

**Via Email and Fax**

July 22, 2016

Samson Cree First Nation

Miller Thomson LLP

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Canada[www.aer.ca](http://www.aer.ca)**Attention: Norine Saddleback,  
Consultation Manager****Attention: Aryn F. Lalji**

Dear Madam and Sir:

**Re: Request for Regulatory Appeal Samson Cree Nation (Samson Cree)  
Encana Corporation (Encana)  
Application Nos: 1802269 (Bundled Infrastructure Applications); and *Water Act*  
Application No. 00347134-001; and EPEA Application No. 001-354353 (collectively, the  
Applications) (Project)  
AER Decisions reflected in letters dated: September 5 (which includes approvals issued  
on August 18 and August 19, 2014); September 18; September 26; November 12; and  
November 21, 2014.  
Regulatory Appeal No.1808241 (Regulatory Appeal)**

Samson Cree Nation filed five regulatory appeal requests under section 38 of the *Responsible Energy Development Act (REDA)*, each relating to approvals issued by the AER to Encana for its project (the Project) located approximately 20 kilometres west of the town of Fox Creek, within Townships 61 to 64, Ranges 20 to 25, West of the 5th Meridian. The AER has considered Samson Cree Nation's requests, and the written submissions made by Samson Cree Nation and by the parties' respective counsel. For the reasons that follow, the AER has decided not to hold a regulatory appeal on any of the five requests because:

- Samson Cree Nation has not demonstrated it will be directly and adversely affected, or directly affected (as the applicable test may be), by any of the Project applications for which it made its requests, and therefore it is not an "eligible person" who can request a regulatory appeal;
- for the preliminary certificate issued under the *Water Act*, Samson Cree Nation did not file a statement of concern to the application. For that additional reason it is not an "eligible person" for that part of its requests, and the AER's decision to issue the certificate is not an "appealable decision"; and
- Samson Cree Nation's request for a regulatory appeal of the AER's September 26, 2014 decision to issue an approval for Encana's fresh water storage reservoir was not filed within 7 days following the giving of notice of that decision, and therefore that part of Samson Cree Nation's requests was not filed in accordance with the Rules.

**BACKGROUND**

Encana filed *Water Act* Application No. 00347134-001 on February 6, 2014 seeking approval for a licence to divert water from the Little Smoky River for exploration and development purposes, including hydraulic fracturing (Water Diversion application). The application was originally submitted to Alberta Environment and Sustainable Resource Development (ESRD) and the AER later assumed responsibility for its disposition effective March 29, 2014 as per *REDA* and the *Specified Enactments (Jurisdiction) Regulation*. Encana also filed Application No. 1802269 on July 16, 2014 seeking approvals needed to construct, operate and reclaim an integrated water, gas gathering and fuel gas infrastructure system as part of the Project. This application was known as the "Bundled Infrastructure" application, and it included applications for authorizations under the *Pipeline Act*, the *Public Lands Act*, the *Environmental Protection and Enhancement Act* (EPEA) and the *Water Act*. Dispositions under the Bundled Infrastructure Applications in relation to the Project were issued by the AER in a series of decisions from August 18 to November 21, 2014 (as set out in the Table attached to this letter). Both

the Water Diversion location and the Project are located in the Treaty 8 area, approximately 10 kilometres from its boundary within the Treaty 6 area (at the nearest point). Samson Cree Nation is a Treaty 6 First Nation.

## **REQUIREMENTS FOR A REGULATORY APPEAL UNDER REDA**

*REDA* sets out the test for regulatory appeal in section 38(1):

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.  
(underlining added)

The test has three components:

- (a) the decision must be an appealable decision;
- (b) the requester must be an eligible person; and
- (c) the request must be filed in accordance with the rules.

These components are discussed below in relation to Samson Cree Nation's regulatory appeal requests.

### **1. Appealable Decision**

The applicable *REDA* provisions for the requests are:

- Section 36(a)(i): a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 91(1) of the *EPEA*, if that decision was made without a hearing;
- Section 36(a)(ii): a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 115 of the *Water Act*, if that decision was made without a hearing;
- Section 36(a)(iii): a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 121 of the *Public Lands Act*, if that decision was made without a hearing.
- Section 36(a)(iv): a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

Each of these is addressed below.

