

Proceeding 379

January 19, 2024

By email only

Hearing Commissioners' OfficeSuite 1000, 250 - 5 Street SW
Calgary, Alberta T2P 0R4
Canadahearing.services@aer.caStikeman Elliott
Attention: Dennis Langen
Email: DLangen@stikeman.comWestbrick Energy
Attention: Alana Jensen
Email: ajensen@westbrick.caRae and Company
Attention: Brooke Barrett
Email: bbarrett@raeandcompany.comBennett Jones LLP
Attention: Jessica Kennedy
Email: kennedyj@bennettjones.comThe Minister of Justice and Solicitor
General of Alberta
Prairie Regional Office (Edmonton)
**Attention: Krista D. Epton / Angela L.
Edgington**
Email: krista.epton@gov.ab.ca /
angela.edgington@gov.ab.caAttorney General of Canada
Prairie Regional Office (Edmonton)
Attention: Kerry E.S. Boyd
Email: kerry.boyd@justice.gc.caDentons Canada LLP
Attention: Laura Estep
Email: laura.estep@dentons.com**Re: Saturn Oil & Gas Inc. and Westbrick Energy Ltd. (Applicants)
Well License Applications near the Brazeau Dam
O'Chiese First Nation Notice of Question of Constitutional Law**

This letter is the panel's response to the Notice of Question of Constitutional Law (NQCL) filed by O'Chiese First Nation on October 31, 2023, pursuant to the *Administrative Procedures and Jurisdiction Act (APJA)* and the *Designation of Constitutional Decision Makers Regulation (Designation Regulation)*.

We find that questions 1–4 of the NQCL, including whether the panel has jurisdiction to determine the questions, should be determined as part of the hearing proper. The panel declines to determine questions 5 and 6 of the NQCL, as they are outside of the scope of Proceeding 379.

Background

Proceeding 379 is a consideration of ten well license applications (the Applications) made to the Alberta Energy Regulator (AER) by Westbrick and Saturn (collectively, the Applicants) under the *Oil and Gas Conservation Act (OGCA)*, to drill and hydraulically fracture wells targeting oil and natural gas in the Cardium and Upper Mannville formations. The wells would be located within 5 kilometers of the Brazeau Hydroelectric Facility, owned and operated by TransAlta Corporation (TransAlta). Since about 2012, TransAlta has raised concerns over oil and gas activity in proximity to the Brazeau Facility, due to concerns that hydraulic fracturing could result in induced seismic activity that puts the Brazeau Facility at risk and thus pose a threat to public safety. The notice of hearing for Proceeding 379 was issued on November 18, 2019, and TransAlta was granted full participation rights in the hearing.

On January 30, 2023, O’Chiese First Nation applied to participate in Proceeding 379.¹ O’Chiese First Nation submits that it is a “band” as defined in the *Indian Act* and adhered to Treaty No. 6 on May 12, 1950. O’Chiese First Nation has over 1,500 members and exercises its Treaty and Aboriginal rights, which it refers to as its Inherent rights, throughout Alberta, including the territory referenced within the written text of Treaty No. 6. O’Chiese First Nation claims Treaty rights that include a broad right to harvest, meaning the right to hunt, fish, trap and gather which also encompass the cultural aspects associated with these practices. Two reserves have been set apart for the exclusive use and benefit of O’Chiese First Nation. O’Chiese IR 203 is located between the Nordegg and Baptiste Rivers, encompasses approximately 13,812.7 ha of land and is approximately 6 to 11 kms from the proposed wells being considered in Proceeding 379. The second reserve, O’Chiese IR 203A, the O’Chiese First Nation Cemetery reserve, is located approximately 20 km southwest of Rocky Mountain House.

O’Chiese First Nation is concerned that if the Applications are approved, the proposed activities have the potential to cause detrimental effects, including induced seismic activity, that may impact the Brazeau Dam infrastructure resulting in catastrophic safety concerns to both O’Chiese First Nation IR 203 and to lands that support the exercise of constitutionally protected Inherent and Treaty rights throughout Treaty No. 6.

