

Proceeding 460

May 22, 2026

To: Laura-Marie Berg
For: Sunshine Oil Sands Ltd.

To: Maria Lavelle and Shauna Gibbons
For: Alberta Energy Regulator – Regulatory Compliance Branch

[By email only]

**Re: Regulatory Appeals by Sunshine Oil Sands Ltd. (Sunshine)
Alberta Energy Regulator - Regulatory Compliance Branch (AER Regulatory Compliance)
Regulatory appeal of the November 14, 2024, Decision to Issue an RCAM Order to Sunshine
Regulatory appeal of the May 9, 2025, Decision to Issue an Abandonment and Reclamation Order to Sunshine
Motion of Sunshine - Filing of New Evidence, Confidentiality and an Additional Witness**

Dear Counsel,

We are the Alberta Energy Regulator (AER) panel of hearing commissioners, presiding over proceeding 460 (the panel).

We write to provide our decisions on Sunshine's request for filing of new evidence, confidentiality and an additional witness. We have received the motion from Sunshine dated May 20, 2026, and comments from Regulatory Compliance and reply from Sunshine, both dated May 21, 2026. Following review and consideration of the motion and the subsequent submissions provided by AER Regulatory Compliance and Sunshine, we have decided to:

- (A) Allow Sunshine to include Mr. Cail McCray as part of its witness panel, subject to the conditions set out below.
- (B) Allow Sunshine to provide new evidence related to transactions between Sunshine, Renergy Petroleum (Canada) Co. Ltd. and a third party, and related to the Hong Kong Stock Exchange.
- (C) Deny Sunshine's request to grant confidentiality to the exhibits to the affidavit of Michael Hibberd.

We provide details of these decisions and our reasons below.

Background

The motion requested that Sunshine be permitted to provide new evidence regarding confidential commercial information which includes accepted offers, which Sunshine stated provides an alternative source of near-term funding.

The motion also requested confidential treatment of the commercial information (offers) for a period of one year or until that information is publicly disclosed. In addition, the motion requested confidentiality for a portion of paragraph 3 of Mr. Hibberd's affidavit. On May 21, 2026, Sunshine advised that confidential treatment of paragraph 3 of the affidavit was no longer necessary. Finally, the motion requested that Sunshine be allowed to seat an additional witness, Cail McCray, with the Sunshine panel on May 26, 2026. Sunshine submitted that Mr. McCray managed the West Ells site for Sunshine and can speak to matters which occurred before and after the November Order and can provide information which may be helpful to the panel.

AER Regulatory Compliance raised concern with the relevance of the information described in paragraph 3 of Mr. Hibberd's affidavit and regarding an offer to purchase certain assets. It contended that an offer to purchase is not a legally binding agreement and other actions must be complete before the purchase agreement is finalized and closed. AER Regulatory Compliance submitted that Sunshine has not established that the new evidence is relevant and material to the issues in Proceeding 460 as noted in the panel's May 5, 2026, letter or why the evidence will assist the panel in making its decision on the regulatory appeals. With respect to the request for an additional witness, AER Regulatory Compliance questioned why this witness was added at such a late stage in the proceeding and why the need for this witness and his testimony was not raised in past Sunshine submissions of March 17, 2026 and April 28, 2026.

Sunshine commented in reply that the information in paragraph 3 of Mr. Hibberd's affidavit is an update of evidence previously provided in its evidentiary submissions. It submitted that the new evidence related to transactions between Sunshine, Renergy and a third party provides up-to-date information regarding Sunshine's financial situation, that the entire record of this proceeding stems from Sunshine's financial difficulties, and that funding will be required for any viable plan to address issues raised by the orders under appeal. Sunshine indicated that part of the reason that it is putting Mr. McCray forward as a witness now is to facilitate evidence going in more efficiently, considering translation difficulties encountered with another Sunshine witness during a different AER hearing last week. Sunshine noted that it understands that if this request were granted, it would be required to finish direct evidence in the time previously allotted in the hearing schedule.

Panel Decision

(A) New witness

Sunshine advised that Mr. McCray has knowledge of and involvement with the West Ells site both before and after the issuance of the November order. It submitted that his appearance as a witness could facilitate evidence being provided more efficiently, given potential translation difficulties. Sunshine also advised that Mr. McCray would only be available to provide evidence on May 26, 2026, participating remotely, and would log onto the proceeding early to ensure his connection is working before the hearing starts.

AER Regulatory Compliance suggested that if we were to allow Mr. McCray as a witness, it could constrain its cross-examination on May 26, 2026, to Mr. McCray only to allow us time for questioning Mr. McCray.

It also indicated that it reserves its right to fully test any new evidence or new witnesses and that it estimates it would need an additional hour of cross-examination.

