

November 27, 2018

Designated Officer Regulations Team
National Energy Board
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SUBMISSION ON DISCUSSION PAPER: DESIGNATED OFFICER REGULATIONS

Introduction

This submission has been prepared by the File Hills Qu'Appelle Tribal Council ("FHQTC"), The FHQTC is a political, administrative and service organization that delivers programs and services for up to 15,000 Citizens of our eleven (11) Nations: Carry the Kettle First Nation; Little Black Bear's Band; Muscowpetung First Nation; Nekaneet First Nation; Okanese First Nation; Pasqua First Nation; Peepeekisis First Nation; Piapot First Nation; Standing Buffalo First Nation; Starblanket First Nation; and Wood Mountain First Nation.

Situated in southern Saskatchewan with a combined total of 435,000 acres of reserve lands in Treaty 4 territory, the majority of our eleven (11) Nations are signatories to Treaty #4 entered into with the Crown on September 15, 1874 followed by subsequent adhesions. Of particular note, the Standing Buffalo First Nation and Wood Mountain First Nation did not sign or adhere to Treaty #4 and continue to hold Aboriginal Rights and Title.

In 1993 the Crown endorsed a Treaty 4 Settlement Agreement under which Treaty 4 Reserve #77 lands have been established, individually nine of our eleven Nations and FHQTC engage in stewardship of the interests on behalf of Treaty 4 Reserve.

The FHQTC and their Member Nations have and continue to undertake collaborative work with the objectives of protecting, enforcing and implementing the terms of Treaty under Treaty #4 within the context of consultation, engagement and in relationship building with Crown Agencies, Industry and neighboring jurisdictions. In parallel, we actively seek to act on opportunities that may arise from major projects and regional development to assist our Nations and their Citizens build safe, healthy, sustainable and independent lives. We are of the view that when cultural, economic and social development benefits are realized by our Nations, social good and benefits also accrue to our neighbors and the region we are a part of.

However, it remains important to note that although our eleven Nations are aligned politically, all remain autonomous and as such nothing in this submission should be seen as replacing their comments should they decide to provide comments independently.

Our comments and recommendations should be read with our submission to the Standing Committee Studying Bill C-69 dated April 6, 2018.

Foundational Considerations

As outlined in the *Discussion Paper: Designated Officer Regulations*, two foundational areas of consideration for developing the regulations are as follows:

1. What are the criteria for identifying whether a decision of the Commission is “technical or administrative in nature”?
2. Under what circumstances should decisions that are “technical or administrative in nature” be referred to the Commission rather than designated officers?

The following questions posed refer to suggested criteria and circumstances that have been reproduced and appended to this submission.

Question 1: What changes, if any, would you suggest to [the above] criteria identifying decisions in the CER Act that are “technical or administrative in nature”?

We would recommend that anything related to Traditional Indigenous Knowledge remain in the purview of the Commission. Ideally, the Commission would be able to access local Indigenous Advisory Groups comprised of Elders and Knowledge Keepers that would assist them in the area of Traditional Indigenous Knowledge as well as Traditional Ecological Knowledge. Regional Advisory Groups would be formed by the Indigenous Nation(s) in the respective Treaty/regional areas based upon their regional diversity and inherent identity.

Our concern involves the use and weight given to Traditional Indigenous Knowledge by designated officers who are appointed based on their expertise and background in specific areas relevant to the Regulator’s jurisdiction and not necessarily in the area of Traditional Indigenous Knowledge and specifically to the impacted lands, resources and environment of the potentially impacted First Nations.

Question 2: Are there any other criteria that could be used to identify decisions that are “technical or administrative in nature”?

We recommend adding “the decision does not require the consideration of adverse effects on the rights of Indigenous Peoples”. Although it is already within the CER Act, and there is an

allowable appeal to the Commission from a decision or order from a designated officer, they may not be best suited to consider adverse effects despite having expertise in their relevant areas.

The Commission will have one full-time Indigenous person appointed. It is hoped that the appointments expand to include more than one designated officer of First Nation descent that will have expertise in the area of Indigenous issues and consultation combined with a background of experience in the area of the Regulator's legislated jurisdiction from each of our inherent Nations of the Saulteaux, Nakota, Dakota, Lakota and Cree Nations.

Question 3: What changes, if any, would you suggest to the circumstances listed [above]?

That potentially impacted First Nations be provided primary notice from the CER regarding decisions before the Commission.

Question 4: Are there any other circumstances that could apply for when a decision should be made by the Commission and not a designated officer?

We recommend that the two comments in Questions 1 and 2 be incorporated as potential circumstances in addition to ensuring that local First Nation stewardship offices and or administrative mechanisms be provided primary notice along with the potentially impacted Nations to ensure their Traditional Indigenous and Ecological Knowledge is sought for input.

Question 5: Are there any circumstances where a decision that is "technical or administrative in nature" should always be made by a designated officer?

We are providing no additional comment at this time.

Conclusion

The integrity of our land is deeply entrenched in our way of life. The intimate connection with our lands and everything that is tied to it – the water, the environment and its resources are intrinsically tied to our Natural Laws. It is a process guided by sacred protocols that must be adhered to in order for the continuation of our way our life. This is the foundation of our submission.

We intend to provide further comments in other areas and wish to continue to be engaged in all processes moving forward particularly at tables where legislation, policy and regulations are being considered and developed. We remain open to additional dialogue and working in a collaborative manner to address problems and find solutions with this government.

We thank you for your time and consideration.