LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Fort Hills Energy Corp. v Provincial Assessor, 2022 ABLPRT 1333

Date: 2022-10-04
File No. DIP19/FORT/WILS-01; DIP20/FORT/WILS-01; DIP21/FORT/WILS-01
Decision No. LPRT2022/MG1333

The Municipal Government Board ("MGB") is continued under the name Land and Property Rights Tribunal ("Tribunal"), and any reference to Municipal Government Board or Board is a reference to the Tribunal.

In the matter of 2019/2020/2021 Designated Industrial Property Assessment Complaints filed by Wilson Laycraft on behalf of Fort Hills Energy Corp.

BETWEEN:

Fort Hills Energy Corp.
(as represented by Wilson Laycraft)

Complainant,

-and-

The Provincial Assessor
(as represented by Brownlee LLP)

Respondent,

- and -

The Regional Municipality of Wood Buffalo
(as represented by Harper Lee Law)

Intervenor.

BEFORE: I. Zacharopoulos, Presiding Officer
D. Mullen
D. Roberts
(the "Panel")

Attending: D. Graham, Case Manager

APPEARANCES AND WRITTEN SUBMISSIONS

For the Complainant:	G. Ludwig, Counsel, Wilson Laycraft LLP
For the Respondent:	A. Kosak and G. Plester, Counsel, Brownlee LLP
For the Intervenor:	A.P. Frank and H.L. Overli, Counsel, Harper

INTRODUCTION

On June 21, 2022, the LPRT held a virtual preliminary hearing to consider procedural issues, including

1. the role of the Presiding Officer,
2. clarification of an issue of reference,
3. the role of the Intervenor, and
4. confidentiality protocols

Rulings on these matters were issued in LPRT Decision No. LPRT2022/MG0912, with reasons to follow. This order provides a description of these issues and provides reasons for the rulings previously issued.

In addition, this order addresses a request from the Respondent to extend the disclosure deadlines and postpone the merit hearing. The request was submitted June 16, 2022, and the requirements for written submissions were set out in LPRT Decision No. LPRT2022/MG0912.

PART I – LPRT 2022/MG0912 RULINGS and REASONS

1. Presiding Officer

Ruling

[1] By consent of all Participants, it was confirmed that Mr. Zacharopoulos shall remain in the role of Presiding Officer and member of the Panel for this matter.

Discussion and Reasons

[2] Rule 8.3 of the LPRT Designated Industrial Property and Equalized Assessment Complaint Procedure Rules ("LPRT Rules") requires that:

> 8.3 A Tribunal member who has acted as a case manager in respect of a matter will not participate in any subsequent hearing concerning the same matter unless all affected participants consent.

[3] In this case, Mr. Zacharopoulos has participated in a Case Management meeting on the subject matter in the past. However, all Participants consented to him remaining in the role Presiding Officer and member of the Panel for this matter.

2. Clarification of Reference to "Parties" in Decision LPRT2022-MG0583

Ruling

[4] The reference to the Complainant, Respondent, and Intervenor in the April 29, 2022 Decision (***Fort Hills Energy Corp. v Provincial Assessor, LPRT2022-MG0583***) should correctly be the "Participants" and a revised decision will be issued.

Discussion and Reasons

[5] The collective reference in ***LPRT2022-MG0583*** to the Complainant, Respondent, and Intervenor as the "Parties" did not reflect the fact that the Intervenor has a different status before the Tribunal than the Complainant and Respondent. The term "Participants" is a more apt description, since it applies to any person with a right to participate in the proceedings

[6] The matter of clarification was to ensure that references to the Complainant, Respondent, and Intervenor are referred to as "Participants." This was a clerical clarification. The Participants did not raise any concerns about the clarification.

3. Role of the Intervenor

Ruling

[7] Further to the Intervenor's submission at the Preliminary Hearing, the role of the Intervenor will be as follows:

1) Counsel for the Intervenor is permitted to submit briefs (oral, written or both) on Preliminary Matters subject to any form and timelines agreed to or imposed by the Panel;
2) Counsel for the Intervenor is permitted to submit the Intervenor's written brief;
3) Counsel for the Intervenor is permitted to provide an opening argument (oral, written or both) on behalf of the Regional Municipality of Wood Buffalo;
4) Counsel for the Intervenor is permitted to put any questions it may have arising from the testimony of the Complainant through counsel for the Respondent and will not cross-examine witnesses separately. The Respondent may decline to put forward any of the Intervenor's questions it deems inappropriate; and
5) Counsel for the Intervenor is permitted to make a closing argument (oral, written or both) on behalf of the Regional Municipality of Wood Buffalo.

Positions of the Participants

The Regional Municipality of Wood Buffalo, Intervenor ("RMWB")

[8] The original submission by RMWB was that its role in these hearings should be as a full party based on:

1) the connection and effect of this matter to the RMWB;
2) RMWB's capacity to provide expertise and perspective to the Land and Property Rights Tribunal; and
3) procedural fairness.

[9] However, during the hearing, RMWB altered its request from full party status to align with the role of an Intervenor which a prior Panel agreed to in ***Canadian Natural Resources Limited v Provincial Assessor, 2021 ABLPRT 623 ("CNRL").*** In ***CNRL*** the Panel determined that Intervenor status would be granted to two municipalities. The Board Decision stated:

> [4] The Parties agreed that the Intervenor would not be filing briefs with respect to the preliminary matters. The Parties, and the Intervenor, agreed that Counsel for the Intervenor would make an opening statement and closing argument on behalf of the Municipal District of Opportunity No. 17 and Northern Sunrise County (the Municipalities). In addition, Counsel for the Intervenor will put any cross-examination questions through Counsel for the Respondent and will not cross-examine witnesses separately. A copy of a letter from Counsel for the Municipalities is referenced as Exhibit I42.

[10] Regarding s.508, RMWB Counsel confirmed that they will have council approval to act as Intervenor prior to the merit hearing. RMWB does not agree municipal council must identify the issues surrounding the complaint; rather, its role is simply to authorize RMWB's role in the proceedings. It was also RMWB Counsel's opinion that the Intervenor role agreed to by RMWB (like that granted to the Intervenors in ***CNRL***), should not be a precedent, or binding on any future complaints.

Complainant

[11] Regarding s. 508(1) which allows a Municipal council to authorize participation as a Complainant or an Intervenor, the Complainant suggested participation as a complainant would be a better path to full party status. However, RMWB did not file an appeal of the assessment within 60 days from the date of the assessment; therefore, it is barred from seeking complainant status and must seek intervenor status instead.

[12] The Complainant agreed RMWB should be granted status as an Intervenor; however, that status should be to watch, to be well informed and to file a brief at the end of the hearing. This would permit RMWB to "stay in its lane" and to avoid duplication or interference with the role of the Provincial Assessor, as well as increased time and hearing costs.

[13] In this regard, the Complainant was agreeable to RMWB being granted Intervenor status on a similar basis granted to the Intervenors in **CNRL**.

Respondent

[14] The Respondent took no position in the role of the Intervenor.

Discussion and Reasons

[15] The Intervenor requested the Panel indicate its decision should not be construed as establishing precedent and is without prejudice to other hearings. The Panel declines to do so. Each application is considered on the facts before it, and while previous Board decisions do not bind subsequent panels, they can be instructive.

[16] The LPRT observes RMWB had the ability to file an appeal of the assessment to gain full party status – however, that opportunity is no longer available to the RMWB given that complaints must be filed within 60 days of the Notice of Assessment being issued.

