

Proceeding ID 372

December 17, 2018

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By e-mail only

McCarthy Tétrault LLP
Attention: Kimberly J. Howard

Dear Ms. Howard:

**Request to Participate by Suncor Energy Inc. (Suncor)
Gibson Energy Inc. (Gibson)
EPEA Approval Amendments Nos.: 00246980-00-03 and 00010801-02-02
Regulatory Appeal No. 1912412 (Regulatory Appeal)
Proceeding ID 372**

On November 20, 2018, the Alberta Energy Regulator (AER) issued a notice of hearing setting out the process for filing a request to participate in the hearing of Gibson's Regulatory Appeal of the *Environmental Protection and Enhancement Act (EPEA)* approval amendments noted above. I am writing to communicate the panel's decision regarding a request to participate filed on November 30, 2018 by Suncor. In reaching its decision, the panel also considered response submissions filed by the AER's Authorizations Group (AER Authorizations) and Gibson on December 11 and 12, 2018, respectively.

The panel is guided by the *Alberta Energy Regulator Rules of Practice* (the *Rules of Practice*), which give the hearing panel discretion to grant participation status to persons who may be directly and adversely affected by the decision of the AER on a Regulatory Appeal.

Suncor's Request

In its November 30, 2018 request to participate, Suncor asked to participate in the Regulatory Appeal as a co-appellant with full participatory rights. In the alternative, Suncor requested the right to participate in the Regulatory Appeal as an intervenor with full participatory rights.

Suncor submitted that it is directly and adversely affected by both *EPEA* Approval Amendment No. 00246980-00-03 and the Regulatory Appeal as it holds an interest in the Hardisty West Bulk Petroleum Storage and Transfer Facility (Hardisty West Facility) and a portion of SE-30-042-09W4M on which the Hardisty West Facility is located pursuant to a joint venture agreement. The Hardisty West Facility is the subject of *EPEA* Approval Amendment No. 00246980-00-03.

In addition, Suncor submitted that 'Suncor's interests materially diverge' from Gibson's in that Suncor's interests relate only to that portion of Gibson's Regulatory Appeal that concerns: (i) *EPEA* Approval Amendment No. 00246980-00-03 and its application to the Hardisty West

Facility and the lands on which it is located; and (ii) Gibson's regulatory appeal of the AER's decision to issue an environmental protection order naming Gibson and Husky Oil Operations Limited and its application to the Hardisty West Facility and the lands on which it is located.

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Gibson's Response

Gibson supported Suncor's request to participate in the hearing as Suncor is a joint venture owner with Gibson in the Hardisty West Facility, which is the subject of *EPEA* Approval No. 246980-00-03. Gibson submitted that on this basis, Suncor will be directly and adversely affected by a decision of the AER on the Regulatory Appeal.

Authorization's Response

AER Authorizations did not take a position on whether Suncor should be granted participation status in the Regulatory Appeal. However, AER Authorizations submitted that, should the hearing panel decide to grant participation status to Suncor, Suncor's participation should be limited to the ability to make oral argument. The reasons outlined for limiting Suncor's scope of participation are as follows: to prevent duplication of evidence and argument; as operator of the Hardisty West Facility, Gibson, not Suncor, has the best data and is in the best position to provide relevant evidence; Suncor has not demonstrated that its participation will materially assist the panel; and Suncor's participation may unnecessarily lengthen the hearing.

The Hearing Panel's Decision

The hearing panel accepts that Suncor may be directly and adversely affected by a decision of the AER in this Regulatory Appeal by virtue of its unique interest in relation to this matter. In particular, Suncor holds an interest in the Hardisty West Facility and the lands on which it is located pursuant to a joint venture agreement.

Subject to further direction or rulings by the panel, Suncor is granted full participation rights, as an intervenor, in the hearing on limited matters. In particular, Suncor's evidence and argument must be limited to addressing its interest as a joint venture participant in the Hardisty West Facility as it relates to the Regulatory Appeal. Furthermore, Suncor must not duplicate Gibson's evidence and argument or unnecessarily delay the Regulatory Appeal.

The panel also notes Suncor's request to participate as a co-appellant in this Regulatory Appeal. The *Rules of Practice* do not allow a participant to be a "co-appellant". To be an appellant of an AER decision, a person must file a request for regulatory appeal in accordance with the *Rules of Practice*. Suncor has not done that in this case and is therefore not entitled to participate in the Regulatory Appeal as a co-appellant.

Yours truly,

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Tammy Turner
Hearing Coordinator, Hearing Services

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