Mr. Greg Essensa Chief Electoral Officer of Ontario 51 Rolark Drive Toronto, Ontario M1R 3B1

Via Fax To: 1-866-714-2089 and Email To: info@elections.on.ca

July 30, 2018

RE: CAPP election advertising complaint

Dear Mr. Essensa:

We are writing to request an investigation into the advertising activities of the Canadian Association of Petroleum Producers (CAPP) during the 2018 Ontario election pre-writ and writ period.

I. CAPP's Advertising Campaign

The slide on "Metrics: Canada's Energy Citizens and TMX campaign April 8 – May 29, 2018" (see Appendix 1) was sent anonymously to Keith Stewart, c/o Greenpeace Canada, as well as to reporters at the *Toronto Star*, National Observer and Global Television (the *Toronto Star* article is attached as Appendix 2, along with a link to the online version of the article).

Canada's Energy Citizens is a project of the Canadian Association of Petroleum Producers (CAPP). The disclaimer section of the Energy Citizens website https://www.energycitizens.ca/disclaimer states "www.energycitizens.ca is owned and operated by the Canadian Association of Petroleum Producers (CAPP)."

In the cover note received by Greenpeace Canada, the sender claims that the slide was part of a Canadian Association of Petroleum Producers package that was handed out at an Energy Summit in Vaughan, Ontario that took place May 30 – 31 – the Summit's website is at: https://www.emccanada.org/energy-summit-2018>. CAPP confirmed to the *Toronto Star* (see Appendix 2) that they did run this campaign.

The slide indicates that CAPP's activities between April 8 and May 29, 2018 (i.e. during the Ontario election pre-writ and writ period) included:

- 13 rallies across the country attended by thousands of supportive Canadians.
- A ground campaign in Ontario targeting 13 Liberal swing ridings that incorporated billboards on competitiveness and market access in high-visibility locations in the GTA, a

- 400,000-piece pro-TMX literature drop via Canada Post and a letter-writing campaign resulting in more than 2,000 letters to Liberal MPs.
- Over 24,000 letters sent to key decision makers including: Premier Horgan (BC), Premier Notley (AB), Minister Carr, members of cabinet and government MPs from B.C. and Ontario.
- Facebook audience reach = 17,440,830
- Facebook users engaged = 1,246,953
- Facebook video views = 2 million
- Twitter Impressions = 519,000

II. Ontario's Legal Requirements for Third-Party Political Advertisers

Sections 37.5 and 37.10.1 of Ontario's *Elections Finance Act* ("*EFA*" -- R.S.O. 1990, Chapter E.7 as amended – which can be seen at: https://www.ontario.ca/laws/statute/90e07) together require non-political party, non-candidate entities and individuals to register as third-party advertisers if they spend \$500 or more on political advertising during the pre-writ period (which was November 9, 2017 to May 9, 2018) or during the election campaign period (which was May 9, 2018 to June 7, 2018).

According to Elections Ontario's webpage at: < https://www.elections.on.ca/en/political-entities-in-ontario/third-parties.html, neither CAPP nor Energy Citizens registered with Elections Ontario as a third-party advertiser.

On page 21 of Elections Ontario's document entitled *Election Finances CFO Handbook for Third Parties* 2018 at:

https://www.elections.on.ca/content/dam/NGW/sitecontent/Compliance%20Documentation/English/Third%20Party%20Advertisers/CFO%20Handbook%20for%20Third%20Parties.pdf third-party political advertising is defined as including:

"... advertising with respect to an issue of public policy during an election for which one or more registered political parties or candidates may also have taken a position."

and the definition of "political advertising" in subsection 1(1) of the *EFA* says it "includes advertising that takes a position on an issue that can reasonably be regarded as closely associated with a registered party or its leader or a registered candidate..."

