Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2026 ABKB 708

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Docket: 1701 07427
Registry: Calgary

2026 ABKB 708 (CanLII)

Between:

CNOOC Petroleum North America ULC

Plaintiff

- and -

ITP SA, Sunstone Projects Ltd., and Wood Group Canada, Inc.

Defendants

- and -

StressTech Engineering Inc.

Third Party

Reasons for Decision
of the
Honourable Justice R.W. Armstrong

Introduction and Background

[1] This action concerns allegations arising from a pipeline failure that occurred on July 15, 2015. The Plaintiff, CNOOC Petroleum North America ULC, alleges design and construction deficiencies caused the pipeline failure and that the Defendants, Sunstone Projects Ltd., Wood

Group Canada, Inc. ("collectively Wood Group) and ITP SA ("ITP"), are responsible for the damages CNOOC alleges it sustained because of the pipeline failure.

[2] Not surprisingly, the parties anticipate a significant amount of expert evidence to be tendered at trial. The timing of the exchange of expert reports was governed by a Complex Case Litigation Plan ("CCLP"). Primary expert reports were served by CNOOC (seven reports) and ITP (two reports) in March 2026 and rebuttal reports were exchanged in July 2026.

[3] Following the exchange of rebuttal reports, the parties engaged in cross applications seeking to strike various rebuttal reports on the basis that they were, in substance, primary reports and had therefore been delivered after the deadlines set out in the CCLP. Wood Group argued that one of CNOOC's reports raised so many new issues it could not be considered a rebuttal report and, in its cross application, CNOOC argued that the Wood Group rebuttal reports raised several new primary arguments and were therefore improper rebuttal reports. Both parties sought to strike all or portions of the other's rebuttal reports. Neither of them was successful: ***CNOOC Petroleum North America ULC v ITP SA***, 2026 ABKB 582 ("***CNOOC 1***").

[4] On September 21, 2026, the parties exchanged surrebuttal reports. CNOOC served twelve surrebuttal reports on the Defendants, including reports from three new experts. ITP and Wood Group take issue with four of CNOOC's surrebuttal reports. They allege the reports go far beyond the scope of a proper surrebuttal and that these reports should have been served as primary reports. The Defendants allege they will be prejudiced at trial by their inability to respond to the surrebuttal reports.

Rule 5.35

[5] Rules 5.35 states:

> 5.35(1) If a party intends to use the evidence of an expert at trial, the expert's report must be served in the sequence described in subrule (2).
>
> (2) Unless the parties otherwise agree or the Court otherwise orders, experts' reports on which a party intends to rely must be served in the following sequence:
>
> > (a) the party who bears the primary onus of proof must serve on each of the other parties the report of that party's expert;
> >
> > (b) the other party or parties must serve their expert's rebuttal report, if any, and may include in the report issues not raised in the initial expert's report;
> >
> > (c) the party who served the initial expert's report may serve a surrebuttal expert's report that responds only to the new issues raised in the rebuttal report

[6] The law with respect to Rule 5.35 was thoroughly canvassed by Nixon ACJ in ***CNOOC 1*** in the context of a very similar application to this one. I do not purport to restate his analysis here, but note the following principles apply.

[7] Rule 5.35 is a rule designed to ensure fairness at trial, not to create a technical trap for an opposing party. The purpose of mandating a sequential expert report exchange is to promote meaningful pre-trial disclosure, reduce surprise and trial by ambush, and focus the parties on the

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real issues to be determined. As such, the Rule should be interpreted and applied in a practical manner rather than with excessive rigidity: ***CNOOC 1*** at paras 24 and 68, citing with approval ***Signalta Resources Limited v Canadian Natural Resources Limited***, 2018 ABQB 904 at paras 11-15.

[8] While the Rule mandates that the party who bears the primary onus of proof on the issue addressed by the expert evidence must serve their expert report first, determining which party has that primary onus of proof is issue specific and context dependent. It is therefore not necessarily a plaintiff who must serve its reports first. It depends on the circumstances of the case: ***CNOOC 1*** at paras 21-22 and 53-58, citing with approval ***Stewart Estate v TAQA North Ltd.***, 2012 ABQB 904.

[9] Rebuttal reports may raise genuinely novel issues not raised in primary reports. A rebuttal report is therefore not restricted to a point-by-point criticism of a primary report. However, a rebuttal report cannot be used to split a party's case or to hold back evidence that should have appeared in a primary report. The focus must be on the function of the report, not the way counsel describes it: ***CNOOC 1*** at para 23; see also ***Signalta Resources*** at para 12, ***Stewart Estate*** at para 14, and ***Ford v Jivraj***, 2026 ABKB 473 at paras 13-14.

[10] Surrebuttal reports may respond to alternative theories, new dimensions, or genuinely new matters that emerge from a rebuttal report. A surrebuttal report cannot be used to restate, strengthen, elaborate upon, or reargue the original expert opinion. Nor may it be used to advance new allegations or split a party's case.

[11] Whether something constitutes a "new issue" under Rule 5.35(2)(c) depends on the circumstances of the case. The key question is whether the matter genuinely arose from the rebuttal report and could not reasonably have been addressed in the primary report. Courts should avoid both an unduly strict approach and an excessively expansive one: ***CNOOC 1*** at paras 71 and 81.

[12] Rule 5.35 should not be interpreted in a manner that would require a party to speculate about every possible rebuttal position and anticipate every conceivable criticism of its report or alternative theory that might be advanced by an opposing party. A party is expected to put forward its case with due diligence, but not to include excessive commentary simply to guard against later allegations of case splitting.

[13] Striking expert reports for non-compliance with Rule 5.35 is an exceptional remedy and ought only to be done in cases where there is serious prejudice that cannot be cured through other means, including provision of additional reports, timetable adjustments, or costs consequences: ***CNOOC 1*** at para 37.

[14] In ***CNOOC 1***, Nixon, ACJ, acting as the case management justice, refused to permit CNOOC to raise new issues in its surrebuttal reports. At paragraph 80 of the decision he said: "CNOOC is not permitted to respond with a report that goes beyond the limited scope of a surrebuttal."

The Disputed Reports

[15] In these reasons, I refer to certain expert reports and opinions exchanged by the parties solely for the purpose of providing factual and procedural context to the issues before the Court on this application. No expert has yet been qualified to give expert evidence, and none of the

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opinions contained in the reports have been tested at trial. No reference to any report or opinion should be understood as a finding regarding the admissibility of the reports, the qualification of the proposed experts, the reliability of the opinions expressed, or the weight to be accorded to them. Nothing in these reasons constitutes acceptance, endorsement, or rejection of any expert opinion tendered, all of which remains for determination at trial.

[16] There are four surrebuttal reports in dispute: the Williams Surrebuttal Report, the Hothi Surrebuttal Report, the Carlson Surrebuttal Report and the Weisgerber Surrebuttal Report.

[17] The Williams Surrebuttal Report is authored by Dr. Kevin Williams, a civil engineer described as having over 40 years' experience working on onshore and offshore oil and gas projects during design, installation, operation, and decommissioning phases.

