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**ATHABASCA CHIPEWYAN FIRST NATION**  
**INDUSTRY RELATIONS CORPORATION**

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April 17, 2014

Canadian Environmental Assessment Agency  
160 Elgin Street, 22<sup>nd</sup> Floor  
Ottawa, ON, K1A 0H3  
via email: [Frontier.Review@ceaa-acee.gc.ca](mailto:Frontier.Review@ceaa-acee.gc.ca)

**Attention: David Haddon, Panel Manager**

Dear Mr. Haddon,

**Re: Athabasca Chipewyan First Nation Comments on the Draft Agreement and Terms of Reference (“TOR”) for the Joint Review Panel for the Frontier Oil Sands Mine (the “Project”)**

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We have reviewed the draft agreement and terms of reference on behalf of the Athabasca Chipewyan First Nation (“ACFN”).

By way of introduction to these submissions, ACFN has and asserts rights protected by section 35 of the *Constitution Act, 1982* including but not limited to rights pursuant to Treaty 8. Among other things, Treaty 8 protects the right to hunt, fish, trap, and gather; guarantees that the First Nations have a meaningful livelihood now and for the future; and protects ACFN’s right to use and enjoyment of its reserve lands. ACFN is the beneficial owner of eight Indian Reserves (the “Reserve Lands”), two of which are in close proximity to, and all of which are located downstream from the Project.

ACFN is concerned about the potential for the Project to adversely impact and infringe its section 35 rights. It wishes to ensure, through the Agreement and the TOR, that the full, direct, indirect and cumulative impacts of the Project are properly assessed against ACFN’s ability to meaningfully exercise its constitutionally-protected rights now and in the future. ACFN is concerned that as written, the draft Agreement and TOR does not contain sufficient language to require a full and proper assessment of the potential adverse impacts on and potential infringement of their section 35 rights.

We highlight the following issues for your consideration:

- the need for explicit requirements for assessment of impacts to our Reserve Lands;
- the need to require incorporation of the Aboriginal perspective into the assessment;
- the need for explicit and detailed requirements and guidance for assessing socio-economic impacts in relation to Aboriginal people;
- that the assessment of effects and impacts must not be confined by the narrow definitions and mandate of the *Canadian Environmental Assessment Act, 2012*;
- that the Agreement and TOR should reflect the current statutory regime in Alberta, including the Regulator's jurisdiction to issue authorization under the *Environmental Protection and Enhancement Act*;
- the need to hold at least a portion of the hearings in Fort Chipewyan; and
- the need for clarity around the Panel's mandate to consider and decide Questions of Constitutional Law.

ACFN's purpose for participating in the Joint Review Panel process is to ensure protection for its section 35 rights and way of life. ACFN wishes focus its resources and efforts in processes that are capable of delivering such protection. It is in this context that ACFN makes the attached submissions.

Regards,

<original signed by>

  
Lisa King  
Director, ACFN IRC

Cc Carolyn Dunn, CEAA

ACFN's detailed comments on the draft Joint Review Panel Agreement ("Agreement") and Terms of Reference ("TOR") for the Frontier Oil Sands Mine ("Project") are listed below.

**1. Definition: environmental effect (Agreement at 2)**

The phrase "environmental effects" plays a key role throughout the Agreement and the TOR and must be carefully defined in order to capture all potential effects and impacts of the Project.

Currently the Agreement does not include a definition of environmental effect for the purposes of the Joint Review Panel. Environmental effect is defined solely for the purposes of the federal Minister with reference to *CEAA 2012*, section 5. However section 5 restricts consideration of effects to those within federal jurisdiction. ACFN's experience of consultation on the Jackpine Mine Expansion (JME) report was that the Minister construes Canada's jurisdiction much more narrowly than the JME Panel appeared to, and certainly more narrowly than what the language of the statute suggests is available to the Minister. A Panel review conducted on the basis of *CEAA 2012* alone is not capable of effecting protection for ACFN's section 35 rights, and will not be capable of delivering a process nor decisions that are consistent with the *Constitution Act, 1982*.

An assessment based on the *CEAA 2012* definition of environmental effects will assess only a small subset of the effects and impacts that are likely to occur, have been assessed by past Review Panels, and that ACFN would expect this Project Panel to consider. It is unnecessary to define environmental effects solely in terms of *CEAA 2012* for the purposes of the federal Minister of the Environment: the Minister is already bound by that statute. The Panel will also sit in its capacity as a division of the Alberta Energy Regulator, which has obligations and powers in relation to the Project under several statutes including the *Constitution Act, 1982*, the *Oil Sands Conservation Act*, the *Responsible Energy Development Act*, and the *Environmental Protection and Enhancement Act*. The Agreement should incorporate a definition that is inclusive of all effects that may flow from the Project.