According to section 37.0.1 of the *EFA* and the list set out on pages 21-22 of the Handbook, the Chief Electoral Officer considers the following criteria to determine if an advertisement is political advertising:

a) whether it is reasonable to conclude that the advertising was specifically planned to coincide with the period referred to in Spending Limits section;

- whether the formatting or branding of the advertisement is similar to a registered political party's or registered candidate's formatting or branding or election material;
- c) whether the advertising makes reference to the election, election day, voting day, or similar terms;
- d) whether the advertisement makes reference to a registered political party or registered candidate either directly or indirectly;
- e) whether there is a material increase in the normal volume of advertising conducted by the person, organization, or entity;
- f) whether the advertising has historically occurred during the relevant time of the vear;
- g) whether the advertising is consistent with previous advertising conducted by the person, organization, or entity;
- h) whether the advertising is within the normal parameters of promotion of a specific program or activity; and
- i) whether the content of the advertisement is similar to the political advertising of a party, constituency association, nomination contestant, candidate or leadership contestant registered under the Act.

III. Evidence that CAPP's Campaign Required Registration as a Third-Party Advertiser

We believe the evidence set out below shows clearly that CAPP's advertising activities, which clearly cost more than \$500, meet the definition of "political advertising" in the *EFA* and also fulfill many of the above criteria. As a result, we believe that CAPP was required to register as a third-party advertiser. A full investigation is needed to determine whether CAPP's advertising also violated the spending limits in any riding, or overall, during the pre-writ period or the election campaign period.

Furthermore, section 37.4 and subsection 22(9) of the *Election Finances Act* require the name of the person or entity who placed an ad and the name of person or entity who sponsored or paid for it, to be included in the ad. CAPP's name is not on the Energy Citizens' billboards, so if they paid for the billboards or to promote Energy Citizens' social media postings on Facebook, Twitter or other platforms, then this may also be a violation of the *Act*.

1. Political ad definition: Is the advertising related to an issue of public policy during an election for which one or more registered political parties or candidates may also have taken a position?

CAPP's advertising campaign addressed two issues that were major election issues in Ontario – carbon pricing and whether government policy was making the province 'closed for business" – that were addressed in positions taken by all of the main Ontario political parties.

(a) Carbon pricing:

Doug Ford became leader of the Ontario Conservative Party on March 10, 2018 with a clear commitment to ending carbon pricing (see, for example, his statements quoted in the article at: https://globalnews.ca/news/4077129/doug-ford-policy-platform-big-issues/). The previous leader, Patrick Brown, had committed to introducing a revenue-neutral carbon tax, so this marked a significant, and well-publicized, shift in policy.

As leader, Doug Ford campaigned heavily on opposition to carbon pricing in the pre-writ period and during the election campaign period. This is openly acknowledged by the party now that it is in office. One of the Conservative government's first acts was to pass a regulation prohibiting the trading of carbon credits. In the Environmental Bill of Rights Registry posting on the regulation, the government argued that it could do so without the legally-required public consultation "because the Minister was of the opinion that the recent Ontario election was a process of public participation that was substantially equivalent to the process required under the EBR and that the environmentally significant aspects of the regulation were considered

Keep Canada Competitive: Position Canada to Provide the Energy of Tomorrow Canada is facing economic challenges. Layers of new regulations and policies, including carbon pricing, have made it difficult for Canada's energy sector to compete and provide good jobs here at home. The fact is, total capital spending by

during that process because the government made a clear election platform commitment to end the cap and trade program." (source: http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do).

The lead 'take action' post on the Energy Citizen's website home page identifies carbon pricing as a barrier to competitiveness. The first home page 'button' (pictured

here) states:

"Keep Canada Competitive: Position Canada to Provide the Energy of Tomorrow. Canada is facing economic challenges. Layers of new regulations and policies, **including carbon pricing**, have made it difficult for Canada's energy sector to compete and provide good jobs here at home" (emphasis added).

If you click on the link, it takes you to a pledge https://www.energycitizens.ca/keep canada competitive 2> that states:

"Layers of new regulations and policies, **including carbon pricing**, have made it difficult for Canada's energy sector to compete and provide good jobs here at home.

"The fact is, total capital spending by the oil and natural gas industry in the Canadian economy was \$45 billion in 2017 – a 44-per-cent decline compared to \$81 billion in 2014, and a 19-per-cent drop from 2016. Meanwhile, capital spending in the United States increased by about 38 per cent to \$120 billion thanks to a more streamlined regulatory system.

"This kind of loss in investment curbs industry development of innovation and technology that is key to breaking the link between energy growth and emissions growth over time. But currently, climate policies in Canada come at a high cost to the country's economy with minimal effect on global emissions as natural gas and oil production migrates to regions with fewer, if any, regulations.

