AER hearings to have opposing parties maintain different interpretations of geology based on the same subject data.

ATCO has not provided reasons or an explanation why it could be reasonably expected that a competitor could duplicate the Program based on the disclosure of Appendix G. ATCO has not identified any competitors or competing projects that could make use of the Requested Confidential Information, or why this information would benefit such hypothetical projects to the point that ATCO's competitive position could be significantly harmed. ATCO has not explained why the release of Appendix G could significantly harm its competitive position any more than other information that is routinely released by the AER in relation to other subsurface applications.

For the reasons described above, the AER denies ATCO's request to for confidentiality with respect to Appendix G.

Appendix I

With respect to Appendix I, ATCO explained that the study informs Appendix G. ATCO described that the core analysis collection and testing program was developed over a period of two years and the evaluation took over an additional six months. ATCO submitted that the core analysis would allow competitors to draw conclusions on the permeability of existing salt rights and make additional analogous assumptions about the characteristics of other assets. ATCO stated that if this report is published prior to the expiry of the confidentiality of materials submitted to the Core Research Centre, it would eliminate the technical, scientific, and commercial advantages ATCO has invested in, over the past three years of the Program.

Based on ATCO's submissions, the contents of Appendix I can be distinguished from Appendix G and its analogues, as Appendix I contains information derived from a lower degree of analysis applied to samples and data collected as part of the Program. Furthermore, ATCO explained that the data and samples referred to in Appendix I were submitted to the Core Research Centre and will be held by the Core Research Centre as confidential for one year following submission pursuant to section 12.150 of the *OGCR*. ATCO has not provided any reason for the AER to expect that the materials submitted to the Core Research Centre will not be available to the public pursuant to section 12.150 of the *OGCR*.

The disclosure of Appendix I can more reasonably be expected to cause significant harm to ATCO's competitive position, or undue financial gain to another party, until the materials submitted to the Core Research Centre are available to the public. The risks associated with the release of Appendix I are not speculative as they relate to the disclosure of materials, as opposed to subjective analysis, that would otherwise be unavailable to the public. Furthermore, the contents of Appendix I are less likely to be subject to disagreement, or based on the independent interpretation of potentially disagreeing professionals.

Therefore, the AER grants ATCO's request for confidentiality of Appendix I, until such time as the materials submitted to the Core Research Centre are made available to the public.

Appendix J

Apart from the title of the document, ATCO has not provided a description of the nature of the information that is contained in Appendix J, as is required by s. 49(3)(b)(i) of the *Rules*. ATCO seeks confidentiality of Appendix J to comply with the USDOE Confidentiality Agreement. The AER notes that this compliance could also be achieved by ATCO not disclosing Appendix J to the AER.

Unlike the other Appendices in the Requested Confidential Information, the AER has not been able to determine from the Correspondence why the information contained in Appendix J is required to support the Application. Therefore, Appendix J appears to include more information than the AER requires for the Application. ATCO has full control over what information it chooses to submit to meet the requirements of the Application. If ATCO decides to submit Appendix J as part of its Application at this time, it will be doing so voluntarily and not pursuant to any AER requirement.

Considering the above, the AER denies ATCO's request for confidentiality in relation to Appendix J.

If during the review of the Application ATCO is directed or requested to disclose the information in Appendix J, ATCO will be able to make a subsequent request for confidentiality pursuant to section 49 of the *Rules*. The AER notes that such a request must include a brief description of the nature of the information in the document, pursuant to subsection 49(3)(b)(i) of the *Rules*.

Appendix N

With respect to Appendix N, ATCO explained that this document contains the well configuration, testing plan, design conditions, fluids used, criteria considered, QA/QC results, test methodology and test results for the Program. ATCO submitted that this report is highly technical in nature and if released would provide prescriptive guidance to anyone seeking to copy the Program.

Considering ATCO's submissions regarding the highly technical and prescriptive nature of Appendix N, the AER finds that Appendix N can be distinguished from the analysis contained in Appendix G. Therefore,

the AER finds that ATCO has established that the release of Appendix N could reasonably be expected to cause significant harm to ATCO's competitive position. The AER grants ATCO's confidentiality request in respect of the entire contents of Appendix N for a term of three years.

Given the nature of the AER's disposition in relation to this request for confidentiality, AER staff will be in touch with ATCO to facilitate how to handle the submission and review of the Appendices over which confidentiality has been granted.

Sincerely,

<Original signed by>

Stephanie Latimer
Vice President, Law and Associate General Counsel

cc: Keely Cameron, Bennett Jones LLP
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