[17] There are no legislated provisions with respect to time to file as an Intervenor. Aside from the LPRT Rules, the only applicable provision for a municipality to obtain that status is resolution by municipal council pursuant to s. 508(1) of the *Act*. Counsel for RMWB assured the Panel that they will have council approval prior to the merit hearing. The Panel adopts a similar rationale to that explained by the Board para [5] of ***Whitecourt Power Inc. and Canadian Hydro Developers v. Designated Linear Assessor for the Province of Alberta*** (***DL038/09***) ("***Whitecourt***") which states:

> A representative from the City of Grande Prairie (the "City") attended the hearing as an interested party. He was advised by the Board that should the City wish to become an intervenor and actively participate in this complaint, s. 508 of the Act requires that a resolution of the city council be filed authorizing that status. The representative from the City indicated that official intervenor status was not being pursued at this time and that it wished to be kept informed of the proceedings and final outcome of the complaint.

[18] The LPRT Designated Industrial Property and Equalized Assessment Complaint Procedure Rules ("LPRT Rules") allow the panel to determine the role of an intervenor in its proceedings:

> 9(e) (A panel may) Determine whether a person may participate in a proceeding and the extent of that participation

[19] The Intervenor provided a brief concerning the role of the Intervenor, as well as a letter outlining its position on confidentiality protocols (also see reasons below). In prior preliminary hearings, the Intervenor has been granted the ability to submit briefs (oral, written or both) in response to Preliminary matters. The Intervenor was also permitted to file a written brief in response to the Complainant's and Respondent's disclosure/briefs. The Panel finds a similar level of participation to be reasonable.

[20] The Panel finds the decision from ***CNRL*** very instructive in determining the role of Intervenor. In CNRL, the Panel found that the Intervenor, at the merit hearing, could provide an opening statement and observe the proceedings. If any questions arose from the Intervenor, those questions could be submitted to the Respondent for consideration. The ultimate decision on whether to ask the questions was left with the Respondent. Finally, the Intervenor was permitted to provide a closing brief (oral, written or both).

[21] The Panel finds that permitting the Intervenor to participate to the extent described provide is fair to all Participants and reflects the Intervenor's interest in the outcome of this complaint, given the potentially significant changes to the assessment affecting the tax role of RMWB.

4. Confidentiality Protocols

Ruling

[22] The Panel finds the protocols for the exchange of the Complainant's evidentiary documents will be as follows:

1) The Intervenor must provide to the Tribunal a resolution of Council pursuant to s.508 of the MGA, authorizing that status. The requirement of s.508 within the MGA is stated as follows:

> **Intervention by municipality**
>
> **508(1)** When the council of a municipality considers that the interests of the public in the municipality or in a major part of the municipality are sufficiently concerned, the council may authorize the municipality to become a complainant or intervenor in a hearing before the Tribunal.
>
> **508(2)** For the purposes of subsection (1), a council may take any steps, incur any expense and take any proceedings necessary to place the question in dispute before the Tribunal for a decision.

2) Upon receipt of the Intervenor's authorization, the Tribunal will inform the Participants. The Complainant is then to provide copies (electronically) to the Intervenor, of any non-confidential and redacted evidence that it has submitted to the Respondent. Further, it will submit any further non-confidential and redacted evidence to the Intervenor at the same time as it submits the disclosure to the Respondent. Pending the execution of a Confidentiality Agreement, there is no requirement currently to provide confidential, unredacted information.

3) If the Intervenor requires further details, or seeks additional confidential information, the Intervenor must execute a form of Confidentiality Agreement acceptable to the Complainant and the Intervenor. The agreement applies to all persons who may review the confidential information. A copy of any agreed upon form of Confidentiality Agreement is to be provided to the Tribunal for approval.

4) In the event the Complainant and Intervenor are unable to agree on the form of Confidentiality Agreement, either may refer the matter to the Tribunal for a ruling.

Position of the Participants

<u>Intervenor</u>

[23] The Intervenor's position was that it understands the need for confidentiality of documents. The concern of RMWB is with what is confidential in nature.

[24] The RMWB submitted the following:

> The Land and Property Rights Tribunal ("LPRT") has the power to deal with disclosure

and confidential information or sensitive materials pursuant to Part F – Orders for Further Disclosure or to Protect Confidential Information of the LPRT Designated Industrial Property and Equalized Assessment Complaint – Procedure Rules (dated October 30, 2021) ("LPRT Procedure Rules").

Pursuant to the LPRT Procedure Rules, there are three categories of materials and information that the LPRT is dealing with:

A) **Non-Confidential and Not Sensitive;**
B) **Confidential;** and
C) **Sensitive.**

For the purposes of the RMWB's position, it is best to approach this analysis based upon what each type of materials and information is and how they should apply to the Intervenor, the RMWB.

A) **Non-Confidential and Not Sensitive** – The RMWB requires full disclosure to materials, information and evidence that is non-confidential and not sensitive, without restriction.

This type of materials and information should include the assessments, the method and materials used to prepare the assessments, any revised or reduced assessments, the method and materials used to revise or reduce the assessments.

This material and information may be used by the RMWB as they see fit, including using this material, information and evidence to inform the Mayor, Council and Administration of the RMWB and for witnesses.

B) **Confidential** – The RMWB requires full disclosure to materials, information and evidence that is considered confidential.

Confidential materials and information should already be confidential and not otherwise available beyond the Complainant and Provincial Assessor. The confidential materials and information should be clearly marked as such and these confidential materials and information should be confined to, as per the preamble of the proposed June 1, 2022 Confidentiality Protocol:

Generally, the substance of the Confidential Information is relating to confidential cost matters, Suncor technology matters, and issues relating to the parties involved in the design and other errors which occurred during the construction of the project.

However, "confidential cost matters" is undefined and overly broad. It would be more appropriate to list the specific "confidential cost matters" that need to remain confidential.

Subject to more specificity to the "confidential costs matters", the proposed Undertaking could be signed by witnesses and contractors of the RMWB, but should not be required to be signed by lawyers and employees in the RMWB Legal Services Department.

C) **Sensitive** – The RMWB requires full disclosure to materials information and evidence that is considered sensitive.

Materials, information and evidence of a sensitive nature could arise during the preliminary and the merit hearings, which was not otherwise previously marked as confidential.

As materials and information of a sensitive nature arise during the hearings, an arrangement could be made between the Complainant, the Provincial Assessor and the Intervenor, that is satisfactory to the Panel or Tribunal, to deal with the sensitive material, information and evidence, without compromising the sensitive nature of the material, information and evidence. Such an arrangement aligns with section 13.3(e) of the LPRT Procedure Rules.

[25] Counsel argued in-house counsel and employees of the RMWB Legal Services Department need not sign the confidentiality agreement as they are bound by other professional standards. The concern was that if information was provided to the municipal council and a member of council disclosed that information, then there can be no liability to in-house council.

[26] Counsel similarly opined that there was no need for legal counsel for RMWB to sign confidentiality agreements – though he conceded fact and expert witnesses would be required to enter into confidentiality agreements.

Complainant

[27] The Complainant's position was that any person being provided confidential information, as determined by the Complainant, needs to enter into a Confidentiality Agreement. The Complainant advised that a Confidentiality Protocol has been agreed to by the Respondent and those who have received the confidential information have executed confidentiality agreements. There is no reason the Intervenor should not be subject to the same protocol.

[28] It was the Complainant's position that it would provide redacted information once the council authorization pursuant to s. 508(1) was received. To obtain un-redacted information, confidentiality agreements would be required.

[29] The Complainant also noted there are several types of confidentiality issues that could arise, including:

1) What went wrong and finger pointing at presumed wrong doers. The Complainant is sensitive to "fault."
2) Private costing issues especially regarding change orders which are confidential company documents, with potential liability issues concerning costing changes.
3) Developed technology is also confidential and led to delays and cost increases. There is not a lot of information redacted because the documents were never filed.