"We need to do more to spur growth in our energy sector and protect jobs in Canada instead of letting that money go to our competitors."

CAPP's campaign was focused primarily on the federal government but, as discussed below, the 'ground campaign' only took place in Ontario Liberal swing ridings.

Social media posted from the Energy Citizen's account urged the public to contact both federal and provincial representatives about these "competitiveness" concerns. For example, an April 30 tweet on 'competitiveness' from Energy Citizens issued a call to action for individuals to contact "all levels of government" to address "competitiveness" (Source: https://twitter.com/Energy Citizens/status/991052069070147584>).

The tweet links to the page on their website quoted above that specifically highlights carbon pricing as harmful to competitiveness. The tweet goes on to urge readers to 'Share if you think it's time to fight for Canadian jobs', which brings us to the second common theme between the CAPP campaign and the Ontario Progressive Conservative election campaign platform: Is Canada / Ontario open for business?

Other Energy Citizen tweets and re-tweets related to competitiveness and carbon pricing can be found in Appendix 3 below. Some of these tweets used the #onpoli hashtag, which brings them to the attention of people interested in Ontario politics. It is also worth noting that there were 5 twitter postings from Energy Citizens attacking carbon pricing on June 5-6, immediately prior to the Ontario election.

These messages were often echoed on their Facebook page. For examples, see:

 $\frac{https://www.facebook.com/CanadasEnergyCitizens/photos/a.470229813122836.1073741828.}{466158346863316/1417268475085627/?type=3\&theater}$

and

 $\frac{\text{https://www.facebook.com/CanadasEnergyCitizens/photos/a.470229813122836.1073741828.}}{466158346863316/1406424069503401/?type=3\&theater}$

and

https://www.facebook.com/CanadasEnergyCitizens/photos/a.470229813122836.1073741828. 466158346863316/1432539116891896/?type=3&theater

(b) Open for business

CAPP's advertising asked "Is Canada closed for business?" as part of their messaging on oil and gas industry competitiveness. This was very similar to Ontario Progressive Conservative Party messaging.



For example, on May 14, Energy Citizens retweeted a post from CAPP's Vice President of Communications, Jeff Gaulin, in their social media timeline with the "Is Canada closed for business?" question in it:

https://twitter.com/CAPP Jeff/status/996146735717146625

On the same day, the Ontario Progressive Conservative website posted a video and press release < http://www.fordnationlive.ca/ontario is open for business > that was authorized by the CFO for the Ontario PC Party in which Conservative leader Doug Ford announced that:

"An Ontario PC government will bring good jobs back to Ontario and make the province "Open for Business"... Ford announced that an Ontario PC Government will take meaningful action to stop the bleeding of jobs across the border and bring quality jobs back home. "We're going to put up a big sign on the border that says 'Ontario is open for business'," said Ford. "Instead of picking winners and losers, we are going to lower business taxes for everyone. We are going to stabilize business hydro costs for everyone. We are going to cut red tape for everyone."

This messaging continued throughout the Conservative's election campaign.

2. Criteria (a): Is it reasonable to conclude that the advertising was planned to coincide with the election?

With Ontario's fixed election date of June 7, 2018, CAPP knew that the election would be occurring. CAPP's campaign ran from April 8, 2018 to May 29, 2018, overlapping with one month of the pre-writ period and 3 weeks of the election campaign period. As a result, it is reasonable to conclude that its ads were planned to coincide with the election period covered by the spending limits, which ran from November 9, 2017 to May 9, 2018 (pre-writ period) and from May 9, 2018 to June 7, 2018 (election campaign period).

3. Criteria (d): Does the advertisement make reference to a registered political party or registered candidate either directly or indirectly?

While it was nominally addressing a national issue (oil industry competitiveness and market access), the "ground campaign" portion of CAPP's campaign (400,000 items mailed to households, billboards in prominent places in the Greater Toronto Area) only took place in 13 Liberal swing ridings in Ontario. The targeting of Liberal swing ridings indicates a strategy that includes both partisan considerations and an interest in affecting electoral outcomes.