### **Section 91 *Environmental Protection and Enhancement Act (EPEA)*<sup>1</sup>**

Under section 91(1), a notice of appeal may be submitted by the following persons in the following circumstances:

- (a) where the [Regulator] issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted
  - (i) By the approval holder or by any person who previously submitted a statement of concern in accordance with the [*REDA* and its regulations and rules] and is directly affected by the [Regulator's] decision, in a case where notice of the application or proposed changes was provided under the [*REDA* and its regulations and rules],

The AER's decision to issue the *EPEA* approval is an appealable decision.

<sup>1</sup> Section 91 *EPEA*, s. 115 (1)(a) and (b) *Water Act*, and s. 121 *Public Lands Act* and ss. 211-212 *Public Lands Administration Regulation*, are set out in this letter with the modifications to those sections that are provided in *REDA* and in the *Specified Enactments (Jurisdiction) Regulation* indicated in square brackets.

**Section 115 Water Act: Approval issued under the Bundled Infrastructure Applications (Application No. 00354354-00-00)**

Under section 115(1)(a), if the Regulator issues or amends an approval, a notice of appeal may be submitted

- (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with [REDA and its regulations and rules] who is directly affected by the [Regulator's] decision, if notice of the application or proposed change was previously provided [under REDA and its regulations and rules],

The AER's decisions to issue *Water Act* approvals under the Bundled Infrastructure Applications are appealable decisions.

**Section 115 Water Act: Preliminary Certificate issued under Application No. 00347134-001**

Under section 115(1)(b), if the Regulator issues or amends a preliminary certificate, a notice of appeal may be submitted

- (i) by the preliminary certificate holder or by any person who previously submitted a statement of concern in accordance with [REDA and its regulations and rules] who is directly affected by the [Regulator's] decision, if notice of the application or proposed change was previously provided under [REDA and its regulations and rules],

No person, including Samson Cree Nation, filed a statement of concern in accordance with the regulations and rules in relation to the *Water Act* application in which the preliminary certificate was issued. Samson Cree Nation attempted to submit a statement of concern more than 80 days after the last day for doing so had passed, and it was not granted an extension to file by the AER. As a result, Samson Cree Nation is not a person who submitted a statement of concern as required under section 115(1)(b)(ii) of the *Water Act*, and therefore the AER's decision to issue the preliminary certificate is not an appealable decision.

**Public Lands Act dispositions**

Under section 121(1), a notice of appeal of a "prescribed decision" may be submitted by a "prescribed person" in accordance with REDA and its regulations and rules.

**Section 211 Public Lands Administration Regulation  
Decisions that can be appealed**

211 The following decisions are prescribed as decisions from which an appeal is available:

- (a) The issuance, renewal, amendment or suspension of a disposition issued under the Act;

The AER's decisions to issue the public lands dispositions under the Bundled Infrastructure Applications are appealable decisions.

**Pipeline Act Approvals**

The AER's decisions to issue the energy resource enactment (i.e., *Pipeline Act*) approvals under the Bundled Infrastructure application are appealable decisions.

**2. Eligible Person**

For the energy resource enactment decisions, an eligible person is a person who is directly and adversely affected by a decision made under an energy resource enactment without a hearing (section 36(b)(ii) REDA). For the specified enactment decisions, an eligible person is a person referred to in (a)(i), (ii) or (iii) of section 36 REDA. These are:

- for the decision to issue an EPEA approval, an eligible person is a person who previously submitted a statement of concern in response to public notice and who is directly affected by the AER's decision;
- for the decisions to issue the preliminary certificate or other approvals under the *Water Act*, an eligible person is a person who previously submitted a statement of concern in response to public notice and who is directly affected by the decision;
- for the decisions to issue *Public Lands Act* dispositions, an eligible person is a person to whom notice of the decision was given or a person, including a commercial user referred to in section 98, that is directly and adversely affected by the AER's decision.

Whether Samson Cree Nation is an eligible person is discussed below under the heading "Directly and Adversely Affected/Directly Affected."

