

BY EMAIL ONLY

January 29, 2020

James Cardinal
Métis Nation of Alberta - Region 1

SUNCOR ENERGY INC. (SUNCOR)
APPLICATIONS NO. 1922922, 080-0000094
STATEMENT OF CONCERN NO. 31564, 31565

Dear James Cardinal:

You are receiving this letter because you filed a statement of concern on behalf of Métis Nation of Alberta - Region 1 (MNA) in respect of Applications No. 1922922 and 080-0000094 (the Applications). The Alberta Energy Regulator (AER) has reviewed your statement of concern, along with the Applications, and all applicable requirements and other submissions or information about the Applications. 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:

- The Applications seek to amend Suncor's existing *Environmental Protection and Enhancement Act (EPEA)* and *Oil Sands Conservation Act (OSCA)* approvals for the Base Plant Mine to allow Suncor to deposit froth treated tailings (FTT) at existing Pond 7 and at an in-pit disposal area in the North Steepbank Extension mining area. The activities contemplated in the Applications would be undertaken entirely within the existing approved footprint of the Base Plant Mine and do not require new land disturbances.
- With respect to your concerns regarding consultation, the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples.¹ Additionally, the Aboriginal Consultation Office (ACO) determined that consultation in respect of the Applications was adequate on August 16, 2019, and

¹ *Responsible Energy Development Act*, SA 2012, c R-17.3, s 21.

your specific requests made in relation to the ACO relate to matters outside of the AER's jurisdiction.

- Per the Métis Harvesting Agreement you provided as part of your statement of concern, the AER acknowledges that the Government of Alberta has recognized qualified MNA members as Métis harvesters under the *Métis Harvesting in Alberta Policy (2018)*.² The AER also acknowledges that the Applications relate to lands that fall within a specified Métis Harvesting Area, an area within which qualified MNA members exercise Métis rights to hunt, fish and trap for subsistence (food) purposes.³
- However, the mere fact that the Applications relate to lands that are located within a specified Métis Harvesting Area does not, without further factual connection, establish that MNA may be directly and adversely impacted by the Applications. Further, while you state that the Applications relate to an area that MNA members consider part of their traditional territory, and have used for trapping, hunting, harvesting and cultural activities, the public does not currently have access to the lands that are the subject of the Applications (i.e. Suncor's Base Plant Mine). Moreover, and as stated, the activities described in the Applications will be undertaken entirely within the existing approved footprint of the Base Plant Mine, and there will be no new land disturbance required. As a result, MNA does not identify in sufficient detail how the Applications may directly and adversely affect MNA members and the lands and waters they commonly use.⁴
- With respect to your concerns regarding cumulative impacts, 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.⁵ The Applications relate to lands that fall within the Lower Athabasca Region. Accordingly, the Lower Athabasca Regional Plan (LARP) is the appropriate mechanism through which to identify and manage the regional cumulative effects of resource development activities.⁶ Standard conditions in AER approvals issued under *EPEA* require that approval holders participate in LARP management frameworks.
- While the AER acknowledges the basis for your concern regarding funding to study socio-economic impacts associated with the Applications, the AER does not have the authority to direct applicants to provide capacity funding.

Whether a decision of the AER may directly and adversely affect a statement of concern filer, such as MNA, is to be considered by the AER in light of the evidence properly

² *Metis Harvesting in Alberta Policy (2018)*, Government of Alberta, September 1, 2019 <http://albertametis.com/wp-content/uploads/2019/03/M%C3%A9tis-Harvesting-in-Alberta-Policy-2019.pdf>

³ *Ibid*, page 1.

⁴ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at paras 10, 14 and 18.

⁵ See, for example, *Dover Operating Corp.*, 2013 ABAER 014 at para 43; *Prosper Petroleum Ltd.*, 2014 ABAER 013 at para 121.

⁶ *Ibid*.

adduced before it.⁷ Based on the foregoing, MNA has not demonstrated that it may be directly and adversely affected by the Applications and a number of its concerns relate to matters that are outside of the AER's jurisdiction. As a result, the AER has concluded that it is not necessary to hold a hearing before making a decision on the Applications.

The AER has issued the applied-for approvals and this is your notice of that decision. Copies of the approvals are attached.

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 here: <https://aer.ca/regulating-development/compliance/compliance-assurance-program>.

Under the *Responsible Energy Development Act (REDA)*, an eligible person may request a regulatory appeal of an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *REDA* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. Filing instructions and forms are on our website under Regulatory Appeal Process.

If you have any questions, contact SOC@aer.ca.

Sincerely,

<Original signed by>

Lane Peterson
Director, Regulatory Applications

Enclosure (2): **Approvals**

cc: Blair Penner, Suncor Energy Inc.
Margwyn Zacaruk, Suncor Energy Inc.
Margaret Caine, Métis Nation of Alberta - Region 1
AER SOC Assessor
AER Bonnyville Field Centre
AER Indigenous Relations
Aboriginal Consultation Office

⁷ *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348 at para 43.