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To: NEB Modernization / Modernisation de l'ONE (NRCAN/RNCAN) <NRCan.NEBModernization-ModernisationONE.RNCan@Canada.ca>

Subject: Feedback on Designated Officer Regulations and the Damage Prevention Framework for Federally Regulated Powerlines

Greetings,

Natural Resources Canada and the National Energy Board recently released discussion papers seeking public feedback surrounding the *Designated Officer Regulations* and the *Damage Prevention Framework for Federally Regulated Powerlines* to help inform the approach to developing and updating the regulations and to support the Government's proposed Canadian Energy Regulator Act (CER Act), creating the Canadian Energy Regulator.

In response, the Métis Nation of Alberta has submitted feedback to assist with the development of the regulations in question in the supporting attachment.

We look forward to further opportunities and engagements in the coming future.

Regards,



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RESPONSES TO DISCUSSION PAPER: DESIGNATED OFFICER

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

- Where a project has been approved and minor variations are needed to the approval, this should be allowed by officers following a transparent review of the possible impacts to Aboriginal rights. Where there are no identified impacts, the officer be given the power/responsibility to direct/order. Where there are impacts, the request should be referred to the Commission for further review and engagement where necessary.
- Consideration of administering more time in identifying issues on projects that occur on Indigenous traditional lands and in identifying alternative considerations with respect to Indigenous findings to dispute or use in the decision-making process to accommodate for a decision;
- Establishing a consistent timeline for responses and applications to be reviewed and submitted by officers; General timeline parameters for officers must be set by the Act.
- There is a fair amount of ambiguity in the proposed guidelines (i.e. “likely to be few stakeholders directly affected by the decision.”) the parameters surrounding these powers need to be pieces clearly defined. Who determines “few”? What would qualify as “few”?

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

- Projects with low new footprint/disturbance (i.e. occur on existing disturbance) could sometimes be considered administrative decisions.
- Issuing of paperwork or identifying indicators or threshold levels are administrative or technical.
- If there is an impact to ability to exercise Aboriginal rights, it lies outside of scope of an officer.
- The scope of the decision. (i.e. is there a large change to the project plan that may impact Aboriginal people?)

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

- Rather than “there is significant interest shown in the application by Indigenous groups”, it should be “a request is made by an Indigenous government or nation to have the project referred to the commission.”
- Align with the duty to consult; if there are possible impact to an Aboriginal right, it must be referred to the Commission for further action.
- Any application involving more interest from a variety of different parties and requires mediation amongst the interests, and when any legal issues arise, should be referred to the Commission for further review with a clear decision report provided outlining the criteria for the decision following decision.

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?

- Any decision or order to be made that has the potential to impact Aboriginal rights must be referred to the Commission and likely consulted on, if it lies outside of the areas that have already been consulted on. However, there are instances where there are impacts in an existing area that had not been considered because it was not part of the original plan presented during consultation.
- The MNA has stated in previous submission related environmental impacts and regulation of resource development that there must be greater involvement of Metis Nations in decision making matrixes related to resource development projects to truly align with UNDRIP.

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

- Clearly defining the role of Designated Officer and or Commission in managing and distributing accurate and current information, maintaining files and correspondence, leading a project team or organization and doing so in timely manner.
- Where a decision by a designated officer authorizing contact to Indigenous groups to collect input on a decision or to participate in the decision-making process on programs, and/or determining whether a project is approved for construction where it significantly impacts and affects the community;
- Issuing of responses, orders or other instances where powers of the officer are being discharged as a result of decisions/direction of the Commission.