[30] The Complainant's position was that the request for no confidentiality agreements for lawyers and legal departments, as well as any others, is not reasonable.

Respondent

[31] The Respondent took no position on the confidentiality protocols.

Discussion and Reasons

[32] Prior to the June 21, 2022 preliminary hearing, the Participants agreed to timelines for submitting briefs for the June 21, *2022* hearing, concerning the role of the Intervenor and confidentiality protocols, which were as follows:

- Initial submissions – Tuesday June 7, 2022
- Rebuttal submissions – Tuesday, June 14, 2022

[33] The Panel accepts there will be a significant amount of information relevant to the complaint that must be disclosed to the hearing participants to ensure they can participate fairly, but that would be damaging to the Complainant's interests were it to be publicly disclosed – being financial, technological, or other sensitive information. It is reasonable for the Complainant to request safeguards to preserve a degree of confidentiality in relation to such matters. Accordingly, the Panel finds that a form of confidentiality agreement is required from all those persons who may be provided copies of the material. The LPRT sees no merit in the suggestion that Legal Counsel or municipal staff who receive copies of sensitive material should be exempt from requirements to sign confidentiality agreements or undertakings.

PART 2 – REQUEST FOR POSTPONEMENT

Decision

[34] The merit hearing is postponed until July 17, 2023 and will conclude not later than August 25, 2023. This timeframe allows for a six-week hearing, if necessary.

[35] The following disclosure deadlines for the merit hearing are imposed:

- Respondent's Disclosure: 6:00 pm Friday January 13, 2023
- Intervenor's Disclosure: 6:00 pm Friday February 24, 2023
- Complainant's Rebuttal: 6:00 pm Friday April 21, 2023

[36] Time shall also be set aside to hear preliminary matters from May 23, 2023 to May 26, 2023.

[37] The following disclosure deadlines for the preliminary hearing are imposed:

- Preliminary Matters: 6:00 pm Friday May 12, 2023
- Responses: 6:00 pm Wednesday May 17, 2023

Background

[38] In the preliminary hearing on June 21, 2022, the Participants discussed a written request from the Respondent, **submitted** to the Tribunal on June 16, 2022, to postpone and/or reschedule the hearing and disclosure dates set by agreement in a Preliminary hearing held February 22, 2022 (***Fort Hills Energy Corp. v Provincial Assessor, LPRT2022/MG0350)*** as follows (the "2022 schedule"):

- Merit Hearings: Monday, October 31 – Friday, November 18, 2022
- As needed: Wednesday, December 7 – Friday December 9, 2022
- If required: Monday, December 12 – Friday, December 16, 2022
- Complainant's Disclosure: Wednesday, May 25, 2022.
- Respondent's Disclosure: Thursday, August 18, 2022.
- Intervenor's Disclosure: Thursday, September 15, 2022.
- Rebuttal Disclosure (if any): Friday, October 7, 2022.

[39] At the June 21, 2022 preliminary hearing, the Participants agreed to timelines for submitting briefs regarding the request for a change to the 2022 schedule. The written briefs were to be submitted no later than:

- Respondent's Disclosure: 6:00 pm Friday, June 24, 2022
- Complainant's Disclosure: 6:00 pm Tuesday, June 28, 2022
- Intervenors Disclosure: 6:00 pm Thursday, June 30, 2022

[40] The Complainant and Respondent submitted written briefs in due course; the Intervenor confirmed it takes no position on the matter scheduled and did not submit a brief. After considering these submissions, the Panel was hopeful the participants could reach a mutually acceptable schedule, and referred to LPRT Rule 9.1(a) which states the Panel may:

> 9.1(a) Direct parties to pursue discussions on their own, with a case manager, or with another independent facilitator by specified dates, or direct parties to attempt mediation or any other form of alternative dispute resolution and to report progress by specified dates.

[41] The Panel gave direction through the Tribunal Administration on July 14, 2022 (Appendix A). The foregoing imposed a deadline for reaching consensus concerning the postponement request by July 28, 2022. Unfortunately, the Participants were unable to reach consensus by July 28, 2022; as a result, the Panel decided on revised merit hearing dates of July 17, 2023 to August 25, 2023.

[42] The Participants were advised of the new merit hearing dates by way of a letter from Tribunal Administration dated August 9, 2022 (Appendix B) and were directed to work with the Case Manager to establish a timeline for disclosure of information. In the event the Participants were unable to reach a consensus by August 18, 2022, the Panel would meet and establish the timelines.

[43] The Participants were unable to reach consensus by August 18, 2022. As a result, the Panel decided on the disclosure timelines listed in a letter given to the Participants on August 24, 2022 (Appendix C). The letter indicated that a written decision would be issued in due course.

Position of the Participants

Respondent

[44] The Respondent initially provided its position in a 3-page letter to the Panel dated June 16, 2022, requesting a preliminary hearing as soon as possible to consider a request to postpone the 2022 schedule.

[45] The Respondent followed with a 19-page written brief (Exhibit R-1), a 226-page legal authorities (Exhibit R-2), a 62-page report from M. Minard (Exhibit R-3), a 9-page witness report from Dr. E. Thompson (Exhibit R-4), a 4-page witness report from R. Saldarelli (Exhibit R-5), a 17-page rebuttal disclosure (Exhibit R-6) and an 8-page rebuttal report from M. Minard (Exhibit R-7).

[46] The Respondent requested the following:

> (1) An extension of the Provincial Assessor's disclosure deadline of August 18, 2022 (the "Disclosure Deadline") for at least eight months (i.e. April 18, 2023); and
>
> (2) The postponement of the Merit Hearing from October 31 – November 18, December 7–9 and December 12–16 (the "Merit Hearing Dates") to after July 14, 2023 or three months after the Provincial Assessor's disclosure, whichever is later.

[47] The Respondent submits that although the *Matters Relating to Assessment Complaints Regulation (MRAC)* s. 31 prohibits postponement of hearings except in "exceptional circumstances", this matter qualifies as exceptional circumstances. In addition, the Respondent requests the time allotted for the merit hearing be increased from the current proposed 23 days to provide adequate time to hear the issues raised by the Complainant and the Respondent's responses.

[48] The Respondent confirmed it received the Complainant's Disclosure document on May 25, 2022, which was the date agreed upon within the 2022 schedule. However, the Complainant's total disclosure is more than 4,800 pages in length, excluding multiple excel workbooks and a video, and the disclosure includes many hundreds of pages of detailed, technical analysis.

[49] The Respondent submits much of the disclosure was not previously disclosed, despite the Respondent asking for detailed information. The information contains many new arguments, and the Provincial Assessor and expert witnesses will not have sufficient time to complete their review if the disclosure deadline for the Respondent remains as August 18, 2022.

[50] The Respondent's position is that exceptional circumstances may include the following:

> i. The scheduled hearing date does not allow a party sufficient time to prepare for the hearing or pursue the necessary expertise in response **(*Edmonton (City) v Edmonton (Assessment Review Board)*,** 2010 ABQB 634 at para 44 [***Edmonton***].
>
> ii. A key witness or expert witnesses are not available to go ahead with a hearing *(**Edmonton*** at paras 43-44); or
>
> iii. The dates for a party's disclosure coincide with previously scheduled hearings in another matter *(**Edmonton*** at paras 33, 43-44); (***Alberta Power (2000) Ltd. v Designated Linear Assessor,*** MGB Decision No. DL 037/11 at 5); (***Home Hardware Stores Ltd. v City of Airdrie,*** Airdrie CARB Order 001-2021 at 2).

