



THE SAHTU SECRETARIAT INCORPORATED

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October 22, 2013

BY FAX: (867) 766-8410

Brian Chambers
Professional Leader, Northern Engagement
National Energy Board
P.O. Box 2213
Yellowknife, NT X1A 2P7

Dear Sir:

Re: Draft financial viability and financial responsibility guidelines (the "Draft Guidelines")

The Sahtu Secretariat Incorporated (the "SSI") has been advised that the National Energy Board (the "NEB") is seeking comments on the Draft Guidelines from interested parties until October 31, 2013. These Draft Guidelines propose to set out the information that an applicant seeking an authorization under section 5(1)(b) of the *Canada Oil and Gas Operations Act* (Canada) may be required to provide to the NEB to demonstrate its financial viability with respect to the proposed activities and how it will meet the financial responsibility requirements pursuant to section 27(1) of the *Canada Oil and Gas Operations Act*.

If these Draft Guidelines are approved they would apply in all regions covered by the *Canada Oil and Gas Operations Act* (Canada). It is unclear if such guidelines would apply in onshore of the NWT after April 1, 2014, when the *Canada Oil and Gas Operations Act* is repealed by Parliament pursuant to the *Northwest Territories Lands and Resources Devolution Agreement* dated June 25, 2013, and the GNWT enacts territorial legislation.

The SSI makes the following two points for your consideration.

Firstly, since the Draft Guidelines relate to the use of Sahtu lands and may affect our treaty and aboriginal rights, titles, claims and interests, the Crown has a constitutional duty to consult with the Sahtu and, where appropriate, accommodate the matters raised by the Sahtu during the consultations. This means that the NEB cannot only "seek comments" from the Sahtu with respect to the Draft Guidelines. To date, this duty to consult and accommodate has not been fulfilled by the Crown.

Secondly, the SSI requests that the Crown also consult with the Sahtu land corporations with respect to the Draft Guidelines. While the Register of Designated Sahtu Organizations established pursuant to section 7.1.8 of the Sahtu Dene and Metis Comprehensive Land Claim Agreement (the "Sahtu Agreement") directs the SSI to deal with consultations on behalf of the Sahtu under section 22.1.7 of the Sahtu Agreement with respect to proposed legislation concerning the NWT in respect of subsurface resources and rights, the Sahtu land corporations must also be consulted, as directed by the Supreme Court of Canada in its decision of *Beckman v. Carmacks/Little Salmon*, since they govern matters relating to the use of Sahtu lands.

I note that you confirmed with the SSI Executive Director in a discussion on October 18, 2013, that the NEB would be prepared to meet with the SSI and the Sahtu land corporations next month to discuss matters

relating to the Draft Guidelines. In our view, these discussions will form part of the Crown's duty to consult with the Sahtu.

Lastly, the NEB cannot implement the Draft Guidelines until the Crown has fulfilled its constitutional duty to consult with the SSI and the Sahtu land corporations and, where appropriate, accommodate the matters raised by them during the consultations.

We look forward to our discussions with the NEB with respect to the Draft Guidelines.

Sincerely,



Ethel Blondin-Andrew
Chair

- cc. Tulita Land Corporation
- FN Metis Local #60 Land Corporation
- Norman Wells Land Corporation
- Ayoni Keh Land Corporation
- Yamoga Land Corporation
- FGH Metis Local #54 Land Corporation
- Deline Land Corporation
- Tulita District Land Corporation
- K'ahsho Got'ine Lands Corporation