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### By email only

December 4, 2025

#### Chickadee Indigenous Relations

Attention: Melanie Daniels

#### Baytex Energy Ltd.

Attention: Murray Phillips  
Brad Nicholson  
Shane Koss  
Nicole Frechette

### Dear Parties:

**RE: Request for Regulatory Appeal by Melanie Daniels and Perry Anderson (Requestors)  
Baytex Energy Ltd. (Baytex)  
Application No.: 33348902 (Application)  
Pipeline Licence Nos.: 64571 and 64572 (Pipeline Licences)  
Locations: 07-28-045-02W5M to 11-34-044-02 W5M  
Request for Regulatory Appeal No.: 1958326**

The Alberta Energy Regulator (AER) has considered the Requestors' request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decision to approve Baytex's Application and issue the Pipeline Licences on June 17, 2025 (Request). The AER has reviewed the Requestors' submissions and the submissions made by Baytex.

For the reasons that follow, the AER has decided that the Requestors are not directly and adversely affected by the issuance of the Pipeline Licences, and consequently, not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

### Background

On March 3, 2025, Baytex applied to the AER under the provisions of the *Pipeline Act* to construct and operate a pipeline carrying Oil-Well Effluent with 0 mol\kmol hydrogen sulphide (H<sub>2</sub>S), and to construct and operate a pipeline carrying Natural Gas with 0 mol/kmol H<sub>2</sub>S (Application No. 33348902).

On March 3, 2025, the Requestor submitted a Statement of Concern to the AER in respect of Baytex's Application No. 33348902 (SOC 32764).

On June 17, 2024, the AER issued correspondence to the Requestors in relation to their SOC 32764, advising that their concerns had been considered and it was determined that a hearing was not required, and that Application No. 33348902 was approved and the Pipeline Licences had been issued to Baytex.

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On June 24, 2025, the Requestors submitted a request for a Regulatory Appeal to the AER under section 38 of REDA in relation to the AER's decision to issue the Pipeline Licences to Baytex (Request).

Baytex responded to the Request on July 30, 2025, and the Requestors' reply submissions was submitted to the AER on August 8, 2025.

## **Submissions**

### Request

The Requestors submit that the AER and the Aboriginal Consultation Office (ACO) have violated the inherent Treaty and Constitutional rights of Indigenous peoples impacted by this project by not permitting consultation with the Requestors and their First Nation. The Requestors submit that the AER and ACO have failed to uphold their Treaty obligations and Honour of the Crown through their failure to adequately and meaningfully consult all rights holders whose rights are impacted by the project, specifically stating that Ermineskin Cree Nation, Louis Bull Tribe, Montana First Nation, Samson Cree Nation, O'Chiese First Nation, Sunchild First Nation and the Metis who all practice rights within these lands and territory.

The Requested relief being sought in the Request is stated to be as follows:

"I am seeking a revised [*Directive 056 - Energy Development Applications and Schedules (Directive 056)*] policy that addresses impacts to rightsholders and rightsholders who own land. Our rights are separate from other Albertans and should be treated as such. We require unique processes conducted by the AER, not the ACO, that upholds, Treaty, Section 35 and the Honour of the Crown."

The Requestors submit that they will be directly and adversely affected by the project as they are Indigenous landowners who hold title to land adjacent to the Crown Lands in question. The Requestors submit that they are rights holders whose rights are enshrined in section 35 of the *Constitution Act of Canada*, Treaty 6, Treaty 8 and 4. The Requestors submit that they access and utilize the Crown Lands in question for the practice of rights and to connect with their spirituality. They submit that the uptake of Crown Lands limits their ability to practice their Constitutional and Treaty rights, removal of trees and culturally significant plants and medicines, disturbance of wetlands impacting medicines, critical wildlife habitat and ground water that may have the potential to impact drinking water. The Requestors submit that their mental health and spirituality are directly connected to the land, which is already strained by cumulative effects from oil and gas development, grazing and clearing. The Requestors further submit that they believe that Indigenous landowners are owed a separate process from other landowners in Alberta, that it is past time to address cumulative effects, that the ACO has created risk for the AER and Baytex by excluding several First Nations and Métis Peoples [in the duty to consult] that share the traditional territory, traditional land use areas, familial connections and language. The Requestors submit that the approach outlined in the Consultation Policy and Associated Guideline is systemically racist and takes advantage of the capacity issues and government mistrust held by First Nations and Métis.

### Baytex's Response

Baytex's response submits that Baytex takes the Requestors' concerns seriously and remains fully committed to responsible land use and compliance with regulatory requirements. Baytex submits that it has complied with all the consultation requirements directed by the ACO and was subsequently granted an Adequacy Assessment. Baytex submits that the concerns related to *Directive 056*, cumulative effects and the boarder consultation policy are matters relating to regulatory policy not determined or administered by Baytex. Baytex concludes that it has followed all applicable rules and regulations in regard to the timing of its project and respectfully requests that the AER dismiss the Request.