Therefore ACFN proposes that the following definition of environmental effect replace the current definition.

- a. *Any change that the project may cause in the environment*
- b. *Any direct, indirect or cumulative effect of any change referred to in paragraph (a), including such changes as described by Aboriginal traditional knowledge, on*
  - i. *Health and socio-economic conditions, including effects on navigation;*
  - ii. *Physical and cultural heritage;*
  - iii. *Use of lands and resources for traditional purposes by Aboriginal persons;*
  - iv. *Any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.*
- c. *Any change to the project that may be caused by the environment whether any such change or effect occurs within or outside Canada.*

## **2. Definition: cumulative effect**

ACFN proposes that the Agreement incorporate the following definition of cumulative effect:

*“changes to the environment caused by all past, present and reasonably foreseeable future projects and human activities and includes the potential social, cultural, health, economic and environmental impacts of these projects and activities on First Nations and on Aboriginal and Treaty Rights.”*

## **3. Definition: “impact”**

In order to facilitate the full assessment of the Project’s impacts on First Nations Aboriginal and Treaty rights, the following definition should be inserted into the Agreement:

*“Impacts” mean potential direct, indirect and cumulative adverse impacts on Aboriginal and/or Treaty rights.*

## **4. Definition: “interested party”**

This definition appears to require that the Panel determine who is directly affected by the carrying out of the Project in advance of the hearing and submission of all evidence (see TOR s. 13). Section 34(3) of *REDA* only requires that a person may be directly affected by the application in order to be heard. ACFN submits that the word ‘is’ should at minimum be replaced by the word ‘may’ in the definition of interested party. ACFN further suggests that the democratic function of the Panel process is best served by the application of the old *CEAA* definition of interested party to this proceeding: *any person or body having an interest in the outcome of the environmental assessment for a purpose that is neither frivolous nor vexatious.*

## **5. Definition: “report”**

This definition does not explicitly acknowledge that the Joint Review Panel will also have the capacity to determine Teck’s section 66 *Environmental Protection and Enhancement Act* (“*EPEA*”) application as well as setting conditions on approvals granted, if any, under *EPEA* and the *OSCA*. It does not address the likelihood that by the time this application is heard, the Panel sitting as the Alberta Energy Regulator will have the capacity to decide Teck’s applications under sections 37 and 50 of the *Water Act*. This issue is discussed further in section 15 below.

This definition may need to be amended to refer to the Panel’s determination under the *EPEA* and to reflect the Panel’s ability to set terms and conditions, in addition to making recommendations. It should also address the possibility that the Panel may have the capacity to make decisions pursuant to the *Water Act*.

## **6. Constitution of the Joint Review Panel: Section 3.3**

Members should have knowledge or experience relevant to the anticipated impacts of the project on Aboriginal and Treaty rights.

## **7. Secretariat: Section 4.1**

Technical support staff provided by the secretariat to advise the Panel members on subjects within the TOR should be subject to the same requirements as experts retained under section 6.3: their names, credentials, and any documents obtained or created by them submitted to the Panel should be disclosed on the Public Registries. Technical staff advising the Panel on subjects within the TOR should also be subject to the requirements of section 3.3: be unbiased and free from any conflict of interest relative to the project and have knowledge or experience relevant to the anticipated environmental effects and impacts of the project.

## **8. TOR Part I: Scope of Project**

For clarity, ACFN requests that the following sentences be added.

*“For clarity, the geographic scope of the assessment of the Project’s environmental effects and impacts is not limited to the 24,139 ha of directly disturbed area.”*

*“The scope of the Project includes all components and activities as described in the Integrated Application filed on November 25, 2011, as modified by the removal of Lease 14 and the South Development Area on June 7, 2013 and any supplemental information responses filed by Teck.”*

## **9. TOR Part II: Scope of the Environmental Assessment**

Due to the narrow definition of environmental effects found in section 5 of *CEAA 2012*, sections 19(1) and 19(3) *CEAA 2012* are limited to a small subset of the direct, indirect and cumulative effects likely to occur from the Project. The definition of environmental effects should be amended, as described in section 1 above, and the phrases “per section 19(1) of *CEAA 2012*” and “as provided in section 19(3) of *CEAA 2012*” should be removed.