¹ Exhibit 264.01 O’Chiese First Nation Request to Participate January 30, 2023

We granted O’Chiese First Nation full participatory rights in the proceeding on February 14, 2023.² Participation was granted on the basis that O’Chiese First Nation may be directly and adversely affected by the AER’s decisions on the Applications and that its participation would materially assist the panel in deciding the matters before us, including helping us understand the potential impacts to O’Chiese First Nation’s rights. However, our participation decision provided the following comments related to the panel’s jurisdiction with respect to the Crown’s duty to consult with O’Chiese First Nation:

The submissions addressed the Crown’s consultation with O’Chiese First Nation. The duty to consult is Alberta’s, not the AER’s, and this panel has no authority to assess the adequacy of the Crown’s consultation with O’Chiese First Nation. We recognize that a decision made where the duty to consult has not been satisfied would not be in the public interest. However, concerns with the adequacy of consultation must be addressed with the Government of Alberta.

On February 21, 2023, we wrote to Alberta’s Aboriginal Consultation Office (ACO) seeking advice with respect to the adequacy of Crown consultation related to the Applications.³

On March 2, 2023, the ACO responded that the Applications under the *OGCA* are outside of the ACO’s role established through *Energy Ministerial Order 105/2014* and *Environment and Sustainable Resource Development Ministerial Order 53/2014*, which only address applications made under the “specified enactments”⁴ under the *Responsible Energy Development Act (REDA)* and as such, the ACO would not be providing consultation advice to the AER regarding the Applications.⁵

On March 15, 2023, O’Chiese First Nation wrote to the panel to confirm the scope of the hearing issues and to address the implications of the ACO indicating that it would not provide consultation advice to the AER on this matter.⁶ O’Chiese First Nation expressed concern that no

² Exhibit 285.01 Panel Decision on O’Chiese First Nation Request to Participate February 14, 2023

³ Exhibit 291.01 Panel Request for Consultation Advice from the Aboriginal Consultation Office February 21, 2023

⁴ The specified enactments under *REDA* include the *Environmental Protection and Enhancement Act*, the *Water Act*, the *Public Lands Act* and Part 8 of the *Mines and Minerals Act*.

⁵ Exhibit 301.01 ACO Response to Panel Request for Consultation Advice March 2, 2023

⁶ Exhibit 308.01 O’Chiese Letter to Panel Regarding Hearing Scope, Issues and Consultation March 15, 2023

consultation by any government body or the ACO has been considered regarding the issue of dam safety and induced seismicity, including the creation of AER Subsurface Order No. 6 (SSO6). O’Chiese First Nation requested that the AER provide direction to O’Chiese First Nation on how the absence of the ACO would be addressed in the proceeding.

On April 19, 2023, we wrote to the Deputy Ministers of Energy, Indigenous Relations, and Environment and Protected Areas to seek advice regarding Crown consultation; specifically, from whom and when we would receive advice as to the status of Crown consultation with O’Chiese First Nation in relation to Proceeding 379, given that Section 21 of *REDA* is clear that the AER does not have the authority to assess the adequacy of Crown consultation.⁷

On May 5, 2023, Deputy Minister, Donavon Young, Indigenous Relations, responded on behalf of all the Deputy Ministers.⁸ The response confirmed that the *Energy Ministerial Order 105/2014* and *Environment and Sustainable Resource Development Ministerial Order 53/2014* only apply to applications under specified enactments and not to applications under the *OGCA*. The response further stated that:

The Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management, 2013 and *The Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resource Management, 2014*, do not require consultation by Alberta on the *OGCA* applications.

...

There is no Ministerial direction whereby the AER is to seek consultation advice from Alberta regarding an “energy resource enactment” such as *OGCA*. As such, the Ministries of Energy, Environment and Protected Areas, and Indigenous Relations have no advice to provide to the panel regarding Crown consultation with O’Chiese First Nation on the application.

On May 18, 2023, we wrote to the participants, advising that, notwithstanding the letter received from Deputy Minister Young, it was our view that *The Government of Alberta’s Policy on*

⁷ Exhibit 324.01 Panel Letter to Deputy Ministers Regarding Crown Consultation April 19, 2023

⁸ Exhibit 328.01 Response from Deputy Minister Indigenous Relations Regarding Crown Consultation May 5, 2023

Consultation with First Nations on Land and Natural Resource Management, 2013 applies when the Crown contemplates a decision on land / natural resource management that has the potential to adversely impact First Nations' Treaty rights or traditional uses and that we planned to move forward with Proceeding 379.⁹

