

**Proceeding 403**

December 17, 2020  
By email only

Lawson Lundell LLP  
Attention: Shailaz Dhalla

Dentons LLP  
Attention: Bernard Roth

**Re: Hearing Issues, Schedule, and Format**

Dear Counsel:

I am writing to you on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners assigned to this proceeding (the panel).

The panel issued a letter on November 12, 2020, inviting submissions from Pure Environmental Waste Management Ltd. (Pure) and Suncor Energy Inc. (Suncor) on the following four items:

- The issues to be addressed in proceeding 403;
- The schedule for filing evidence and written submissions;
- An information request process; and
- Hearing format (written or oral).

The panel has reviewed your submissions received on November 27, 2020, and the reply submissions received on December 4, 2020.

**Hearing Issues****Submissions of the Parties**

In its November 27<sup>th</sup> submission, Pure stated that the hearing issues should be limited to the following:

1. The disposal capacity of the Keg River Formation in the Hangingstone area;
2. The potential for adverse interference between Pure's proposed wells and Suncor's wells located at 100/03-31-084-08W4/00 and 100/11-29-084-08W4/02; and,

3. The potential for bitumen sterilization as a result of Pure's proposed wells, and the associated pipeline to the 7-20 well.

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Suncor, in its November 27<sup>th</sup> submission, stated that the the issues to be addressed in proceeding 403 include the potential adverse impacts to Suncor resulting from Pure's proposed disposal operations, including:

1. Impacts to the likely limited capacity in the target disposal formation, including but not limited to the volume and types of fluids that are proposed to be injected into the formation;
2. The potential for interference from Pure's proposed disposal operations with Suncor's disposal wells approved in PIA-003; and
3. Source water quality.

In its reply submission of December 4<sup>th</sup>, Pure disagreed with Suncor's characterization of the first issue in Suncor's submission. According to Pure, the crux of this issue is the *amount* of disposal capacity and whether the Keg River Formation has sufficient capacity and leak-off to accommodate both Pure and Suncor's disposal needs. Pure does not agree that there is "likely limited capacity." Pure also disagreed that the types of fluids proposed to be injected into the Keg River Formation should be up for discussion at the hearing. Pure stated that it proposes to dispose Class 1b fluids, the very same fluids Suncor currently has conditional approval to dispose of in relation to its Meadow Creek operations. As Suncor has not shown that there is any potential for direct and adverse effect as a result of the Class 1b fluids Pure proposes to dispose, this issue should be limited to the amount of disposal capacity available and not the type of disposal contemplated.

In relation to the potential for interference, Pure submitted that the issue should be limited to the consideration of interference that is *adverse* in nature between Pure's proposed wells and Suncor's *existing* and *approved* disposal wells at 100/03-31-084-08W4/00 and 100/11-29-084-08W4/02. Given the location of Pure's proposed wells, Pure does not believe there will be any degree of interference with Suncor's approved disposal wells that will result in an adverse impact to Suncor. To the extent that Suncor alleges interference or communication, Pure stated that the burden is on Suncor to prove that the interference or communication is adverse in nature such that it will negatively impact Suncor's operations.

In relation to the source water quality issue, Pure stated that Suncor's concerns are directed at Pure's existing water well which is entirely outside the scope of the applications before the AER. The water source well located at 7-25-85-10-W4M was

drilled back in October, 2018. Application 30608918 relates *only* to the approval for a water well connection or pipeline to connect the existing drilled water source well to Pure's approved facility. The source water quality issue is entirely irrelevant to the pipeline application before the AER and, as a result, Suncor has not demonstrated the potential for direct and adverse effect.

Pure noted that Suncor did not include the third issue noted in Pure's letter related to bitumen sterilization. Accordingly, Pure requests that the potential for bitumen sterilization or impacts on Suncor's extraction or exploitation of resources as a result of Pure's proposed applications be removed from the list of issues to be addressed in this proceeding.

Thus, Pure submitted that the issues to be considered in proceeding 403 should be characterized and limited to the following two issues:

1. The disposal capacity of the Keg River Formation in the Hangingstone area; and
2. The potential for adverse interference between Pure's proposed wells and Suncor's wells located at 100/03-31-084-08W4/00 and 100/11-29-084-08W4/02.

In its reply submission of December 4<sup>th</sup>, Suncor submitted that the mandate of the AER Hearing Commissioners is to decide the applications in the first instance, which includes determining whether all statutory and technical requirements have been met by Pure.

Suncor submitted that the quality of the source water will impact disposal capacity and that the types of fluids that are proposed to be injected by Pure into the formation can potentially cause damage to the disposal reservoir and reduce its disposal capacity. Suncor argued it needs to be determined whether Pure's proposed source water may be fresh requiring approval under the *Water Act* and this will be a matter of regulatory compliance and a matter of fairness. Suncor argued that the fresh water use requirements that apply to Suncor should also be applied to Pure.

