



**Canada Energy Regulator**

**January 29<sup>th</sup>, 2025**

**Re: Rules of Practice and Procedure Regulations**

Dear Rules Review Project Team,

Please accept the following as written response from Asenwiche Winewak Nation of Canada on the Rules of Practice and Procedure Regulations released by the Canada Energy Regulator.

**Discussion Questions:**

**3) Do you have feedback regarding how the Rules could incorporate process steps for providing and protecting Indigenous knowledge within hearings?**

**Indigenous Knowledge and Confidentiality** Lack of flexibility or clarity in how Indigenous knowledge is shared, potentially leading to procedural fairness issues or unintended misuse.

- Protecting Indigenous knowledge through clear procedural safeguards are in line with modernizing practices to better reflect current realities and expectations.
  - Include explicit provisions for the respectful collection, storage, and use of Indigenous knowledge.
  - Ensure procedural steps for Indigenous knowledge sessions are clearly defined and protect confidentiality in accordance with section 58 of the CER Act.
- Establish procedural safeguards that recognize Indigenous knowledge as equal to Western scientific evidence, ensuring its protection and appropriate use.
- Indigenous advisory body and annual reconciliation impact reporting modernize oversight and accountability mechanisms.
- Incorporate better and more complete Indigenous knowledge
  - Provide sufficient funding
  - Develop protocols to enable incorporation on a nation-by-nation, case-by-case basis
  - Indigenous people must be included in monitoring and compliance, especially as it relates to meaningfully incorporating Indigenous knowledge à independent compliance committee to ensure IK is integrated
  - Provide a more comfortable forum to receive information from elders and knowledge keepers. CER should vary rules, under authority in s 4(1), to facilitate Indigenous knowledge, including:





- Special considerations for providing oral IK (expanded privacy, elders permitted to attend and listen to other witnesses, recording of oral testimony in advance, ceremony space/time, flexibility for translation services, and recordings from home/comfortable community space.
- Note that hearings are only a portion of providing IK but is what is addressed most clearly in the Rules

**4) Would you like to see the role of the Crown Consultation Coordinator, and the nature of its participation in Commission hearings reflected in the Rules? If so, how?**

#### **Role of the Crown Consultation Coordinator (CCC)**

- Define the CCC's role and timelines in the hearing process to avoid gaps in consultation.
- Undefined or inconsistent roles of the CCC in hearings could lead to confusion or inadequate consultation:
  - Unclear whether the CCC's role includes facilitating consultation, monitoring compliance, or actively advocating for Indigenous concerns.
    - If not, who will ensure these key priorities are met? (advisory council?)
  - Formalization of the CCC role in the rules to enhance transparency and procedural clarity, ensuring timelines for consultation are defined.
  - If the CCC's consultation findings are not integrated into the CER's decision-making or shared on public records, it can reduce the credibility and effectiveness of the consultation process.
  - Potential advantages could include easing the administrative burden (acting as a process navigator, developing regional understanding and expertise and assigned to the nation so they build understanding of the specific nations)
  - Clarity whether the CCC acts as a neutral facilitator or as a representative of the Crown?
    - Could create a lack of meaningful consultation.

**5) Do you have other feedback related to how the Commission can align the Rules with the CER Act, including the objectives outlined in the Act's preamble, such as the commitment to Reconciliation, and the UN Declaration?**

#### **Reconciliation and UNDRIP Implementation to have meaningful and intentional participation CER must show action beyond recommendations:**

- UNDRIP has been recognized as binding law in Canada.
  - be consistent with the Act's objectives and preamble, the CER cannot approve a project they find to have violated UNDRIP.





## ASENIWUCHE WINEWAK NATION

- Align CER with commitment to reconciliation by adding processes that address historical and systemic barriers to Indigenous participation.
  - Capacity building
  - Financial barriers to participation
  - Language
  - Geography
- CER to report annually on how its decisions advance reconciliation objectives and Indigenous Peoples'
  - Indigenous rights, self-determination, and FPIC reflect the CER Act's commitment to reconciliation and the principles outlined in its preamble.

### **Additional Feedback**

#### **Timelines and Efficiency**

- Flexible timelines and resource allocation directly address the objective of making processes more predictable and equitable by applying principles of FPIC.
- Flexibility in application timelines to accommodate seasonal and cultural considerations of Indigenous communities.
- Overly rigid or undefined timelines may prevent adequate consultation with Indigenous groups or restrict timely dispute resolution.
  - A review of timelines for applications and hearings, with flexibility to accommodate community-specific needs, such as seasonal availability for participation. This is in line with FPIC rules or participation

#### **Engagement and Capacity Building**

- Dedicate resources to support Indigenous-led research, governance, and participation in CER processes.
- Develop long-term funding agreements with Indigenous Nations to build internal capacity for regulatory engagement.
  - Provide funding and technical resources to ensure meaningful participation, with specific allocations for capacity-building for Indigenous communities.
  - funding to support Indigenous participation and capacity building.
- Sustained engagement with Indigenous Nations at every stage of regulatory processes, from planning to post-decision implementation.
- Limited capacity to engage effectively due to insufficient resources or understanding of the CER processes.
  - Workshops before hearings to support process and understanding of rules and responsibilities.



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### **Recognizing Inherent Rights and Self-Determination**

- CER Rules must affirm the inherent rights of Indigenous Peoples, as recognized in section 35 of the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
  - UNDRIP must also be further aligned with CER to create specific understandings of UNDRIP use and language
  - UNDRIP is a declaration, not a binding treaty Canada has adopted UNDRIP at the federal level, however provinces may interpret and apply it differently leading to fragmented and piecemeal implementation.
  - Regulatory bodies may selectively apply UNDRIP principles, leading to potential gaps in how rights like Free, Prior, and Informed Consent (FPIC) are upheld. (emphasis on clear language and CER rules application as substantive engagement)
- Procedural updates:
  - prioritize mechanisms that enable Indigenous Nations to assert their jurisdiction and self-determination over their lands, waters, and resources as an Inherent right moving beyond recognition.

### **Enabling Co-Decision-Making**

- Establish a framework for Indigenous co-governance in CER-regulated projects, ensuring Indigenous Peoples have a meaningful role in decision-making. (Address overarching power dynamics)
- Include provisions for Indigenous-led environmental monitoring and project oversight.
- Require evidence of consent or documented efforts to address concerns before project approvals.

### **Accountability**

- Create an independent Indigenous advisory body to oversee the CER's adherence to Indigenous rights and reconciliation commitments.
- Require periodic reviews of CER Rules with direct input from Indigenous Nations

Please contact us if you have any further questions or concerns,

Sincerely,

Michelle Moberly  
AWN Executive Director