On September 7, 2023, O'Chiese First Nation wrote to the Deputy Ministers of Energy, Indigenous Relations, Environment and Protected Areas, and Agriculture and Irrigation requesting that the Ministers engage in consultation regarding Proceeding 379 and the issues of induced seismicity and impacts to the Brazeau Hydroelectric Facility and surrounding infrastructure and areas.¹⁰

On October 31, 2023, O'Chiese First Nation filed its submissions for the proceeding in accordance with the timeline for filing established by the panel.¹¹ On the same date, it filed the NQCL, having not yet received a response to its September 7, 2023, letter to the Deputy Ministers.¹² The NQCL was served on the Minister of Justice of Alberta, the Attorney General of Canada, the Alberta Energy Regulator (AER), Westbrick Energy Ltd, Saturn Oil & Gas Inc., TransAlta Corporation and Cenovus Energy Inc.

On November 6, 2023, we established a deadline of November 27, 2023, by which Alberta, Canada and the other participants could respond to the NQCL. O'Chiese First Nation was directed to file its reply by December 11, 2023.

On November 17, 2023, Alberta Justice provided a response to the September 7, 2023, letter from O'Chiese First Nation.¹³ In its response, Alberta Justice advised that Alberta would be relying on the AER regulatory process to fulfill the Crown's duty to consult regarding "these particular *OGCA* applications in this proceeding." The response also stated that:

Alberta relies on the Supreme Court of Canada decisions in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* 2017 SCC 40 and *Chippewas of the Thames First Nation v.*

⁹ Exhibit 332.01 Panel Letter to Participants Regarding Crown Consultation and the Hearing Process May 18, 2023

¹⁰ Exhibit 361.01 O'Chiese Letter to the Deputy Ministers Regarding Consultation Requirements September 7, 2023

¹¹ 376.01, 376.02 O'Chiese First Nation Hearing Submissions October 31, 2023

¹² Exhibit 377.01, 377.02 O'Chiese Notice of Questions of Constitutional Law October 31, 2023

¹³ Exhibit 389.01 Alberta Justice Response to O'Chiese Regarding Crown Consultation November 17, 2023

Enbridge Pipelines Inc. 2017 SCC 41 for the legal principle that Alberta is entitled to rely upon a regulatory process to discharge any consultation obligations.

It is the Government of Alberta's position that the AER is obligated to consider the potential adverse impacts of these *OGCA* applications on existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982*. The Government of Alberta further relies on the AER's technical expertise and the AER's regulatory powers to mitigate any potential adverse impacts to Treaty rights of First Nations associated with these particular regulatory applications under *OGCA*. Alberta encourages O'Chiese First Nation to continue its participation in the AER process.

On November 27, 2023, Alberta Justice and TransAlta filed submissions in response to the NQCL.^{14,15} The Attorney General of Canada, the Applicants, and Cenovus confirmed they would not be filing submissions in response to the NQCL.

On November 30, 2023, O'Chiese First Nation filed a motion¹⁶ with the AER seeking

- guidance on the consultation process that would be implemented in the proceeding,
- advice as to how the AER was going to inform itself that there had been adequate consultation prior to making its public-interest determination,
- the right to amend the NQCL and written submissions, and
- an extension of the deadline for which to file a reply to Alberta's response.

On December 7, 2023, we issued a letter granting the motion and allowing O'Chiese First Nation additional time to respond to Alberta's submissions on the NQCL and an opportunity to update its hearing submissions.¹⁷ We established a deadline of December 18, 2024, for O'Chiese First

¹⁴ Exhibit 390.01, 390.02 Alberta Justice Submissions on the O'Chiese NQCL November 27, 2023

¹⁵ Exhibit 393.01 TransAlta Submissions on the O'Chiese NQCL November 27, 2023

¹⁶ Exhibit 395.01 O'Chiese Letter Regarding Consultation Process and Motion to Extend Deadline November 30, 2023

¹⁷ Exhibit 398.01 Panel Response Regarding Consultation Process and Decision on Motion December 7, 2023

Nation to file its amended NQCL or reply submission on the NQCL, and January 23, 2024, to update its hearing submissions.

Our December 7, 2023, letter also confirmed that the AER would rely on the hearing process to understand O’Chiese First Nation’s concerns about the Applications and the potential for approval of the Applications to adversely impact O’Chiese First Nation IR 203 and the First Nation’s rights, traditional uses and members, including effects resulting from any potential adverse effects of the proposed activities to the Brazeau dam and associated infrastructure.