### Panel Decision

The panel considers the available disposal capacity of the Keg River Formation in the Hangingstone area and the potential for Pure's proposed injection operations to adversely impact Suncor's planned disposal operations and bitumen recovery at Meadow Creek to be at the heart of this dispute.

With respect to source water quality, the panel notes that Pure's water source well was previously approved and drilled and is not directly before this panel. In its August 25, 2020 letter to Suncor, Pure confirmed that third party sampling and testing of the water source well was undertaken and confirmed that the water was saline. Nonetheless, the

panel recognizes that the available disposal capacity in the Keg River Formation can be impacted by both the quantity and quality of the injected disposal water as well as operational conditions for its injection. Therefore, in so far as source water quality may impact the amount and quality of resulting cavern wash water and injection water into the Keg River Formation, the panel considers this to be a relevant issue in this hearing.

Further, in considering and deciding the applications which are the subject of this proceeding (the “applications”), the panel must determine if the proposed activities meet the relevant legislative and regulatory requirements. The *Oil and Gas Conservation Act* requires the panel to determine whether the proposed applications are in the public interest, while the *Responsible Energy Development Act (REDA)* requires that the panel consider the social, economic and environmental effects of the proposed activities.

Having regard for the above, the panel determines the following to be the issues for the hearing:

1. Disposal capacity of the Keg River Formation in the Hangingstone area;
2. Impacts of the volume and types of fluids that are proposed to be injected into the formation on the disposal capacity, including any impacts resulting from source water quality;
3. The potential for interference between Pure’s proposed disposal operations and Suncor’s disposal wells approved in PIA-003; and,
4. Whether approving the applications is in the public interest having regard for the social, economic and environmental impacts of the proposed activities and the requirements provided in *REDA* and the relevant regulatory framework.

The panel may also consider additional issues that arise during the course of the hearing, that are relevant and material to the above issues and assist the panel in deciding the applications before it.

## **Hearing Format and Schedule**

### Submissions of the Parties

Pure proposed that an oral hearing is most appropriate. This is because the applications involve technical matters and the ability to speak to these matters through direct oral testimony from expert witnesses is likely to assist the AER and all parties to achieve a comprehensive understanding of the potential impacts of Pure’s applications. Pure proposed a formal information request process and a schedule that would have the oral hearing commence in mid to late May 2021.

Suncor noted the existing restrictions due to the COVID-19 pandemic which can impose restrictions on an in-person hearing. Suncor submitted that the AER should adopt a written process for submitting evidence, including opportunities for written evidence-in-chief, reply evidence, and information requests, followed by oral final argument. Suncor suggested a 22-week schedule for the hearing steps which would be similar in length to Pure’s proposed schedule and roughly aligns with a hearing date in late May 2021.

Panel Decision

The panel has considered the parties’ submissions and has decided to hold an oral hearing. The technical nature of this hearing may give rise to the need for clarifying questions for the expert witnesses from the panel or AER staff. Additionally, in-person direct and cross-examination of expert witnesses will be beneficial to the panel in its decision making, which an oral hearing would provide for.

In light of the ongoing public health emergency related to COVID-19 and associated restrictions, an oral electronic hearing will allow this proceeding to move forward efficiently. Should the public health restrictions change, the panel may hold the hearing in-person at Govier Hall in the AER’s Calgary head office.

The panel notes that the parties requested and agreed to exchanging information requests, while disagreeing about the timing and order of this process step. For this proceeding, it is the panel’s view that any information request process would be most beneficial if it is applied to clarify documentary evidence filed by the parties and would serve little purpose in advance of filed evidence. These applications are subject of a hearing and Pure as the proponent has the onus to file its evidence first followed by Suncor as the opponent to the applications. With that in mind the panel has set the following process schedule which includes a formal information request process.

January 28, 2021	Pure hearing submission
February 25, 2021	Suncor hearing submission
March 18, 2021	Pure, Suncor, and the AER file Information Requests
April 15, 2021	Pure and Suncor submit responses to Information Requests
May 6, 2021	Pure reply submission
May 11, 2021	Electronic platform practice session with all hearing participants (invite will be sent by email in advance)
May 25, 2021	Hearing starts

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Please note that submissions must be filed with [hearing.services@aer.ca](mailto:hearing.services@ aer.ca) by noon on the stated date. Submissions should be in PDF format, page numbered to match the PDF page number, bookmarked and searchable (optimal character recognition). Submissions must meet the requirements of section 9.2(2) of the *Alberta Energy Regulator Rules of Practice*. All submissions that are filed in this proceeding are marked as exhibits and posted in SharePoint. This forms part of the public record of this proceeding.

If you have any questions, contact Tammy Turner at [hearing.services@aer.ca](mailto:hearing.services@ aer.ca).

Sincerely,

*Tammy Turner*

Hearing Coordinator, Hearing Services

cc: C. Graham, Suncor Energy Inc.  
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