Alberta Energy Regulator

Hearing Commissioners' Office

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Proceeding 460
October 8, 2025

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)
Panel Decision - Request for a Stay of the Abandonment and Reclamation Order issued on May 9, 2025

Dear Counsel,

The panel of Alberta Energy Regulator (AER) hearing commissioners presiding over this proceeding (the panel), writes to provide our decision on Sunshine's request for a stay of the Abandonment and Reclamation order issued on May 9, 2025 (the May Order), by AER Regulatory Compliance. Following review and consideration of the submissions provided by Sunshine and AER Regulatory Compliance, we have decided to deny Sunshine's request to stay the May Order for the reasons set out below.

Background

Sunshine currently holds licences and approvals granted by the AER under the *Oil and Gas Conservation Act (OGCA),* the *Oil Sands Conservation Act,* the *Pipeline Act,* and the *Environmental Protection and Enhancement Act* for the West Ells Facility, and all associated wells, facilities and pipelines at various locations identified in Appendix 1 of the May Order.

On May 9, 2025, AER Regulatory Compliance issued the May Order directing Sunshine to abandon all associated wells, pipelines, and facilities, and conduct reclamation of specified lands. On May 15, 2025, Sunshine filed a request for a regulatory appeal of the May Order, and a stay request of the May Order. The following submissions were provided before a panel was set for the hearing:

- June 3, 2025 – AER Regulatory Compliance filed a response to the stay request,
- June 11, 2025 – Sunshine filed its initial reply.

On June 24, 2025, the AER granted the request for regulatory appeal of the May Order. This panel was assigned to consider this matter.

On July 3, 2025, we provided Sunshine and AER Regulatory Compliance with the further opportunity to provide limited submissions with respect to the stay request, to clarify or update the parties' original submissions. Further submissions from Sunshine and AER Regulatory Compliance were provided on July 4, 2025, and July 8, 2025, respectively. Sunshine provided its reply submission on July 9, 2025.

Reasons for Decision

Under section 38(2) of the *Responsible Energy Development Act (REDA)*, the filing of a request for regulatory appeal does not operate to stay an appealable decision.

The AER's test for a stay is adopted from the Supreme Court of Canada's decision in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 *(RJR-MacDonald)*. The onus is on Sunshine as the requester for the stay to demonstrate that they meet each of the following criteria:

1. Serious question to be tried

The first step in the test requires Sunshine to establish that there is a serious issue to be tried. The requester must demonstrate that there is some basis on which to present an argument on the regulatory appeal. This is a low threshold. The stay requester need only show that the regulatory appeal is not frivolous or vexatious.

For this part of the test, Sunshine submitted that the key issue in this regulatory appeal is the timing of the May Order. It provided evidence of its efforts to secure short and long-term financing to address its regulatory non-compliances. Sunshine suggested that the May Order was premature and not appropriate while it was actively pursuing resolution of its longer-term funding issues and seeking interim funding to address immediate regulatory non-compliances.

Sunshine also suggested that some of its sites are still capable of producing. It contended that this raises a serious question to be tried because the May Order applies to all Sunshine's sites and does not distinguish between sites that may be ready to be abandoned and those sites capable of continued production.

AER Regulatory Compliance submitted Sunshine does not demonstrate there is an arguable case or a serious question to be tried because the focus of the stay application is on the prospect of securing future financing, and Sunshine did not dispute the non-compliances and the risks to public safety and the environment that led to the issuance of the May Order.

AER Regulatory Compliance also contended that the question of whether there are Sunshine assets capable of producing does not determine whether it was appropriate for the AER to issue the May Order. It referred to section 27 of the *OGCA* and section 23 of the *Pipeline Act* and stated that both sections set out the legislative test for granting an abandonment order as whether "it was necessary to do so in order to protect the public or the environment."

We find that there is some basis on which Sunshine can present arguments in the regulatory appeal in relation to the matter that some Sunshine sites may still be capable of producing, given our responsibility to consider factors established under section 15 of *REDA* in regulatory appeals involving energy enactments.

We therefore find that this part of the test has been met. This conclusion does not make any assessment or predetermination of the issues that would be the subject of the hearing of this regulatory appeal.

2. Irreparable harm

The second step in the test requires the stay requester to establish it will suffer irreparable harm if the stay is not granted. Irreparable harm will occur if the stay requester will be adversely affected by the conduct the stay would prevent if the requester ultimately prevailed on the regulatory appeal; *RJR-MacDonald* page 341. The harm must be of a sort that cannot be remedied through damages (i.e. monetary terms) or otherwise remedied; *RJR-MacDonald*, page 341. The stay requester must provide clear and nonspeculative evidence that it will suffer irreparable harm if its application is denied; *Aventis Pharma S.A. v Novopharm Ltd.,* 2005 FC 815, paragraph 59. Hypothetical or speculative allegations of harm will not suffice. The stay requester must prove that actual harm will occur if the stay is not granted; *Canada (Attorney General) v Amnesty International Canada,* 2009 FC 426, paragraph 30.

Sunshine stated the May Order would cause irreparable harm because it jeopardizes Sunshine's ability to continue as a going concern. Sunshine referred to a receivership application by the Orphan Well Association, as evidence that not staying the May Order would result in its receivership and cause irreparable harm. It also cited *RJR MacDonald* as indicating that irreparable harm could result where a party will be put out of business by a decision to deny a stay or will suffer permanent market loss or irrevocable damage to its business reputation.

In its evidence, Sunshine provided several receipts showing payments to creditors, and a copy of an order of the Alberta Court of King's Bench adjourning the Orphan Well Association's receivership application indefinitely effective May 23, 2025.

AER Regulatory Compliance submitted that Sunshine has not proven irreparable harm. It stated that Sunshine is asserting a monetary claim in relation to its ability to continue as a corporation and the effect of receivership proceedings and has not demonstrated that irreparable harm would result. AER Regulatory Compliance also noted the two-year timeline to comply with the May Order and adjournment of the receivership application and disputed the need for a stay.

This step of the test for a stay requires Sunshine to prove that it will suffer actual harm if a stay is not granted. Sunshine has asserted that it will cease business and enter receivership if this order is not stayed. Sunshine has not provided evidence that such harm *will* occur, or that the potential harm would be irreparable.

The Orphan Well Association's proceeding to put Sunshine into receivership has been adjourned indefinitely, which nullifies the basis for most of Sunshine's assertion of irreparable harm. The evidence Sunshine submitted shows it has made various payments to creditors after the May Order was issued, which undermines its argument that the May Order is causing irreparable harm. We find that Sunshine has not provided sufficient evidence to satisfy the second step of the test for a stay.

3. Balance of convenience

The third part of the test considers which party will suffer more harm from granting or refusing the stay request.

As explained above, a stay requester must satisfy each part of the three-part test for the stay to be granted. Having determined that Sunshine has not met the second part of the test, we need not consider the third part of the test.

Conclusion

We deny the stay request because Sunshine has failed to satisfy the second step of the three-part test for a stay.

Sincerely,

Andrew MacPherson	Cindy Chiasson	Shaunna Cartwright
Presiding Hearing Commissioner	Hearing Commissioner	Hearing Commissioner

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