On December 18, 2023, O’Chiese First Nation filed its reply submission related to the NQCL.¹⁸

On December 21, 2023, Alberta filed a response to O’Chiese First Nation’s December 18, 2023, reply submission on the NQCL.¹⁹

Content of the NQCL

At the time O’Chiese First Nation filed its NQCL, it had not received Alberta Justice’s November 7, 2023, letter and was not aware that Alberta intended to rely on the AER’s regulatory processes to satisfy any Crown duty to consult.

In its NQCL, O’Chiese First Nation raises the following concerns:

- O’Chiese First Nation first learned about the issue of induced seismic activity from hydraulic fracturing and the potential risk to the Brazeau Dam from a CBC News media report. There has been no Crown consultation related to these matters or the Applications that are the subject of Proceeding 379.
- While Section 21 of *REDA* prohibits the AER from assessing the adequacy of Crown consultation associated with the rights of Aboriginal peoples as recognized and affirmed under s. 35(1) of the *Constitution Act, 1982*, the same Act empowers the AER to consider adverse effects on Aboriginal interests as that relates to its public interest determination.
- The Deputy Minister, Indigenous Relations, has advised the AER that *Energy Ministerial Order 105/2014* and *Environment and Sustainable Resource Development Ministerial*

¹⁸ Exhibit 399.01, 399.02 O’Chiese Reply Submission on NQCL December 18, 2023

¹⁹ Exhibit 400.01 Alberta Justice Response to O’Chiese Reply Submission on NQCL December 21, 2023

Order 53/2014, which require the AER to seek guidance from the Aboriginal Consultation Office respecting whether Alberta has found consultation to be “adequate, adequate pending the outcome of the AER’s process, or not required,” do not apply to the *OGCA* applications that are the subject of this proceeding and no similar ministerial orders are in place to provide guidance to the AER on the adequacy of consultation related to applications made under energy statutes prior to making its decisions on the Applications.

- The Deputy Minister, Indigenous Relations, has advised that Alberta’s Consultation Policy and Guidelines do not require consultation by Alberta on *OGCA* applications and the Ministries of Energy, Environment and Protected Areas, and Indigenous Relations have no advice to provide to the AER regarding Crown consultation with O’Chiese First Nation.
- The Crown has not yet responded to O’Chiese First Nation’s request for consultation related to the issue of induced seismicity and risk to the Brazeau Dam.
- O’Chiese First Nation has not been advised how the AER will proceed in making its public interest determination in the absence of any consultation.
- SSO6, which purports to restrict hydraulic fracturing within 5 kilometers of the Brazeau Dam was issued by the AER on or about May 27, 2019. O’Chiese IR 203 is encompassed within this restricted area and the AER has no jurisdictional ability to directly establish and apply rules with respect to the use of on mines and minerals on reserve. Therefore, SSO6 is *ultra vires* the AER’s authority and *prima facie* infringes O’Chiese First Nation’s rights to O’Chiese IR 203. The honour of the Crown has not been upheld because no consultation has occurred regarding the need for SSO6 prior to it being implemented. Further, if any order would result in an expropriation or sterilization of the O’Chiese First Nation’s mines and minerals, then compensation must be made available.

The questions posed in the NQCL are:

1. Can the AER make a determination that the constitutional duty to consult with O’Chiese First Nation has been triggered as a result of the Applications that are before it?
2. Is s. 21 of the *REDA*, which states that the AER has no jurisdiction with respect to assessing the adequacy of Crown consultation associated with the rights of Aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982*, inconsistent with s. 35(1) of the *Constitution Act, 1982*, the principle of honour of the Crown and the objective of reconciliation?

3. In the alternative, has the Crown violated its constitutional obligations to the O’Chiese First Nation, pursuant to s. 35(1) of the *Constitution Act, 1982*, the principle of the honour of the Crown and the objective of reconciliation by either failing to issue a direction to the AER, pursuant to s. 67 of the *REDA* or only addressing “specified enactments” under *Energy Ministerial Order 105/2014* and *Environment and Sustainable Resource Development Ministerial Order 53/2014*, to direct the AER as to who is to inform the AER that consultation is adequate in the context of these Applications?
4. Has the Crown failed to discharge its duty to consult with O’Chiese First Nation regarding potential impacts of its Treaty No. 6 Rights and Aboriginal rights protected under s. 35(1) of the *Constitution Act, 1982* which may arise if the Applications, that are the subject of AER Proceeding 379, granted approval?
5. Is SSO6 *ultra vires* the AER and Alberta’s legislative authority under the *Constitution Act, 1867*, if it purports to apply to O’Chiese IR 203?
6. In the alternative, if SSO6 does apply to O’Chiese IR 203, does SSO6 unjustifiably infringe upon the constitutionally protected Treaty and Aboriginal rights of O’Chiese First Nation to O’Chiese IR 203?

