

BY EMAIL ONLY

October 24, 2019

Bill Loutitt  
**McMurray Métis Local 1935**

**SUNCOR ENERGY INC. (SUNCOR)**  
**APPLICATION NO. 1899100**  
**STATEMENT OF CONCERN NO. 30999**

Dear Bill Loutitt:

You are receiving this letter because you filed a statement of concern on behalf of McMurray Métis Local 1935 (McMurray Métis) about Application No. 1899100 (the Application). The Alberta Energy Regulator (AER) has reviewed your statement of concern, along with the Application, and all applicable requirements and other submissions or information about the Application, and the AER has decided that a hearing is not required to consider the concerns outlined in your statement of concern.

In our review of your concerns, we considered the following:

- Concerns related to a prior Suncor application relate to a matter that is beyond the scope of the Application.
- Your concerns regarding the risks of in-situ oil sands extraction and the transport of product are vague.
- Your concern regarding disposal of waste into deep disposal wells is vague and outside the scope of the Application. Suncor did not apply for any disposal as part of the Application.
- In relation to your concern regarding groundwater contamination, standard conditions in AER-issued *Environmental Protection and Enhancement Act (EPEA)* approvals require approval holders to develop and implement a Groundwater Monitoring Program.

- With respect to your concern regarding surface water contamination:
  - Standard conditions in AER-issued dispositions issued under the *Public Lands Act (PLA)* require approval holders to comply with applicable watercourse and waterbody setbacks as required in the *Master Schedule of Standards and Conditions (MSSC)*.<sup>1</sup>
  - Standard conditions in AER-issued *EPEA* approvals require that approval holders manage storm water ponds at central processing facilities and well pads to control run-off. Approval holders must also test collected storm water to ensure it meets regulatory guidelines before releasing it into the surrounding environment.
  - Standard conditions in AER-issued *EPEA* approvals require approval holders to develop and implement a Wetland and Water Body Monitoring Program.
  - Suncor has committed to implementing site controls such as containment and diversion barriers, as well as spill response, reporting and clean up standard operating procedures. Suncor is required to comply with all legislative and regulatory requirements associated with reporting and remediating spills and releases that may occur during the life of the Meadow Creek West (MCW) project.<sup>2</sup>
  - The AER reviewed the surface water information Suncor provided in, and as a supplement to, the Environmental Impact Assessment (EIA) Suncor submitted as part of the Application, and the AER deemed the EIA complete.
- Your concern regarding human-wildlife encounters is vague.
- With respect to your concern that the MCW project poses a threat to McMurray Métis members' constitutionally-protected Aboriginal rights and traditional way of life:
  - Suncor has proposed mitigation measures to avoid or reduce potential adverse effects on the availability of traditional resources for current use.
  - Suncor has committed to only restricting access to operating areas of the MCW project, which includes well pads and the central processing facility, and will not restrict access to non-operating areas such as access roads and undeveloped space. As such, Suncor has stated that the MCW project will only impede access to limited portions of the MCW project area.
- The AER acknowledges your concerns about the MCW project contributing to the cumulative impacts of commercial development. However, McMurray Métis has not provided the AER with sufficient information detailing how the MCW project will contribute to adverse cumulative

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<sup>1</sup> *Master Schedule of Standards and Conditions*, Government of Alberta, 2018.

<sup>2</sup> See, for example, *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 110 and 112.

impacts and the extent to which those cumulative impacts may impact McMurray Métis members' activities. Further, the AER has previously held that the Government of Alberta's environmental management frameworks under its delineated Regional Plans are the appropriate mechanisms for identifying and managing the regional cumulative effects of resource development activities.<sup>3</sup> The MCW project area falls within the Lower Athabasca Region. Accordingly, the Lower Athabasca Regional Plan is the appropriate mechanism through which to identify and manage the regional cumulative effects of resource development activities.<sup>4</sup> Standard conditions in AER-issued *EPEA* approvals require approval holders to participate in Government of Alberta regional plans and management frameworks.

- Concerns regarding the Integrated Resource Management System, cumulative effects policy (e.g. Biodiversity Management Framework and the Surface Water Quantity Management Framework), and the implementation and funding of same relate to Government of Alberta policies, matters that are outside of the AER's jurisdiction.
- With respect to your concern regarding consultation, the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples.<sup>5</sup>

Your specific request that the Aboriginal Consultation Office (ACO) direct Suncor to consult with McMurray Métis also relates to a matter outside of the AER's jurisdiction. The ACO determined on April 4, 2019, that consultation for the MCW project was adequate.<sup>6</sup> That being said:

