

Via Email Only

April 28, 2017

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Attention: Sander DuncansonBoughton Law Corporation
**Attention: Tarlan Razzaghi and James
Coady, Q.C.**McPherson Leslie & Tyerman LLP
Attention: Meghan ConroyJFK Law
Attention: Mark Gustafson

Dear Counsel:

**RE: Proceeding ID 350
Prosper Petroleum Ltd
Rigel Project**

The Alberta Energy Regulator (AER) hearing panel assigned to this proceeding has considered the submissions of the parties regarding the issues for this proceeding.

The panel has determined that the issues in this proceeding will be:

1. Consistency with the *Oil Sands Conservation Act* purposes. In particular those set out in subsections 3 (a), (b) and (g) of that act.
2. Consistency with *Responsible Energy Development Act* purposes. In particular those set out in subsections 2 (1) (a) and 2 (1) (b) (ii) and (iii) of that act.
3. Economic effects of the proposed project.
4. Social effects of the proposed project.
5. Effects on the environment of the activities that would be authorized by the applications including effects on ecosystem function and biodiversity, and on air and water and their ability to support human and ecosystem needs.
6. Effects caused by the proposed project other than those covered in issues 3 - 5 on aboriginal rights and traditional land use.
7. Cumulative effects caused by the activities authorized by the applications when considered in combination with effects of existing or approved activities.
8. Compliance with LARP, including any sub-regional plans.

The following issues are not within the scope of this proceeding:

1. The adequacy of Crown consultation. The AER has no jurisdiction with respect to assessing the adequacy of Crown consultation.

2. The adequacy of LARP and any existing sub-regional plans under LARP.
3. MLAMP does not exist as a sub-regional plan and consideration of it is not within the panel's mandate.
4. Cumulative effects unrelated to the effects that might be caused by the Rigel Project.

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In response to specific submissions of Fort McKay First Nation and Fort McKay Métis, the panel notes:

Crown Consultation - Section 21 of the *Responsible Energy Development Act* (REDA) says the AER has no jurisdiction to assess the adequacy of Crown consultation. Nothing in the *Administrative Procedures and Jurisdiction Act* (APJA), which governs the filing of a notice of question of constitutional law (NQCL) in Alberta, suspends or amends REDA section 21. As a result, the potential content of any NQCL that may be filed by a participant does not form the basis for adding matters related to Crown consultation to the issues for this proceeding at this time.

NQCL and Procedural Fairness - If a participant files a NQCL, the panel will give it full consideration in the context of the applicable law. However, knowledge that a participant intends to file a NQCL does not suspend the requirement in the *AER Rules of Practice* that the panel specify the issues for the hearing.

The requirement for issues to be specified before the hearing is fundamental to procedural fairness. In this case, the participants have provided the panel with their views of the issues through their statements of concern and their requests to participate. They had a further opportunity to make submissions on the issues for hearing at the invitation of the panel set out in the April 12, 2017 letter to the parties. That letter also included a list of issues the panel considered to be in the scope of the hearing and a list of issues the panel considered to be out of scope.

Cumulative Effects - The panel will consider cumulative effects, including on the participants' aboriginal rights, to the extent those effects: arise from, are caused by, or are directly contributed to by the Rigel Project. Cumulative effects that do not relate to impacts from the Rigel Project are outside the scope of this proceeding.

LARP and MLAMP – The panel is bound by section 20 of REDA which requires it to act in accordance with the Lower Athabasca Regional Plan (LARP). Therefore, the panel will consider whether the proposed Rigel Project conforms to the requirements of LARP and

any sub-regional plans under LARP. MLAMP is not a sub-regional plan under LARP. As a statutory decision maker, the panel can only take into account the legislation in place at the relevant time.

In response to Ms. Conroy's concern that Prosper may have drafted the issues listed in the panel's April 12, 2017 letter, the panel confirms that it drafted the list of issues. For Ms. Conroy's reference, attached is the April 12 letter which states on page 2:

5. Effects on the environment of the activities that would be authorized by the applications including effects on ecosystem function and biodiversity and on air and water and their ability to support human and ecosystem needs. [underlining added]

The panel has considered the information provided by the parties regarding availability for a hearing and sets the following deadlines for process steps as well as the hearing date:

Prosper's Submission	May 11, 2017
Information Requests (IRs) to Prosper	May 25, 2017
Prosper responses to IRs	June 8, 2017
Participants' Evidence, Submissions and NQCLs	June 22, 2017
Prosper's Reply Submissions	July 6, 2017
Hearing Commences	July 18, 2017*

*To accommodate the Fort McKay First Nations' witnesses, the hearing will continue in the week of July 24th.

The above schedule provides for a formal IR process whereby participants can ask IRs of Prosper. It is open to the parties to ask informal IRs at any time. If the parties want the responses received to any informal IRs to be included on the record, they will have to be filed by the parties. Further, if a party is satisfied with the informal IR responses it has received, there is no need to file any formal IRs.

Any process steps required to deal with NQCLs filed in this proceeding will be determined upon filing of the NQCLs.

It is the panel's intention to conduct the hearing in Fort McMurray at a venue to be determined and, if possible, in part at Fort McKay.

Submissions should be in PDF format, page numbered to match the PDF page number, bookmarked, and searchable (optical character recognition). Send a copy of your submissions to all parties and to:

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

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A Notice of Scheduling of Hearing will be issued shortly.

Cecilia A. Low
Presiding Hearing Commissioner

Christine Macken
Hearing Commissioner

Terry Engen
Hearing Commissioner

Attachment: AER letter dated April 12, 2017

Cc: Robert Kopecky, Melody Nice, ACO
Susan Foisy, Sarabpreet Singh, Toni Hafso, ACO
Barbara Kapel Holden, AER
David Burns, AER
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