

August 22, 2018

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Canada

By e-mail only

[www.aer.ca](http://www.aer.ca)

Boughton Law

Attention: Tarlan Razzaghi

Dear Ms. Razzaghi:

**Re: Decision on Participation of Fort McKay First Nation**

**Proceeding ID 364 Imperial Oil Resources Limited (Imperial Oil) – Aspen Project**

On July 27 and July 30, 2018, the AER issued a notice of hearing and an amended notice of hearing explaining how to file a request to participate in the hearing of Imperial Oil's applications associated with the Aspen Project. I am writing to communicate the panel's decision regarding the only request to participate received which was filed on August 13, 2018 by Fort McKay First Nation.

Section 34(3) of the *Responsible Energy Development Act* states that: "...a person who may be directly and adversely affected by the application is entitled to be heard at the hearing."

**Fort McKay First Nation's Request**

In the August 13, 2018 participation request, Fort McKay First Nation submitted their rights and interests may be directly and adversely affected by the AER's decisions on the applications for the Aspen Project (the project) for the following reasons:

- Fort McKay First Nation stated they hold constitutionally protected rights under Section 35 of the Constitution Act, 1982, including Treaty 8 rights and the project will directly take up land currently available to Fort McKay First Nation for the exercise of these Treaty rights.
- Fort McKay First Nation is a community with reserve lands within 20km of the proposed project.
- The project area is a location of intensive traditional land use for Fort McKay First Nation as shown in the Traditional Land Use map in Appendix A of the request to participate.
- The areas around the project footprint will also be injuriously affected by the project reducing the quality of those adjacent lands for the exercise of Treaty rights.

- The project poses safety concerns regarding construction and operational activities, including the potential for blow out and water, vegetation and wildlife habitat contamination could also deter members from accessing the area of the project for the exercise of Treaty rights.
- The project will adversely affect traditional wildlife resources, including moose, caribou and beaver thereby reducing opportunities for members to harvest, enjoy and transmit traditional and cultural knowledge regarding traditional wildlife resources, including within the project area.
- Sufficient water quantity to support the needs of the aquatic environment in the Green Stockings Creek Watershed is necessary to support the exercise of Fort McKay First Nation's Treaty rights in the watershed. Fort McKay First Nation states there is not enough water in the watershed during winter to provide a reliable water supply to the project and still protect the aquatic environment.
- The use of solvent injection technology has unassessed risks which is deterrent to members for accessing lands and waters due to the unknown risk; prevents the implementation of necessary and protective mitigation measures; and leads to the potential for contaminated water sources, and water dependent resources, that could have permanent impacts to Fort McKay First Nation's exercise of Treaty and aboriginal harvesting rights.

Fort McKay First Nation also submitted that they have exchanged correspondence and held without prejudice discussions with Imperial Oil to try to resolve concerns with the project. They are also hopeful outstanding concerns will be addressed through the parties' ongoing discussions in the near future.

### **Imperial Oil's Response**

In the August 14, 2018 response to the requests to participate, Imperial Oil acknowledges its continued work with Fort McKay First Nation to try to address their project-specific concerns. In their response, Imperial Oil disagrees with Fort McKay First Nation's characterization of potential impacts from the project and submits that Imperial Oil has responded and addressed the concerns raised by Fort McKay First Nation's request to participate. Imperial Oil responded that they do not take a position on whether Fort McKay First Nation should be permitted to participate in a hearing and reserves the right to respond to any further submissions of or positions taken by Fort McKay First Nation in this proceeding such as the scope of participation by Fort McKay First Nation in the hearing.

Imperial Oil further requests in their response that the AER schedule a technical meeting with legal counsel for Imperial Oil and Fort McKay First Nation as per section 17 of the *Alberta Energy Regulator Rules of Practice*.

## The Panel's Decision

The panel finds, based upon the information before it at this time, that Fort McKay First Nation may be directly and adversely affected by the project. Subject to further directions or rulings issued by the panel, particularly on the issues for hearing, the panel grants Fort McKay First Nation full participation rights in the hearing. The panel's reasons are as follows:

- The map showing traditional land use values in the project area shows that in addition to parts of 4 trap lines that fall within the project footprint there are subsistence and habitation values as well as other traditional values within the project footprint. The northern portion of the project footprint in particular overlays an area that shows significant traditional use values.
- Imperial Oil does not take a position on Fort McKay First Nation's participation in the hearing.

## Next Action

The panel proposes an in-person meeting for approximately one hour on the afternoon of September the 12<sup>th</sup> or morning of September the 13<sup>th</sup>, 2018 at the AER Calgary Head Office to meet with legal counsel from Fort McKay First Nation and Imperial Oil to discuss hearing process steps. An agenda will follow. Please confirm your attendance by e-mail to Hearing Services **no later than noon on August 24, 2018**. This meeting will include the panel members, a hearing coordinator and legal counsel only. There will not be a court reporter and transcripts. The hearing coordinator will take minutes of the meeting and will forward the minutes to counsel as soon as possible after the meeting.

Sincerely,

Tammy Turner,  
Hearing Coordinator, Hearing Services

cc: B. Gilmour, Bennett Jones  
M. LaCasse, AER  
A. Doebele, AER  
B. Kapel Holden, AER  
G. Potter, ACO