



Syncrude Canada Ltd.

Application for an Order Permitting the Sharing of Records
Not Available to the Public Between Syncrude Canada Ltd.
and Suncor Energy (Syncrude) Operating Inc.

August 11, 2021

Alberta Utilities Commission

Decision 26584-D01-2021

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Not Available to the Public Between Syncrude Canada Ltd.
and Suncor Energy (Syncrude) Operating Inc.

Proceeding 26584

Application 26584-A001

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1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether to approve an application brought under Section 3 of the *Fair, Efficient and Open Competition Regulation*, by Syncrude Canada Ltd. (Syncrude), for the preferential sharing of records that are not available to the public between Syncrude, and Suncor Energy (Syncrude) Operating Inc. (Suncor), an affiliate company wholly owned by Suncor Energy Inc.

2. As discussed in greater detail below, Syncrude established that the sharing of such records is reasonably necessary for it to carry out its business and that the shared records will not be used for any purpose that will not support the fair, efficient and openly competitive operation of the electricity market. On this basis, and noting the support of the Market Surveillance Administrator (MSA), the Commission has granted the application to permit the sharing of records pertaining to the electricity market under Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation*.

2 Introduction and procedural background

3. On June 7, 2021, Syncrude filed an application¹ with the AUC pursuant to Section 3 of the *Fair, Efficient and Open Competition Regulation*, AR 159/2009. The application sought an order from the Commission permitting the sharing of records not available to the public between Syncrude and Suncor, relating to the Syncrude Project, which consists of 10 oil sands leases and two major production facilities, located north of Fort McMurray, in the Regional Municipality of Wood Buffalo. This includes the dispatch of the Syncrude generation portfolio, which operates under the Alberta Electric System Operator (AESO) asset ID SCL1, and has an aggregate maximum capability rating of 510 megawatts.

4. The Syncrude Project, currently operated and administered by Syncrude, is a joint venture among four owners: Imperial Oil Resources Limited, CNOOC Oil Sands Canada, Sinopec Oil Sands Partnership, and Suncor Energy Inc. (collectively the owners).

5. Disposition 25054-D01-2020 previously determined that the operational information shared between Syncrude and the owners was not subject to the *Fair, Efficient and Open Competition Regulation*.

¹ Application 26584-A001.

6. However, a new Joint Venture Operating Agreement, effective as of September 30, 2021, will designate Suncor as the new operator of the Syncrude Project. Suncor will appoint Suncor Energy Marketing Inc. (SEMI), a wholly owned subsidiary of Suncor Energy Inc., to act as its agent in managing certain services for the Syncrude Project, including the use, sale and settlement of power in the Alberta power pool. This will necessitate that Syncrude and Suncor share information that is not available to the public.

7. The Commission issued notice of the application on June 16, 2021. In the notice, the Commission advised that the parties granted standing in the proceeding were limited to Syncrude and the MSA, in accordance with Subsection 3(5) of the *Fair, Efficient and Open Competition Regulation*.

8. On June 29, 2021, the MSA advised the Commission that it required further information to render its judgement on the application. It included an information request directed to Syncrude, which the Commission confirmed in a process letter dated July 8, 2021.

9. Syncrude responded to the information request on July 15, 2021. On July 19, 2021, the MSA advised the Commission that it had no further questions, that it supports the application of Syncrude and that it does not require further evidentiary process.

10. The Commission considers the record for this proceeding closed as of July 19, 2021.

11. In reaching the determinations contained within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

3 The Commission's authority to allow record sharing

12. Subsection 3(1) of the *Fair, Efficient and Open Competition Regulation* establishes that an electricity market participant shall not share records that are not available to the public relating to any past, current or future price and quantity offer made to the power pool or for the provision of ancillary services. Subsection 3(2) establishes instances where records that are not available to the public may be shared. Subsection 3(3) allows the Commission to issue an order permitting the sharing of records, stating:

(3) The Commission may, on application by a market participant that is otherwise prohibited from sharing records referred to under subsection (1), issue an order permitting the sharing of those records on any terms and conditions the Commission considers appropriate where the market participant establishes that

- (a) the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market, including the conduct referred to in section 2, and

- (b) the sharing of the records is reasonably necessary for the market participant to carry out its business.

13. Another factor that the Commission considers in making a determination on the sharing of records is market share offer control. Subsection 5(5) of the *Fair, Efficient and Open Competition Regulation* states that a market participant shall not hold offer control in excess of 30 per cent of the total maximum capability of generating units in Alberta.

14. The Commission is also cognizant of the requirement in Section 6 of the *Electric Utilities Act* that “[m]arket participants are to conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.”

4 Submissions of the applicant

4.1 Is the proposed sharing of records reasonably necessary

15. In its application and information response, Syncrude identified that Suncor will appoint SEMI to act as its agent for the dispatching and market requirements related to the Syncrude Project. SEMI operates a real time dispatch desk, which will allow it to perform all dispatching duties on behalf of Syncrude, including for the Syncrude generation portfolio. This will necessitate real-time or near real-time exchange of information between Syncrude and SEMI.