### Reply Submissions

In their reply submissions, the Requestors submitted that they don't believe that Baytex has the authority to address their concerns. The Requestors submit that:

"Our concerns are related to the Government of Alberta's Consultation Policy and processes, and the [AER's] reliance on this policy to ensure that impacts to Indigenous rights are meaningfully protected. Our concerns are with the AER's and the [ACO]'s inability to uphold the Honour of the Crown through permitting ongoing oil & gas development without undertaking meaningful consultation with potentially impacted First Nations and Métis."

The Requestors further submit that this has resulted in a direct violation and derogation of their rights, including Little Black Bear First Nation, as well as the rights of the Maskawacis Cree Nations, Sunchild First nation, O'Chiese First Nation as well as the Métis that may use the area. The Requestors submit that Baytex has complied with the Consultation Policy and direction issued thorough the ACO, but this does not mean that the impacts to rights have been identified, assessed, avoided or mitigated. The Requestors submit that they are seeking audience with the AER to discuss the regulatory gaps identified and the risk created by the ongoing reliance on the ACO adequacy determination process.

## **Legislative Framework**

Section 38(1) of the REDA sets out the test for eligibility to request a regulatory appeal:

38(1) An **eligible person** may request a regulatory appeal of an **appealable decision** by filing a request for regulatory appeal with the Regulator **in accordance with the rules**.

[Emphasis added]

## **Analysis**

### Appealable Decision

The Pipeline Licences are appealable decisions, as the Pipeline Licences were issued under an energy resource enactment (the *Pipeline Act*) without a hearing.

### In Accordance with the Rules

While the Requestors' Request was initially missing several of the components required to be filed, as set out in section 30 of the *AER Rules of Practice* (the Rules), the Requestors addressed the deficiencies within the timeline requested by the AER, and we find that the Request was otherwise made in accordance with the Rules.

### Eligible Person

In order to be granted a Regulatory Appeal, the Requestors must establish that they are "eligible persons"—persons that are directly and adversely affected by the AER's decision to issue the Pipeline Licences to Baytex.

The AER has reviewed the Requestors' submissions and the submissions from Baytex.

The AER acknowledges that the Requestors are Indigenous landowners who hold title to land. The AER also acknowledges that the Requestors have made submissions that they access certain Crown Lands to practice their Constitutional and Treaty rights and to connect with their spirituality.

The land that the Requestors own is adjacent to Crown Lands. The Pipeline Licences allow for the construction of a pipeline through these Crown Lands, but the footprint of the pipeline itself is not adjacent to the Requestors' land. The Pipeline Licences allow a pipeline to run through a different quarter section than the quarter section containing the Requestors' lands.

Additionally, the Pipeline Licences permit the pipeline to be constructed in an existing right-of-way which has already been disturbed.

In *Dene Tha' First Nation v Alberta (Energy & Utilities Board)*, 2005 ABCA 68, the Alberta Court of Appeal states that there must be some facts needed to establish that an aboriginal party is directly and adversely affected. A mere assertion of an Indigenous or treaty right is not sufficient and some degree of location or connection between the proposed project and the right asserted is reasonable, which degree is a question of fact for the AER to determine.<sup>1</sup>

Adverse effect is a matter of degree. The AER must consider the specific facts of the case and decide whether the magnitude of risk is such that the person in question has become directly and adversely affected.<sup>2</sup>

In relation to prior consultation, the Supreme Court of Canada has held that the claimant must show a causal relationship between the decision in question and a potential adverse impact on the Aboriginal rights, and that past wrongs, including previous breaches of the duty to consult, do not suffice.<sup>3</sup>

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<sup>1</sup> *Dene Tha' First Nations v Alberta (Energy & Utilities Board)*, 2005 ABCA 68 at para 14.

<sup>2</sup> *Kelly v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 325 at para 26.

<sup>3</sup> *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, [2010] 2 SCR 650 at para 45.

Given the above, the AER finds that that the Requestors have not established that they are directly and adversely affected by the decision to issue the Pipeline Licences.

### Policy Concerns

The AER acknowledges that the Requestors have stated in their submissions that they have concerns related to Alberta's Consultation Policy, consultation procedures, the ACO's adequacy determination process and Directive 056 procedures.

Concerns related to the Consultation Policy in Alberta, the ACO's adequacy determination process, and government policy, are outside of the scope the AER's request for regulatory appeal process and are outside of the AER's jurisdiction. Such concerns should be raised directly with the Government of Alberta.

### **Conclusion**

Given the above, the Request for Regulatory Appeal is denied.

**Sincerely,**

<Original signed by>

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**Gary Neilson**

Senior Advisor, Crown Liaison

<Original signed by>

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**Isaac Amponsah**

Senior Advisor, Regulatory Enhancement

<Original signed by>

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**Paul Ferensowicz**

Principal, Regulatory Advisor

cc: Toni Hafso, Aboriginal Consultation Office  
Sylvia Ulrich, AER