[18] The Williams Surrebuttal Report purports to respond to paragraph 25(c) of the rebuttal report of Michael Dowhopoluk, in which Mr. Dowhopoluk suggested that several remediation options were available to address the PE pipeline upheaval buckle before loss of containment occurred, including anchors, excavation and replacement of the deformed section, regrading and relaying the affected pipeline, or reducing operating temperatures pending permanent repair. Dr. Williams was asked to provide his opinion on whether those remediation options would have been sufficient in the circumstances.

[19] In his report, Dr. Williams accepts that the repair methods identified by Mr. Dowhopoluk are recognized means of addressing a localized upheaval buckle in a properly designed pipeline system. However, he concludes that the PE and BFW pipelines involved broader system-wide issues extending beyond the buckle location. He identifies concerns with the original design assumptions, including pre-stress calculations, effective force calculations, outer-pipe temperature assumptions, and the ability of peat soils to provide sufficient resistance against buckling. In his view, these issues affected the entire pipeline system and required assessment on a line-wide basis rather than at a single location.

[20] Dr. Williams also relies on the post-failure engineering work undertaken by Jacobs and Atkins. He notes that those investigations identified concerns affecting both pipelines, including bulkhead capacity, excessive stresses, increased effective forces, potential strain localization, inner-pipe movement, global buckling, insulation performance, and hydrogen within the annulus. He observes that a number of these issues remained unresolved, and that further engineering assessment and remediation would have been required before either pipeline could safely return to service.

[21] The central conclusion of the report is that, if the original design conditions were to be maintained, local repair of the buckle would not have been sufficient. Based on the findings of Mr. Dowhopoluk and the Jacobs and Atkins analysis, Dr. Williams concludes that both the PE and BFW pipelines would have required substantial intervention along their full lengths to achieve safe operation and would effectively have required replacement. While operation under reduced temperature and pressure conditions may have formed part of an interim strategy, he concludes that even a derated operating regime would have required significant remediation work, monitoring, and operational restrictions before either pipeline could be returned to service.

[22] The Hothi Surrebuttal Report is authored by Jaspreet Hothi. He is a licensed professional engineer holding a master's degree in mechanical engineering with a focus on Finite Element

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Analysis. He has 20 years of experience performing stress analysis for pipelines, heavy machinery, and power generation equipment.

[23] The principal question addressed by Mr. Hothi in his surrebuttal report is whether the PE pipeline was adequately designed and assessed against upheaval buckling (UHB), particularly whether the absence of screw anchors contributed to the failure and whether the analyses advanced by the rebuttal experts accurately reflected the pipeline's susceptibility to buckling.

[24] A central theme of the report is Mr. Hothi's disagreement with Mr. Dowhopoluk's design-stage modelling assumptions. He maintains that Mr. Dowhopoluk’s assumptions unpinning his report do not represent the surveyed as-built conditions for the pipeline and understates the soil resistance associated with the actual cover used. He therefore concludes that the design-stage analysis should have identified a substantially greater vulnerability to upheaval buckling than that reflected in the rebuttal reports.

[25] The report also focuses extensively on the effect of load sharing within the pipe-in-pipe system. Mr. Hothi agrees that load sharing between the inner and outer pipes was a significant factor in the pipeline failure but disagrees with the suggestion that the issue arose solely from erroneous calculations. In his view, StressTech, as the stress engineer responsible for the upheaval buckling assessment, had an independent obligation to account for load sharing in its modelling. He concludes that StressTech's use of a simplified "single equivalent pipe" model failed to properly represent the behaviour of a pipe-in-pipe system, overstated the retained prestress, understated thermal loading, and consequently overstated the pipeline's resistance to upheaval buckling.

[26] In response to Dowhopoluk's as-built analysis, Mr. Hothi performed his own modelling using surveyed as-built geometry, measured operating temperatures, recorded construction prestress information, and actual operating data. He criticizes the rebuttal analysis for relying on idealized geometry and theoretical temperature assumptions rather than the available field data. His modelling indicates that the PE pipeline remained vulnerable to upheaval buckling under both design and operating conditions in the absence of adequate anchoring. He further concludes that the actual pipeline alignment, temperature profile, and load-sharing effects must be considered to properly assess buckling behaviour.

[27] The report ultimately concludes that screw anchors were a necessary component of a safe design. According to Mr. Hothi, a proper design-stage analysis would have shown that anchors spaced at 20 metres were inadequate and that anchors at approximately 10-metre spacing in deep muskeg were required to prevent upheaval buckling. He states that, had screw anchors been installed at that spacing, the PE pipeline would not have experienced upheaval buckling or the resulting rupture. He further opines that a proper as-built stress analysis would have identified the significant buckling risk created by load sharing and the lack of sufficient anchoring and would likely have indicated that the pipeline should not have been placed into operation in its constructed form.

[28] The Carlson Surrebuttal Report is authored by Chris Carlson, a professional land surveyor. He holds a Bachelor of Science degree in geographic information systems. His specific area of expertise is described as pipeline as-built surveying, the verification of field data collection, and the technical interpretation of spatial data presented in the record as-built alignment sheets.

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[29] Mr. Carlson was retained to respond to two specific issues raised in the rebuttal reports of Greg Bridgewater and Michael Dowhopoluk. First, he was asked whether Sunstone had the survey information necessary to determine the PE Pipeline's ditch-bottom profile and depth of cover for purposes of a post-installation analysis. Second, he was asked to comment on the meaning of the terms "out-of-straightness" or "prop" and on the interpretation of the StressTech recommendation that vertical offset be limited to approximately 0.6 m over an 80 m length.

[30] With respect to the first issue, Mr. Carlson concludes that Sunstone possessed the survey information required to determine both the ditch-bottom profile and the depth of cover for the PE Pipeline. With respect to the ditch-bottom profile, he reviews several datasets and as-built records that were available to Sunstone, including November 2013 survey data, June 2014 alignment-sheet data, and later processed survey data. After plotting and comparing those datasets, he finds that the coordinates near the rupture location are consistent across the various sources. Although surveyors typically collect top-of-pipe coordinates rather than direct ditch-bottom elevations, he explains that the ditch-bottom profile can be readily calculated by subtracting the pipe diameter from the surveyed top-of-pipe elevation. Therefore, in his opinion Sunstone had the information required to calculate the ditch bottom profile by November 3, 2013.

[31] He reaches a similar conclusion regarding depth of cover. Mr. Carlson notes that the as-built drawings contained information regarding the graded surface, original surface, and top-of-pipe elevations. By comparing these datasets, he concludes that there was no missing information preventing calculation of cover depth. He explains that depth of cover can be determined by comparing the graded surface elevation to the top-of-pipe elevation and that the required information was available in Revision A as-built drawings received by Sunstone in February 2014. He also describes how he used the available survey records and alignment sheets to generate a spreadsheet of chainages, pipe elevations, and surface elevations near the rupture location, all from data that Sunstone already possessed. According to Mr. Carlson, Sunstone could have calculated the depth of cover of the PE pipeline using the information contained in Revision A as built drawings that it received in February 2014.

[32] On the second issue, Mr. Carlson addresses the survey meaning of "out-of-straightness" and the StressTech recommendation limiting vertical offset to 0.6 m over 80 m. He states that he is unaware of any standard surveying method used in the field to calculate an out-of-straightness feature or "prop" and notes that surveyors are typically not instructed to verify compliance with a specified prop height. Instead, surveyors are more commonly directed to maintain a particular roping radius. Drawing on his surveying experience, he says that if he had received StressTech's recommendation, he would have understood it to mean that over any 80 m section of ditch profile, the pipeline should not deviate more than 0.6 m above or below a theoretical straight-line profile.

