

**Via Email**

September 13, 2017

Calgary Head Office  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada

Ember Resources Inc.

Encana Corporation

[www.aer.ca](http://www.aer.ca)**Attention: Tom Zuorro****Attention: Danielle Parrotta**

Dear Sir/Madam:

**RE: Request for Regulatory Appeal and Suspension by Ember Resources Inc. (Ember)  
Encana Corporation (Encana) and Manito Energy Inc. (Manitok)  
Application No.: 1884350 Pipeline Licence Transfers  
Request for Regulatory Appeal No.: 1885827 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered Ember's request under section 38 of the Responsible Energy Development Act (REDA) for a stay and a regulatory appeal of the AER's decision to approve the transfer of certain pipeline licences (Transfer Decision) from Encana to Manito. The AER has reviewed Ember's submissions and the submissions made by both Encana and Manito.

For the reasons that follow, the AER has decided that Ember is not eligible to request a regulatory appeal in this matter. Therefore, the request for a regulatory appeal is dismissed.

The applicable provision of REDA in regard to regulatory appeals, section 38, states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [emphasis added]

The applicable definition of "appealable decision" is in section 36(a)(iv) of REDA, which states:

36(a)(iv) a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing,

The term "eligible person" is defined in section 36(b)(ii) of REDA to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment]...

**Reasons for Decision**

Ember raised concerns with the Transfer Decision on the basis that it should have been transferred the licences from Encana as Ember is the owner of the pipelines under a purchase and sale agreement between Encana and Ember. Ember submitted that it flows 4.34 mmscfd of 100% working interest Ember gas through these pipelines and that Manito could change the operation of the pipelines to restrict or terminate the flow of Ember's gas onto the pipelines. In response to Encana's argument that the pipelines were not included in the purchase and sale agreement, Ember submitted that the pipelines were inadvertently and by error included in certain assets that were excluded from the sale. Ember submitted that when offered to purchase the excluded assets, that it did not review the list of assets.

Encana and ManitoK responded that the pipelines in question were not included as part of the purchase and sale agreement and that ManitoK is the current owner of the pipelines. Encana further submitted that the concerns of Ember relate to a private agreement between the parties and is not a matter for the AER. Encana argued that since Ember has no interest in the pipelines that it has no legal standing to bring the request for regulatory appeal or alternatively, that the matter is not properly before the AER as it involves determining ownership, for which the AER is not the appropriate forum.

The AER agrees that the appropriate forum for legal interpretation and enforcement of private agreements is the Alberta courts, unless such interpretation is required by the AER to meet its mandates under its legislation. Ember has not shown a potential breach of an AER requirement that would require determination of the private agreement, and therefore the AER is not the appropriate forum for such a legal determination.

The concerns of Ember appear to be largely related to potential future operation of the pipeline by ManitoK to the detriment of Ember's interests. The AER is of the view that this concern is speculative and not a direct result of the Transfer Decision. The AER notes that the pipeline licences were not held by Ember prior to the Transfer Decision and this has not changed as a result of the Transfer Decision. Finally, the AER notes that the *Oil and Gas Conservation Act* provides for the filing of a common carrier application by a producer if its production is unfairly discriminated against by a pipeline operator.

### **Conclusion**

Given the foregoing, it does not appear that Ember is directly and adversely affected by the decision to transfer the pipeline licences to ManitoK. The request for regulatory appeal is dismissed.

As the request for regulatory appeal is dismissed, there is no basis upon which to consider Ember's stay request.

Sincerely,

*<original signed by>*

Patricia Johnston  
EVP & General Counsel, Legal

*<original signed by>*

Tom Byrnes, P. Eng.  
Senior Advisor, Oil & Gas, Industry Operations

cc: Raquel Schneidmiller, ManitoK Energy Inc.