The scope of the Environmental Assessment should also include:

- *impacts to Aboriginal and Treaty Rights and culture; and*
- *the capacity of renewable resources.*

Regarding mitigation, the assessment should be limited to a consideration of mitigation that is technically and economically feasible, *with verified and measurable success in reducing effects and impacts.*

Regarding the receipt of community knowledge and aboriginal traditional knowledge, the phrase “such as traditional use studies” should be amended to read “*such as, but not limited to,*

*traditional use studies*". Traditional knowledge may be expressed in many forms beyond a traditional use study.

## **10. TOR Part III: Scope of the Factors – Aboriginal Rights and Interests**

### Incorporation of information from Aboriginal Groups

The Aboriginal Rights and Interests section states that the Panel shall "review information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal or treaty rights in the area of the project, as well as information on the potential adverse environmental effects that the project may have on asserted or established Aboriginal or treaty rights"

This sentence should be amended to read:

*"review and incorporate into its assessment information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal or treaty rights in the area of the project, as well as information on the potential environmental effects and impacts that the project may have on asserted or established Aboriginal or treaty rights and culture"*.

### Impacts to Reserve Lands

Reserve Lands must be included in the assessment of impacts on asserted or established Aboriginal or Treaty Rights. In addition to considering the impacts of the Project on ACFN's ability to use and enjoy its Reserve Lands, the Alberta Energy Regulator is required to consider the impacts of energy developments on land owners. ACFN is the beneficial owner of its Reserve Lands. Therefore, the terms of reference should include a full assessment of impacts to reserves.

By way of background, ACFN first raised the issue of assessing and avoiding Project impacts to its Reserve Lands with Canada on April 23, 2013. Our understanding of Canada's response is, in short, that Aboriginal Affairs and Northern Development Canada lacks the resources, expertise and knowledge to assist in assessment and avoidance of the potential impacts of the Frontier Mine to ACFN's reserves. AANDC has encouraged ACFN to engage with the Canadian Environmental Assessment Agency (CEAA) regarding impacts to Reserve Lands, and ACFN has done so. Given the dialogue that has occurred on this subject, we were surprised that Reserve Lands were not included in the Terms of Reference. ACFN requests that impacts to Reserve Lands, including access by water, air pollution, deposition, odour, water pollution including loss of drinking water sources, noise, light, increased trespass and vandalism, and loss of function as a basis for harvesting and other activities, be explicitly included in the assessment.

Issues such as noise levels at Poplar Point reserve are falling through the cracks, and not being addressed by Teck's information: see ACFN and MCFN SIR Response Review (CEAR Doc 125) at 66, Review comments and a). Our recent review of Teck's responses indicate that Teck still refuses to conduct long-term ambient noise monitoring, an information gathering exercise

ACFN advised Teck was required to understand noise impacts to Poplar Point in 2012. Similarly, Teck has not provided sufficient information to allow an assessment of the Project's light pollution that may reach Poplar Point and Point Brule Reserves, despite ACFN's repeated requests for such information since June 2012.

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The word "current" should be removed from the sentence "any potential effects on current uses of lands and resources by Aboriginal persons for traditional purposes". The Panel will require information on past and anticipated future uses in order to assess impacts to Treaty Rights. Treaty 8 guarantees the meaningful ability to exercise hunting, fishing, trapping, gathering and ancillary rights in perpetuity. The Panel will need to understand the past use, as well as anticipated future uses by this generation and future generations in order to understand the Project's impacts on ACFN's Rights and interests. There is nothing in the jurisprudence on Treaty and Aboriginal rights that limits consideration of impacts on the exercise of rights to impact on "current" use. A current use approach ignores the important reality that although First Nations may not be using or fully using certain parts of their traditional lands today, they may wish to do so in the future as other parts of their lands are taken up for industrial development and other purposes. Current use also ignores the very real fact that the activities of oil sands companies, seismic companies, pipeline companies, power line companies, logging companies, municipalities and others have been impacting traditional use in ACFN's traditional lands for many decades. The concept penalizes First Nations for previously having been forced to accommodate the non-traditional uses of others on their traditional use lands.

Capacity of Renewable Resources

The Amended Agreement for the JME Joint Review Panel Terms of Reference included a section called "Capacity of Renewable Resources" (at page 15). This section should be replicated in its entirety in the TOR for this Project. The inclusion of the requirement to assess the capacity of renewable resources would contribute to the Panel's ability to assess the Project impacts on ACFN's Rights and interests, in perpetuity. Such an assessment will be required to ensure that decisions made by the Panel are constitutionally valid.