16. SEMI will also conduct offer (price and quantity pair) submissions on behalf of the Syncrude Project to the AESO, and will likely have discretion over offer behavior.

17. For these reasons, Syncrude asserted that the sharing of non-public records relating to the Syncrude Project with Suncor is reasonably necessary in order for it to carry out its business regarding the Syncrude Project. Written representations from senior officers of Syncrude and Suncor, attesting to the necessity for the sharing of records, were filed with the application.

4.2 Fair, efficient and openly competitive operation of the electricity market

18. As part of its application, Syncrude filed a written representation from a senior officer of Syncrude indicating that the records subject to preferential information sharing will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*.

19. The aforementioned written representation also identified that Syncrude has a code of conduct in place to safeguard confidential and commercially sensitive information and access to such information, including non-public price and quantity offer information and the confidential information of companies with which Syncrude does business.

20. A written representation from a senior officer of Suncor was filed with the application, which confirmed that the records shared with Suncor will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*.

21. The senior officer of Suncor confirmed that Suncor has a formal compliance plan and program in place to safeguard confidential and commercially sensitive information and access to such information, including non-public price and quantity offer information and the confidential information of companies with which Suncor does business.

4.3 Offer control

22. Syncrude advised that, after the execution of the new Joint Venture Operating Agreement, Syncrude's total offer control will be zero per cent and that Suncor Energy Inc.'s total offer control will be 10.5 per cent, both of which are less than the offer-control limit of 30 per cent, as set out in Subsection 5(5) of the *Fair, Efficient and Open Competition Regulation*.

5 Commission findings

23. Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation* authorizes the Commission to issue an order permitting the sharing of records on any terms and conditions that the Commission considers appropriate, provided that certain requirements are satisfied. For the reasons that follow, the Commission finds that those requirements have been met.

24. The Commission is satisfied that Syncrude has demonstrated that (i) the sharing of records is reasonably necessary for Syncrude to carry out its business; and (ii) the subject records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The Commission is further satisfied that Syncrude and Suncor will conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market. In making these findings, the Commission has relied on:

- (a) Written representations from senior officers of Syncrude and Suncor confirming that the sharing of records is necessary for Syncrude and Suncor to carry out their business regarding the Syncrude Project.
- (b) Written representations from senior officers of Syncrude and Suncor confirming that any records subject to preferential information sharing will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market and that they will conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.

- (c) A written representation from Syncrude confirming that it has a formal system of controls and policies that ensure the information shared with Suncor will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The Commission understands that all officers and employees of Syncrude are required to comply with these policies.
- (d) A written representation from Suncor that it has a formal system of controls and policies that ensure the information shared with Suncor will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The Commission understands that all officers and employees of Suncor are required to comply with these policies.

25. The Commission also finds that offer-control figures for all entities involved (both before and after any approval to share records) are less than the offer-control limit of 30 per cent, as set out in Subsection 5(5) of the *Fair, Efficient and Open Competition Regulation*.

26. Finally, the Commission considers the MSA's support of this application to be a contributing factor in its determination to permit the sharing of records, given the MSA's mandate under Subsection 39(2)(a)(vi) of the *Alberta Utilities Commission Act*, to survey, investigate or enforce the "arrangements, information sharing and decisions relating to electricity market participants exchanging or wishing to exchange electric energy and ancillary services or any aspect of those activities."

27. For all of the above reasons, the Commission is prepared to issue an order allowing Syncrude to share records not available to the public with Suncor, subject to the following terms and conditions:

- (a) The order applies to the sharing of non-public price, quantity and availability information, between Syncrude and Suncor, pertaining to the Syncrude Project, that may relate to the Syncrude Project's participation in the Alberta electricity market, as described in the application.
- (b) Syncrude and Suncor must notify the Commission of the termination of the commercial arrangements between Syncrude and Suncor as soon as is practicable and within 30 days of the termination of such commercial arrangements;
- (c) Syncrude and Suncor must notify the Commission of any material changes to the information and continued applicability of any representations included within its application that may affect the compliance of Syncrude and Suncor with the *Fair, Efficient and Open Competition Regulation* as soon as is practicable and within 30 days of the material changes.

28. The order shall be effective from the date of this decision until the earlier of June 1, 2029, or the termination of commercial arrangements between Syncrude and Suncor.

6 Order

29. Pursuant to the provisions of Section 3 of the *Fair, Efficient and Open Competition Regulation*, the Commission approves the application for the sharing of records set out in the following order granted to Syncrude Canada Ltd. and Suncor Energy (Syncrude) Operating Inc., which is a separate disposition in this proceeding:

- (1) Preferential Sharing of Records – Syncrude Project – Order 26584-D02-2021 – August 11, 2021.

Dated on August 11, 2021.

Alberta Utilities Commission

(original signed by)

Cairns Price
Commission Member