[33] In summary, the report is focused on surveying evidence rather than engineering analysis. Mr. Carlson's principal opinion is that Sunstone had the survey data necessary to derive both ditch-bottom profile and depth-of-cover information for the PE Pipeline, and that the StressTech "0.6 m over 80 m" criterion would reasonably be interpreted as a limit on the vertical deviation of the pipeline relative to a straight ditch profile.

[34] The Weisgerber Surrebuttal Report is authored by David Weisgerber. He is a professional engineer who holds a bachelor’s degree in metallurgical engineering and chemistry. He is

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described as having more than 20 years' experience in the field of metallurgical engineering and materials science. He has worked on several oil and gas, petrochemical, pharmaceutical, mining, energy generation, and transportation sector projects including pipeline projects.

[35] Mr. Weisgerber's surrebuttal report is intended to respond to the rebuttal report of Dr. Angelique Lasseigne. The question he was asked to address was whether he agreed with Dr. Lasseigne's opinions concerning the source of hydrogen found in the annulus spaces of the PE and BFW pipelines and her conclusion that hydrogen accumulation resulted from uncontrolled and preventable internal corrosion that CNOOC failed to adequately manage.

[36] The principal thrust of Mr. Weisgerber's report is that he disagrees with Dr. Lasseigne's conclusion that CNOOC failed to manage a reasonably foreseeable corrosion threat. He notes that post-failure corrosion assessments conducted by Atkins predicted very low corrosion rates in the PE pipeline and essentially zero corrosion in the BFW pipeline. He further points to inspection programs, integrity assessments, and materials evaluations undertaken after the rupture that did not identify measurable corrosion damage, hydrogen-induced cracking, or material degradation. In his view, the available inspection evidence does not support the proposition that significant active corrosion was occurring during operations.

[37] A substantial portion of the report addresses Dr. Lasseigne's hydrogen-permeation calculations. Mr. Weisgerber accepts that her methodology improves certain aspects of earlier Atkins calculations but characterizes the analysis as theoretical rather than empirical. He notes that the calculations are based on extrapolations from laboratory research rather than testing the actual K1A pipeline materials and conditions. He also observes that Dr. Lasseigne relied on design temperatures rather than actual operating temperatures, which were materially lower. In his opinion, her calculations demonstrate only that hydrogen permeation is theoretically possible, not that it occurred in the manner she proposes.

[38] Weisgerber further criticizes what he describes as gaps in Dr. Lasseigne's corrosion hypothesis. While she presents a theory for how sour corrosion in the PE pipeline could have generated hydrogen, he notes that considerably less support is provided for the BFW pipeline, where corrosion rates were estimated to be near zero and where the process conditions differed substantially. He characterizes the explanation for hydrogen in the BFW pipeline as speculative, pointing out that no inspection evidence demonstrated under-deposit corrosion and that several independent sections of the BFW pipeline contained similar hydrogen levels despite being isolated from one another. He also observes that alternative hydrogen sources, such as possible off gassing from insulation materials in the annulus, had not been definitively ruled out.

[39] Despite these disagreements, the report concludes on an area of common ground. Weisgerber agrees with Dr. Lasseigne that the presence and continued accumulation of hydrogen in the annulus represented a serious long-term integrity concern for the pipe-in-pipe system. Regardless of the source of hydrogen, he concludes that ongoing accumulation could create risks including hydrogen-induced cracking, safety hazards associated with flammable gas, degradation of the vacuum insulation system, and adverse effects on thermal performance and pipeline stability. In his view, once hydrogen was known to exist in the annulus, its continued accumulation would have been an important factor in assessing whether either pipeline could safely remain in service over its intended 40-year design life.

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The Positions of the Parties

The Applicant Wood Group

[40] Wood Group's overall position is that all four challenged reports are examples of improper case splitting. It argues that CNOOC bore the primary burden of proving not only what caused the PE pipeline rupture, but also why replacement of the PE pipeline and the non-failed BFW pipeline was allegedly required. According to Wood Group, CNOOC elected in March 2026 to advance expert evidence concerning the cause of the rupture but did not tender expert causation evidence supporting replacement of either pipeline. Wood Group says the September 2026 surrebuttal reports collectively attempt to fill that gap by introducing new primary opinions shortly before trial, contrary to Rule 5.35 and Associate Chief Justice Nixon's direction that surrebuttal reports may respond only to genuinely new issues raised in rebuttal, and may not raise new allegations or split a party's case.

[41] With respect to the Williams Surrebuttal Report, Wood Group characterizes it as the clearest and most significant example of improper surrebuttal. It argues that Dr. Williams advances, for the first time in the litigation, the opinion that both the PE and BFW pipelines required replacement. Wood Group says that issue had always been central to CNOOC's claim for replacement damages, yet no primary expert advanced that opinion by the March 2026 deadline.

[42] Wood Group further contends that Dr. Williams is not properly responding to Mr. Dowhopoluk's Rebuttal Report because that report addressed only local remediation options that might have prevented the rupture before loss of containment and did not address replacement of either pipeline. Indeed, Wood Group emphasizes that Mr. Dowhopoluk did not discuss the BFW pipeline at all.

[43] Wood Group also objects to Dr. Williams' reliance on extensive 2017 Jacobs and Atkins reports, arguing that those materials contain numerous technical findings which had never been advanced as expert opinions in this action and were available to CNOOC for years. Wood Group says Dr. Williams effectively imports those reports into the litigation through surrebuttal and raises new allegations relating to bulkheads, system-wide deficiencies, hydrogen in the annulus, strain localization, insulation performance, global buckling, and other matters that would require entirely new expert responses from the defendants.

[44] Wood Group makes a similar argument regarding the Hothi Surrebuttal Report. It acknowledges that Mr. Dowhopoluk conducted stress modelling in his rebuttal report but argues that Mr. Hothi's surrebuttal goes far beyond responding to that analysis. In Wood Group's view, Mr. Hothi conducted entirely new stress modelling for the stated purpose of determining whether the PE pipeline was vulnerable to upheaval buckling under actual operating conditions and under full design-load conditions using as-built geometry. Wood Group says those are core causation opinions that should have appeared in a primary report. It emphasizes that Mr. Hothi's new analysis relies upon new survey information produced by Chris Carlson, creating what Wood Group describes as a new factual and analytical foundation for the Plaintiff's causation case. According to Wood Group, if Mr. Hothi wished to present multiple stress models, those models should have been disclosed in March 2026 rather than introduced through a September 2026 surrebuttal report.

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[45] Wood Group's criticism of the Carlson Surrebuttal Report is that he is a new expert in a new discipline who was not responding to any survey evidence from the Defendants. Mr. Carlson concludes that Sunstone had sufficient survey information to determine ditch-bottom profile and depth of cover and develops a reconstructed survey model containing extensive interpolated data and a newly derived pipeline centerline. Wood Group argues that this is not responsive to any survey opinion in the rebuttal reports because no survey expert tendered a report for the Defendants. Rather, it says Mr. Carlson changes the issue from whether sufficient information existed for a post-installation stress analysis to whether historical survey information can today be reconstructed and interpreted differently.

