

**PUBLIC
INQUIRY**
**ANTI-
ENERGY
CAMPAIGNS**

info@albertainquiry.ca
www.AlbertaInquiry.ca

June 18, 2021

CONFIDENTIAL

Greenpeace Canada
33 Cecil Street
Toronto, ON M5T 1N1

Dear Sir/Madam

Re: Public Inquiry into Anti-Alberta Energy Campaigns - Notice to Participant for Response

I am Commissioner of the Public Inquiry into Anti-Alberta Energy Campaigns (“**Inquiry**”). Through the work of the Inquiry, I have identified your organization (“**you**”) as being potentially involved in an anti-Alberta energy campaign(s) and accordingly am granting you standing as a Participant for Response.

This letter serves as your formal notice of potential findings that may be made in respect of you and of the evidence upon which those potential findings may be based. To assist you in understanding the process, I have enclosed a copy of the Rules of Procedure and Practice and Ruling on Interpretation of the Terms of Reference that apply to the Inquiry. Further information regarding the Inquiry may be found on the website <https://albertainquiry.ca>.

The potential findings, the related evidence and the material that will provide the context for considering a potential finding, will be made accessible in a secure dataroom platform (the “**Dataroom**”). Any potential finding is based on this available information and I will not make any finding in respect of you until I have had an opportunity to consider and analyze any submissions you make in this process.

As well, should I ultimately make a finding in respect of you, I will clearly declare that such a finding, if any, does not in any way suggest that the activities on which I might base a finding have been unlawful or dishonest, or that the conduct on which I might base a finding should in any way be impugned.

In accordance with Rule 22, you are entitled to make a written submission, not to exceed 15 pages without prior approval and file evidence, including by affidavit, which is also limited to no more than 15 pages. Submissions and evidence must be uploaded in the Dataroom no later than July 16, 2021.

I have determined that I will not require your written undertaking as to confidentiality pursuant to Rule 12 prior to granting access to the Dataroom and materials therein. However these materials, including in particular those materials generated by the Inquiry, are provided to you on the basis that they are confidential, are not to be disclosed and may only be used for the purposes of the Inquiry unless and until they become part of the public record. Release of the materials prior to their inclusion, if at all, in the Final report may result in prejudice or harm to parties who may not be subject to a finding in the Final report.

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The Dataroom will be available for access shortly. In order to gain access, please provide the email address(es) of the representatives of your organization for whom you wish to have access, to info@albertainquiry.ca.

The Dataroom will contain a folder to accommodate the uploading of any submissions that you wish me to consider. If you are unable to access the Dataroom or encounter any technical difficulties, please email the Inquiry at info@albertainquiry.ca.

Thank you very much for your participation in this process. I hope that it will enable me to meet my mandate to deliver a fair, balanced and comprehensive report to Albertans, by submitting it to the Minister of Energy on July 30, 2021, in accordance with my Terms of Reference. The Minister will thereafter make the Final report public in accordance with the timelines set out in the Terms of Reference.

Yours truly,



J. Stephens Allan

Commissioner, Public Inquiry into Anti-Alberta Energy Campaigns

Public Inquiry into Anti-Alberta Energy Campaigns

Rules for Procedure and Practice

SEPTEMBER 14, 2020

I. General

1. These Rules for Procedure and Practice (the “**Rules**”) apply to the Public Inquiry into Anti-Alberta Energy Campaigns (the “**Commission**” or “**Inquiry**”).
2. Subject to the Public Inquiries Act, the Terms of Reference, and these Rules the conduct and procedure to be followed in this Inquiry are under the control and discretion of Commissioner J. Stephens Allan (the “**Commissioner**”).
3. The Commissioner may amend or supplement these Rules or dispense with their compliance as he deems necessary to ensure that the Inquiry is efficient, thorough, fair, timely and consistent with the principles of fundamental justice.
4. In these Rules, the terms “**Person**” and “**Persons**” includes, without limitation, an individual, group, organization, society, government, agency, institution, body corporate or other entity. A Person with a grant of standing as a Participant for Commentary or Participant for Response, as described below, is referred to as a “**Participant**”.
5. The Commissioner will communicate with Participants primarily by email. Notice or service by email shall be considered adequate notice or service. Each Participant must identify the email address they wish to use for this purpose.
6. All Participants and their counsel, if any, are deemed to agree to adhere to these Rules as a result of their submission of an application for standing as a Participant for Commentary or other participation in the Inquiry.
7. The Commissioner may deal with any non-compliance with these Rules as he deems appropriate, including, without limitation, by rescinding standing of a Participant, imposing restrictions on a Participant or excluding any Person from participation in any aspect (or aspects) of the Inquiry’s proceedings.

