

Proceeding 376

July 09, 2019

Calgary Head OfficeSuite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

By email only

www.aer.caKen Dion
Kehewin Cree Nation**Re: Hearing Participation Decision
Imperial CLEP Regulatory Appeal**

Dear Mr. Dion:

I am writing to you on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners (the panel) assigned to this regulatory appeal proceeding.

On September 12, 2018, the AER received a request for regulatory appeal from the Elizabeth Métis Settlement (Elizabeth Métis) under section 38 of the *Responsible Energy Development Act (REDA)* of the AER's decision to approve Imperial Oil Resources Limited's (Imperial) amendment applications for the Cold Lake Expansion Project (Cold Lake Expansion Project or CLEP). The AER issued its decision to hold a hearing on the regulatory appeal on December 20, 2018. The purpose of the hearing is to determine whether the AER should confirm, vary, suspend, or revoke its decision to issue the amended approvals.

On April 1, 2019, the AER issued a notice of regulatory appeal hearing. The notice of regulatory appeal hearing explained how to file a request to participate in the hearing and set a filing deadline of April 16, 2019.

The AER received Kehewin Cree Nation's (Kehewin) request to participate on April 16, 2019. In the request you reference Elizabeth Métis' request for regulatory appeal and state that "Kehewin also believes Imperial's EIA is incomplete in that it does not properly address all impacts to traditional land use, including impacts to Kehewin's traditional land use and Treaty rights." You indicate that the conditions attached to the CLEP approvals would not effectively mitigate the impacts on Kehewin's traditional land use and Treaty rights. You also state that Kehewin will be directly and adversely affected by the AER's decision on the regulatory appeal because of the "intensity of land use by Kehewin members in the Project Area." The request states that should the appeal be denied, there would be no further opportunity to complete the assessment of impacts on Kehewin's traditional land use and Treaty rights. Finally, the

request states that you have had discussions with Imperial to discuss Kehewin's concerns and that those discussions have not been completed.

On April 23, 2019, Imperial responded to Kehewin's request to participate. In its response, Imperial states that Kehewin raises a number of general concerns regarding the CLEP's potential impacts on Kehewin's Treaty rights and traditional land uses. Imperial also states that it disagrees with Kehewin's "characterization of potential impacts from the CLEP", and submits that it has responded to and addressed the concerns raised in Kehewin's request to participate. Imperial notes that Kehewin did not file a statement of concern in respect of the CLEP. Imperial concludes by stating that it does not otherwise take a position on whether participation should be granted if a hearing is ultimately held, subject to the caveats that (i) the AER will discontinue the regulatory appeal and cancel the hearing if Elizabeth Métis withdraws its request for regulatory appeal; (ii) Kehewin will not repeat or duplicate evidence presented by other parties, including Elizabeth Métis; and (iii) Kehewin's participation will not delay the setting of a hearing date or the conduct of the hearing.

On May 22, 2019, the panel issued a letter to the parties and request to participate filers outlining the specific issues for the hearing. The panel gave all request to participate filers an opportunity to provide additional written submissions indicating how their requested participation would fit within the specific issues for the hearing.

On May 29, 2019, Kehewin responded to the panel's May 22, 2019, letter restating its positions regarding the incomplete EIA, adding that Kehewin's participation in the hearing, "can provide further information and context regarding the perceived ineffectiveness of standard AER conditions [such as those attached to this Project approval] in addressing adverse effects of projects in the Cold Lake region on all indigenous land users."

On June 5, 2019, Imperial responded to Kehewin's additional submissions, largely restating the position it took in its April 23, 2019 correspondence adding that Kehewin did not file a request for regulatory appeal.

On June 5, 2019, Elizabeth Métis filed a response stating that it took no position on Kehewin's request to participate.

The AER's Authorizations Group also responded on June 5, 2019, stating that it took no position on the request to participate while noting that participation should be limited to providing evidence relevant to the issues in this proceeding per the panel's May 22, 2019, letter.

Hearing Panel Decision

A person wishing to participate in the hearing of a regulatory appeal must file a request to participate in accordance with section 32.1 of the *Alberta Energy Regulator Rules of Practice* (the *Rules*). Subsection 32.1(2) of the *Rules* specifies what must be included in a request to participate.

The panel has considered Kehewin's request to participate and the submissions described above. The panel finds, based on the information before it, that (i) Kehewin's participation in the regulatory appeal hearing will materially assist the panel in making a decision; (ii) Kehewin has a tangible interest in the subject matter of the hearing because it has submitted in its request to participate that its members exercise rights and participate in traditional activities within reasonable proximity to the project; and (iii) in light of the scope of permitted participation described below, Kehewin's participation will not unnecessarily delay the proceedings or result in duplicate evidence.

For the above reasons and subject to further directions or rulings issued by the panel, Kehewin is permitted full participation in the hearing, including the ability to provide oral and written evidence, cross-examine witnesses, and make representations and argument, as it relates to the third issue in the list of hearing issues outlined below:

1. Will the Cold Lake Expansion Project, as approved in *EPEA* Approval No. 73534-01-02 and *OSCA* Approval No. 8558MM, directly and adversely affect Elizabeth Métis members' ability to exercise their Aboriginal harvesting rights, including traditional land use activities, on the lands and waters that will be impacted by the Cold Lake Expansion Project?
2. Will the Cold Lake Expansion Project, as approved in *EPEA* Approval No. 73534-01-02 and *OSCA* Approval No. 8558MM, directly and adversely affect Elizabeth Métis members' cultural connection to the lands and waters that will be impacted by the Cold Lake Expansion Project?
3. Can adverse effects identified in the first two issues be appropriately and adequately addressed through conditions?
4. If not, would confirming the approval of the Cold Lake Expansion Project be in the public interest?

Lastly, the panel reminds participants that per section 32.4 of the *Rules*, the panel is obligated to discontinue this regulatory appeal proceeding if Elizabeth Métis withdraws its request for regulatory appeal.

If you have any questions, please contact Tammy Turner at 403-297-3232 or at hearing.services@aer.ca.

Sincerely,
Tammy Turner
Hearing Coordinator, Hearing Services

cc: B. Gilmour, Bennett Jones LLP

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