[46] Wood Group also points to Mr. Carlson's interpretation of terms such as "prop" and "out-of-straightness," arguing that those concepts were already present in Mr. Hothi's primary report and therefore were not new issues arising from Mr. Dowhopoluk's rebuttal report. Most importantly, Wood Group argues that Mr. Carlson's work serves as the foundational data used by Mr. Hothi's new stress modelling, demonstrating that both reports operate together as a new primary causation analysis rather than legitimate surrebuttal.

[47] With respect to the Weisgerber Surrebuttal Report, Wood Group argues that his surrebuttal moves beyond the issue raised by Dr. Angelique Lasseigne. It acknowledges that Mr. Weisgerber's primary report discussed the unexpected presence of hydrogen in the annulus and noted that further investigation was warranted but says he did not opine that hydrogen rendered the pipelines unsuitable for service or required replacement. Wood Group says the Dr. Lasseigne rebuttal report simply advanced a corrosion-based explanation for the source of hydrogen and did not contend that hydrogen accumulation rendered the pipelines unfit for continued service.

[48] According to Wood Group, Mr. Weisgerber's surrebuttal then introduces entirely new opinions by describing hydrogen accumulation as a critical design flaw, a continuous and ongoing integrity threat, and a reason that both pipelines were unsuitable for their intended service. Wood Group argues that these conclusions do not respond to Lasseigne's source-of-hydrogen theory but instead support a new replacement and fitness-for-service theory being advanced for the first time in surrebuttal.

[49] Viewed collectively, Wood Group argues that the four reports function as an integrated new causation case. In its characterization, Dr. Williams supplies the conclusion that both pipelines required replacement; Mr. Weisgerber supplies new fitness-for-service and integrity opinions concerning hydrogen; Mr. Carlson generates new survey information; and Mr. Hothi uses Mr. Carlson's information to create new stress modelling. Wood Group therefore submits that the reports are not isolated responses to rebuttal evidence but are components of an entirely new case that CNOOC could and should have advanced in its primary reports.

[50] Wood Group contends that if the reports are allowed at trial, it would deprive the Defendants of the opportunity contemplated by Rule 5.35 to retain experts, prepare rebuttal evidence, and prepare for trial on a fair and orderly basis. For that reason, Wood Group seeks to have all four reports struck in their entirety.

The Applicant ITP

[51] ITP's position is largely aligned with that of Wood Group, but it places greater emphasis on the burden of proof. It argues that CNOOC's claim has always been that the PE and BFW pipelines were not fit for service and had to be significantly repaired or replaced. Because those

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allegations are expressly pleaded and form the basis of a claim exceeding $700 million, ITP says CNOOC bore the primary obligation to prove them through timely primary expert evidence. In ITP's submission, replacement is not a mitigation issue. Rather, it is a core causation and damages issue that CNOOC was required to establish as part of its case-in-chief. ITP argues that nothing in the defendants' pleadings relieved CNOOC of that burden and that the defendants were entitled to know the complete case they were required to meet before preparing rebuttal evidence.

[52] ITP argues that Rule 5.35 and the CCLP were designed to prevent precisely the type of case splitting that occurred here. It submits that none of CNOOC's primary reports addressed whether the pipelines required replacement, and none of the rebuttal reports from any party addressed that issue either. According to ITP, CNOOC deliberately withheld expert opinions on fitness for service and replacement until September 2026 and then attempted to introduce those opinions through surrebuttal reports. ITP says this deprived the defendants of a meaningful opportunity to retain experts, prepare evidence, and understand the case against them. In its submission, a party with the primary burden cannot reserve essential expert opinions for the surrebuttal stage and then characterize them as responsive evidence.

[53] ITP's principal objection is directed at the report of Dr. Williams. It argues that the Williams Surrebuttal Report advances, for the first time, the opinion that both the PE and BFW pipelines would have required significant intervention and effective replacement if the original design conditions were maintained. ITP says this opinion is directed at one of the central issues in the litigation and should have been delivered in a primary report. It rejects the suggestion that Dr. Williams is merely responding to paragraph 25(c) of Michael Dowhopoluk's rebuttal report, noting that Mr. Dowhopoluk's opinion dealt with local remediation options before loss of containment and did not address post-failure replacement of either pipeline.

[54] ITP further argues that Dr. Williams relies heavily on the Jacobs and Atkins reports commissioned by CNOOC years earlier and thereby attempts to introduce extensive technical findings that were never tendered as expert evidence in the action. In ITP's view, the report raises a host of new issues, including bulkheads, strain localization, global buckling, hydrogen accumulation, insulation degradation, and other system-wide concerns that should have formed part of CNOOC's primary expert case.

[55] ITP makes a similar complaint regarding the Weisgerber Surrebuttal Report. It accepts that Mr. Weisgerber's primary report discussed hydrogen found in the annulus but notes that he did not conclude that hydrogen rendered the pipelines unfit for service or necessitated replacement. ITP argues that Dr. Angelique Lasseigne's rebuttal report was confined to the source of hydrogen and whether corrosion explained its presence. According to ITP, Mr. Weisgerber's surrebuttal goes beyond that issue and introduces new opinions that hydrogen accumulation constituted a continuing threat to pipeline integrity, suitability for service, and future operation of the pipelines. ITP says those opinions concern replacement and fitness for service, not the source of hydrogen, and therefore represent new primary opinions rather than responses to a new issue raised in rebuttal. While ITP acknowledges that portions of the report may be responsive, it argues that the sections addressing serviceability and replacement consequences exceed the permissible scope of surrebuttal.

[56] ITP also challenges the Carlson Surrebuttal Report. It argues that Mr. Carlson introduces a new surveying opinion in support of causation and stress-analysis issues that should have been

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addressed, if at all, through primary expert evidence. Mr. Carlson opines that Sunstone possessed sufficient survey information to determine ditch-bottom profile and depth of cover and develops new calculations and reconstructed survey data to support that conclusion. ITP says there were no surveying reports from any defendant and therefore no survey issue requiring surrebuttal. In its submission, Mr. Carlson creates an entirely new factual foundation that supports CNOOC's causation theory and provides information later relied upon by Mr. Hothi. ITP argues that the defendants have been deprived of any meaningful opportunity to retain their own survey experts and respond.

[57] ITP did not seek to strike the Hothi Surrebuttal Report and ultimately took no position on whether it should be excluded. ITP's application focused instead on the Williams, Weisgerber, and Carlson Surrebuttal Reports because those reports were said to introduce new opinions relating to replacement, fitness for service, and the factual foundation underlying CNOOC's causation case.

[58] ITP submits that the admission of the impugned Surrebuttal Reports would result in substantial prejudice. It says it prepared its rebuttal evidence based on the primary reports CNOOC chose to serve and was not required to anticipate additional theories that might emerge later. By introducing new opinions on pipeline replacement, hydrogen-related serviceability concerns, and survey-based causation issues after rebuttal reports had already been exchanged, CNOOC deprived ITP of any practical opportunity to obtain expert evidence in response. ITP argues that the defendants cannot fairly proceed to trial against opinions they have never had an opportunity to rebut and that permitting such evidence would undermine the integrity of the expert-report process.