[51] In support of its position, the Respondent provided written reports/witness reports from M. Minard (Provincial Assessor's Office), Dr. E. Thompson (independent expert witness) and J. Saldarelli (independent expert witness). All three reports suggest that additional time will be required to review the Complainant's disclosure and to respond by way of reports.

[52] Mr. Minard's report (Exhibit R-3) and rebuttal report (Exhibit R-7) detail the extra work considered necessary to respond to the Complainant's disclosure. There is no estimated timeframe to complete the work. Mr. Minard's report notes that the Respondent has recently lost two (2) key employees who would normally work on this file. As well, normal functions in the Provincial Assessor's office must continue. The Respondent has dedicated resources to the file, including 3 internal accredited assessors, 2 internal engineers, and 1 internal accountant, as well as multiple contracted expert witnesses; however, additional time is required.

[53] Dr. Thompson's witness report (Exhibit R-4) also deals with the additional time required to provide a response to the Complainant disclosure. In his opinion, if a full-time team worked on the file, it could be completed in 6 to 8 months, and if a part-time team was used, it would require about one (1) year to conclude the work.

[54] Mr. Saldarelli's witness report (Exhibit R-5) contemplates the timeframe to review and provide a report. In his opinion a credible response would take approximately 6-8 months by a full-time team (5 very experienced individuals) and a part-time team would require 10-12 months.

[55] The Respondent argued that refusing a postponement would be unfair in these circumstances, since its expert witnesses will be unable to provide evidence in this matter. The Respondent's position is that fairness supersedes the public interest in avoiding delays; in support, it quoted Sara Blake, ***Administrative Law in Canada*****,** 7th ed. (Lexis-Nexis Canada Inc., 2022) at p. 90, which says "the most important is the requirement of a fair hearing." The Respondent also provided its opinion derived from ***Edmonton*** which recognized:

> …that municipal tax assessment decisions made by boards and tribunals often carry substantial economic consequences, and, as such, administrative decision-makers are tasked with ensuring the parties have a fair hearing. This includes ensuring the parties have been afforded "sufficient time to prepare". (**Edmonton** at para 40). The Court went on to conclude that an "exceptional circumstance" will include an instance where an adjournment is needed in order to prepare a response to expert reports. (**Edmonton** at para 43). One of the hallmarks of a full and fair hearing is the presence of all documentation relevant to the proceedings. Altus Group Ltd. v The City of Calgary, CARB Order 2036/2010-P at 4 (**Altus**). Parties to the proceedings must be allowed adequate time to pursue the necessary expertise to make their case. A failure to sufficiently ensure that a hearing process is procedurally fair can constitute a "miscarriage of justice". (**Edmonton** at para 44).

[56] The Respondent also cited a few similar cases pertaining to the principles of natural justice including ***Anterra Sunridge Power Centre Ltd. v Calgary (City)*****,** 2014 ABQB 223 at para 88 (***Anterra****),* ***Anterra*** at para 86, and ***Wal-mart Canada Corp. v Rocky View County***, 2021 ARB 006 at para 12 (***Wal-mart****)*,

[57] The Respondent also submits that all the principles of natural justice support its request for postponement, as a matter to allow the Respondent the ability to fully answer and defend its position. To do so, the Respondent requires adequate time to review the Complainant's disclosure, prepare witness reports, gather information, and formulate responses. The Respondent considers that Alberta administrative boards have confirmed that if there is more than a "mere possibility" that a party may not be prepared to put forth a complete case, or have their experts able to testify, then it would be unreasonable to refuse a requested adjournment **S*uncor Energy Inc. v Zee Investments Inc***., 2013 ABSRB 441 at 5.

[58] The Respondent acknowledges that timelines are in place to ensure timeliness of hearings; however, the timelines cannot be such that the Respondent is unable to prepare and respond to the evidence. The Respondent submitted the need for additional time is supported by the following:

> 18. In the Edmonton decision cited above, the Court dealt with the Assessment Review Board refusing to grant one of the parties an adjournment of the hearing following a particularly large disclosure of documents from the opposing party. Both the Court and the Assessment Review Board acknowledged the complexity of the proceedings in Edmonton when an adjournment was granted to the opposing party earlier on.
>
> 19. The board in Altus granted a postponement upon finding that the rebuttal disclosure of the Complainant, which was 233 pages in length, was "unusual" and required approximately one additional month of time for the Respondent to prepare1
>
> 20. The Complainant's disclosure in these proceedings exceeds the disclosure in Altus by almost twenty times, indicating the necessity of additional time to prepare.
>
> 21. Further, the Complainant's property, being the Fort Hills Oil Sands Facility, is the largest oil sands project ever in Alberta, both in terms of cost and size. The total capital cost of the project was over $14 billion, and the assessment reduction sought by the complainant makes this one of the largest assessment complaints in the Province's history. These proceedings raise unique, complex issues that necessitate extensive disclosure and thorough expert reports that will take months to prepare.

[59] The Respondent also cites that the Complainant's disclosure has identified new issues. As a result, additional clarification is required from the Complainant, which will require significant additional time to consider. The Respondent noted that the purpose of disclosure is so that the party knows the case being made against them. The Respondent submits that it does not have the information it needs.

[60] The Respondent summarized as follows:

> The Complainant has, through its disclosure, expanded the scope of issues raised in their original Complaint Forms. The scope of this issue has now been dramatically increased, with no advanced notice given to the Provincial Assessor prior to May 25, 2022. It is the Provincial Assessor's position that the drastic change in scope of the issues with respect to these proceedings qualifies as an exceptional circumstance that justify this request for an extension and postponement.

[61] The Respondent also testified it had made requests for information pursuant to s. 295; however, the requests were not responded to until the Complainant made its disclosure. The Respondent submits that it needs additional time to review and respond to the information it had previously requested that was not provided in a timely manner.

[62] The Respondent also submits that the Complainant has relied on several previous Composite Assessment Review Board ("CARB") decisions regarding a consistent approach to assessment. While legal counsel for the Respondent acted for RMWB on some of the hearings, they were not counsel for all hearings. Accordingly, they may not be able to access information from RMWB due to confidentiality issues. Additional time may be necessary to share information to allow a response to the Complainant's disclosure.

[63] The Respondent also noted that the Complainant was afforded a two-month delay to file its disclosure (***Fort Hills Energy Corp. v The Provincial Assessor***, 2022 ABLPRT 350).

[64] The Respondent also raised the possibility of bifurcating the hearing. The request was:

> (1) A bifurcation of the Merit Hearing, allowing the sole interpretative question of whether section 2.500 of the CCRG requires that "typical" or "normal" costs be calculated based on what is "normal" or "typical" within the Edmonton area as a baseline to proceed during the Merit Hearing Dates; and
>
> (2) An extension of the Provincial Assessor's Disclosure Deadline by two weeks, to September 1, 2022.

[65] The Respondent submits that if the bifurcation hearing proceeded, the duration of the merit hearing may be reduced. The Respondent advised the issue of "whether the CCRG requires an Edmonton adjustment is not an issue that would require all of the Provincial Assessor's external expert witnesses. As such, this approach would allow legal counsel and applicable witnesses to focus on specific issues raised in the Complainant's disclosure, while allowing additional time to review and consider the remaining disclosure to be responded to at a later date."