O’Chiese First Nation further stated that if the answer to any of the questions above is yes, then O’Chiese First Nation intends to seek the following relief:

1. That the AER make a determination that the duty to consult with O’Chiese First Nation has been triggered.
2. A declaration that s. 21 of the *REDA* is unconstitutional and of no force and effect under s. 52(1) of the *Constitution Act, 1982* as it applied in the context of AER Proceeding 379.
3. In the alternative, an order from the AER requesting the Lieutenant Governor in Council give direction to the AER on who the AER is to rely on for advice as to whether there has been adequate consultation with respect to potential impacts to O’Chiese First Nations Treaty and Aboriginal rights prior to approving the Applications.
4. An order and declaration directing the Crown to uphold the honour of the Crown and to consult with O’Chiese First Nation in order to fulfill the Crown’s constitutional obligations pursuant to s.35(1) of the *Constitution Act, 1982*.

5. An order and declaration under s. 52(1) of the *Constitution Act, 1982* that SSO6 is *ultra vires* s. 91(24) of the *Constitution Act, 1867* and therefore invalid.
6. In the alternative, an order or declaration that SSO6 unjustifiably infringes upon the Treaty and Aboriginal rights of the O'Chiese First Nation enshrined under s. 35(1) of the *Constitution Act, 1982* and to the extent that SSO6 applies to O'Chiese IR 203, it is of no force and effect.

The Panel's Jurisdiction

The *APJA* and the *Designation Regulation* govern the ability of the panel to consider questions of constitutional law.

Section 10(d) of the *APJA* defines a question of constitutional law to mean:

- (i) any challenge, by virtue of the Constitution of Canada or the *Alberta Bill of Rights*, to the applicability or validity of an enactment of the Parliament of Canada or an enactment of the Legislature of Alberta, or
- (ii) a determination of any right under the Constitution of Canada or the *Alberta Bill of Rights*.

Section 12 of the *APJA* states that

(1) Except in circumstances where only the exclusion of evidence is sought under the *Canadian Charter of Rights and Freedoms*, a person who intends to raise a question of constitutional law at a proceeding before a designated decision maker that has jurisdiction to determine such a question

(a) must provide written notice of the person's intention to do so at least 14 days before the date of the proceeding

(i) to the Attorney General of Canada,

(ii) to the Minister of Justice and Solicitor General of Alberta, and

(iii) to the parties to the proceeding,

and

(b) must provide written notice of the person's intention to do so to the designated decision maker.

(2) Until subsection (1) is complied with, the decision maker must not begin the determination of the question of constitutional law.

...

(4) The notice under subsection (1) must be in the form and contain the information provided for in the regulations.

Schedule 1 of the *Designation Regulation* provides that the AER has jurisdiction to decide all matters of constitutional law. However, Section 21 of *REDA* is explicit:

The Regulator has no jurisdiction with respect to assessing the adequacy of Crown consultation associated with the rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982*.

In determining whether the panel has the jurisdiction to consider the questions posed in the NQCL, we considered the following:

- Have the notice provisions of the *APJA* and *Designation Regulation* been complied with?
- Do the questions posed in the NQCL constitute questions of constitutional law?
- Does the panel have jurisdiction over the content of the question, and can it provide a remedy?
- Is it necessary to consider the questions for the purposes of this proceeding, or alternatively, are the questions engaged by the facts and circumstances of this proceeding?

Discussion

The NQCL was served on the required parties within the timeline specified by the *APJA* and regulations. We consider these aspects of the notice requirements to have been met.