[59] ITP therefore seeks an order striking the Williams Surrebuttal Report in its entirety and striking all offending portions of the Weisgerber and Carlson Surrebuttal Reports. In the alternative, if the Court permits the reports to stand, ITP argues that an adjournment is required to permit it to retain additional experts to respond and thereby restore fairness. In ITP's submission, either striking the reports or adjourning the trial is necessary to prevent prejudice and preserve a fair trial process.

The Respondent CNOOC

[60] CNOOC's position is that the Defendants' application is founded on a mistaken premise, namely that CNOOC never advanced a primary expert case on whether the pipelines were fit for service. CNOOC argues that this issue has been part of its claim from the outset and that the Defendants have known since March 2026 that CNOOC's case was that both the PE and BFW pipelines were non-compliant, unfit for service, and incapable of operating safely without significant remediation.

[61] CNOOC says its primary expert reports already addressed systemic design deficiencies, bulkhead failures, code non-compliance, upheaval buckling susceptibility, and integrity concerns affecting both pipelines. In CNOOC's submission, the defendants artificially separate the "rupture causation" issue from the broader question of whether the pipelines were fit for service in an attempt to characterize responsive evidence as a new theory.

[62] CNOOC disputes the Defendants' assertion that replacement of the pipelines was a new issue first raised in September 2026. It points to its pleadings, which repeatedly allege that the pipelines were unfit for service and required repair or replacement, and argues that its primary

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reports addressed those allegations through opinions concerning code compliance, bulkhead failures, design flaws, and pipeline integrity. CNOOC says the Defendants are attempting to elevate the absence of the precise words “replace the pipeline” into an alleged procedural defect. In its view, the expert reports did not need to express the conclusion in those exact words so long as they provided the technical foundation supporting the allegation that the pipelines could not safely operate in their original form. CNOOC therefore rejects the suggestion that the Defendants were surprised by an issue that had been pleaded for years and addressed in the primary expert evidence.

[63] With respect to the Williams Surrebuttal Report, CNOOC argues that the report is a proper and narrowly focused response to a genuinely new issue raised in Mr. Dowhopoluk’s rebuttal report. According to CNOOC, Mr. Dowhopoluk was the first expert to suggest that a localized repair of the upheaval buckle could have allowed the PE Pipeline to continue operating. CNOOC says that opinion fundamentally changed the landscape because it introduced the theory that only local remediation was required. Dr. Williams was retained specifically to respond to that proposition and to explain why local repair alone would not have been sufficient given the system-wide deficiencies affecting the pipeline system. CNOOC submits that Dr. Williams does not create a new issue but rather critiques the feasibility and reasonableness of Mr. Dowhopoluk’s proposed repair options. In CNOOC’s view, it would be fundamentally unfair if a defendant could introduce a new local-repair theory in rebuttal and then prevent the plaintiff from responding to it.

[64] CNOOC further argues that the Defendants mischaracterize Dr. Williams’ references to the Jacobs and Atkins reports. It notes that those reports were commissioned immediately after the rupture, are among the most contemporaneous engineering assessments available, and were already referenced by several defence experts, including Mike Hylton, Angelique Lasseigne, and Adeel Raza. CNOOC says Dr. Williams relied on those materials not to inject a new theory into the case, but to explain why the local repair options proposed by Mr. Dowhopoluk would not have addressed broader engineering concerns. In CNOOC’s submission, the report simply explains why any reasonable operator assessing a local repair would still have been required to consider system-wide compliance, regulatory approval requirements, and the integrity of the remainder of the pipeline system.

[65] Regarding the Weisgerber Surrebuttal Report, CNOOC argues that it was a direct response to new matters raised by Dr. Lasseigne. It says Dr. Lasseigne advanced a new theory attributing hydrogen accumulation in the annulus of both pipelines to corrosion resulting from inadequate corrosion management by CNOOC. CNOOC submits that Mr. Weisgerber was entitled to respond both to the corrosion theory and to the consequences of hydrogen accumulation because Dr. Lasseigne herself discussed the impact of hydrogen on pipeline integrity, progressive degradation, and material failures. According to CNOOC, Mr. Weisgerber’s surrebuttal report does not introduce a new issue but responds to a subject that Dr. Lasseigne placed squarely in issue by linking hydrogen accumulation to long-term pipeline integrity. CNOOC also emphasizes that Mr. Weisgerber agrees with portions of Dr. Lasseigne’s integrity concerns while disagreeing about the source of the hydrogen, making the surrebuttal responsive rather than novel.

[66] CNOOC similarly contends that the Carlson Surrebuttal Report is proper surrebuttal. It says Mr. Carlson was retained to address two specific issues raised by the Defendants’ rebuttal experts: first, Mr. Bridgewater’s assertion that Sunstone lacked the survey information necessary

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to perform certain analyses, and second, terminology and survey-related concepts relied on by Mr. Dowhopoluk. According to CNOOC, Mr. Carlson simply explains what survey information existed and how it could be used by a professional surveyor. CNOOC rejects the argument that a report is improper merely because it comes from a different discipline and notes that it intentionally retained experts with specialized expertise appropriate to each issue. In its view, Mr. Carlson corrects inaccurate factual assumptions and clarifies technical survey concepts rather than creating an entirely new causation theory.

[67] CNOOC maintains that the Hothi Surrebuttal Report responds to new finite-element modelling and other technical analyses advanced by Mr. Dowhopoluk in rebuttal. In CNOOC's view, Mr. Dowhopoluk introduced a new dimension to the stress-analysis debate and Mr. Hothi was entitled to address those new analyses through surrebuttal. CNOOC therefore characterizes Mr. Hothi's work as a conventional example of a surrebuttal expert responding to alternative modelling assumptions advanced by the opposing expert.

[68] More broadly, CNOOC argues that the Defendants' applications seek an overly rigid and technical approach to Rule 5.35. It says the purpose of surrebuttal is to permit a party to respond to alternative theories, new dimensions, and new facts introduced in rebuttal. In its submission, the challenged reports do exactly that. CNOOC contends that the Defendants effectively want a rule requiring plaintiffs to anticipate every defence theory that may later emerge and address those hypothetical future arguments in primary reports. Such an approach, it argues, would undermine the purpose of sequential expert disclosure and create its own unfairness. CNOOC says the Defendants are attempting to transform Rule 5.35 into a procedural trap rather than a mechanism for ensuring that the Court receives the best available evidence on the actual issues raised by the parties.

[69] Finally, CNOOC argues that the remedies sought by the Defendants are disproportionate. It submits that striking significant expert evidence shortly before trial should occur only in the clearest of cases. If the Court concludes that any passages exceed the proper scope of surrebuttal, CNOOC says the appropriate remedy is targeted editing rather than wholesale exclusion of reports: it advocates the scalpel over the sledgehammer approach. CNOOC opposes any adjournment and emphasizes that this long-scheduled trial is about to begin, numerous witnesses have been arranged, and further expert exchanges would risk creating the endless cycle of expert reports that Rule 5.35 is intended to avoid. In CNOOC's submission, the four impugned reports are responsive surrebuttal evidence, the applications should be dismissed, and the trial should proceed as scheduled.

Analysis

[70] The underlying premise of this application is that none of CNOOC's primary reports provide an opinion on whether the pipelines need to be replaced or repaired. Wood Group and ITP argue that the first time the issue of replacement versus repair was raised by CNOOC was in the surrebuttal reports. They further argue that CNOOC bears the primary burden on that issue and therefore must have addressed that issue in its primary reports.