II. Documents

8. In these Rules, the terms “**Document**” and “**Documents**” are intended to have a broad meaning, and include, without limitation, the following forms: written, printed, electronic, digital reproductions, photographs, graphs, spreadsheets and any data and information recorded or stored by means of any device, and includes Commissioned Reports, defined below.
9. The Commissioner has largely completed a preliminary investigative stage of the Inquiry, which included, without limitation, informal interviews, submissions from the public through the Commission website, research and Commissioned Reports, defined below. The informal interviews, public submissions to the Commission website during the preliminary investigative

stage, research and Commissioned Reports do not form part of the public record, unless otherwise determined by the Commissioner.

10. The Commissioner has the discretion to determine those Documents that form the public record of the Inquiry. The Commissioner may redact all or portions of any Documents that form part of the public record where the Commissioner deems redaction necessary or advisable, including, without limitation, to omit privileged, irrelevant or immaterial information. The Commissioner retains discretion as to whether Documents form part of the public record or are redacted; however, the Commissioner shall consider any requests from Participants that the Commissioner not make a Document public or that the Commissioner redact portions thereof before making a Document public.
11. Subject to Rules 12, 13 and 14 the Inquiry shall treat all Documents it receives as confidential, unless and until they are made part of the public record, or until the Commissioner, in his discretion, otherwise determines.
12. The Commissioner may provide non-public information and Documents to Participants to facilitate their participation in the Inquiry. Before the Commissioner provides any such non-public Documents or information to Participants, such Participants and their counsel, if any, must execute a written undertaking that Documents and information provided by the Commissioner will be kept confidential and used only for the purposes of the Inquiry, unless and until the Documents or information are or become part of the public record. The Commissioner may in writing release a Participant or counsel from complying, in whole or in part, with an undertaking made under this Rule.
13. The Commissioner may, in his discretion, post submissions from, Documents received from or correspondence with Participants ("**Participant Submissions**") on the Inquiry's website, and any Participant Submissions so posted are deemed non-confidential from the time of posting.
14. The Commissioner may, in his discretion, provide an opportunity for Participants to comment on the Participant Submissions submitted by one or more other Participants.

III. **Standing – Participants for Commentary**

15. The Commissioner may grant a Person standing as a "**Participant for Commentary**", which may involve inviting the Person to provide submissions in response to topics identified by the Commissioner, with a view to informing the findings or recommendations of the Commissioner.
16. The Commissioner may grant standing as a Participant for Commentary to any Person that satisfies the Commissioner that such Person has a substantial and direct interest in the subject matter of the Inquiry.
17. Persons may apply for standing as a Participant for Commentary by way of an application to the Commissioner via email at the address standing@albertainquiry.ca. An application form asking the Person to set out their status, interest in the subject matter of the Inquiry and proposed contributions they could make to the Inquiry will be provided by the Commissioner and be available on the Inquiry's website. Absent permission from the Commissioner, applications for standing as a Participant for Commentary shall not exceed three pages. The Commissioner may invite Persons to apply for standing as a Participant for Commentary.