Furthermore, Ontario and the federal government have identical ridings (outside of four ridings in the far north, where two federal electoral districts have been divided into four provincial electoral districts), and voters commonly confuse federal and provincial jurisdiction.

Social media posted from the Energy Citizen's account urged the public to contact their provincial representatives and included the #onpoli hashtag to show relevance to Ontario politics (See Appendix 3).

An April 30 tweet on 'competitiveness' from Energy Citizens issued a call to action for individuals to contact "all levels of government" to address "competitiveness". Source: https://twitter.com/Energy Citizens/status/991052069070147584>

The tweet links to a page on their website that specifically highlights carbon pricing – a major issue in the Ontario election – as harmful to competitiveness.

4. Criteria (e): Was there a material increase in the normal volume of advertising conducted by the person, organization, or entity?

The slide states that the ground campaign included a 400,000-piece literature drop in 13 Liberal swing ridings in Ontario and billboards in high-visibility locations in the GTA. This is clearly an increase in CAPP's normal volume of advertising.

5. Criteria (f): Did the advertising historically occur during this time of the year? As far as we can determine, CAPP's advertising campaign is unprecedented.

6. Criteria (g): Was the advertising consistent with previous advertising conducted by the entity?

As far as we can determine, the content of CAPP's advertising campaign is unprecedented.

7. Criteria (h): Was the advertising within the normal parameters of promotion of a specific program or activity?

CAPP's advertising campaign was specifically targeted at 13 Liberal swing ridings. As well, the content and advertising strategy was clearly aimed at affecting voters support for

political parties. As a result, it is clear that the campaign was not within the normal parameters of promotion of a program or activity – it was clearly an explicitly political advertising campaign.

8. Criteria (i): Was the content of the advertisement similar to the political advertising of a party or candidate?

As detailed above in subsection 1, CAPP's advertising campaign contained very similar messages as the Progressive Conservative Party's messages.

We are happy to answer any questions you may have about the above. Given the above information, and the information set out in the appendices below, we believe that an investigation should not take very much time and we look forward to receiving your ruling very soon on whether CAPP violated the registration requirements and spending limits.

Sincerely,

Keith Stewart, Energy Campaigner

Greenpeace Canada

Duff Conacher, Co-founder

Democracy Watch

APPENDIX 1

CAPP slide on "Metrics: Canada's Energy Citizens and TMX campaign April 8 – May 29, 2018"

Metrics: Canada's Energy Citizens and TMX campaign April 8-May 29, 2018

- 13 rallies across the country attended by thousands of supportive Canadians
- A ground campaign in Ontario targeting 13 Liberal swing ridings that
 incorporated billboards on competitiveness and market access in highvisibility locations in the GTA, a 400,000-piece pro-TMX literature drop via
 Canada Post and a letter-writing campaign resulting in more than 2,000
 letters to Liberal MPs.
- Over 24,000 letters sent to key decision makers including: Premier Horgan (BC), Premier Notley (AB), Minister Carr, members of cabinet and government MPs from B.C. and Ontario
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APPENDIX 2

Toronto Star article re: CAPP's Advertising Campaign

Link to online version of article:

https://www.thestar.com/news/investigations/2018/07/05/oil-lobby-targeted-13-ontario-swing-ridings-in-unprecedented-pipeline-campaign.html

Oil lobby targeted 13 Ontario swing ridings in 'unprecedented' pipeline campaign

By <u>ROBERT CRIBB</u> Investigative Reporter FATIMA SYED Staff Reporter

Thu., July 5, 2018

Canada's largest oil and gas lobby group targeted voters in 13 Ontario "swing ridings" with rallies, billboards in "high visibility locations" in the Toronto area, and 400,000 pieces of pro-pipeline literature, an ongoing Toronto Star/National Observer/Global News investigation has found.

The Canadian Association of Petroleum Producers (CAPP) conducted the advertising campaign between April 8 and May 29 — the period in which the federal government was deciding on the fate of the Trans Mountain pipeline. It included 13 rallies across the country and 24,000 letters sent to "key decision makers" including B.C. Premier John Horgan, Alberta Premier Rachel Notley and federal National Resources Minister Jim Carr, a leaked CAPP document reads.