### 3. In Accordance with the Rules:

Section 30(3)(m) of the *AER Rules of Practice* provides that a request for regulatory appeal of most of the kinds of decisions that are the subject of Samson Cree Nation's requests must be filed within 30 calendar days following notice of the decision being issued. The requests were all filed within that 30 day time period. However, for the section 38 *Water Act* approvals issued under the Bundled Infrastructure Applications on September 5 and September 26, 2014, section 30(3)(d) of the *AER Rules of Practice* requires a request for a regulatory appeal to be filed within 7 calendar days after notice of the order is issued. This requirement is met for the regulatory appeal request filed by Samson Cree on September 12, 2014 (in relation to the AER's September 5 notice of decision), but not for the regulatory appeal request filed by Samson Cree on October 7, 2014 in relation to the AER's notice of decision dated September 26, 2014. Therefore, that part of Samson Cree Nation's requests was not made in accordance with the rules, and it does not comply with section 38(1) of *REDA*.

### Directly and Adversely Affected/Directly Affected

Whether Samson Cree Nation is a person who is directly and adversely affected/directly affected by the AER's decisions to issue the various approvals under the Bundled Infrastructure Applications, or by the Water Diversion approval issued September 5, 2014, is the principal question to be decided in relation to Samson Cree Nation's requests for regulatory appeals. A preliminary matter to address, which was raised by Samson Cree Nation in its request dated September 12, 2014 and in its counsel's letter dated January 6, 2015, is whether the phrases "is directly affected" and "is directly and adversely affected" import a different test—a more onerous test—than the test under section 34(3) of *REDA*, which uses the phrase "may be directly and adversely affected." This issue was addressed in *Court v. Alberta Environmental Appeals Board*, 2003 ABQB 456. In that case the court considered the phrase "is directly affected" under certain provisions of EPEA. The court stated:

[71] Fourth, the appellant need not prove, by a preponderance of evidence, that he or she will in fact be harmed or impaired by the approved project. The appellant need only prove a potential or reasonable probability for harm. See *Mizera* at para. 26. In *Bildson* at para. 39, the Board stated:

[T]he "preponderance of evidence" standard applies to the appellant's burden of proving standing. However, for standing purposes, an appellant need not prove, by a preponderance of evidence, that he will in fact be harmed by the project in question. Rather, the Board has stated that an appellant need only prove a "potential" or "reasonable probability" for harm.

In a 2013 decision,<sup>2</sup> the Environmental Appeals Board cited the *Court* decision when it considered whether a landowner was a person "who is directly affected" as that phrase is used in section 115 of the *Water Act*. The EAB stated:

<sup>2</sup> *Tomlinson v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission* (03 April 2013), Appeal No. 12-033-ID 1 (A.E.A.B.).

[29] The Court of Queen's Bench in *Court* stated an appellant only needs to show there is a potential for an effect on that person's interests. This potential effect must still be within reason, plausible, and relevant to the Board's jurisdiction for the Board to consider it sufficient to grant standing.

The AER's approach in cases such as this, where the development or activity in question has not yet occurred and therefore the actual impacts are not yet known, is to take the position that the phrases "is directly and adversely affected" or "is directly affected" do not require certain proof that the person will be affected. What is required is reliable information that demonstrates a reasonable potential or probability that the person asserting the impact will be affected.

Samson Cree Nation's statement of concern (SOC) dated August 28, 2014, and its September 12, 2014 regulatory appeal request, present the bulk of its information and arguments in relation to its position that it is directly and adversely affected/directly affected. Both the SOC and the September 12<sup>th</sup> request address in detail the rights and interests Samson Cree Nation claims it and its members have and exercise throughout its traditional territory (which by Samson Cree Nation's description includes the entire province of Alberta). What is missing from Samson Cree Nation's submissions, in the AER's assessment, is the hard information that establishes a Samson Cree Nation presence at a particular location in some ascertainable proximity to Project infrastructure or activities. This point was made by the AER in each of its five letters giving notice to Samson Cree Nation of the approvals issued by the AER.

