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FORT MCKAY
FIRST NATION

Fort McKay First Nation: AER Must Demonstrate Neutrality, Transparency, and Accountability Under Bill 22 or Risk Further Delays in Court

July 20, 2020

FORT MCKAY – *The Chief and Council of the Fort McKay First Nation releases the following statement today.*

“Bill 22, Alberta’s second *Red-Tape Reduction Act*, received third reading this Wednesday and is now awaiting royal assent. This legislation is a serious concern for Fort McKay and should be for all Albertans. This omnibus bill includes amendments that would make the Alberta Energy Regulator (AER) the sole judge of the public interest for all Albertans, allowing the elected government to cut itself out of the decision-making process. This means the AER will be the final decision maker about impacts to Treaty rights and the cumulative effects of development in our Traditional Territory. These are both matters the regulator has previously said are outside its mandate and for which it has no expertise.

“AER’s lack of accountability has been troubling in the past, and under Bill 22 this becomes even more so. In April 2020, the Alberta Court of Appeal threw out the AER’s approval of Prosper Petroleum’s Rigel project with strong language about the AER’s failure to enforce promises made under Treaty 8, and its failure to uphold the Honour of the Crown. Prosper’s project would have threatened the ecological and cultural integrity of the area around our Moose Lake reserves, one of the last unspoiled wildernesses in our Traditional Territory, and central to our ability to practice constitutionally recognized Treaty rights. Fort McKay was forced to take the AER to court and is shocked that after such serious criticism from the highest court in Alberta, the government is rewarding this tribunal with even more power.

“Recent media coverage of the AER internal handling of industry and CAPP’s request for environmental monitoring suspension, showed the cozy relationship with industry, out-of-bounds and unfair practices in the AER’s very recent past. This is further demonstration that the AER only seems to agree with industry and CAPP recommendations, while First Nations are not even consulted. The First Nation is deeply alarmed by the privileged and preferential treatment given by the AER to industry and CAPP rather than an objective and transparent consideration of all stakeholder needs.

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“The Government of Alberta is walking away from its responsibilities as the highest elected body in Alberta and handing authority to make the final decision on energy projects to an unelected tribunal. Fort McKay and other First Nations will now be forced to turn to the courts even more often to resolve these regulatory and constitutional conflicts. Rather than reducing red tape, this actually increases uncertainty and delay for industry, something both government and AER say they want to avoid.

“If the AER becomes the final authority on oil sands projects, it must be demonstrably neutral in all matters before it. It must be more open, transparent, and accountable. It must improve its ability to understand and make the right decisions related to Treaty rights. It must behave like a quasi-judicial body, with the strict independence of a court, and it must not act like a friend to industry. The AER must learn the new rules quickly or its decisions will be challenged and overruled by the courts time and again. First Nations and all Albertans will be watching.”

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