Advertising materials used this spring to urge Canadians to tell their MP to support the Trans Mountain pipeline

"I've never seen the oil industry lobby like this before," says Keith Stewart, senior strategist with Greenpeace. "What is absolutely unprecedented, as far as I know, is deliberately targeting swing ridings in order to impact the makeup of the government."

CAPP declined a request for an interview. In a written statement, the group acknowledged the campaign was an effort to promote federal approval of the Trans Mountain pipeline.

"The timing of the advertising campaign aligned with the federal decision on a federally regulated pipeline deemed in the national interest, targeting federal Members of Parliament," said Chelsie Klassen, a CAPP spokesperson.

The advertising material urges Canadians to "tell your federal MP to support the Trans Mountain Pipeline" alongside the words, "Is Canada closed for business?"

Critics say the campaign's timing — launched amid Ontario's provincial election campaign and targeting 13 ridings, all in Ontario — merits examination by provincial officials responsible for upholding electoral rules on third-party registration and spending.

"With this campaign they're targeting both the federal Liberals and provincial Liberals," says Duff Conacher, co-founder of Ottawa-based Democracy Watch. "They would want (Premier Doug) Ford in there because they know he would be pushing pipeline instead of windmill."

According to the province's electoral rules, a third party — such as a corporation, partnership, business or association — that spends more than \$500 in the six months before a fixed-date general election on political advertising of some kind must register with Elections Ontario.

A spokesperson for Elections Ontario confirmed CAPP was not a registered third party during the election period. Elections Ontario would not comment on whether it has received a complaint or whether it is investigating.

CAPP's written statement denies any effort to target provincial candidates with the campaign, saying, "pipelines were not identified as a priority for any of the Ontario election candidates, further separating the advertising campaign from the election."

The details of CAPP's campaign are highlighted in a document, obtained by the Toronto Star, National Observer and Global News, titled, "Metrics: Canada's Energy Citizens and TMX (Trans Mountain expansion) campaign."

Among the results: "Facebook audience reach = 17,440,830; Facebook users engaged = 1,246,953; Facebook video views = 2 million; Twitter impressions = 519,000," it reads.

CAPP's public advocacy on behalf of the Trans Mountain pipeline expansion was on display in other ways in recent weeks.



Conservative Party of Canada staffers are seen holding banners at a rally organized by Rally4Resources and Canada Action, as well as Canada's Energy Citizens, in Ottawa in May to support the Trans Mountain pipeline. (ALEX TÉTREAULT / NATIONAL OBSERVER)

A "Day of Support" for the pipeline in Ottawa on May 23 led by the Canadian Chamber of Commerce brought together "provincial and territorial chamber presidents, association heads, corporate leaders, union representatives and Indigenous leaders to advocate the importance of seeing this project through to the future benefit of Canadians," reads a story published in CAPP's magazine, Context.

Participants met the federal Liberal minister Carr and federal Tory Leader Andrew Scheer, urging them to work with the provinces to "reach a consensus and use the appropriate legislative, legal and financial steps to ensure the Trans Mountain Expansion project gets built."

The lobby group's advertising was run under the umbrella of Canada's Energy Citizens, a group created and managed by CAPP to engage with Canadians and drive public support for oilpatch-friendly policies. The Energy Citizens have a strong social media following of more than 220,000 Facebook users.

Ultimately, the federal government made a deal to purchase the pipeline.

Members of both the provincial and federal Liberal parties declined to comment directly on the CAPP campaign.

In response to questions, the federal Liberals provided a broad written statement saying the party's actions are based "solely on what is in the best interests of Canadians."

Ontario Liberal Party spokesperson Patricia Favre said in a written statement that the two previous Liberal governments in Ontario passed an "ambitious agenda to fight climate change, including the largest single reduction in greenhouse-gas emissions through the closure of the coal plants, and a plan to put a cap on carbon pollution and use the proceeds to help people transition to a low-carbon economy while saving their costs."

Kevin Taft, the former leader of the Alberta Liberal Party from 2003 to 2008 and author of Oil's Deep State, sees the timing of CAPP's campaign as conspicuous.

"To an outsider, it certainly looks like the campaign was designed to co-ordinate with the Ontario election campaign," he said. "Ontario is a big player in the confederation ... If they elect a government that's friendly to them and does what Doug Ford is doing — getting out of the cap-and-trade system, getting out of promotion of green energy — that's all good for the oil industry. That's in their interest."