[66] The Respondent summarized its position as follows:

> 64. … the Provincial Assessor seeks:
>
> (1) An extension of the Disclosure Deadline by at least eight months (i.e. April 18, 2023); and
>
> (2) The postponement of the Merit Hearing from the Merit Hearing Dates to after July 14, 2023 or three months after the Provincial Assessor's disclosure, whichever is later.
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> 65. In the alternative, the Provincial Assessor seeks:
>
> (1) A bifurcation of the Merit Hearing, allowing the stand alone interpretative question of whether section 2.500 of the CCRG requires that "typical" or "normal" costs be calculated based on what is "normal" or "typical" within the Edmonton area as a baseline to proceed during the Merit Hearing Dates; and
>
> (2) An extension of the Provincial Assessor's Disclosure Deadline by two weeks, to September 1, 2022.

Complainant

[67] The Complainant provided a letter dated June 20, 2022 in response to the Respondent's initial request opposing the requested postponement. The Complainant followed with a 20-page written brief (Exhibit C-3) and a 17-page witness report from B. Matthews (Exhibit C-4).

[68] The Complainant noted that on the date of the original letter (June 16, 2022) there were two months to the Respondent's filing date. The Complainant also noted that the Respondent cited being short-staffed for resources to prepare what they propose as a full case. The Complainant opined that this does not meet the test for "exceptional circumstances". The Complainant's position is that it was the Respondent's own decision to not analyze the rendition reports provided to them at least since July 2021 and, in some cases, well before that. The Complainant further opined that the Respondent's application proposes a new analysis which has little relevance to the issues before the Panel.

[69] The Respondent submits that there are only two issues that remain to be resolved:

a. Edmonton Area (Productivity); and
b. Design Changes (Cost Escalations).

[70] Respecting the issue of productivity, the Complainant's position is the Provincial Assessor's decision to deny Edmonton based productivity claims is their own decision, which they should be well prepared to explain. The issue has been known to the Respondent for over three years. The Complainant's position is this is not an exceptional circumstance for the Respondent to suggest they do not have access to other assessments to consider in their preparation.

[71] With regard to the issue of cost escalation, the Complainant's position is that the Respondent has failed to respond to the majority of the documentation which it has had since July 2021. This does not create an exceptional circumstance. The Complainant submits that a six-month engineering analysis is not necessary. The Complainant opined that the solution is for the Respondent to provide clear direction on its position with respect to design changes for each of the Complainant's Project Areas. The Complainant submits that if clear direction were provided, neither party would need to review all of the Project Change Notice ("PCN") logs or change orders that detail the cost escalations on the Complainant's plant. The Respondent is proposing to delay its response, which could have been done months ago, when the Respondent knew it was in issue. Lastly, the Respondent has had a summary of the documents and the names of the company representatives for over a year and could have used that time to resolve the issues.

[72] The Complainant submits that an extended review by the Respondent and its expert witnesses could "run(s) the new risk of unnecessary diversions and statistical complications".

[73] In respect of the volume of the Complainant's disclosure, Mr. B. Matthews summarized in his report:

> 2. Of the 4,816 pages, in the 20 PDF documents provided to the PA on May 25, 2022 only 336 pages contained substantive submissions of the Complainant. Of the remaining 4,480 pages: 1,121 comprised of a list of authorities provided by Wilson Laycraft in support of their Legal Brief (42 pages); a further approximately 1,930 pages contain lists of Project Change Notices ("**PCNs**"), tables of contents related to PCNs, and the PCNs themselves; and five reports (the reports of Lubo Iliev outlined as reports eight through 12) contain the same materials in the calculation of abnormal labour costs for each project area and were previously provided to the PA on July 19, 2021 (188 pages). Six of

> the Excel workbooks provided include content related to each project area, and were previously provided to the PA. (emphasis by Mr. Matthews)

[74] The Complainant also considered the ***Edmonton*** decision and submits that case can be distinguished. It was a typical CARB hearing with regulated timelines, where the Respondent did not have sufficient time to deal with an appraisal it was not aware was being filed. This is distinguished with respect to this matter, as in this matter the documents were within the knowledge and possession of the Respondent for some time.

[75] The Complainant also submits that the Respondent calling the issues "novel" is a mischaracterization. Many of the documents relate to a change order review, which the Complainant opined rarely come before the Tribunal. The Complainant suggests the typical handling of change orders is for the Respondent to review the change orders, audit a portion and come up with a determination of what it accepts. The Complainant submits that if every change order is subject to audit, and an engineer requiring a six-month review, it would not allow any rendition to be complete and assessment prepared.

[76] The Complainant submits that procedural fairness does not require perfection in the filing of disclosure. The Complainant's position is that approximately three years after issuance of its assessment, the Respondent claims there is inadequate time to prepare its disclosure. The case for exceptional circumstances should not be confused with inconvenience.

[77] The Complainant opined that a request for adjournment must be balanced against the value of continuing with the hearing in a timely fashion, particularly where the administrative tribunal has a public interest mandate. For example, in ***Pomeroy*** **v** ***Law Society (British Columbia)***, 1998 Carswell BC 327, [1998] B.C.J. No. 347 (B.C.S.C.) the refusal to grant an adjournment was held not to have been made capriciously or arbitrarily and was accordingly held not to be a denial of procedural fairness. This was despite the Law Society having amended one allegation against the applicant Pomeroy less than a week before the hearing.

[78] The Complainant also argued that the Respondent's right to provide a full answer in defence is not an unlimited, unrestricted right to take as much time as the Respondent would like to hire experts to review every aspect of an assessment. A three-year period to prepare the Respondent's documents to defend the assessment, along with a 15-month timeframe to respond to the full rendition and its claims, as well as a three-month time to respond to the supplemental filing is a reasonable approach to the circumstances of this case and supports no change to the agreed to schedule for disclosure.

[79] The Complainant also raises an issue as to what may be required once the expert reports are concluded. Those reports may be 6-8 months out and the Complainant queries whether the Respondent would then suggest a further 6-8 months would be necessary to review the reports. The Complainant highlighted that the Respondent in the past has been able to review change orders and decide without the benefit of expert reports. In the Complainant's opinion, this issue is only 50 written pages and should be easily responded to by August 18, 2022. The Complainant opined that the "statistical analysis" proposed is unnecessary.

[80] The Complainant also testified that the Respondent's position that it needs "additional clarification and new information" is unknown to the Complainant. The Complainant submits that the request should be either in writing or should have formed a part of the request for postponement. If there is missing information or documents, it should have been addressed well in advance of the Respondent's filing requirement.

[81] The Complainant also argues that the issues have not changed. The Complainant's position is that the issues in the May 2022 disclosure filing are identical to the July 2019 filing. The Complainant submits "The only difference is that a number of the issues have been resolved in the interim and some quantities have changed. While there has been some shift among the categories as to the exact amount claimed, the methodology has been known to the Assessor well in advance of the filing."

[82] The Complainant also addressed the Respondent's claim concerning lack of response to the Respondent s. 295 requests for information. The Complainant submits that it has responded to all the requests for information, and the request in June 2022 with the postponement application has no detail as to what is being requested. The Respondent cites this as a reason for postponement but provides no clarity as to what is required. The Complainant's position is that "This is an unprecedented standard for mid-hearing disclosure and delay and has no basis in the statute or the requirements for the provision of information, or exceptional circumstances."

[83] The Complainant also argued that based on the scope of the engagement of Dr. Thompson, there are serious questions concerning his need to provide information. The Complainant acknowledges that the Respondent is at liberty to engage witnesses; however, in respect of Dr. Thompson, the Complainant submits they do not consider his testimony will be of benefit.

[84] The Complainant does not provide any comments on the scope of engagement of Mr. Saldarelli.

