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April 10, 2026

Via Email

The Honourable Andrew D. Little
Chairperson, Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Dear Justice Little:

Re: Informal Motion re Confidentiality Order in Pulse Seismic ats Whitecap Resources - CT-2026-003 (the "Proceedings")

We are counsel for the respondent, Pulse Seismic, in the Proceedings before the Competition Tribunal (the "**Tribunal**"). We respectfully request that this letter be brought to the attention of Justice Little.¹

Pursuant to the Direction of this Tribunal, dated April 2, 2026, Pulse Seismic has communicated promptly with counsel to the applicant, Whitecap Partnership ("**Whitecap**"), concerning the terms of a Confidentiality Order to be issued by the Tribunal. A draft Confidentiality Order is attached as **Appendix A**. All of the comments of counsel to Whitecap, Burnet, Duckworth & Palmer LLP, have been incorporated in the preparation of this draft Confidentiality Order, and Whitecap consents to the issuance of the draft Confidentiality Order. This letter is a motion under Rule 81 and Rule 66 of the *Competition Tribunal Rules*, SOR/2008-141 for the issuance of a single confidentiality order to cover all documents in this Proceeding, in the terms provided for in the draft Confidentiality Order. In support of this motion, please see the grounds for the motion in Section 2 below.

1. Draft Confidentiality Order

The draft Confidentiality Order is substantially the same as confidentiality orders in recent proceedings before the Tribunal, including in *JAMP Pharma Corporation v Janssen Inc.* and *8X Labs Inc. v Vistar Media Inc* ("**8X**"). However, an additional level of confidentiality – "**Level C Protected**" – is introduced and defined in the draft Confidentiality Order. Records marked as "Level C Protected" may be disclosed to:

- (a) outside counsel and outside counsels' staff of both Pulse Seismic and Whitecap;
- (b) any personnel of the Tribunal and of the presiding judicial member's chambers as may be necessary for the conduct of the Proceeding;

¹ All capitalized terms not defined have the same meaning as set out in the draft Confidentiality Order.

- (c) Independent Experts and their staff who are directly involved in the Proceeding;
- (d) the Commissioner, including the Commissioner's counsel and staff; and
- (e) the Parties.

The "Level C Protected" confidentiality designation is defined to capture documents that do not need to be redacted as between the Parties, but cannot be made public due to competitively sensitive information outlined below. For example, negotiated rates between the Parties should be shielded from public view, but need not be limited to Designated Representatives of the Parties.

2. Grounds for the Motion for a Single Confidentiality Order

Pursuant to Rule 66(1)(b) of the *Competition Tribunal Rules*, SOR/2008-141, the Tribunal may order a document or information in a document be treated as confidential upon a motion, or an informal request pursuant to Rule 81, of a party who has filed or will file a document. The Tribunal may issue a single confidentiality order to cover multiple documents under Rule 66(2). In order to grant a confidentiality order, the Tribunal should be satisfied that:

- (i) The order is necessary to prevent a specific and direct harm that would allegedly result from disclosing the identify of the witness or revealing the information in question in a proceeding open to the public;
- (ii) There are no reasonable alternative measures to prevent the harm; and
- (iii) The salutary effects of the order, including the effects on the right of the parties to a fair hearing, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible proceedings before the Tribunal.²

The Tribunal has issued a single confidentiality order in many recent proceedings – including most recently in 8X.³

(a) Prong One: Specific and Direct Harm, and the Public Interest

At the first step of the test, the Tribunal must be satisfied that the alleged harm engages a public interest dimension. A public interest dimension is implicated here: the protection of competition and the protection of sensitive third-party information. Subparagraphs 2(a) – (e) of the draft Confidentiality Order list the different types of information that are competitively sensitive or proprietary to the Parties.

Additionally, protecting competition engages a clear public interest, as reflected in section 1.1 of the *Competition Act*, which seeks to maintain and encourage competition in Canada, including by ensuring fair participation by small and medium-sized enterprises and competitive prices and choices for consumers. Consistent with this objective, the Federal Court and the Tribunal have

² *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41; *Sherman Estate v. Donovan*, 2021 SCC 25.

³ 2026 Comp Trib 11, File No. CT-2025-006, Proceeding No. 49.

recognized that the protection of competitively sensitive and proprietary information is itself a matter of public interest, as disclosure of such information can have concrete adverse effects on competition.⁴

The public disclosure of certain information that is included in the application materials would result in a specific and direct harm for Pulse Seismic, Whitecap, third parties and competition itself. There are two categories of highly sensitive information – pricing information and contractual information – that the Parties maintain on a confidential basis, which the Parties will redact in the Whitecap application materials. Pursuant to the draft Confidentiality Order, the Parties will mark the information in the application materials as Level C Protected. The proposed redactions are attached. Public disclosure of this information would expose commercially sensitive details to competitors and counterparties, impairing the Parties ability to compete in their respective industries.

(b) Prong Two: No Reasonable Alternatives

There is no alternative form of order or proposal before the Tribunal. Absent the type of single Confidentiality Order requested, the Parties would likely have to make individual motions to the Tribunal for most documents filed with the Tribunal in this Proceeding. This would result in an inefficient use of both the Tribunal's and the Parties' resources, and create challenges for a proceeding under section 103.1 to be dealt with expeditiously.

The draft Confidentiality Order is flexible and not final. Paragraph 5 permits Whitecap or Pulse Seismic to challenge a claim of confidentiality or the level of confidentiality applied by the other party, and for the Tribunal to determine the validity of any claim of confidentiality. In addition, paragraph 9 permits the Parties to change the confidentiality designation that applies to a document filed in the Proceeding.

(c) Prong Three: Balancing Salutary and Deleterious Effects

The salutary effects of granting the draft Confidentiality Order includes protecting competition in the Canadian two-dimensional and three-dimensional seismic data industry and oil and gas exploration and production industry, and protecting commercial knowledge and pricing information from public disclosure.

The salutary effects of a confidentiality order must be weighed against its impact on the open court principle, including the values of truth-seeking, the common good, and public participation in the political process.⁵ The Supreme Court has recognized that confidentiality orders can, in some cases, advance the search for truth.⁶ Given the narrowly tailored scope of the confidentiality sought and the narrow nature of the redactions proposed, the deleterious effects on openness are minimal and outweighed by the benefits to the truth-seeking function of the Tribunal and the public interest, such that the open court principle is not materially impaired and a confidentiality order is warranted.

⁴ *Canada (Commissioner of Competition) v. Rogers Communications Inc.*, 2024 FC 239; *Dow Chemical Canada ULC v. Nova Chemicals Corporation*, 2015 ABQB 81, citing *Commissioner v. Superior Propane Inc.* and *Petro-Canada, The Chancellor Holdings Corporation and ICG Propane Inc.*

⁵ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras 74-75.

⁶ *Ibid.*

3. **Order Requested**

For the reasons above, the Parties respectfully request that an order be issued pursuant to Rule 66 of the *Competition Tribunal Rules* granting a confidentiality order in the form attached as Appendix A.

Upon issuance of the confidentiality order, the Parties will promptly file public and confidential versions of the application materials with the Tribunal marked in accordance with the order.

Should the Tribunal require further information or support for the Confidentiality Order, please advise the Parties.

Sincerely,



Nikiforos Iatrou
Partner | Associé

cc: Kara Smyth, Jocelyn Turnbull Wallace and Madison Bruno, *McCarthy Tétrault LLP*
Craig Alcock and Lisa Manners, *Burnet, Duckworth & Palmer LLP*