In *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68, the Court of Appeal of Alberta provided guidance on what an aboriginal group must demonstrate in order to meet the factual part of the directly and adversely affected test. Although the decision concerns the test under subsection 26(2) of the former *Energy Resources Conservation Act*, the AER considers it to be reliable guidance on the question of what information is needed to show that a person may be directly and adversely affected/directly affected, i.e., on the factual question that arises under section 36(b) of *REDA*:

[14] It was argued before us that more recent case law on prima facie infringement of aboriginal or treaty rights changed things. But the Board still needed some facts to go on. It is not compelled by this legislation to order intervention and a hearing whenever anyone anywhere in Alberta merely asserts a possible aboriginal or treaty right. Some degree of location or connection between the work proposed and the right asserted is reasonable. What degree is a question of fact for the Board.

.....

[18] There had been discussion and provision of exact well site locations long before the submissions to the Board. There never has been any suggestion that anyone lived outside the reserve, or that any wells or roads were to be within the reserve. The First Nation must know, or be able easily to learn, where its members hunt and trap. None of that hard information was provided to the Board. Instead the solicitors gave vague and adroitly worded assertions of rights, some of which encompassed all land in Alberta, or in any event, all Crown land in Alberta.

[19] The First Nation also contended before us it had no duty to tell the Board specifics, and that the Board should have frozen all development while deciding the question. We cannot agree, and have seen no authority, constitutional or otherwise, requiring such a logical impasse.

The *Dene Tha'* decision indicates that a person, including a Treaty First Nation, who asserts that he or she may be directly and adversely affected by the AER's decision on an application must demonstrate

a degree of location or connection with that application, or its effects, in order to bring himself or herself within the bounds of the legislative provision.

Subsequent to Samson Cree Nation filing its requests in this proceeding, the Court of Appeal of Alberta considered an application from a First Nation that believed it met the directly and adversely affected test even though it had provided only limited information about potential impacts. In its reasons<sup>3</sup> refusing the First Nation permission to appeal the AER's decision that the First Nation had not established (in its regulatory appeal request) that it may be directly and adversely affected by the project, the court stated:

[37] The O'Chiese First Nation argued that its treaty rights would be directly and adversely affected by any development undertaken within the OCFNCA; the argument being that once a development had taken place, its traditional treaty rights are lost over the area of the development.

[38] In other words, the O'Chiese First Nation's position is that there is no requirement whatsoever upon it to adduce any specific evidence to show how the Approvals affected it. The argument is that the Approvals, as a matter of law, "directly and adversely" affect the O'Chiese First Nation's rights by the mere fact that both its reserve and the lands covered by the Approvals are situated within the OCFNCA.

....

[42] However, [the adequacy of the Crown's duty to consult] does not inform the requirements of the relevant legislation that some party in the position of the O'Chiese First Nation must be "directly and adversely affected" by a decision of the AER as a pre-condition to be accorded a regulatory appeal. The O'Chiese First Nation, having chosen to adduce no evidence to show how it would be directly and adversely affected by the Approvals cannot now seek regulatory appeals therefrom.

[43] A decision of the AER can, as a matter of fact, "directly and adversely" affect a party such as the O'Chiese First Nation. Whether it does so or not is to be considered by the AER in light of the evidence properly adduced before it.

[44] What is equally clear however is that the phrase "directly and adversely" is not automatically engaged as a matter of law on the facts of this case. In other words, the mere fact that the developments in question are located within the OCFNCA does not mean that the Approvals "directly and adversely" affect the O'Chiese First Nation.

[45] Had the Legislature intended that a party in the position of the O'Chiese First Nation have the right to a regulatory appeal any time an Approval is granted to a development located within that party's area of consultation, it would have been easy enough for the Legislature to so provide. The fact that there is no such legislation to that effect strongly tells against the argument now being advanced on behalf of the O'Chiese First Nation.

The AER has concluded that Samson Cree Nation's approach in these regulatory appeal requests is consistent with the facts that the court considered in the *O'Chiese* decision. Samson Cree Nation has stated that Encana's project is wholly within Samson Cree Nation's traditional territory; that the project will impact Samson Cree Nation's use of traditional sites and resources; and that it will impact the exercise of Samson Cree Nation's rights in the Project area. Samson Cree Nation does not, however, identify specific locations where its members might be affected, or specific ways in which they might be affected by the Project. Samson Cree Nation argues that Encana, the Aboriginal Consultation Office, or the AER itself (by holding a hearing) has the responsibility to bring that information forward. Both the *Dene Tha'* and *O'Chiese* decisions indicate that is not correct, and that Samson Cree Nation has an obligation to provide "hard information" to the AER that demonstrates some degree of location or connection between the project and potential effects on it or its members.

