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DEPARTMENT OF ENERGY

DEPARTMENT OF ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT

RESPONSIBLE ENERGY DEVELOPMENT ACT

SA 2012, c. R-17.3

Energy Ministerial Order 105/2014

Environment and Sustainable Resource Development Ministerial
Order 53/2014

We, Frank Oberle, Minister of Energy, and Kyle Fawcett, Minister of Environment and Sustainable Resource Development, pursuant to section 67 of the *Responsible Energy Development Act*, make the Aboriginal Consultation Direction, in the attached Appendix.

Energy Ministerial Order 141/2013 is repealed.

DATED at the City of Edmonton, in the Province of Alberta, this 31st day of October, 2014.

Original signed by Minister Frank Oberle

Frank Oberle
Minister

Original signed by Minister Kyle Fawcett

Kyle Fawcett
Minister

APPENDIX

ABORIGINAL CONSULTATION DIRECTION

PURPOSE

The Ministers of Energy and Environment and Sustainable Resource Development are authorized by section 67 of the Responsible Energy Development Act (REDA) to give directions to the Alberta Energy Regulator (the “AER”) for the purpose of

- (a) providing priorities and guidelines for the AER to follow in the carrying out of its powers, duties and functions, and
- (b) ensuring the work of the AER is consistent with the programs, policies and work of the Government of Alberta in respect of energy resource development, public land management, environmental management and water management.

This Direction applies to “applications” to the AER for “energy resource activity” “approvals” under “specified enactments”, all as defined in REDA (“energy applications”).

The purpose of this Direction is to ensure that the AER considers and makes decisions in respect of energy applications in a manner that is consistent with the work of the Government of Alberta (“Alberta”)

- (a) in meeting its consultation obligations associated with the existing rights of aboriginal peoples as recognized and affirmed under Part II of the Constitution Act, 1982; and
- (b) in undertaking its consultation obligations pursuant to The Government of Alberta's Policy on Consultation with First Nations on Land Management and Resource Development, 2013 as amended and replaced from time to time (“Consultation Policy”) and associated Consultation Guidelines (“Guidelines”).

This Direction

- (a) recognizes that
 - i. the AER has a responsibility to consider potential adverse impacts of energy applications on existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982* within its statutory authority under REDA,
 - ii. AER processes will constitute part of Alberta's overall consultation process as appropriate,
 - iii. Alberta retains the responsibility to assess the adequacy of Crown consultation in respect of energy applications,
- (b) facilitates timely, efficient and effective information exchange between the AER and Alberta with respect to energy applications that require aboriginal consultation; and

- (c) requires the AER to act consistently with decisions made by Alberta under the Consultation Policy and Guidelines in respect of energy applications to
 - i. support informed consideration of applications by the AER,
 - ii. ensure that the AER's approval of energy applications is consistent with Alberta's consultation and engagement in respect of the energy resource activity to which it relates.

Any opinion, consideration or decision of the AER in respect of energy applications' potential adverse impacts on existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982* shall not be construed as the opinion, consideration or decision of Alberta.

DIRECTIONS TO THE AER

Coordination

- 1) The AER shall create and maintain a consultation unit that will work with Alberta's Aboriginal Consultation Office (ACO) to ensure Alberta will be able to meet consultation obligations associated with
 - a) the existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982*, and
 - b) the Consultation Policy and Guidelines.
- 2) The AER shall assist the ACO to establish and maintain operating procedures that set out how the AER and the ACO will cooperate to administer and coordinate their work for the purposes of this Ministerial Order.
- 3) The AER shall follow the operating procedures established under section 2 of this Ministerial Order.

Applications

- 4) The AER shall direct proponents to contact the ACO for any proposed or planned energy resource activity prior to submitting an energy application to the AER.
- 5) When a proponent files an energy application with the AER, the AER shall, provide the ACO with
 - a) a copy of or access to the application,
 - b) a copy of any statement of concern filed by a First Nation or other aboriginal group in respect of the application,
 - c) a copy of any submission filed by a First Nation or other aboriginal group in respect of the application under the Alberta Energy Regulator Rules of Practice, and
 - d) copies of any evidence and information submitted by or with respect to First Nations and other aboriginal groups.

- 6) Unless an energy application is in respect of an activity or application that is listed in the Consultation Guidelines as not requiring consultation, or is accompanied by a pre-consultation assessment by the ACO indicating that no First Nations consultation is required, the AER shall
 - a) require the proponent of the energy application to include information about the potential adverse impacts, if any, of the proposed energy resource activity on existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982* and on traditional uses as defined in the Consultation Policy,
 - b) advise the ACO of any changes the proponent proposes to the energy application,
 - c) advise ACO if alternate dispute resolution (ADR) involving First Nations or other aboriginal groups will be used with respect to an application, and
 - d) advise ACO if a hearing will be held on the application and the AER's decisions with respect to including First Nations or other aboriginal groups in the hearing process.

Decisions

- 7) Prior to making a decision in respect of an energy application for which First Nations consultation is required by the Consultation Guidelines or by the ACO, the AER shall request advice from the ACO
 - a) respecting whether Alberta has found consultation to have been adequate, adequate pending the outcome of the AER's process, or not required, and
 - b) on whether actions may be required to address potential adverse impacts on existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982* or traditional uses as defined in the Consultation Policy.
- 8) When the AER makes a decision in respect of an energy application for which First Nations consultation is required by the Consultation Guidelines or by the ACO, the AER must immediately provide the ACO with a copy of its decision, and any related reasons, in respect of the decision, at the same time it provides notice of the same to the proponent.

Appeal and Reconsideration

- 9) The AER must immediately provide the ACO with a copy of any application for regulatory appeal, reconsideration or leave to appeal application to the Court of Appeal filed by a First Nation or any other aboriginal group.