- Standard conditions in AER-issued Integrated Decision Approach (IDA) in-situ oil sands approvals require approval holders to collaborate with stakeholders and Indigenous communities in developing, implementing and maintaining an ongoing engagement plan. An ongoing engagement plan ensures that impacted stakeholders are provided with regular project updates and an opportunity to share concerns related to the applicable development throughout the project's life-cycle. As part of Suncor's MCW engagement plan, Suncor has committed to, among other things, providing information on deviations from the MCW project development plan and unanticipated risks that could impact McMurray Métis.
- The AER included language in the draft approval document provided to McMurray Métis stating that if the AER is made aware of concerns from stakeholders and Indigenous

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<sup>3</sup> See, for example, *Dover Operating Corp.*, 2013 ABAER 014 at para 43; *Prosper Petroleum Ltd.*, 2014 ABAER 013 at para 121.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Responsible Energy Development Act*, SA 2012, c R-17.3, s 21.

<sup>6</sup> FNC201606036

communities that have not been resolved by Suncor, the AER may direct Suncor to attend alternative dispute resolution with stakeholders and Indigenous communities or amend the ongoing engagement plan.

- While the AER understands the basis for your request for capacity funding, the AER does not have the authority to direct Suncor to provide McMurray Métis with capacity funding. Concerns regarding capacity funding and the Government of Alberta's policies in respect of capacity funding relate to matters outside of the AER's jurisdiction.
- Concerns regarding deficiencies and gaps in Government of Alberta oil sands policy and development of a Métis Consultation Policy relate to matters outside of the AER's jurisdiction.
- With respect to your concerns regarding pipeline construction issues:
  - Standard conditions in AER-issued *PLA* dispositions require approval holders to comply with the Government of Alberta's *Above Ground Pipeline Wildlife Crossing Directive 2014-07* as specified in the *MSSC*.
  - Suncor is required to comply with the Government of Alberta's *Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body*.<sup>7</sup>
- With respect to your concerns regarding pipeline operational issues:
  - Suncor is required to comply with all legislative and regulatory requirements associated with pipeline construction and safety, emergency response and the reporting and remediating of spills and releases that may occur during the life of the MCW project.<sup>8</sup>
  - Suncor is required to comply with applicable legislative and regulatory requirements regarding weed management and the use of herbicides and pesticides.
- In relation to your concerns regarding biodiversity:
  - Standard conditions in AER-issued *EPEA* approvals require approval holders to implement a Project Level Conservation, Reclamation and Closure Plan (PLCRCP).
  - Standard conditions in AER-issued *EPEA* approvals require that approval holders progressively reclaim disturbed land in accordance with applicable Government of Alberta legislation, policy, criteria and guidelines as well as directions from the AER.<sup>9</sup> Concerns regarding Suncor's reclamation activities can be managed through the above-mentioned approval conditions requiring approval holders to develop and implement an

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<sup>7</sup> *Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body*, Government of Alberta, 2013, as amended.

<sup>8</sup> See, for example, *Pipeline Rules*, Alta Reg 91/2005; *CSA Z662, Oil and Gas Pipeline Systems; Directive 077: Pipelines – Requirements and Reference Tools; Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry; Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 110 and 112.

<sup>9</sup> See for example *Specified Enactment Direction 001: Direction for Conservation and Reclamation Submissions*, Alberta Energy Regulator, February 2016.

ongoing engagement plan with input from Indigenous communities and other stakeholders.

- Standard conditions in AER-issued *EPEA* approvals require approval holders to develop and implement a wildlife mitigation and monitoring program (WMMP). As part of a WMMP, approval holders are required to implement strategies and actions (adhering to the mitigation hierarchy of avoid, minimize, restore, and offset) to mitigate project and site-specific effects on fish and wildlife species at risk and of cultural significance throughout the life of a project. Approval holders are also required to implement strategies for identifying fish and wildlife features to comply with the outcomes of the *MSSC* and measures to mitigate impacts to fisheries and aquatic habitat.
- Suncor is required to comply with applicable Government of Alberta policies, guidelines and requirements relating to wildlife impacts.
- The AER deemed the MCW project EIA complete and in accordance with the terms of reference, including for wildlife impact assessment. Suncor also included a fisheries assessment in the Application that predicted that the effects of the MCW project on fisheries during construction, operation and reclamation will be low in magnitude, short term in duration and reversible.
- With respect to your concerns regarding caribou:
  - In a WMMP, approval holders are required to include a description of how their activities are in alignment with the *Woodland Caribou Policy for Alberta*<sup>10</sup> and any Government of Alberta caribou policies or range plans in effect. Approval holders are also required to describe strategies that will be implemented to mitigate the effects of a project on Woodland Caribou, and describe how those strategies will align with the desired outcomes in the *Caribou Protection Plan Guidelines and Caribou Calving Information*.<sup>11</sup>
  - The AER reviewed the wildlife section of the MCW project EIA, and the AER deemed the EIA complete and in accordance with the terms of reference, including for woodland caribou impact assessment.
- With respect to your concerns regarding reclamation planning and monitoring:

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<sup>10</sup> *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011.