<sup>3</sup> *O'Chiese First Nation v. Alberta Energy Regulator*, 2015 ABCA 348.

Samson Cree Nation submitted that it had provided “compelling” information that it may be directly and adversely affected/directly affected by the applications. But what is missing from the record of its requests is specific information about where and how the anticipated impacts might occur, and an indication that a reasonable potential or probability exists that those impacts will occur. Instead, Samson Cree Nation’s concerns are general in nature, leaving unanswered the questions of which of its members are active in what locations and for what purposes, and how they or the resources they rely on might be affected by the Project or elements of it. Although its submissions were extensive in terms of describing its Treaty and other aboriginal rights, and in summarizing in a general way its members’ exercise of those rights and their uses of natural resources, Samson Cree Nation did not provide the detail needed to show a degree of location or connection with the Project that demonstrates the potential exists for its members to be affected. As a result, the AER cannot conclude that the Project may or will directly and adversely affect/directly affect Samson Cree or its members. The fact that the Project is approved within Samson Cree Nation’s traditional territory does not, by itself, demonstrate that Samson Cree is directly and adversely affected/directly affected by the AER’s decisions. That is clear from the excerpts from *Dene Tha’* and *O’Chiese* quoted above.

Samson Cree Nation quoted from the Court of Appeal of Alberta’s leave decision in *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94, citing it as authority that the test for direct and adverse effect only requires that a *prima facie* case be made for the possible infringement of a legal right. However, in the full appeal decision<sup>4</sup> in that action the court substantially discounted both that argument and the leave court’s reliance on a previous leave decision. The court stated:

[3] The *prima facie* argument is based upon a passage in a memorandum of decision 5 years ago in another case. In it, one Justice of Appeal gave leave to appeal from the Commission’s predecessor, the A.E.U.B. The issues there were quite different from the present issues. But there is one brief passage reciting a proposition not argued there, and merely conceded:

“that the test for standing under section 26 of the *ERCA* requires that the applicant establish a *prima facie* case of the probable infringement of a legal right.”

*Whitefish L. F.N. v. A.E.U.B.*, 2004 ABCA 49, 12 Admin. L.R. (4th) 295 (para. 22)

[4] That decision does not expand upon that position, and did not have to in that case. Nor is a statement of a conceded proposition, recited after no argument, of much precedential value.

[5] In any event, the phrase “*prima facie* case” is at best ambiguous.

[6] On the one hand, it is clear from the legislation (such as the *Alberta Utilities Commission Act*, s. 9(2)) that the issue at these early stages is whether the applicant neighbours’ rights **may** be adversely affected, not whether it is certain that they will be affected. And “*prima facie*”, when used loosely, more or less conveys that meaning. So used, it refers more or less to *standard of proof*.

[7] On the other hand, “*prima facie* case” or “evidence” has another more technical meaning in the law of evidence or civil procedure. It refers to enough evidence to avoid a nonsuit, or maybe enough evidence to win, if no one leads any other evidence and if that evidence (said to be *prima facie*) is believed. This refers to the *burden of proof*, indeed strictly to the burden of leading some evidence, not to the ultimate or persuasive burden.

[8] In our view, the latter meaning of *prima facie* is not appropriate to this legislation, and the *Whitefish L. F.N.* decision, *supra*, was not using it in this more technical sense.

<sup>4</sup> *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 348.

[9] In any event, the phrase “*prima facie*” is not in the relevant legislation, and we should interpret the actual words of the Legislature, not a brief paraphrase in a tentative unargued decision.