18. Standing as a Participant for Commentary may be granted individually or jointly where the interests and perspectives of Persons are alike. The Commissioner may, in his discretion, decline to grant standing as a Participant for Commentary to a Person where, in the Commissioner's view, an existing Participant for Commentary adequately represents such Person's interest or perspective.
19. The Commissioner will determine on what terms each Participant for Commentary may participate, and the nature and extent of such participation, including access to Documents or information in the Commissioner's possession or control. The Commissioner retains the discretion to vary the terms of a Participant for Commentary's participation or rescind standing as a Participant for Commentary.

IV. [Standing – Participants for Response](#)

20. Prior to final determinations being made and rendered in the final report, the Commissioner shall identify Persons that he considers may be subject to a finding (or findings) of misconduct or may otherwise be the subject of a potential materially adverse factual finding (or findings) in the final report such that the Persons should receive notice of the potential finding (or findings) and be afforded an opportunity to respond. The Commissioner shall issue such Persons a confidential written notice (a "**Notice**") setting out the potential finding (or findings), and the evidence the Commissioner intends to rely on to support such finding (or findings). The Commissioner may redact portions of any Documents that form part of such evidence, provided that the information redacted is not relevant or material to the potential finding (or findings) against the Person receiving the Notice.
21. Any Person that receives a Notice will be granted standing as a "**Participant for Response**".
22. Any Participant for Response that receives a Notice is entitled to make written submissions to the Inquiry and file evidence by affidavit within such timelines as may be stipulated by the Commissioner. The Commissioner may, in his discretion, set limits on the length of written submissions and require that Participants for Response ensure that any evidence by affidavit is not unduly lengthy.
23. A Participant for Response must obtain leave from the Commissioner if they wish to provide oral submissions or conduct cross-examination of a Person with respect to the evidence of that Person being relied upon by the Commissioner in making a finding (or findings) against the Participant for Response. The Commissioner shall determine, in his discretion, whether the potential finding (or findings) in relation to such Participant for Response, and the nature and substance of the evidence underlying the potential finding, warrant granting the Participant leave to make oral submissions or conduct cross-examination. The procedure to be employed for any oral submissions or cross-examination shall be set out in the Commissioner's decision providing leave for such submissions or cross-examination.
24. Any Person who is a Participant for Response may also be, or have been, a Participant for Commentary.

V. [Procedure Applications to the Commissioner](#)

25. A Participant may apply to the Commissioner for an order or direction regarding these Rules or related procedural matters by written application appending any supporting materials (a

“Procedural Application”). A Procedural Application shall be made by email and contain the name of Participant making the application, the nature of the relief sought by way of order or direction and a brief description of the factual and legal basis for the relief sought. The Commissioner may set limits on the length of a Procedural Application.

26. The Commissioner may, in his discretion, deliver the Procedural Application to other Participants identified by the Commissioner as having an interest in the subject matter of the Procedural Application and provide such Participants with an opportunity to respond to the Procedural Application.
27. The Commissioner may make an order or direction based on the Procedural Application and any responses from other Participants to whom the Procedural Application was delivered or, at his discretion, after receiving further written or oral argument. The procedure to be employed for receiving any further written or oral argument shall be set out by the Commissioner in connection with any requests made by the Commissioner for further written or oral argument regarding a Procedural Application.

VI. **Commissioned Reports**

28. The Commissioner has, and may in the future, retain Persons to prepare reports on matters of potential relevance to the Inquiry (**“Commissioned Reports”** and each a **“Commissioned Report”**) and remunerate such Persons as determined by the Commissioner.
29. The Commissioned Reports do not represent the views of the Commissioner, but may inform the findings or recommendations of the Commissioner.
30. Any Document that is specifically identified and referenced in a Commissioned Report may be relied on by the Commissioner in his deliberations and such Documents are not required to be marked as exhibits before the Commissioner.
31. The Commissioner may, in his discretion, provide a Participant with a copy of one or more Commissioned Reports or portions thereof, including Documents specifically referenced or identified therein.
32. The Commissioner may consider the Commissioned Reports and any comments of one or more Participants thereon to make findings of fact and recommendations.

