

Proceeding 376

July 09, 2019

Calgary Head Office

Suite 1000, 250 – 5 Street SW

Calgary, Alberta T2P 0R4

Canada

By email only

www.aer.caMeaghan Conroy
MLT Aikins LLP**Re: Hearing Participation Decision
Imperial CLEP Regulatory Appeal**

Dear Ms. Conroy:

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

On September 12, 2018, the AER received a request for regulatory appeal from the Elizabeth Métis Settlement (Elizabeth Métis) pursuant to 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 Fishing Lake Métis Settlement's (Fishing Lake Métis) request to participate on April 22, 2019. In the request, you note that, "[t]he Project has the potential to directly and adversely impact the rights and interests of Fishing Lake Métis." You also note, per the attached materials, that "... [Fishing Lake Métis] has strong historical ties to the Project area and members continue to use the Project area to exercise their rights". You then submit that the construction and operation of the CLEP will render much of the area unsuitable for traditional use activities for several generations, and indicate that Fishing Lake Métis' leadership is open to meeting with Imperial to discuss the development of measures to mitigate or off-set the impacts of the CLEP on Fishing Lake Métis.

On April 23, 2019, Imperial responded to Fishing Lake Métis' request to participate. In its response, Imperial states that Fishing Lake Métis raises a number of general concerns regarding the CLEP's

potential impacts on Fishing Lake Métis' Aboriginal rights and traditional land uses. Imperial also disagrees with Fishing Lake Métis' "characterization of potential impacts from the CLEP", and submits that it has responded to and addressed the concerns raised in Fishing Lake Métis' request to participate. Imperial states that it does not otherwise take a position on whether participation should be granted to Fishing Lake Métis 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) Fishing Lake Métis will not repeat or duplicate evidence presented by other parties, including Elizabeth Métis; and (iii) Fishing Lake Métis' 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, Fishing Lake Métis responded to the panel's May 22, 2019, letter requesting, among other things, that the AER determine hearing participation prior to making a decision on the hearing issues. Fishing Lake Métis did not make further submissions to show how their requested participation would fit in the specific issues for the hearing.

On June 5, 2019, Imperial responded to Fishing Lake Métis' additional submissions, largely restating the position it took in its April 23, 2019, correspondence with respect to Fishing Lake Métis' participation in the regulatory appeal proceeding. Imperial also responded to Fishing Lake Métis' request that the AER determine hearing participation prior to making a decision on the hearing issues.

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

The AER's Authorizations Group (Authorizations Group) also responded on June 5, 2019, stating that it took no position on Fishing Lake Métis' 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.

On June 12, 2019, Fishing Lake Métis filed a response to the parties' submissions noting that Imperial and the Authorizations Group do not oppose Fishing Lake Métis' request to participate or dispute that Fishing Lake Métis may be directly and adversely affected by the panel's decision in the regulatory appeal proceeding. Once again, Fishing Lake Métis did not make further submissions to show how their requested participation would fit in the specific issues for the hearing.

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 Fishing Lake Métis' request to participate and the submissions described above. The panel finds, based on the information before it, that (i) Fishing Lake Métis' participation in the regulatory appeal hearing will materially assist the panel in making a decision; (ii) Fishing Lake Métis has a tangible interest in the subject matter of the hearing because it provided a traditional knowledge and land use study showing that its members exercise their rights and engage in traditional activities within reasonable proximity to the CLEP; and (iii) in light of the scope of permitted participation described below, Fishing Lake Métis' participation will not unnecessarily delay the regulatory appeal proceeding or result in duplicate evidence.

For the above reasons and subject to further directions or rulings issued by the panel, Fishing Lake Métis 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

T. Owen, Owen Law

M. LaCasse, AER Authorizations

K. Dumanovski, AER Authorizations

C. Copeland, Cold Lake

G. Sawchuk, MD of Bonnyville

K. Dion, Kehewin Cree Nation

B. Kapel Holden, AER

F. De Luca, AER

M. Nice, ACO