A3 – Use of Information

The TOR as drafted provide for the Panel to "recommend measures to mitigate any adverse environmental effects caused by the project that could adversely impact or infringe on those potential or established Aboriginal or treaty rights". This sentence should be amended to read:

*"recommend measures to mitigate any adverse environmental effects and impacts that could infringe on those potential or established Aboriginal and treaty rights."*

The sentence that reads “The Joint Review Panel may use this information to make recommendations that relate to the manner in which the project may adversely affect Aboriginal or treaty rights asserted by the participants” should be amended to:

- Include infringement – “*in which the project may adversely impact, affect or infringe on the Aboriginal or treaty rights asserted by participants*”.
- reflect that the Joint Review Panel, sitting as a division of the Alberta Energy Regulator, will also have the ability to make decisions under various statutes, and these decisions must be consistent with section 35 of the *Constitution Act, 1982*.

The Panel must be alive to the fact that nothing in the jurisprudence suggests that a standard of significance is to be applied to impacts on section 35 rights. It is submitted that the TOR be amended to reflect that, when considering potential adverse impacts to ACFN’s section 35 rights, the Panel must adhere to the following legal and constitutional principles:

- (a) Section 35 of the *Constitution Act, 1982* is to be construed in a purposive way. A generous, liberal interpretation is demanded given that the provision is to affirm aboriginal rights: *R. v. Sparrow*, [1990] 1 S.C.R. 1075;
- (b) Any limitations which restrict the rights of First Nations under a Treaty must be narrowly construed: *R. v. Badger*, [1996] 1 S.C.R. 771 at para. 41;
- (c) When considering the direct and adverse environmental impacts of the Project on first Nations’ rights, the term “environment” must be construed broadly and includes the cumulative impacts of a project and other facilities to be developed in the future on those rights: *Dene Tha’ First Nation v. MOE et al.*, 2006 FC 1354 at para. 34;
- (d) The potential negative derivative impacts of a project must also be taken into account: *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74 at para. 32; and
- (e) The injurious affection that a project causes on the exercise of rights within the vicinity of that project must be taken into account: *Mikisew Cree First Nation v. Canada*, 2005 SCC 69 at paras. 15, 44, 47.

The case law has also made it clear that the threshold for First Nations to establish a level of impact sufficient to trigger Crown action (the duty to consult) is a low one. The Panel’s assessment process should not require a much higher threshold – significant effect- to require a project proponent to do anything to deal with impacts or effects on constitutionally-protected rights. The same issue arises in the context of a discussion of cumulative effects and residual impacts. There is no requirement in the jurisprudence for a finding of significant residual impact before a finding of adverse impact on section 35 rights may be found.

The above comment also applies to sections 19 and 20 of the TOR.

### Criteria, Measures and Thresholds

There should be an express requirement in the TOR that for any conclusions made by the Panel in relation to direct or cumulative impacts or effects on treaty or aboriginal rights, the Panel must explain what criteria, measures and thresholds were established with reference to the Aboriginal perspective, and used to reach any such conclusions specifically as they relate to the exercise of rights or the use of lands for traditional purposes.

#### **11. TOR Part III: Scope of the Factors – Socio-Economic**

The Draft TOR do not include sufficient and explicit requirements and guidance for assessing socio-economic impacts in relation to Aboriginal people. The TOR Part III: Scope of the Factors, should be amended to include a distinct section requiring the Panel to consider and assess explicit and detailed socio-economic information and impacts.

This request is supported and justified by Part II: Scope of the Assessment, citing section 19(1) of CEEA 2012, that “the assessment shall include a consideration of...” item c) “comments from the public, including Aboriginal persons and groups, that are received during the joint review”. This consideration of comments from Aboriginal groups must be explicitly inclusive of the extensive comments ACFN has provided regarding anticipated socio-economic impacts (June 2012 Technical Sufficiency Review<sup>1</sup> and the recently filed review of Teck’s responses to the Technical Sufficiency Review).