[71] I agree with Wood Group and ITP that CNOOC bears the primary evidentiary burden with respect to its allegations that the pipelines were unfit for service and required extensive repair or replacement. Looking at the context provided by the pleadings, it is clear that CNOOC is the proponent of the proposition that the pipelines may require replacement as they are,

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generally speaking, unfit for service. Relevant portions of the Statement of Claim filed on July 14, 2026 include:

> Paragraph 2: The pipelines in question are not fit for service, as they do not meet design specifications, or applicable codes and standards, and must be significantly repaired or replaced.
>
> Paragraph 3: The Action seeks recovery of the cost to repair or replace the pipelines.
>
> Paragraph 58: "CNOOC alleges that following discovery of the failure it determined that the pipelines had suffered a 'total or substantial failure' and that they do not meet design parameters, applicable codes, standards, and guidelines including CSA Codes and ASME guidelines.
>
> Paragraph 60: CNOOC alleges that the pipelines do not meet operating temperature requirements, pressure requirements, or applicable CSA and ASME standards.
>
> Paragraph 61: The Pipelines are unfit for their intended purpose and are unusable and must therefore undergo significant repair or replacement.
>
> Paragraph 92: It was reasonably foreseeable to ITP and Sunstone that the negligent performance or provision of the Sunstone Work and ITP Work would cause the Pipelines to not be fit for service and require significant repair or replacement.
>
> Paragraph 111: CNOOC alleges that the goods making up the Bulkhead Transition System were not fit for service and did not comply with applicable codes and standards.
>
> Paragraph 122: The Pipelines, as designed by Sunstone and ITP do not meet either the BFW Pipeline Parameters or the PE Pipeline Parameters, as applicable, are not fit for the intended purpose, and must therefore be significantly repaired or replaced."
>
> Paragraph 123: The estimated cost of the repair or replacement of the Pipelines to meet the BFW Pipeline Parameters and the PE Pipeline Parameters, ensure fitness for service, and eliminate UHB susceptibility is currently estimated to be at least $405,000,000.00.
>
> Paragraph 129(a): "CNOOC claims damages of at least $450 million, including damages for 'the repair or replacement of the Pipelines."

[72] CNOOC's Statement of Claim advances a consistent theory that the pipelines were not merely damaged at the rupture site but were fundamentally defective throughout the system. Design defects, inadequate UHB analysis and mitigation, improper thermal and stress design, and non-compliance with applicable specifications and codes all contributed to the pipelines being unfit for service, requiring significant repair or replacement. Whether CNOOC ultimately proves those allegations is a separate question; however, as the party advancing those propositions and seeking recovery for replacement related losses, it bears the primary evidentiary burden on those issues.

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[73] To determine whether CNOOC engaged in case splitting as alleged by Wood Group and ITP, it is necessary to look at its primary reports and consider whether those primary reports addressed this issue of replacement versus repair of the pipelines.

[74] CNOOC served seven primary reports. A functional and contextual reading of CNOOC's primary reports demonstrates that CNOOC's experts advanced much more than a localized failure theory focused on the rupture site. Rather, several of the primary experts identified design deficiencies, code-compliance issues, stability concerns, and component failures that, in their opinions, affected substantial portions of the PE and BFW pipelines, necessitated widespread remediation and redesign, and called into question the fitness of the pipelines to operate under their original design conditions.

[75] In his report, J. Phil Kormann opined that the ability to achieve and maintain an installation temperature of at least 60°C was fundamental to the integrity of the K1A pipelines and their compliance with CSA Z662. He concluded that, unless that minimum installation temperature was achieved throughout the PE Pipeline, the structural integrity of the pipeline was not assured, the design was not code compliant, and the pipeline should not have been placed into operation without an engineering assessment. He further concluded that failure to properly account for load sharing would render the pipelines non-compliant with CSA Z662 and subject to an increased risk of upheaval buckling, and he calculated that the resulting stresses exceeded CSA Z662 limits. These opinions were not confined to the rupture location but addressed the fundamental design assumptions underlying the pipelines.

[76] Jaspreet Hothi similarly expressed opinions that extended beyond the single failure location. He concluded that the vulnerability of the PE Pipeline to upheaval buckling existed at the design stage, that the StressTech mitigation recommendations were inadequate, and that the pipelines were vulnerable to upheaval buckling under applicable design conditions. His analysis found that the pipelines experienced stresses and strains well above permissible limits, that global buckling would lead to local buckling amounting to failure, and that substantially greater screw-anchor mitigation was required than had been recommended. Importantly, his work did not identify concerns only with the PE Pipeline; he also concluded that the BFW Pipeline would experience upheaval buckling in all-peat conditions and required additional mitigation to manage that risk.

[77] James Oswell likewise approached the issue from a system-design perspective. He stated that where stress analyses cannot verify acceptable pipeline performance, the pipeline should be redesigned and/or mitigation measures incorporated. He identified extensive areas of deep muskeg along the corridor as requiring proper upheaval-buckling assessment and mitigation and described a range of system-level remedial measures, including screw anchors, engineered backfill, deeper burial, concrete coating, weighting systems, and replacement or modification of weak soils. His report repeatedly emphasized that the design needed to address the interaction between the pipe-in-pipe system and the surrounding soils and that, where upheaval buckling risks were identified, mitigation should be designed into the pipeline system.

[78] Evidence regarding fitness for service also appears in the report of David Weisgerber, professional engineer. After reviewing the post-incident Jacobs and Atkins assessments, he observed that Jacobs' testing and analysis concluded that none of the PE Pipeline bulkheads were fit for service under the original design conditions. He expressly adopted that conclusion, stating that the Jacobs work was sufficient to indicate that the PE bulkheads were not fit for their

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originally intended purpose. He further concluded that the BFW bulkheads contained deficiencies requiring mitigation even under derated conditions and stated that he did not consider the BFW bulkheads fit for purpose based on the original design conditions. He also opined that the stability of both pipelines should have been evaluated, if not completely redesigned, for operation without reliance upon the vacuum conditions assumed in the annulus space. These opinions amount to a direct assertion that critical components of both pipelines were not fit for service under the original design basis and required extensive remediation or replacement.

[79] Taken together, the primary reports of Kormann, Hothi, Oswell, and Weisgerber provide a foundation for CNOOC's contention that the problems were not merely localized at the PE rupture site. The reports advance opinions that the pipelines suffered from systemic design deficiencies affecting code compliance, pre-stressing, upheaval buckling susceptibility, bulkhead integrity, and overall pipeline stability; that major portions of both the PE and BFW systems required mitigation; that key components were not fit for service under the original design conditions; and that redesign, extensive remediation, replacement of components, or potentially broader replacement of pipeline systems was required before the pipelines could safely operate as originally intended.

[80] Having found that the primary reports proffered by CNOOC provide a foundation for its allegations that the pipelines required extensive repair or replacement, I find that CNOOC has not engaged in case splitting. Its primary experts raise sufficient systemic issues in the pipelines that it cannot be said Wood Group or ITP could be taken by surprise or that they were ambushed with evidence supporting a claim for replacement at the surrebuttal stage. However, the analysis does not end there. I must still assess whether the surrebuttal reports provided by CNOOC are properly confined to new issues raised in the Defendants' rebuttal reports.