[85] In respect of the Complainant's reference to prior CARB decisions, the Complainant notes that the Respondent should be aware of assessments for oil sands properties in RMWB. The Respondent has attempted to re-litigate issues that were prior to the Provincial Assessor's involvement in preparing large facility assessments. The Complainant submits that at a meeting with the Complainant, RMWB and the Respondent, when the Respondent attempted to introduce an issue from 2018, they were asked to leave the room because of their attempt to re-introduce the litigation topic. Current counsel for the Respondent were counsel for RMWB in the 2018 matters, and the Complainant submits those are the only decisions that should be followed up. It is the Complainant's position that the Panel can provide its determination as to the weight of information based on the Participant's positions.

[86] The Complainant submits that the Participants engaged in discussions to establish a process for supplemental filing, reporting to the Tribunal, and an allowance for time for the parties to resolve outstanding issues. It was expected that process would be finalized by December 31, 2021. The Complainant testified that the target date was not met by the Respondent, albeit certain agreements were reached; however, final sign-off was not achieved. Accordingly, the Participants requested a short extension which was approved by the Tribunal, and the Tribunal indicated its desire for the Participants to proceed. The Complainant submits that it advised that unless there were efforts to resolve the change order claims, the filing would be significant and there would be additional time required for hearing if each one of them had to be reviewed at the Tribunal. This is the reason for the large volume of filing. The requirement to review each change order before the Tribunal is not being put forward by the Complainant and backup information was provided for reference only, which the Complainant submits is not uncommon.

[87] The Complainant also submits the Respondent's position is that it is overwhelmed with information, yet also suggests it wants hundreds of additional pages of documentation from the Complainant. The Complainant submits that it will work with fulfillment of any further requests.

[88] The Complainant provided its position on a potential bifurcation hearing and suggests it would only work if the Respondent:

> 60. "…commits to an undertaking to use best-efforts to simultaneously review and reduce the amount of issues outstanding with respect to design changes. The starting point would be a meaningful clarification of the Provincial Assessor's position on design changes, alternations [sic] and modifications so that the parties can work toward reducing the volume of evidence to be considered by the Tribunal. Extraneous comparative analysis from confidential rendition mining is not reducing issues.
>
> 61. Efforts would have to be pursued in good faith by both parties. Resources would have to be tapped to ensure the Provincial Assessor can address the productivity/Edmonton area issue and respond to the design changes claim in a meaningful manner at the same time, along with more reasonable data being suggested.

[89] The Complainant summarized its position as follows:

> 62. The Provincial Assessor must use best efforts to respond to the Complainant's arguments by the disclosure date. An 8-month adjournment on filing dates and an 11-month hearing date is unreasonable, excessive, and not supported by any of the arguments submitted by the Provincial Assessor. It is founded in the need for an unnecessary analysis of marginal relevance to the issues at hand. If such a report is needed by the Provincial Assessor, he can commission same for future years.
>
> 63. A bifurcated hearing would only make sense if the Assessor were committed to certain conditions:
>
> a. a meaningful 290 or 299 response on the 299 issue;
>
> b. an effort to use best efforts to resolve issues or reduce the number of issues around design changes for the various units, while at the same time preparing for the productivity Edmonton area issue; and
>
> c. alternative extension periods be proposed other than the 8-month and 11-month proposals put forward in the Provincial Assessor's brief.

Intervenor

[90] The Intervenor provided a letter dated June 30, 2022 (Exhibit I-3) summarizing its position, which was as follows:

> Despite the RMWB's position on the Complainant's (earlier) application respecting rescheduling the merit hearing, the RMWB supports the Provincial Assessor's submission that a postponement of the merit hearing is the appropriate thing to do under the circumstances.
>
> **Postponement Request**
>
> In particular, the following points support the postponement of the merit hearing until next year:
>
> 1. New issues have been raised. It is not uncommon for the Complainant, despite filing a Complaint Form, to raise new issues in their disclosure;
>
> 2. The volume of material disclosed by the Complainant was unexpected and not made available to the Provincial Assessor until the Complainant's deadline for the disclosure arose.

As for the non-confidential, redacted disclosure, which, according to the Complainant, represents 97% of the disclosure, and, notwithstanding the fact this portion of the disclosure is not confidential and is redacted, this disclosure has yet to be disclosed to the RMWB;

3. Procedural fairness warrants an extension of the disclosure deadlines for the Respondent, the Provincial Assessor, and the Intervenor, the RMWB.

Expeditious timelines should not happen at the expense of procedural fairness.

The tax assessments need to be fair and equitable.

The Complainant submitted their disclosure at a time and in a manner that is the cause for the request for a postponement by the Provincial Assessor. The Provincial Assessor and the Intervenor need time to analyze the materials and to respond; and

4. The Complainant's request for 2 prior reschedulings were (previously) granted, which requests were made prior to any disclosure being provided to the Provincial Assessor and which requests afforded the Complainant with more time to, amongst others, prepare its disclosure.

Bifurcation of the Merit Hearing

The RMWB opposes any bifurcation of the merit hearing for these cases. It is uncertain what issues would, or could, reasonably be separated and what aspects of disclosure and witnesses would need to be partitioned off to deal with the separated issues.

Bifurcation, as proposed by the Provincial Assessor, will lead to uncertainty, increased complexity, increased preparation expenses and if, for any reason, including the COVID pandemic or otherwise, LPRT panel members who heard the first part of the merit hearing became unable, months later to hearing the continued parts of the merit hearing, of which they should be seized, then this would result in a failure for the entire merit hearing.

Findings and Reasons

[91] The Panel found the issues of postponement and disclosure were intertwined and therefore its findings and reasons on the issues are combined as follows.

[92] The Respondent's request for a postponement of the merit hearing, as well as the schedule for disclosure timelines was provided to the Panel a short time prior to the preliminary hearing. It did not afford the Complainant and Intervenor time to properly consider the request. To provide additional time to file legal briefs, the Panel considered this decision should be postponed pending written briefs from all Participants.

[93] The Panel determined the written briefs should be provided according to the following schedule:

Respondent's Disclosure:	6:00 pm, Friday, June 24, 2022
Complainant's Disclosure:	6:00 pm, Tuesday, June 28, 2022
Intervenor's Disclosure:	6:00 pm, Thursday, June 30, 2022

[94] The Panel fully considered the written briefs, as well as the Participants' work with the Case Manager to establish a timeline for disclosure of information.

[95] The Panel finds the Respondent's position regarding procedural fairness requires significant weight be applied to it. The need for the Participants to have the necessary time to respond to the initial disclosure is reasonable.

[96] However, the Panel also finds that the Complainant is put into a position where it has disclosed its argument in chief, in good faith and on time as previously agreed to by the Participants within the 2022 schedule. The Respondent now requests an additional eight months to file its disclosure, to April 18, 2023. It further submits that the merit hearing should be postponed until three months after the Complainant's disclosure or July 14, 2023, whichever is later.

[97] The Panel finds the hearing proposed to commence July 14, 2023 is not achievable given the proposed date for the Respondent's disclosure on April 18, 2023, which would not allow the three-month period proposed. At best, if the Intervenor was permitted the 28 days agreed to in February 2022 and the Complainant was permitted slightly over three weeks as proposed, the earliest the merit hearing could proceed would be approximately August 8, 2023. This would postpone the hearing start from October 31, 2022 to August 8, 2023.

[98] The Panel finds it inequitable that the Respondent would be permitted eight additional months, in addition to the three months already agreed to (August 18, 2022), and that the Intervenor and the Complainant would be held to the same disclosure period agreed to earlier.

[99] The Respondent provided its rationale as being related to staffing issues, and the time requirements of the proposed expert witnesses. The Panel sympathizes with the Respondent concerning staffing issues; however, the Panel does not find that to be an extraordinary circumstance by itself. The Respondent may determine how to satisfy its operational requirements.