Canadian Association of Petroleum Producers president and CEO Tim McMillan. CAPP is the country's largest oil and gas lobby group. (ALEX TÉTREAULT / NATIONAL OBSERVER FILE PHOTO)

Doug Ford announced his plan to scrap the Liberal cap-and-trade plan and fight the federal carbon tax proposal during the election campaign on April 23 — in the midst of CAPP's advertising campaign.

Greenpeace's Stewart said that while federal politicians may have been the target of the CAPP campaign, its timing with the provincial election provided obvious advantages.

"I think provincial officials were icing on the cake," he said. "(CAPP) is flexing their political muscle. The minute you start targeting swing ridings, you're trying to influence who will be in office."

The open acknowledgement that the group was targeting 13 swing ridings is "a big shift for CAPP," he said. The organization "generally claims to simply try to inform government, not affect who forms government."

Liberal political commentator Amanda Alvaro said CAPP's targeted Ontario campaign could point to a more aggressive approach in the federal election next year.

"As we're gearing up for 2019, one of the things that would concern us the most ... how do we combat such strong advertising and how do we make sure people are educated enough to understand it? Because people take ads as truth."

Taft agrees: "Perhaps this is a warning shot. Perhaps the federal Liberals and other environmental activists should regard the activities of CAPP in Ontario as a warning as to what's coming up in the federal election."

Ford, who was <u>sworn in as premier</u> last Friday, is already delivering on a number of promises to scrap policies that some oilpatch players have said are bad for business. On July 3, he began the process of abandoning the outgoing provincial Liberals' climate-trade agreement with California and Quebec.

And on the day he was sworn in, Ontario's new finance minister, Vic Fedeli, said the elimination of the cap-and-trade policy would signal "Ontario is open to business."

"It doesn't surprise me at all that some of the wording in the oil industry's (advertising) is the same as the wording in Doug Ford's campaign," Taft said. The oil and gas industry is "a huge public relations machine that is extraordinarily effective in getting its agenda set," he added. "These campaigns are unending."

Robert Cribb is a Toronto-based investigative reporter. Follow him on Twitter: other: other: other

Appendix 3: Energy Citizens social media



A lack of new pipelines and policies (April 30, 2018):

https://twitter.com/Energy Citizens/status/991052069070147584



Watch: There is a grassroots movement growing across Canada #onpoli (May 7) https://twitter.com/Energy_Citizens/status/993543462317244419



The world needs more Canadian energy #onpoli (May 14) https://twitter.com/Energy Citizens/status/996056135621738497



Retweet of CAPP VP: letter to MP (May 14)

https://twitter.com/CAPP Jeff/status/996146735717146625



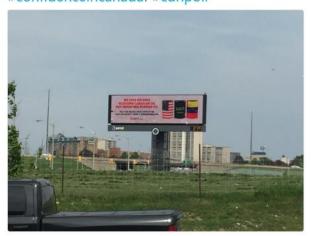
PLEASE RT! Our new billboard ads in Ontario with a simple message for Ottawa: make sure this pipeline gets built! You can help support this campaign at buildcanada.org! #BuildKM #cdnpoli



Please RT! Our new billboard https://twitter.com/Energy Citizens/status/996428242838933504



Sent in from the field from a proud energy citizen. Our BuildCanada.org billboards are running across the GTA in support of #BuildKM and restoring #confidenceincanada! #cdnpoli



8:30 AM - 28 May 2018

Sent in from the field (picture of billboard)(May 28, 2018): https://twitter.com/Energy Citizens/status/1001123435844485120



Jobs and investment will continue to move south (June 5, 2018): https://twitter.com/Energy Citizens/status/1004039796249903105



We NEED to keep our oil and gas competitive (June 5): https://twitter.com/Energy Citizens/status/1004063993072193536



Current climate policies (June 5 retweet of CAPP post):

https://twitter.com/OilGasCanada/status/1004033883464183817



Investment in Canada's energy industry (June 5 retweet of CAPP VP): https://twitter.com/CAPP Jeff/status/1004002524062408704



Canada's energy sector is one of most innovative (June 6):

https://twitter.com/Energy Citizens/status/1004386030303055872