Ruling on Interpretation of the Terms of Reference

1. On July 4, 2019, the Government of Alberta established by Order in Council 125/2019 the Public Inquiry into Anti-Alberta Energy Campaigns (“Commission”). I was appointed the Commissioner for the Inquiry.
2. Part way through my mandate, the Government of Alberta twice amended the Terms of Reference by way of Orders in Council 191/2020 and 249/2020. For reference, a conformed version of the Terms of Reference, prepared by the Commission, is attached as Schedule ‘A’. My interpretation that follows is based on the Terms of Reference, as amended. This ruling is made on my own motion to explain how I interpret the Terms of Reference.

Background

3. A critical task for the Commission is to determine whether foreign individuals or organizations have provided financial resources in opposition to the continued operation or further development of the Alberta oil and gas industry.

Anti-Alberta Energy Campaigns

4. The term “anti-Alberta energy campaign” is defined in the Terms of Reference as:
attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information.
5. This definition must be read considering its text, the surrounding context and purpose of the Terms of Reference and the Public Inquiries Act. There are multiple parts to this definition, which it is helpful to break out to demonstrate what I interpret to be the mandate of the Commission.
6. First, such a campaign involves opposition to the development of Alberta’s oil and gas resources. Reading the definition in its context and in light of the preamble of the Terms of Reference, I consider my mandate to be to inquire into efforts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense. Such frustration may be the stated objective of a party, or may manifest itself through repeated opposition to attempts to develop Alberta’s oil and gas resources or opposition to a particular project in furtherance of an intention of opposing development of Alberta’s oil and gas resources in a broad and general sense. For clarity, I do not consider that a party is attempting to oppose the development of Alberta’s oil and gas resources in a broad and general sense solely by reason of such party opposing a discrete aspect of a specific project, or by isolated opposition on specific grounds to a particular project (such as where a party’s interests in land or traditional rights may be directly affected).

7. Second, I do not interpret it to be my role to determine whether a particular project is “economic, efficient and responsible”. Alberta and Canada have regulatory frameworks set up to make these determinations, which I do not interpret as my mandate to duplicate. Moreover, the Commission does not have the resources or time necessary to review the merits of individual projects at the regulatory level. Accordingly, I will proceed from the basis that some level of oil and gas development in Alberta is “economic, efficient and responsible” and focus on opposition to development Alberta’s oil and gas resources in a broad and general sense.
8. Third, the term “anti-Alberta”, in my view, uses Alberta as a geographical modifier, and clarifies that the Commission’s mandate pertains to oil and gas resources located in Alberta, mindful that a party’s opposition might be targeted at Alberta’s oil and gas resources specifically, or concern a broader collection of oil and gas resources, of which Alberta’s particular resources are a subset. I do not interpret the term “anti-Alberta” as indicating that the Commission is to inquire in to whether opposition to oil and gas development in Alberta is “against Alberta” or its interests in some sense. As I interpret the Terms of Reference, the Commission’s mandate is not to determine whether support or opposition to oil and gas development in Alberta is pro- or anti-“Albertan”; rather, it involves an examination of issues affecting development of oil and gas resources located in Alberta.
9. Fourth, though the Terms of Reference permit (and do not require) inquiry into “the dissemination of misleading and false information” as a means of opposing the development of Alberta’s oil and gas resources, it is not anticipated that determinations of whether particular statements are “misleading or false” will be the primary focus of the Commission. Such a focus is unlikely to be feasible within the resources or time available to the Commission. A finding that a particular person has disseminated “misleading or false” information for the purpose of opposing oil and gas development in Alberta could carry significant reputational consequences, and is not a finding I would be prepared to make lightly and without undertaking extensive measures to explore, test and determine the underlying facts. In many, if not most, cases evaluation of whether a statement made in opposition to the development of Alberta’s oil and gas resources is “misleading or false” is an enormous task, and impractical for the Commission to undertake within the resources available to it.
10. To illustrate, evaluating whether a particular statement is misleading or false could require the Commission to undertake a scientific inquiry akin to that carried out in a regulatory review of a proposed project, but for the entire oil and gas industry in Alberta. Such analysis could require extensive scientific evidence and experts on such matters as hydrology, air pollution, agrology, aquatic biology, wildlife biology, ornithology chemical engineering, geology and seismology, among others. Moreover, while it would be possible (if not practicable) to compile this scientific evidence in Alberta, at incredible expense and over several years, the challenge would be compounded by the difficulty, or even impossibility, of obtaining reliable data from or relating to other key oil and gas producing countries. Further, even if all the necessary scientific evidence were obtained, hearings during which that evidence would be presented and challenged would span many months, if not years. Again, the Commission has neither the budget nor sufficient time to carry out such a colossal undertaking.