[81] Dealing first with Mr. Weisgerber's surrebuttal report, I find that it is properly confined to responding to new issues raised in the rebuttal report of Dr. Lasseigne. The application to strike Mr. Weisgerber's surrebuttal report is therefore dismissed.

[82] Dr. Lasseigne's rebuttal report advanced the theory that hydrogen detected within the annulus of the K1A pipelines was generated by uncontrolled and preventable internal corrosion resulting from inadequate corrosion mitigation measures. She further criticized CNOOC's corrosion management practices, challenged aspects of the Atkins hydrogen analysis, and opined that hydrogen accumulation was attributable to corrosion-driven permeation through the pipe wall. These opinions constituted new matters that had not previously been addressed and therefore opened the door to responsive surrebuttal evidence.

[83] Mr. Weisgerber's surrebuttal report is directed primarily to those new opinions. Mr. Weisgerber responds to Dr. Lasseigne's conclusions concerning corrosion rates, the asserted need for corrosion inhibition programs, the reliability and relevance of the Atkins analyses, the assumptions underlying Dr. Lasseigne's permeation calculations, and the sufficiency of the evidence said to support her corrosion hypothesis. His report also addresses Dr. Lasseigne's explanation for hydrogen accumulation in the BFW Pipeline and her criticism of CNOOC's post-construction corrosion management practices. These matters fall squarely within the proper scope of surrebuttal evidence.

[84] While portions of the Weisgerber report contain broader observations regarding the implications of hydrogen accumulation for the future operation and integrity of the pipelines,

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those comments arise from and are intertwined with Dr. Lasseigne's own opinions concerning hydrogen permeation, corrosion risk, service life, and pipeline integrity. Read fairly and as a whole, the report does not seek to introduce an independent engineering theory unrelated to the matters raised by Dr. Lasseigne. Rather, it seeks to test, challenge, and respond to the conclusions she advanced and to explain why, in Mr. Weisgerber's opinion, those conclusions are not supported by the available inspection data and post-failure investigations.

[85] Accordingly, I am satisfied that the Weisgerber report is properly characterized as responsive surrebuttal evidence. Its dominant purpose is to answer new opinions advanced in Dr. Lasseigne's rebuttal report, not to advance an entirely new affirmative case.

[86] Turning to Mr. Hothi’s surrebuttal report, I find that it is properly confined to responding to new issues raised in the rebuttal report of Mr. Dowhopoluk. The application to strike Mr. Hothi’s surrebuttal report is therefore dismissed.

[87] Mr. Dowhopoluk's report advanced numerous opinions that had not previously been addressed in Mr. Hothi's evidence. Among other things, Mr. Dowhopoluk expressed opinions concerning the adequacy of StressTech's equivalent-pipe modelling approach, the significance of load sharing within the pipe-in-pipe system, the effect of achieving the intended prestress condition, the appropriate interpretation of prop geometry used in upheaval buckling analyses, the adequacy of screw-anchor spacing, and the conclusions to be drawn from various as-built and design-stage engineering analyses. Those opinions directly challenged conclusions reached by Mr. Hothi in his earlier report and created a legitimate foundation for responsive surrebuttal evidence.

[88] Mr. Hothi’s surrebuttal report is directed principally to those issues. Mr. Hothi addresses Mr. Dowhopoluk's conclusions concerning the design-stage modelling assumptions, the treatment of load sharing, the appropriateness of StressTech's equivalent-pipe methodology, the significance of prestress retention, the interpretation of prop geometry, the analysis of screw-anchor requirements, and the reliability of Mr. Dowhopoluk's as-built modelling inputs. The report proceeds largely on a point-by-point basis, explaining why Mr. Hothi disagrees with the engineering assumptions and conclusions adopted by Mr. Dowhopoluk. In substance, it is a response to opinions first expressed in the Dowhopoluk report rather than an attempt to advance an unrelated or independent engineering theory.

[89] Although the surrebuttal report contains some additional analyses and modelling, those analyses were undertaken for the purpose of testing and responding to the methodologies and conclusions advanced by Mr. Dowhopoluk. In particular, Mr. Hothi substituted alternative assumptions concerning the achievability and retention of the 60°C prestress, the applicable imperfection or prop profile, load sharing between the inner and outer pipes, and as-built geometry and actual operating temperatures, not to construct an independent causation model, but to test whether Mr. Dowhopoluk’s conclusions remained valid when the assumptions central to his methodology were changed.

[90] The fact that a responding expert performs further calculations, incorporates additional operating data, or uses alternative modelling assumptions does not, by itself, transform responsive evidence into improper reply evidence. Here, the additional analyses remain tied to the subjects introduced by Mr. Dowhopoluk, namely uplift resistance, prestress loss, load sharing, prop geometry, screw-anchor effectiveness, and the pipeline's susceptibility to upheaval buckling under both design and as-built conditions.

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[91] Viewed as a whole, the dominant effect of Mr. Hothi’s surrebuttal report is to answer and critique the engineering opinions advanced in Mr. Dowhopoluk’s rebuttal report. Any broader comments concerning the implications of the analyses for pipeline safety or operational decisions are ancillary to that primary purpose and arise directly from the matters raised by Mr. Dowhopoluk. I am therefore satisfied that Mr. Hothi’s report is properly characterized as surrebuttal evidence because it is confined to addressing the new issues and opinions introduced in the Dowhopoluk report.

[92] Mr. Carlson’s surrebuttal report was prepared in response to two discrete issues that emerged from the rebuttal reports of Mr. Dowhopoluk and Mr. Bridgewater. Mr. Carlson was expressly retained to address whether the survey information available to Sunstone was sufficient to determine ditch-bottom profile and depth of cover, and to comment on the interpretation of the "0.6 m over 80 m" limitation and related out-of-straightness concepts relied upon by Mr. Dowhopoluk. Those issues were not the subject of earlier expert evidence from Mr. Carlson but were introduced through the rebuttal opinions advanced by Mr. Dowhopoluk and Mr. Bridgewater.

[93] The report remains substantially confined to those topics. Mr. Carlson's analysis concerns the existence, content, interpretation, and usability of survey data, as-built drawings, chainage information, top-of-pipe elevations, ditch-bottom profiles, and depth-of-cover information. His opinions are directed toward answering Mr. Bridgewater's assertion that Sunstone lacked the information required to determine those features and explaining, from the perspective of a professional land surveyor, how that information could be derived from the available survey records. Those opinions are directly responsive to matters raised in the rebuttal reports rather than an attempt to advance a new theory of causation, design failure, or standard of care.

[94] Similarly, Mr. Carlson's discussion of out-of-straightness features and the meaning of the StressTech recommendation limiting curvature to approximately 0.6 metres over 80 metres is directed squarely at assumptions and terminology relied upon by Mr. Dowhopoluk in his engineering analysis. Mr. Carlson does not purport to offer independent engineering opinions regarding upheaval buckling, stress analysis, causation, or the adequacy of the design. Rather, he confines himself to explaining how a professional land surveyor would understand and interpret the survey information and alignment geometry being relied upon by the engineers. In that respect, the report serves a responsive and clarifying function.