O'Chiese First Nation filed the NQCL on October 31, 2023, prior to the letter from Alberta Justice on November 17, 2023, which stated that Alberta relies on the AER regulatory process to fulfill the Crown's duty to consult regarding these particular *OGCA* applications in this proceeding, based on the *Clyde River* and *Chippewas of the Thames* decisions. Most of the reply submissions to the NQCL were therefore directed at the adequacy of the NQCL, the question of whether the duty was triggered in this case, and whether the panel has jurisdiction to consider such issues. O'Chiese First Nation addressed these issues in its reply.

While the NQCL content and format largely complies with the requirements of the *APJA* and *Designation Regulation*, Alberta Justice argues that the required information in some questions – such as the law in question or the right or freedom alleged to be infringed or denied – is deficient or has not been clearly identified.

The AER is a creature of statute, and as such, cannot decide questions outside of its mandate. Section 21 of *REDA* expressly states that the AER has no jurisdiction to assess the adequacy of Crown consultation under the *Constitution Act, 1982*.

The Crown has acknowledged, however, that the honour of the Crown gives rise to a procedural duty to consult when the decision under consideration may affect Treaty rights.

Ruling on Questions 1–4

We find that it is unnecessary and premature to rule on questions 1–4 of the NQCL presented by O’Chiese First Nation prior to the hearing on the merits of the Applications. Based on the Crown’s position that it intends to rely on the regulatory process of the AER to satisfy any duty to consult and accommodate that may exist in the context of this proceeding, we are of the view that it is most prudent to decide these issues following the hearing based on a complete record and argument. Parties are welcome to provide evidence and submissions on this issue.

In *Clyde River*, the Supreme Court of Canada stated, at paragraph 23:

. . . [B]ecause the honour of the Crown requires a meaningful, good faith consultation process (*Haida*, at para. 41), where the Crown relies on the processes of a regulatory body to fulfill its duty in whole or in part, it should be made clear to affected Indigenous groups that the Crown is so relying. Guidance about the form of the consultation process should be provided so that Indigenous peoples know how consultation will be carried out to allow for their effective participation and, if necessary, to permit them to raise concerns with the proposed form of the consultations in a timely manner.

O’Chiese First Nation will be permitted to call those witnesses named in the NQCL during the hearing and the parties shall have the opportunity to cross-examine those witnesses. The other parties may also seek permission to call evidence and witnesses and make final submissions on questions 1–4 of the NQCL.

It is also premature at this stage of the proceedings to rule on whether section 21 of *REDA* should be declared inapplicable or invalid under the *Constitution Act, 1867*, section 52(1), since the duty to consult and accommodate may potentially be satisfied through the hearing process.

Ruling on Questions 5 and 6

We find that questions 5 and 6 of the NQCL asking the panel to review SSO6 and its development are outside the scope of this hearing. We have previously confirmed that this proceeding is not a review of SSO6 or its development and therefore issues related to those topics are not within the scope of this proceeding.

As the proposed well locations are not located within O’Chiese First Nation IR 203, the issue of how SSO6 applies to IR 203 or affects O’Chiese First Nation’s Treaty rights related to IR 203 does not arise in these Applications. Further, in determining whether the Applications should be approved, the panel will not be relying exclusively on the requirements set out in SSO6. The issues for the hearing include “whether there are any reasons that would warrant additional requirements or the dismissal of the applications even though the requirements of SSO6 are met.”²⁰

Closing

We find it premature to rule on questions 1–4 as presented in the NQCL. We decline to determine questions 5 and 6 as they are outside of the scope of the hearing.

Under section 14 of the *APJA*, Alberta and Canada are entitled to appear at the hearing as parties in relation to questions 1–4 of the NQCL.

O’Chiese First Nation estimated that it needed one half day to call evidence and make arguments related to the NQCL. To facilitate scheduling for the hearing, we request that the parties, and Alberta and Canada should they choose to attend the hearing,

- confirm the nature of their intended participation specific to the NQCL, and
- indicate the time expected to call witnesses or present argument with respect to the NQCL.

²⁰ Exhibit 312.01 Panel letter on Scope and Issues for the Hearing, March 24, 2023

Please provide your response to hearing.services@aer.ca by **noon** on **January 31, 2024**, copying all other parties.

Sincerely,

Alex Bolton, Presiding Member

Meg Barker, Panel Member

Brian Zaitlin, Panel Member

cc: Martin Ignasiak, Erin Anderson, Bennett Jones LLP
Sarah Orr, Stikeman Elliott
Oliver Jull, AER counsel for the panel
Susan Foisy, Aboriginal Consultation Office