Samson Cree Nation also referred to *Mikisew Cree First Nation v. Director, Northern Region, Environmental Management, Alberta Environment, re: Nexen Inc.*, a 2009 decision of the Alberta Environmental Appeals Board. The Board’s reasons in that case state that the Director had accepted (in the first instance) that the First Nation was directly affected, but he also stated that the extent to which the Appellant would be affected was questionable. The Board stated it “is willing to accept the [First Nation] is directly affected with some question as to the extent the [First Nation] is actually directly affected.” The Board’s ultimate decision in that case was that the First Nation was not entitled to appeal the Director’s decision because the First Nation raised constitutional law questions that were beyond the Board’s jurisdiction, and the Energy Resources Conservation Board had already dealt with the First Nation’s issues. The AER notes that the Board’s reasons do not give much information about what evidence of project impacts was provided to the Board, and the decision itself predates a number of Court of Appeal decisions on the question of directly and adversely affected, including the *O’Chiese* decision.

### Conclusions

The AER has decided that Samson Cree Nation has not demonstrated it will be directly and adversely affected/directly affected by any of the Project applications for which it made its regulatory appeal requests. As a result, Samson Cree Nation is not an eligible person under section 38 of *REDA*, and therefore the AER will not conduct a regulatory appeal of the decisions approving the Project applications. In addition, for the preliminary certificate issued under the *Water Act*, Samson Cree Nation did not file a statement of concern to the original application and it therefore is not an “eligible person” under *REDA* in relation to that decision, nor is the decision itself an “appealable decision.” Finally, Samson Cree Nation’s request for a regulatory appeal of the AER’s September 26, 2014 decision to issue an approval for Encana’s fresh water storage reservoir was not filed within 7 days following the giving of notice of that decision, and therefore that part of the requests was not filed in accordance with the Rules.

### Questions Raised by Samson Cree that are Not Relevant to the Requests for Regulatory Appeal

In his letter submission dated October 20, 2014, counsel for Samson Cree Nation stated:

13. As originally stated in Samson’s September 12, 2014 Request for a Regulatory Appeal, the issues currently before the AER are as follows:

- A. Whether or not the AER correctly applied the “Directly and Adversely Affected” test;
- B. Whether or not the AER will jointly consider Samson’s August 28 Statement of Concern in respect of both the Water Diversion and Program Applications; and
- C. Whether or not the AER has improperly characterized Samson’s Constitutional Questions.

In relation to issue A. above, which refers to the AER’s original decisions to approve Encana’s applications without holding a hearing, those are not decisions that can be subject to a regulatory appeal under section 38 of *REDA*. A decision to hold or not hold a hearing is made under section 33(1) of *REDA*. *REDA* does not define such a decision as an “appealable decision” that may be subject to a regulatory appeal, because decisions “not to hold a hearing” are not made under an energy resource enactment or specified enactment: they are decisions made under *REDA* or its regulations and rules. Issue A. does not arise in connection with Samson Cree Nation’s regulatory appeal requests.

In relation to Issue B. above, in this proceeding the AER considered all of Samson Cree Nation’s concerns set out in its August 28, 2014 letter, to the extent that those concerns related to the questions

whether Samson Cree Nation was an eligible person, whether the AER's decisions were appealable decisions, or whether the regulatory appeal requests were filed in accordance with the rules.

In relation to issue C. above, Samson Cree Nation stated in its September 12, 2014 request that the AER did not address Samson Cree Nation's questions of constitutional law contained in its SOC dated August 28, 2014. The AER notes that Samson Cree Nation's constitutional law questions were not raised in compliance with Part 2 of the *Administrative Procedures and Jurisdiction Act*, and so the AER did not have jurisdiction to consider them in the first instance, and it does not have that jurisdiction now. (In fact, Samson Cree Nation's SOC states "Samson intends to further define its questions of constitutional law in accordance with section 12 of the Administrative Procedure and Jurisdiction Act and Schedule 2 of the Designation of Constitutional Decision Makers Regulation"). In any event, Samson Cree Nation's position on the regulatory appeal requests is not enhanced as a result of it having stated the constitutional law questions. The first of Samson Cree Nation's constitutional questions, i.e., whether the Project unjustifiably infringes Samson Cree Nation's section 35 rights, might (at best, for the purposes of these regulatory appeal requests) be considered another version of the question whether Samson Cree Nation is directly and adversely affected/directly affected. But for the AER to have considered the question of possible infringements it would have required more detailed information about the potential impact of the Project on Samson Cree Nation, including on section 35 rights, than what Samson Cree Nation provided. Samson Cree Nation's second constitutional law question asked the AER to determine if the Crown had discharged certain duties. This question is so vague that it may or may not relate to the adequacy of Crown consultation (e.g., Samson Cree Nation does not specify what aspect of the Crown's duty to act honourably is engaged), and if so section 21 of *REDA* specifically states that the AER has no jurisdiction to consider the question. Regardless, the second constitutional law question is not directly relevant to the matters the AER must decide on these regulatory appeal requests, namely: is Samson Cree Nation an eligible person; are the AER's decisions appealable decisions; and were the requests filed in accordance with the rules.