[95] The fact that Mr. Carlson's evidence comes from a discipline different from those of Mr. Dowhopoluk and Mr. Bridgewater does not render the report improper surrebuttal. The governing question is not whether the responding expert practices in the same field as the author of the rebuttal report, but whether the evidence is directed to answering issues first raised by that report. Here, Mr. Dowhopoluk and Mr. Bridgewater have advanced opinions concerning the availability, interpretation, and significance of survey information, as-built alignment data, ditch-bottom profile information, depth-of-cover information, and the meaning of certain alignment limitations. Those are matters that fall within the expertise of a professional land surveyor. Mr. Carlson's evidence was tendered because those issues had been raised and required a response from an expert qualified to address them.

[96] While Mr. Carlson undertakes additional analysis of survey records and generates supporting calculations and datasets, those analyses are directed toward answering the specific

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issues raised by Mr. Dowhopoluk and Mr. Bridgewater. Mr. Carlson's report does not advance an independent affirmative case unrelated to those opinions.

[97] Considered as a whole, the Carlson surrebuttal report's dominant purpose is to respond to and evaluate the new surveying and alignment-data issues introduced in the rebuttal reports. I therefore conclude that it is properly characterized as surrebuttal evidence and remains substantially confined to the matters raised by Mr. Dowhopoluk and Mr. Bridgewater.

[98] Dealing finally with the surrebuttal report prepared by Dr. Williams, it is, on its face, the narrowest surrebuttal report in that it purports to respond only to paragraph 25(c) of Mr. Dowhopoluk's report; however, in substance it is the broadest of the four impugned surrebuttal reports.

[99] Dr. Williams was not an author of a primary expert report. Accordingly, the scope of permissible surrebuttal is of particular importance. While a party may call a new expert in surrebuttal where specialized expertise is required to answer a new issue first introduced in rebuttal evidence, the role of such evidence must remain responsive rather than affirmative. The admissibility inquiry therefore turns not on the fact that Dr. Williams is a new witness, but on whether his opinions are directed to answering matters first raised by Mr. Dowhopoluk or instead advance a broader and independent case.

[100] I am satisfied that portions of Dr. Williams' report constitute proper surrebuttal. Mr. Dowhopoluk expressly opined at paragraph 25(c) that, had the upheaval buckle been detected prior to the loss of containment event, several remediation options would have been available, including the installation of screw anchors, excavation and replacement of the affected section, excavation and re-grading of the ditch bottom, and operation at reduced temperature pending permanent repair. Dr. Williams was specifically retained to address those opinions and to comment on whether those local remediation measures would have been reasonable in light of the engineering issues identified elsewhere in Mr. Dowhopoluk's report. To that extent, the Williams report responds directly to matters newly raised in the rebuttal evidence and is properly admissible.

[101] Having quite properly responded to the issues raised in Mr. Dowhopoluk's report, Dr. Williams goes further. In sections 2.3 through 2.6 of his report, Dr. Williams undertakes a broader assessment of the PE and BFW pipelines, reviews and synthesizes findings from the Atkins and Jacobs investigations, addresses bulkhead capacity, strain localization, global buckling susceptibility, hydrogen accumulation, derated operation, and the overall viability of continued service, and ultimately concludes that both pipelines would have required substantial intervention along their complete lengths and would effectively need to be replaced. Those opinions are not directed merely to whether the local repair options identified by Mr. Dowhopoluk would have been available or appropriate. Rather, they constitute affirmative opinions concerning system-wide defects, future operability, replacement strategy, and the cost and scope of remediation.

[102] In my view, those broader opinions exceed the permissible scope of surrebuttal. They are not necessary to answer paragraph 25(c) or any other new issues raised in Mr. Dowhopoluk's report. The question raised by paragraph 25(c) was whether identified local remediation measures were technically available and potentially effective at the buckle location. The opinions expressed in sections 2.3 through 2.6 go beyond that inquiry by addressing broader operational, integrity, and replacement issues that arise independently of the availability or effectiveness of

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the local remediation measures proposed by Mr. Dowhopoluk. They therefore exceed what was necessary to respond to the new issue raised in rebuttal.

[103] Sections 2.3 through 2.6 of Dr. Williams' surrebuttal report advance a wider opinion that the entire PE and BFW pipeline systems suffered from deficiencies requiring extensive intervention or effective replacement. Those issues form part of the affirmative case advanced by CNOOC and are matters that ought to have been addressed through primary expert evidence.

[104] This finding should not be taken to undermine my earlier finding that CNOOC's primary expert case advanced opinions regarding systemic deficiencies and fitness for service and did not therefore engage in case splitting. The difficulty with Dr. Williams' report is not that the issues themselves are new. Rather, Dr. Williams, as a new surrebuttal witness, seeks to advance fresh affirmative opinions on those issues beyond what is necessary to answer Mr. Dowhopoluk's rebuttal evidence.

[105] Accordingly, Dr. Williams' evidence on surrebuttal will be limited to the opinions expressed in sections 2.1 and 2.2 of his report. Sections 2.3, 2.4, and 2.5 are struck, as is the final sentence of his conclusion in section 2.6.

[106] In reaching this decision, I have considered whether striking portions of the report is the appropriate remedy or if some other remedy would be more appropriate. In the circumstances of this case, I am satisfied that striking the overbroad portions of the report is the proportionate and just response.

[107] Striking the entire report fails to consider that a portion of the report contains proper surrebuttal evidence. It would be prejudicial to CNOOC if it were not able to rely on the opinions expressed that properly respond to Mr. Dowhopoluk's rebuttal report. Conversely, failing to strike the portions of the report that are overbroad would be unfairly prejudicial to the Defendants by depriving them of the opportunity to respond to the portions of the report that amount to primary liability and causation opinions.

[108] Adjournment at this stage of the proceedings to allow the Defendants to file further reports responding to Dr. Williams' report would be prejudicial to all parties. All parties have confirmed that they are ready to proceed to trial, and they do not wish to incur further delay. Given the amount of time required to hear the trial, it might be many months or even more than a year before the trial could be rescheduled.

[109] I further find it would not be in the interests of the administration of justice to adjourn the trial at this stage. Considerable judicial resources have already been expended throughout the case management period. One hundred trial days have been allocated to the hearing of this matter. It is just and appropriate that the matter proceed with the appropriate limitations placed on Dr. Wiliam's opinion evidence. This approach is also consistent with the proportionality objectives reflected in Rule 1.2 and it avoids unnecessary disruption of a lengthy trial that is otherwise ready to proceed.

Summary and Conclusion

[110] The application to strike the surrebuttal report of Mr. Weisgerber is dismissed.

[111] The application to strike the surrebuttal report of Mr. Hothi is dismissed.

[112] The application to strike the surrebuttal report of Mr. Carlson is dismissed.

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[113] The application to strike the surrebuttal report of Dr. Williams is allowed in part. Sections 2.3, 2.4, and 2.5 of his report are struck and the last sentence of his conclusion in section 2.6 is struck. Dr. Williams' opinion evidence at trial shall be limited to those matters set out in sections 2.1 and 2.2 of his report.

[114] As there has been mixed success on this application, each party shall bear its own costs.

Heard on the 5th and 6th day of October 2026.
Dated at the City of Calgary, Alberta this 9th day of October 2026.

R.W. Armstrong
J.C.K.B.A.

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