



ALBERTA WILDERNESS ASSOCIATION

*"Defending Wild Alberta through Awareness and Action"*

June 21, 2023

Aimée Hockenull  
Regulatory Appeals Coordinator, Law Branch  
Alberta Energy Regulator  
[regulatoryappeal@aer.ca](mailto:regulatoryappeal@aer.ca)

**Re: Alberta Wilderness Association Request for Reconsideration No.: 1942728**

Dear Aimée Hockenull,

Alberta Wilderness Association (AWA) is in receipt of Suncor's letter dated June 16, 2023, with regards to AWA's reply submissions in this matter. AWA submits this letter to address the concerns raised in Suncor's letter.

In short, the information included in AWA's reply submissions was properly and correctly submitted in reply to specific points raised in Suncor's response submissions dated May 31, 2023. Furthermore, Suncor will have ample opportunity to test any new information if the Regulator decides to initiate a reconsideration hearing.

**The information included in AWA's reply was properly and correctly submitted in reply to specific points raise in Suncor's response submissions**

The first four documents with which Suncor takes issue are the following:

1. Meeting notes with SEOI dated February 23, 2010 (Appendix A);
2. Presentation to the Oil Sands Multi-stakeholder Panel dated September 27, 2006 (Appendix B);
3. Letter to Victor Choy and Sheila Chernys dated September 2, 2008 (Appendix C); and
4. "Memorable McClelland Lake Wetlands" dated June 2016 (Appendix D)

AWA submitted these four appendices and Appendix E in direct response to Suncor's submission that AWA should have participated in the Sustainability Committee. These appendices show why AWA could not reasonably have participated in the Sustainability Committee, contrary to Suncor's submissions. AWA did not raise this issue in our initial submissions. This issue was raised for the first time in Suncor's submissions. As such, and in accordance with the core purpose of reply submissions, AWA properly and correctly submitted these appendices in reply to a new issue raised by Suncor's response.

The last four documents with which Suncor takes issue are the following:

5. Lindsay Report dated May 29, 2023 (Appendix G);
6. Locky Report dated May 31, 2023 (Appendix H);
7. Wieder Report dated May 24, 2023 (Appendix I); and
8. Vitt/House Report dated Nov 28, 2022 (Appendix J)

AWA submitted these four appendices and Appendix F in direct response to the details of the four grounds which Suncor raised in its response, namely that the Operational Plan addresses the seven concerns highlighted in the report, that the report is based on incorrect or misleading assumptions, that the report is speculative, and/or that the report demonstrates a lack of knowledge about the technical expertise that went into the development of the Operational Plan. These detailed issues were first articulated in Suncor's response submission. Again, in accordance with the core purpose of reply submissions, AWA properly and correctly submitted these appendices in reply to issues newly raised in Suncor's response.

AWA also submitted these appendices to address Suncor's assertion that AWA did not submit any compelling, significant or extraordinary information. This issue was raised for the first time in Suncor's response. AWA did not raise this issue in our initial submissions. AWA instead only raised the central issue of whether the new information in AWA's report could lead the Regulator to come to a different conclusion if considered upon reconsideration, namely if the information could lead the Regulator to conclude that the Operational Plan would not meet its regulatory requirements. As such, in accordance with the core purpose of reply submissions, AWA properly and correctly submitted these appendices in reply to a new issue raised by Suncor's response.

The purpose of reply submissions are to enable the initiating party to address new issues raised by the responding party including by providing relevant reply evidence, as a matter of procedural fairness. Suncor's letter fails to acknowledge this core purpose of reply submissions, and instead makes reference to inapplicable rules. It is corrosive to this purpose of procedural fairness for Suncor to raise new issues in its response submissions and then claim that AWA's proper and correct use of the opportunity to provide reply submissions to address those new issues should be barred as an "unfair surprise".

**Suncor will have opportunity to test any new information if the Regulator decides to initiate a reconsideration hearing**

Suncor's assertion that AWA's reply submissions deny Suncor the opportunity to test the evidence on the record is premature and unfounded.

These proceedings are in Phase 1 as outlined in the Regulator's procedural letter dated April 18, 2023, in which the Regulator will determine whether to proceed with a reconsideration. As the Regulator notes, "[i]f the AER decides to exercise this discretion, the second phase of the process will involve submissions from each party on the authorization of the MLWC Operational Plan and whether it should be confirmed, varied, suspended or revoked (Phase 2)."

If the Regulator decides to proceed to Phase 2 of the reconsideration process, Suncor will have ample opportunity to test the evidence on the record, including any new information AWA has submitted thus far. Suncor has not lost an opportunity; Suncor has spent its opportunity to raise new issues in its response regarding the issue to be addressed at Phase 1, and Suncor will have a further opportunity to test the evidence (including any new information which AWA submitted in reply to the new issues raised by Suncor) in its submissions in Phase 2, should the Regulator determine to proceed with Phase 2.

### **Conclusions**

AWA included the appendices to its reply submissions to specifically address new issues raised in Suncor's response submissions. AWA's submissions were thus properly within the domain of reply as a matter of procedural fairness. Moreover, Suncor is not without opportunity to test the evidence in AWA's reply submissions during Phase 2 of these proceedings. The Regulator should consider AWA's reply submissions in full in making its determination of whether to proceed with a reconsideration, and Suncor does not need a further opportunity to test the evidence in AWA's reply submissions prior to Phase 2 of these proceedings.

Contrary to Suncor's assertion that AWA has somehow denied Suncor an opportunity, Suncor had plenty of opportunity to raise and argue new issues, and Suncor spent that opportunity. Suncor knew full well that AWA then had the subsequent opportunity to provide reply submissions regarding those new issues which Suncor raised. For Suncor to then claim that AWA should be denied the opportunity to provide its reply submissions is disingenuous and offensive to the fairness of these proceedings, especially given that Suncor will have ample opportunity to test the evidence in Phase 2. The Regulator should therefore dismiss Suncor's request regarding AWA's reply submissions.

Sincerely,  
ALBERTA WILDERNESS ASSOCIATION



Phillip Meintzer  
Conservation Specialist

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