[100] In respect to the expert witness reports, both Mr. Saldarelli's and Dr. Thompson's reports submit that by applying increased resources, the reports could be accomplished in 6-8 months. Mr. Minard was silent on the timeframe necessary for his report. Based on the representations of Mr. Sandarelli and Dr. Thompson, a 6–8-month time frame was found to be acceptable by the Panel. In doing so, the time frame would start on May 23, 2022 and based on the representations, the Panel agrees to Respondent disclosure by January 13, 2023, which satisfies the eight-month timeframe.

[101] The Panel recognizes this is approximately three months short of the Respondent's request. However, the experts have submitted the timeframe and the Panel accepts their representations. The impediment identified by both experts was whether a full-time team or part-time team should be engaged. The Panel finds the timeframe it has chosen will allow the Respondent a fair opportunity to respond, while respecting the interests of other participants and the overall intent of the Act and MRAC to move matters along in a timely fashion.

[102] This should not come as a surprise to the Respondent, as the Panel has consistently advised the Participants in letters dated July 14, 2022 and August 8, 2022 that the Participants should work towards the current disclosure guidelines.

[103] The Panel also considered that procedural fairness should not flow one way. The Panel also considered that the Complainant has filed its disclosure on the timeline according to the 2022 schedule. It expected that the Respondent would file its disclosure by August 18, 2022 and the Intervenor would have until September 15, 2022 and it would file its rebuttal prior to October 7, 2022. The merit hearing would then proceed on October 31, 2022. There is a level of unfairness by increasing the Respondent's period to file its disclosure from three months to almost eight months. Accordingly, the Intervenor's time for response is increased from four weeks to six weeks, and the Complainant's time for rebuttal is increased from slightly over three weeks to eight weeks.

[104] In addition to the procedural fairness in terms of timeframes, the Complainant is also disadvantaged in that it filed its complaints within the time allotted and paid the property tax. The Panel is not privy to the level of property tax paid; however, the assessment for 2019 tax year (2018 assessment year) was $5,343,067,220 (requested assessment $4,067,884,300), 2020 tax year (2019 assessment year) was $5,375,060,440 (requested assessment $4,084,315,950) and 2021 tax year (2020 assessment year) was $5,392,282,540 (requested assessment $4,070,000,000). The dollars of assessment would indicate a high level of property tax being paid. The Complainant has potentially lost the use of considerable funds in the event their appeal is successful.

[105] In addition, the Complainant has a right to have its hearing heard in a timely manner. The 2019 tax year appeal was filed April 30, 2019, or more than three years ago,

GENERAL MATTERS

[106] The Parties were reminded on a few occasions that the Panel had not decided on the matter of rescheduling or postponement and advised the Participants to continue their diligence in keeping with the current schedule until such time as the Panel provides its decision.

Dated at the City of Chestermere in the Province of Alberta this 24th day of October, 2022.

LAND AND PROPERTY RIGHTS TRIBUNAL

(SGD) D. Roberts, Member

Appendix A

DOCUMENTS MARKED AS EXHIBITS BY THE BOARD

NO.		ITEM
1. C-1	97 pages	Complainant Disclosure – Intervenor and Confidentiality
2. C-2	71 pages	Complainant Rebuttal - Intervenor and Confidentiality
3. C-3	20 pages	Complainant Disclosure – Postponement
4. C-4	17 pages	Complainant – Affidavit of B. Matthews
5. I -1	71 pages	Intervenor's Disclosure – Intervenor Status
6. I-2	3 pages	Intervenor's Disclosure - Confidentiality
7. I-3	3 pages	Intervenor's Letter – Postponement
8. R-1	19 pages	Respondent – Postponement
9. R-2	226 pages	Respondent – Legal Authorities re: Postponement
10. R-3	62 pages	Respondent – Report of M. Minard – Postponement
11. R-4	9 pages	Respondent – E. Thompson – Witness Report – Postponement
12. R-5	4 pages	Respondent – J. Saldarelli – Witness Report – Postponement
13. R-6	17 pages	Respondent – Rebuttal – Postponement
14. R-7	8 pages	Respondent – Rebuttal – M. Minard - Postponement

Appendix B

LAND & PROPERTY RIGHTS TRIBUNAL

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Our Files: DIP19/FORT/WILS-01
DIP20/FORT/WILS-01
DIP21/FORT/WILS-01

July 14, 2022

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Re: 2019/2020/2021 Designated Industrial Property Assessment Complaints
MA ID: DIPAUID 10534014 – Fort Hills Energy Corp.

The Land and Property Rights Tribunal (LPRT) Panel has requested that the following request be sent to all Participants.

Further to Decision No. LPRT2022/MG0912, dated June 24, 2022, the Panel acknowledges receipt of submissions from the Respondent, the Complainant, and the Intervenor (the "Participants") regarding an application by the Respondent (the "Preliminary Matter") to amend the mutually agreed to disclosure schedule and merit hearing dates for the noted Designated Industrial Property Assessment Complaints (the "Complaints").

Under Rule 9.1(a) of the LPRT Designated Industrial Property and Equalized Assessment Complaint Procedure Rules, where the Panel decides it is appropriate, it may:

> *Direct parties to pursue discussions on their own, with a case manager, or with another independent facilitator by specified dates, or direct parties to attempt mediation or any other form of alternative dispute resolution and to report progress by specified dates.*

After careful review of the Participants' submissions, the Panel makes the following observations:

1. The Complaints were originally filed for the 2018 Assessment Year (2019 Tax Year), 2019 Assessment Year (2020 Tax Year) and the 2020 Assessment (2021 Tax Year).

2. After the filing of the complaints, it is evident to the Panel that there has been considerable discussion amongst the Participants. These discussions have led to a number of mutual agreements on scheduling and other matters, as well as recommendations to adjust the assessment which are to be submitted to the Panel for consideration at the merit hearing.

3. In February 2022 the Participants submitted a scheduled timeline for disclosure of documents, as well as the timing of the merit hearing. The dates, agreed to by the Parties, were adopted by the Panel in in Decision No. 2022ABLPRT350, dated February 25, 2022.

4. Based on 2022ABLPRT350, the Complainant's disclosure was due by May 25, 2022, and that deadline was met. The disclosure exceeds 4,800 pages.

5. 2022ABLPRT350 requires that the Respondent's disclosure be filed by August 18, 2022.

6. The Respondent submitted in June 2022 that the Complainant's disclosure is voluminous, raises new issues and contains substantial amounts of disclosure not previously provided to the Respondent. The Respondent's anticipated witnesses have advised the Respondent that they will be unable to review and provide their reports by the August 18, 2022 due date. Further to the advice from its anticipated witnesses, the Provincial Assessor opines that it will need eight months to perform its review. The Respondent's application requests that the filing of its disclosure be deferred to April 18, 2023. The Respondent has also requested that the merit hearing be postponed to the later of July 23, 2023 or three months after the filing of the Complainant's rebuttal. The Intervenor supports the Respondent's submission.

7. The Complainant's position is that while its disclosure is substantial, a significant portion of the material had previously been provided to the Respondent. In addition, the Complainant submits that the issues are not changed, but are the same issues disclosed in July 2019, albeit there may have been changes to the categorization of the amounts. The Complainant's position is that there should be no change to the disclosure schedule, or the dates allotted for the merit hearing, and that both should proceed as agreed to in February 2022.

8. The Complainant has already provided its disclosure. The Respondent now advocates for almost one year to review the Complainant's material. Further, the impact of property taxes due and paid in 2019, 2020 and 2021 tax years is substantial.

9. The Panel notes the Respondent's suggestion to bifurcate the merit hearing. That option may be impacted by the disclosure timelines and the Panel therefore focused on the disclosure consideration.