<sup>11</sup> *Caribou Protection Plan Guidelines and Caribou Calving Information*, Environment and Sustainable Resource Development, September 14, 2012.

- As stated, approval holders are required to progressively reclaim MCW project lands in accordance with applicable Government of Alberta legislation, policy, criteria and guidelines as well as directions from the AER.<sup>12</sup>
- The AER included language in the draft approval document provided to McMurray Métis that requires Suncor to implement a Wetland Minimization Plan. The Wetland Minimization Plan includes, among other things, a summary of minimization procedures and techniques to be implemented to minimize wetland impacts from the MCW project and proposed new or experimental approaches to be implemented to minimize wetland impacts.
- In a PLCRCP, approval holders must include, among other things, a strategy for reclaiming sites for areas of deep organic soils where pad materials will be left in place during land reclamation and removed during land reclamation. A PLCRCP enables approval holders and the AER to ensure that there are tools in place for reclamation.
- Standard conditions in AER-issued *EPEA* approvals require approval holders to implement a Wetland Research Program (WRP). A WRP must include, among other things, a five year research plan with a schedule for conducting wetland research that includes dominant wetland ecosystems disturbed by the project. A WRP contributes to the success of future reclamation efforts undertaken by approval holders.
- In relation to your concerns regarding disruption or impacts to surface water flows:
  - Suncor has indicated that impacts to localized waterbodies as a result of ponding and water use as well as impacts to watersheds in locations of high disturbance density will likely be low.
  - Standard conditions in AER approvals issued under the *Water Act* require approval holders to develop and implement a siltation and erosion control plan, which includes, among other things, measures for the management of surface and subsurface water flow to minimize siltation and erosion of water bodies.
  - The AER reviewed the surface water information Suncor submitted in, and as a supplement to, the MCW project EIA, and deemed the EIA complete.
  - The AER included language in the draft approval document provided to McMurray Métis requiring Suncor to develop and implement a comprehensive Project Area Access

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<sup>12</sup> See for example *Specified Enactment Direction 001: Direction for Conservation and Reclamation Submissions*, Alberta Energy Regulator, February 2016.

Management Plan which includes a discussion of how the access needs of Indigenous communities will be accommodated.

- With respect to your concerns regarding socio-economic impacts:
  - Suncor included an assessment of socio-economic impacts in the MCW project EIA. Applicable portions of the EIA were referred to Alberta Health and Alberta Transportation for additional review to assess health and safety concerns. Alberta Health and Alberta Transportation completed their review of the applicable portions of the EIA and the AER deemed the EIA complete.
  - Potential socio-economic effects from the MCW project can also be managed through the above-mentioned approval conditions requiring approval holders to develop and implement an ongoing engagement plan with input from Indigenous communities and other stakeholders.
  - Applicable portions of the MCW project EIA were referred to Alberta Culture and Tourism for additional review to assess impacts to historic resources. Alberta Culture and Tourism completed its review of the applicable portions of the EIA and the AER deemed the EIA complete.

On September 16, 2019, the AER sent correspondence to Suncor and McMurray Métis providing both parties with an opportunity to comment and provide feedback on proposed draft MCW project approval conditions. McMurray Métis responded on October 7, 2019, stating that it was not in a position to review a draft approval as McMurray Métis did not have the capacity to do so.

As stated above, the AER does not have the authority to direct Suncor to provide McMurray Métis with capacity funding. Therefore, in light of the foregoing considerations and the lack of further information provided by McMurray Métis with respect to the proposed draft approval conditions, the AER has determined that your concerns have been addressed to the AER's satisfaction, are vague, relate to matters outside of the AER's jurisdiction or relate to matters outside the scope of the Application.

The AER will be approving the Application upon receiving Lieutenant Governor in Council authorization of the *Oil Sands Conservation Act (OSCA)* approval under subsection 10(3)(a) of the *OSCA*. The AER will provide you with a copy of the final approval document once it has received authorization from the Lieutenant Governor in Council.

All AER-regulated parties must comply not only with the conditions of their authorizations, but with all of the AER's regulatory requirements. To ensure industry compliance the AER has developed its *Integrated Compliance Assurance Framework*, which embodies the three main components of all effective compliance assurance programs, those being education, prevention, and enforcement. You can find out more about how the AER verifies industry compliance and responds to noncompliance on our [Compliance Assurance Program](#) web page.

If you have any questions, contact Winnie Chan at 780-642-9232 or [Winnie.Chan@aer.ca](mailto:Winnie.Chan@aer.ca).

Sincerely,

*<Original signed by>*

Paul Ferensowicz

Senior Advisor, Strategic Delivery

cc: Mike Morden, Suncor Energy Inc.  
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