

November 14, 2019

By email only

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Lawson Lundell LLP
Attention: Shailaz Dhalla

Dentons LLP
Attention: Bernard Roth

Alberta Justice
Attention: Vivienne Ball

AER Authorizations
Attention: Kiril Dumanovski

Dear Counsel:

**Re: Proceedings 384 and 386 - Pure Environmental Waste Management Ltd.
Closing Argument and General Procedural Matters**

I am writing to you on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners assigned to this proceeding (the panel). This letter provides general procedural information and the panel's decision regarding the timing and format of closing argument.

Closing Argument

The panel has considered the submissions of Pure Environmental Waste Management Ltd. (Pure) and Suncor Energy Inc. (Suncor) regarding closing argument. The panel has decided that closing argument will be done by way of oral submissions. Closing argument for proceeding 384 will occur on November 28, 2019, while closing argument for proceeding 386 will occur on November 29, 2019.

The panel considers that through oral argument, counsel will be able to thoughtfully and thoroughly review the evidence and highlight the key evidence with reference to the evidentiary record and on that basis provide focused oral submissions to the panel that address any relevant legal and evidentiary issues. No unfairness is created by having oral argument.

Pure suggests in its submissions that the technical nature of these proceedings makes written argument more appropriate than oral argument. The panel disagrees. The AER is a technical regulator and all of its proceedings are technical in nature. There is nothing unusual about the length or technical complexity of these proceedings that suggests the panel should deviate from the normal practice of having oral closing argument. AER hearings related to matters far more complex and with much larger records have successfully utilized oral argument. In sum, there is nothing unique about this matter that

requires the use of written argument. Further, oral argument enables the panel to ask questions of counsel, a process that provides benefits to both the panel and the parties. Additionally, oral argument may be more efficient than written argument.

Pure also suggests that having a single consolidated oral argument will create a risk of “incorrectly blurring the distinct evidentiary records for each proceeding and the operative burdens of proof in each proceeding.” As noted above, competent counsel should be able to ensure that does not occur. Nonetheless, out of an abundance of caution the panel has decided that oral argument for the proceedings will occur consecutively as opposed to being combined.

If the parties consider that they require additional time to prepare for oral argument, the parties may request that oral argument be delayed to a future date. The panel will entertain such requests having regard for, among other things, the very limited availability of counsel. It should be noted, however, that delaying closing argument will affect the timing of the panel’s decisions on these matters.

It is the AER’s practice to permit parties, at the close of final argument, to file a written version of their oral submissions that includes detailed evidentiary references. This allows the parties to provide those references without having to refer to them in their oral argument. The panel will follow this practice in these proceedings.

Pure also requests that, even if oral argument occurs, the parties be permitted to file additional written closing argument. The panel does not consider that to be necessary and will not be accepting written argument beyond what is described in the preceding paragraph. The panel is of the opinion that a well-crafted oral argument will be equally, if not more effective than written argument. As stated above, the panel is confident that counsel will be able to provide oral argument that highlights key evidence and addresses any relevant legal and evidentiary issues.

It was suggested by Suncor that Pure bears the onus of proof in both proceedings. The panel disagrees. However, if the parties consider this to be an issue of contention, they may address it and any other legal issues, such as standard of review, burden of proof, the treatment of evidence from one proceeding in the other, or the format of the panel’s final decisions, in their closing arguments.

Exhibit List

Please find attached a copy of the exhibit list. All pre-filed documents have been marked for your reference and are available in SharePoint. The most updated exhibit list will be emailed to you prior to the hearing start date.

Scheduling

Also attached is a schedule for these proceedings. Please note the estimated time for presentation in the schedule is based on input from participants and is included to help facilitate scheduling. It is an approximation only and may be revised as necessary throughout the hearing.

Referencing Exhibits during the Hearing

Evidence referred to at the hearing may be displayed for all participants and any members of the public attending. When witnesses or counsel are speaking at the hearing and would like to have an exhibit displayed; please state the **exhibit number and PDF page number**. This will allow the evidence to be displayed quickly and provide an accurate reference for the written transcript. Please do not use an electronic pointer device to refer to the exhibits.

Any Additional Documentary Material Filed During the Hearing

If the parties wish to file or refer to additional documentary material during the hearing, such as aids to cross examination or corrections to exhibits, please provide the following at the hearing:

- an electronic copy of the document on a memory stick,
- five paper copies of the document for the AER, and
- paper copies for all other parties.

Parties are reminded of section 24 of the *Alberta Energy Regulator Rules of Practice*, which states that unless the panel otherwise directs, no documentary evidence may be presented at the hearing unless the evidence was filed and served in accordance with section 53. Section 53(1) provides that a party shall file the documentary evidence and serve a copy of it on the other parties before the hearing takes place and in accordance with any time limits set out by the AER.

If you have any questions contact me at 403-297-3232 or at hearing.services@aer.ca .

Sincerely,
Tammy Turner
Hearing Coordinator, Hearing Services

cc: M. LaCasse, AER
F. DeLuca, AER