Foreign Funding

11. Insofar as I may be required to interpret section 2(1)(a) of the terms of reference, I consider a foreign organization that has “evinced an intent harmful or injurious” to Alberta’s oil and gas industry to be a foreign organization that has evinced, either through statements or actions, a broad and general opposition to the continued operation or expansion of either all or a part of Alberta’s oil and gas industry, whether in regards to exploration, development, extraction, storage, transportation, processing, upgrading or refining.

Findings and Recommendation

12. The information identified by the Commission will be disclosed to the potentially affected Participants to provide them with a reasonable opportunity to comment and correct any details. Based on the information identified by the Commission and the information and submissions of potentially affected organizations, I will make such findings and recommendations as I consider advisable. The findings and recommendations of the Commission will be set out in my final report.

SCHEDULE A

Terms of Reference

Definitions

1 In these Terms of Reference,

- (a) “Alberta oil and gas industry” means
 - (i) any and all aspects of Alberta’s petroleum and natural gas sectors, including the exploration, development, extraction, storage, processing, upgrading and refining of Alberta’s oil and gas resources, and
 - (ii) any aspect of marketing and delivery of Alberta’s oil and gas resources to commercial markets by any mode of transportation whatsoever, including both railways and pipelines falling under provincial or federal jurisdiction;
- (b) “anti-Alberta energy campaign” means attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information;
- (c) “Minister” means the Minister of Energy.

Mandate of commissioner

2(1) The commissioner shall inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns, and in doing so shall inquire into matters including, but not limited to, the following:

- (a) whether any foreign organization that has evinced an intent harmful or injurious to the Alberta oil and gas industry has provided financial assistance to a Canadian organization, which may include any Canadian organization that has disseminated misleading or false information about the Alberta oil and gas industry;
- (b) whether any Canadian organization referred to in clause (a) has also received grants or other discretionary funding from the government of Alberta, from municipal, provincial or territorial governments in Canada or from the Government of Canada;
- (c) whether any Canadian organization referred to in clause (a) has charitable status in Canada.

(2) As part of the inquiry, the commissioner shall examine the work completed by other investigations in other jurisdictions into similar activities or alleged activities, including but not limited to the following:

- (a) the 2017 report by the Office of the Director of National Intelligence of the United States of America, entitled Background to ‘Assessing Russian Activities and Intentions in Recent US Elections’: The Analytic Process and Cyber Incident Attribution;
- (b) the 2018 United States House of Representatives Committee on Science, Space and Technology Majority Staff Report, entitled Russian Attempts to Influence U.S. Domestic Energy Markets by Exploiting Social Media.

(3) The commissioner shall make such findings and recommendations as the commissioner considers advisable, and may make findings and recommendations to achieve the following:

- (a) make the Government of Alberta and Albertans generally aware of whether foreign funds are being provided in the manner described in subsection (1)(a);
- (b) enable the Government of Alberta to respond effectively if any anti-Alberta energy campaigns are funded, in whole or in part, in the manner described in subsection (1)(a);
- (c) assist the Government of Alberta by recommending any additional eligibility criteria that should be considered when issuing government grants;
- (d) assist the Government of Alberta by recommending the interpretation of existing eligibility criteria or the creation of new eligibility criteria for attaining or maintaining charitable status.

Report and timeline

3(1) The commissioner shall prepare an interim report with advice, proposals, recommendations, analyses or policy options related to the inquiry and submit the report to the Minister no later than January 31, 2020.