In considering the procedural fairness of the matter, the Panel is cognizant that it is in all parties' best interests to put forth their position, and to consider adequate timing for providing that disclosure. The Panel observes that the Participants' positions are diametrically opposed, and the Respondent's position will potentially extend the hearing by almost one year. The significant extension requested will delay the hearing of the assessments; the 2018 assessment (2019 tax year) would be five (5) years past the assessment year.

The Panel notes the demonstrated ability of the Participants to come forward with mutually agreed upon positions. On that basis, the Panel urges the Participants to engage in discussions and to bring forward a mutually acceptable disclosure timeline, including consideration of the Intervenor's submission and Complainant's rebuttal. The Panel interprets the Witness Reports submitted by the Complainant to indicate the scope of engagement of the witnesses impacts their anticipated time requirements. It is therefore reasonable that well defined scopes of engagement are helpful to a timely hearing of the Complaints.

The Panel will consider mutually agreed upon recommendations of the Participants as provided for in Rule 9.1(a). Further to the discussion above, and to allow for timely discussions while maintaining forward momentum, the Panel requests that the Participants advise the Tribunal of their efforts prior to 5:00 PM on Thursday, July 28, 2022. If a mutual agreement is made on the disclosure schedule, the Panel will then request the Participants to work with the Case Manager on the merit hearing schedule.

In the event the Participants are unable to come to agreement, the Panel will re-consider the submissions of the Participants and provide a decision. It is the Panel's preference that the Participants come to an agreement.

The Panel emphasizes that there has been no decision made on the Preliminary Matter before it. The Panel also wishes to emphasize the importance for the Participants to continue to work toward the current disclosure dates.

Please submit your responses as requested directly to the Case Manager at donna.m.graham@gov.ab.ca.

Sincerely,

VIA EMAIL

Donna Graham,
Case Manager
Designated Industrial Property Assessment Complaints

Appendix C

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Our Files: DIP19/FORT/WILS-01
DIP20/FORT/WILS-01
DIP21/FORT/WILS-01

August 9, 2022

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Re: 2019/20/21 Designated Industrial Property Assessment Complaints
MA ID.: DIPAUID 10534014 – Fort Hills Energy Corp

The Land and Property Rights Tribunal (LPRT) Panel has requested that the following directive be sent to all Participants.

Further to our letter dated July 14, 2022, we acknowledge receipt of the responses from the Respondent dated July 28, 2022 and the Complainant also dated July 28, 2022. The Intervenor did not provide its response. The Panel is disappointed that the Participants (the Respondent, the Complainant, and the Intervenor) were unable to come to a consensus on a mutually acceptable disclosure timeline, including consideration of the Intervenor's submission and Complainant's rebuttal.

The Panel had previously advised that it would reconsider the submissions of the Participants and provide a decision regarding the Respondent's application to postpone the merit hearing scheduled to commence on October 31, 2022, if a mutual agreement amongst the Participants was not provided.

After careful review of the Participant's submissions concerning the Respondent's request for postponement, the Board has determined the merit hearing will be postponed. The original merit hearing that was scheduled to commence on Monday, October 31, 2022, will now commence on Monday, July 17, 2023 at 9:00 am. The Panel has set aside six (6) weeks to conclude the hearing on August 25, 2023, if necessary.

Under Rule 9.1(a) of the LPRT Designated Industrial Property and Equalized Assessment Complaint Procedure Rules, where the Panel decides it is appropriate, it may:

9.1(a) Direct parties to pursue discussions on their own, with a case manager, or with another independent facilitator by specified dates, or direct parties to attempt mediation or any other form of alternative dispute resolution and to report progress by specified dates.

The Panel requests that the Participants engage in discussions with the Case Manager, to bring forward a mutually acceptable disclosure timeline, including consideration of the Intervenor's submission and Complainant's rebuttal. The timelines should be based on the commencement of the merit hearing on July 17, 2023 and should provide deference to expanding the Complainant's period for rebuttal in view of the extended disclosure time afforded to the Respondent.

The Panel will consider mutually agreed upon recommendations of the Participants as provided for in Rule 9.1(a); however, no further submissions are required in respect of the merit hearing date. To allow for timely discussions while maintaining forward momentum, the Panel requests that the Participants advise the Tribunal of the revised disclosure dates prior to 5:00 PM on Thursday, August 18, 2022.

In the event the Participants are unable to come to agreement with respect to the disclosure timeline, the Panel will provide a decision. It is the Panel's preference that the Participants come to an agreement on the disclosure timeline.

The Panel has decided on the Preliminary Matter before it to postpone the merit hearing scheduled to commence on October 31, 2022 to now commence on July 17, 2023. A formal decision with reasons will be provided once the disclosure dates are revised.

Further to the above directive, please contact me by email at donna.m.graham@gov.ab.ca as soon as possible, indicating your availability for a WebEx meeting on August 16, 2022 or August 22, 2022 to discuss the disclosure schedule for the Respondent's initial submissions, the Intervenor's submissions, and the Complainant's rebuttal.

Sincerely,

VIA EMAIL

Donna Graham,
Case Manager
Designated Industrial Property Assessment Complaints

Appendix D

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NOTICE OF HEARING - AMENDED

Our Files: DIP19/FORT/WILS-01
DIP20/FORT/WILS-01
DIP21/FORT/WILS-01

August 24, 2022

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Harper-Lee Overli
Harper Lee LLP,
For the Intervenor
300-4503 Brisebois Drive NW
Calgary AB T9H 2K4

Re: 2019/20/21 Designated Industrial Property Assessment Complaints
MA ID.: DIPAUID 10534014 – Fort Hills Energy Corp

The LPRT Panel has established the following amended schedule for the merit hearing, preliminary hearing and disclosure submissions regarding the above captioned complaints.

MERIT HEARING: **Monday, July 17, 2023 to Friday, August 25, 2023**
Time: 9:00 AM
Via WebEx

Submission deadlines for disclosure (merit hearing):

1. Complainant's Disclosure: Filed.
2. Respondent's Disclosure: Friday, January 13, 2023
3. Intervenor's Disclosure: Friday, February 24, 2023
4. Rebuttal Disclosure: Friday, April 21, 2023

PRELIMINARY HEARING: Tuesday, May 23, 2023 to Friday, May 26, 2023

Submission deadlines for disclosure (preliminary hearing):

1. All Parties' submissions: Friday, May 12, 2023
2. All Parties' responses: Wednesday, May 17, 2023

Please make submissions in accordance with the disclosure requirements set out in MRAC and the **LPRT Designated Industrial Property and Equalized Assessment Complaint Procedure Rules.**

All dates in the original schedule, as set out below, are hereby cancelled, with the exception of the Complainant's disclosure which was submitted as required by May 25, 2022.

Merit Hearing: Monday, October 31 - Friday, November 18, 2022
Wednesday, December 7 - Friday, December 9, 2022 (as needed)
Monday, December 12 - Friday, December 16, 2022 (if required)

Submission deadlines for disclosure:

1. Complainant's Disclosure: Wednesday, May 25, 2022 2.
2. Respondent's Disclosure: Thursday, August 18, 2022
3. Intervenor's Disclosure: Thursday, September 15, 2022
4. 4. Rebuttal Disclosure (if applicable): Friday, October 7, 2022

Preliminary hearing: Thursday August 25 – Friday August 26, 2022

This change to the schedule is in response to a request for postponement from the Respondent, dated June 16, 2022, and further submissions from the Parties. A written decision from the LPRT Panel is forthcoming.

If you have any questions or concerns in respect of these files, please do not hesitate to contact me.

Sincerely,

Donna Graham
Case Manager
Land and Property Rights Tribunal
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