Further justification for this request is found in CEEA’s description of “Cooperation and Communication with Aboriginal Peoples”<sup>2</sup>:

*Cooperation and communication with Aboriginal peoples with respect to environmental assessment is a key component of CEEA 2012. The definition of “environmental effects” includes provisions that explicitly relate to Aboriginal peoples and environmental effects that cause changes to their:*

- *health and socio-economic conditions;*
- *physical and cultural heritage;*
- *current use of land and resources for traditional purposes; or*
- *structures, sites or things that are of historical, archaeological, paleontological or architectural significance.*

#### **12. TOR Part III: Scope of the Factors – Cumulative Effects Assessment**

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<sup>1</sup> The “Firelight Sufficiency Review of Teck Frontier IA – Socio-economic Impact Assessment” provides a list of 18 principles of SEIA recommended for assessments in relation to Aboriginal people (Part B, Appendix A) and identifies some of the criteria and data that would be necessary for a fulsome examination of socio-economic baseline conditions (Part B, Appendix B).

<sup>2</sup> <http://www.ceea-acee.gc.ca/default.asp?lang=en&n=16254939-1> (Accessed April 17, 2014)

This section should be amended to make it clear that the approach described in May 2013 Operational Policy statement entitled “Assessing Cumulative Environmental Effects under the Canadian Environmental assessment Act, 2012” is not restricted to an assessment of environmental effects as defined under s. 5, *CEAA 2012*, but that the approach should apply to environmental effects per ACFN’s suggested definition.

It should also be made explicit that a consideration of cumulative impacts will not be limited to physical activities as defined in the *Regulations Designating Physical Activities*, but shall include the changes to the environment caused by all past, present and reasonably foreseeable future projects and human activities.

ACFN suggests the following wording:

*The Panel shall identify and assess the project’s cumulative effects. Cumulative effects are those changes to the environment due to the project combined with all past, present and reasonably foreseeable future projects and human activities. The panel should focus its consideration of cumulative effects on key valued environmental, socio-economic and socio- cultural components. Without limiting itself hereto, the following components shall be considered:*

- *Water quality and quantity*
- *Air quality and greenhouse gas emissions*
- *Aboriginal and Treaty rights protected by section 35(1) of the Constitution Act, 1982;*
- *Social, cultural and health impacts on Aboriginal peoples;*
- *Fragmentation affecting the exercise of Treaty and Aboriginal rights protected by section 35(1);*
- *Any impacts on Aboriginal peoples’ ability to access areas they use for the exercise of their rights protected by 35(1);*
- *Wildlife and wildlife habitat for key species, including all species relied on for the exercise of section 35 rights, federally and provincially listed species at risk, and migratory birds; and*
- *Valued vegetation communities and wetlands.*

### **13. TOR Part III: Scope of the Factors –Accidents and Malfunctions**

In addition to considering the likelihood of occurrence of a malfunction or accident and sensitive elements of the environment that may be affected, the Panel should consider the demonstrated and proven abilities or preparedness of each of the Proponent and relevant government agencies to respond and manage the consequences of any accident or malfunction.

For example, the breach of a tailings dam at the Obed Mountain coal mine in late 2013, and the appearance of blue green algae in the Athabasca River in July 2013 represent serious pollution events that, in ACFN’s view, were not contained in a timely fashion or at all.

Plans, measures and systems to be considered by the Panel must be proven and have a verifiable and successful track record in circumstances analogous to what could occur at this Project.

#### **14. Adequate Time Periods**

ACFN submits that the notice period in each of paragraphs 5, 6, 8 and 10 be a minimum of 60 days, rather than a minimum of 30 days. 30 days is not adequate time for interveners to secure lay and expert witnesses. ACFN is in a different position than a proponent, as for the most part, its witnesses are not employees who can be directed to attend hearing on short notice. Most of ACFN's potential witnesses have other employment or contractual commitments. A 30 day notice period may prejudice ACFN's ability to secure witnesses and put forward evidence.

#### **15. EPEA, Water Act , and the Aboriginal Consultation Office**

Teck's Integrated Application is an application pursuant to the *Oil Sands Conservation Act*, section 66 of the *Environmental Protection and Enhancement Act* and sections 37 and 50 of the *Water Act*. Section 25 of the *Specified Enactments (Jurisdiction) Regulation* states:

- (1) This section applies to an application, proceeding, or other matter in respect of an energy resource activity that was commenced under the *Environmental Protection and Enhancement Act* and its regulations or the *Water Act* and its regulations before the coming into force of section 1(1)(s)(i) and (iii) of the Act and section 1(1)(s)(v) of the Act in respect of those specified enactments, but that was not completed before the provisions of the Act came into force.
- (2) An application, proceeding or other matter. . . that was submitted or commenced, as the case may be, is deemed to be an application, proceeding or matter under the Act and shall be continued by the Regulator and completed in accordance with the Act and its regulations and rules.