Yours truly,

**[original signed by:]**

K. Fisher  
Manager, Regulatory Effectiveness

**[original signed by:]**

**Brent Prenevost** on behalf of

Patricia M. Johnston, Q.C. I.C.D.  
Executive Vice President Law and  
General Counsel

**[original signed by:]**

Stephen Smith  
Sr. Advisor

cc: Bennett Jones LLP, Attention: Shawn M. Munro

Table - Regulatory Appeal Requests and Related Decisions and Submissions

Request for Reg. Appeal - Date	Decisions appealed – Date Issued	Encana Submission - Date	Samson Reply Response -Date
Sept 12, 2014	1805526 (*Aug 19, 2014) 1805532 (*Aug 19, 2014) 1805543 (*Aug 19, 2014) 1805556 (*Aug 19, 2014) 1805564 (*Aug 19, 2014) LOC 141279 (Sept 5, 2014) LOC 141280 (Sept 5, 2014) PIL 140544 (Sept 5, 2014) PLA 141223 (Sept 5, 2014) TFA 145683 (*Aug 19, 2014) TFA 145643 (*Aug 18, 2014) WA 00354354-00-00 (Sept 5, 2014) WA 00347134-00-00 (Sept 5, 2014)  <b>*Notice of these approvals was given to Samson Cree Nation in the AER's letter dated September 5, 2014.</b>	Oct 7, 2014	Oct 20, 2014
Sept 25, 2014	LOC 141257 (Sept 18, 2014) PLA 141224 (Sept 18, 2014) PLA 141278 (Sept 18, 2014) PLA 141277 (Sept 18, 2014)	Oct 7, 2014	Oct. 20, 2014
Oct 7, 2014	1808869 (Sept 26, 2014) 1808867 (Sept 26, 2014) 1805588 (Sept 26, 2014) 1808871 (Sept 26, 2014) LOC141389 (Sept 26, 2014) PIL 140544 (Sept 26, 2014) PIL 140545 (Sept 26, 2014) PIL140546 (Sept 26, 2014) PIL140547 (Sept 26, 2014) PIL 140549 (Sept 26, 2014) PIL 140550 (Sept 26, 2014) PIL140551 (Sept 26, 2014) PIL 140552 (Sept 26, 2014) PLA 141283 (Sept 26, 2014) PLA 141285 (Sept 26, 2014) WA 00357100-00-00 (Sept 26, 2014)	Oct 24, 2014 letter – Encana stated it wished to rely upon its Oct 7 <sup>th</sup> submission	January 6, 2015
Nov 19, 2014	PIL 140609 (Nov 12, 2014) PIL 140610 (Nov 12, 2014) PIL 140615 (Nov 12, 2014) PIL 140616 (Nov 12, 2014) PIL 140617 (Nov 12, 2014) PIL 140618 (Nov 12, 2014) PIL 140763 (Nov 12, 2014) PLA 141237 (Nov 12, 2014) PLA 141389 (Nov 12, 2014) LOC 141878 (Nov 12, 2014) P56322 (Nov 12, 2014) P56491 (Nov 12, 2014) P56492 (Nov 12, 2014)	December 18, 2014	January 6, 2015

<b>Request for Reg. Appeal - Date</b>	<b>Decisions appealed – Date Issued</b>	<b>Encana Submission - Date</b>	<b>Samson Reply Response -Date</b>
Nov 28, 2014	EPEA 001-354353 (Nov 21, 2014)	December 18, 2014	January 6, 2015