We have decided to allow Mr. McCray's participation on the Sunshine witness panel on May 26, 2026 only, subject to the conditions set out below. We believe that this decision, with conditions, will support Sunshine's opportunity to make its case in these regulatory appeals, while seeking to balance fairness to AER Regulatory Compliance in preparation and conduct of its portion of this proceeding. Mr. McCray's participation is subject to the following conditions:

- Sunshine is required to complete all its direct evidence in the time allotted in the hearing schedule issued on May 13, 2026.
- AER Regulatory Compliance will be allowed additional time for cross-examination, as necessary on both May 26 and 27, 2026.
- Given the short timeline and Mr. McCray's limited availability on May 26, 2026, it will not be possible for Hearing Services to test technology in advance with Mr. McCray. Hearing Services will provide Sunshine and Mr. McCray with a list of internet and equipment requirements for remote participation. Considering these constraints, Sunshine bears the risk if the available technology does not support Mr. McCray's remote participation, including if hearing participants, the hearing panel or the court reporter are not able to intelligibly hear and understand Mr. McCray. This proceeding will not be delayed or postponed if Mr. McCray's technology does not work.
- Sunshine is required to provide Hearing Services and AER Regulatory Compliance with Mr. McCray's resume by 9:00 am on May 25, 2026.
- Mr. McCray's evidence must be provided in accordance with section 24 of the *Alberta Energy Regulator Rules of Practice (Rules)*, in particular section 24(2)(b) that confines testimony "to matters set out in the documentary evidence or arising from evidence adduced in cross-examination."

(B) New evidence

We have decided to allow Sunshine to provide new evidence as set out in Mr. Hibberd's affidavit, subject to the conditions set out below and our decision on the confidentiality request. We accept Sunshine's statement that the information covered in paragraph 3 of the affidavit is an update of information previously provided in Sunshine's hearing submissions of March 17, 2026 and April 28, 2026. We acknowledge that AER Regulatory Compliance raised concerns about relevance and materiality of the new evidence. Both parties will be able to make submissions and argument to us about relevance and materiality during the hearing. The acceptance of the new evidence is subject to the following conditions:

- Sunshine is required to complete all its direct evidence in the time allotted in the hearing schedule issued on May 13, 2026.

- AER Regulatory Compliance will be allowed additional time for cross-examination, as necessary on both May 26 and 27, 2026.

(C) Confidentiality requests

Sunshine requested that we grant confidentiality to two aspects of Mr. Hibberd's affidavit: a portion of paragraph 3 that contained information that was not public on May 20, 2026, when the motion and affidavit were filed with the AER; and the exhibits to the affidavit, which are offers containing commercial information that has been treated as confidential by Sunshine, Renergy and the third party that made the offers. Sunshine requested that the exhibits be granted confidentiality for one year, or until they are publicly disclosed, whichever comes first. AER Regulatory Compliance did not address the confidentiality requests in its comments on Sunshine's motion.

We will not address the information in paragraph 3 because Sunshine advised on May 21, 2026 that the information was now public.

In deciding requests for confidentiality, we must apply section 49 of the *Rules*, which provides that all documents filed in a proceeding must be placed on the public record, subject to any grant of confidentiality made by the AER. Section 49(1) of the *Rules* is premised on the basis that it is in the public interest that all information and documents filed with the AER should be made publicly available unless there are compelling reasons to do otherwise.

This approach to disclosure is consistent with the AER's role as an administrative tribunal and its obligation to be transparent and to provide procedural fairness to all parties who participate in its process. Making the information used by decision makers available assists the public in understanding the AER's decisions. In other words, transparency and disclosure of relevant information are fundamental to be procedurally fair, efficient and to promote credible decision making.

The AER also recognizes the legitimate need, when established, of a party to protect confidential or sensitive information where disclosure of that information is likely to result in harm to the party's competitive, financial, or personal interest, and such harm outweighs the benefit to the public interest of disclosure. Exceptions to disclosure should be limited to those situations where the party requesting confidentiality has met the criteria established under subsection 49(4) of the *Rules*. A confidentiality ruling is highly fact and situation specific. Where confidentiality has been granted in the past, the AER has where possible limited confidentiality to portions of the document as opposed to the entire document.

Section 49(3) of the *Rules* requires a confidentiality request to describe the reasons for the request, "including the specific harm that might result if the document were placed on the public record." Section 49(4)(b) enables us to grant confidentiality to information that is commercial, financial, scientific or technical in nature if we are of the opinion that disclosure of that information on this proceeding's public record could reasonably be expected to cause significant harm to a party's competitive position or result in undue financial loss or gain to any person or organization.

Based on section 49 and Sunshine's submissions, we deny the request to grant confidentiality to the exhibits to Mr. Hibberd's affidavit. Sunshine stated that Sunshine, Renegy and the third party to the offers have treated the commercial information in those offers as confidential. However, Sunshine has not provided any information that would indicate specific harm, significant harm to Sunshine's competitive position, or undue financial loss or gain to Sunshine or any other person or organization that would reasonably result from placing the exhibits on the public record of this proceeding. Sunshine has not satisfied the requirements of section 49.

Conclusion

As indicated above, Hearing Services will contact Sunshine directly regarding technology requirements for Mr. McCray's remote participation.

In accordance with the conditions we directed, Sunshine is required to provide Mr. McCray's resume by **9:00 am on May 25, 2026**, to Hearing Services and AER Regulatory Compliance.

We intend to add Mr. Hibberd's affidavit, with the attachments, to the proceeding's public record at **10:00 am on May 25, 2026**.

Sincerely,

Andrew MacPherson

Presiding Hearing Commissioner

Cindy Chiasson

Hearing Commissioner

Shaunna Cartwright

Hearing Commissioner

cc: Danielle Brezina, Counsel for hearing panel
Elaine Arruda, Hearing Coordinator