The Regulator currently has jurisdiction to issue authorizations pursuant to section 66 of the *EPEA* in relation to energy development: *Specified Enactments (Jurisdiction) Regulation* at section 6(2) and Schedule 4. It is likely that by the time this matter is heard, the Regulator will also have jurisdiction to issue authorizations pursuant to sections 37 and 50 of the *Water Act*. It may be inefficient to hold a hearing for the purposes of the *OSCA* and *CEAA 2012* to the exclusion of the *EPEA* and *Water Act*.

In contrast to previous oil sands Joint Review Panels, whose recommendations were rarely implemented by Alberta, this Joint Review Panel, sitting as a division of the Regulator, will have the opportunity to make decisions, and if it decides to issue approvals for the Project, to impose binding terms and conditions under multiple statutes. The language of the Agreement and TOR should be modified throughout to reflect this new reality.

ACFN requests the opportunity for dialogue with the Parties to the Agreement, as well as those responsible for Crown consultation on behalf of each of Canada and Alberta, regarding appropriate amendments to the Agreement and TOR, including the potential timelines for the issuance of multiple provincial authorizations through the Regulator, should the Project be approved.

ACFN acknowledges that the Panel will not have the jurisdiction to determine the adequacy of consultation. However, we also understand that the Alberta Energy Regulator is in the process of “aligning” with Alberta’s Aboriginal Consultation Office (“ACO”) regarding the timing of the hearing of applications in relation to ACO determinations regarding the adequacy of consultation. We understand that in some cases, the Regulator may decline to hear an application until a consultation adequacy determination has been issued by the ACO. Previously, Alberta has taken the position that it relies upon the Panel process and report to inform subsequent consultation with First Nations prior to making decisions under the *EPEA* and the *Water Act*. ACFN has no knowledge of whether this is a case where the Crown has made a request to the Regulator pursuant to Rule 7(f). ACFN wishes to understand how Alberta proposes to meaningfully consult with ACFN for the purposes of reconciling Crown-ACFN interests in a context where it is possible that multiple decisions could be made by this Panel in advance of the Report issuing, under statutes with differing objectives and priorities. ACFN also wishes to understand how Alberta proposes to meaningfully consult with ACFN where the measures Alberta currently relies on as accommodation – terms and conditions on authorizations – will no longer be within the control of an agent of the Crown.

ACFN is entitled to clarity on the new consultation and regulatory processes, and how they are to interact, in relation to this Project prior to the finalization of the Agreement and TOR. While the Regulator will not assess the adequacy of Crown Consultation, it is evident that the Regulator has some role in the consultation process, at least in terms of the timing and content of its decision making processes in relation to the ACO’s adequacy determination. ACFN is entitled to clarity and further dialogue regarding the consultation and decision making process in relation to the Project prior to the finalization of the Agreement and TOR.

## **16. TOR Part V: Review Process - Public Hearing**

### Pre-hearing Conference

ACFN strongly advocates that a pre-hearing conference be held to address procedural issues in general, and in particular to inform the Regulator’s establishment of time limits under Rule 19.1. ACFN wishes to contribute to an efficient hearing process and to avoid any timing issues, particularly in respect of the scheduling of expert and lay witnesses, contingency planning for unanticipated disruptions to the hearing, and in respect of potential constitutional questions which may be raised.

Regarding the time limits to be established under Rule 19.1, ACFN notes that in order to uphold the primary function of cross examination –testing the accuracy of evidence - any time limits established for the questioning of witnesses will likely require explicit direction from the Panel to professional witnesses regarding the need for direct and concise answers to the questions asked of them on cross examination.

#### Hearing Location

Due to the location and nature of the potential impacts of the Project, ACFN anticipates that a large number of community witnesses will give evidence on its behalf. Many members have residences in Fort Chipewyan. It is requested that at least that portion of the hearing set aside for intervener evidence be conducted in Fort Chipewyan. We are advised that the amount of accommodation available for visitors to the community is expected to increase substantially over the next several months.

#### Joint Review Panel Report

More detail is required as to the meaning and intention of sections 19-20. ACFN notes that careful attention must be paid to the jurisprudence surrounding infringement and justification: significant adverse effect is not the relevant test for justification of infringement of section 35 Rights.

The issue of justification of adverse impacts and effects to ACFN is critical, and ACFN's ability to address this matter will be prejudiced without clear TOR regarding the type of evidence the Panel will receive in relation to a justification analysis, and what analytical framework the Panel will apply.

ACFN seeks further dialogue on this matter prior to finalization of the Agreement and TOR.