(2) The commissioner shall prepare a final report setting out the findings and recommendations of the commissioner and submit the final report to the Minister no later than January 31, 2021.

(3) The Minister shall cause the final report to be published within 90 days of receiving it from the commissioner.

Amendment of Terms of Reference

4 The commissioner may request, through the Minister, that the Lieutenant Governor in Council amend any provision of these Terms of Reference if the commissioner is of the opinion that amendment is necessary for the proper conduct of the inquiry.

Policy respecting standing

5 The commissioner may grant standing to participate in the inquiry only if, in the opinion of the commissioner,

- (a) the applicant is or may be directly or substantially affected by the subject-matter of the inquiry, or
- (b) the applicant has a clearly ascertainable interest or perspective that ought to be separately represented at the inquiry in order to assist the inquiry to fulfill its mandate.

Policy respecting financial assistance

6(1) The commissioner shall develop a policy on whether or not financial assistance will be provided to witnesses or interveners in respect of their participation in the inquiry process.

(2) If the policy referred to in subsection (1) allows financial assistance, the policy shall reflect the requirement that financial assistance may only be provided if the witness or intervener

- (a) demonstrates that he or she would not be able to participate in the inquiry without such financial assistance,
- (b) has a substantial, direct or clearly ascertainable interest in the subject-matter of the inquiry,
- (c) has a perspective that would advance the purposes of the inquiry, which cannot be acquired any other way,
- (d) has clearly outlined his or her proposed involvement in the inquiry and the estimated costs to be incurred, and
- (e) has provided a written proposal as to how the witness or intervener would account for the financial assistance received.

(3) If the commissioner determines that financial assistance will be provided to a witness or intervener in accordance with the policy under subsection (1),

- (a) costs for legal counsel shall only be provided in accordance with the Government of Alberta's established rates for retaining external legal counsel, and
- (b) disbursements shall only be provided in accordance with the Court of Queen's Bench Costs Manual.

(4) The policy referred to in subsection (1) shall be submitted to the Minister for review and approval by July 31, 2019.

(5) If the Minister approves the policy referred to in subsection (1), the commissioner shall publish the policy.

Budget for inquiry

7(1) The total budget for the inquiry shall not exceed \$3 500 000.

(2) The following expenses shall be paid out of the budget referred to in subsection (1):

- (a) the commissioner's remuneration;
- (b) compensation for the following:
 - (i) executive support to the commissioner;
 - (ii) retention of legal staff;
 - (iii) retention of experts;
- (c) travel costs for the commissioner and those identified in clause (b);
- (d) financial assistance, if any, provided pursuant to section 6;
- (e) other costs associated with the inquiry that are not covered by section 8.

(3) The commissioner shall prepare a detailed budget and submit it to the Minister for review and approval by July 31, 2019.

(3.1) The commissioner shall prepare a revised detailed budget and submit it to the Minister for review and approval by July 6, 2020.

(4) The commissioner shall put in place a system of budget monitoring and expenditure reporting to the Minister.

(5) The Minister shall fund the inquiry, including the compensation of the commissioner, in accordance with the approved budget.

Administrative support

8(1) In this section, "administrative support" means

- (a) provision of office and hearing space;
- (b) provision of security services;
- (c) development and maintenance of a website;
- (d) provision of clerks, reporters, researchers and assistants;
- (e) provision of services related to bookkeeping and accounting;
- (f) provision of social media support;
- (g) provision of communications support;

- (h) provision of other services necessary to ensure the effective functioning of the office of the commissioner.

(2) The commissioner may from time to time request administrative support from the Government of Alberta through the Minister if the commissioner considers this appropriate and necessary for the proper conduct of the inquiry.

Other matters

9(1) Subject to sections 7 and 8, the Government of Alberta shall support the commissioner's work through contracted resources or by Government personnel assigned for that purpose.

(2) Individuals or organizations contracted or assigned pursuant to subsection (1) shall take their directions from the commissioner.