

Submission on the Review of the National Energy Board Rules of Practice and Procedure, 1995

Submitted by:

Elk Valley Métis
President Jean Sulzer

Introduction

The Elk Valley Métis Nation appreciate the opportunity to contribute to the review of the National Energy Board Rules of Practice and Procedure, 1995 (the “Rules”). This review is a significant opportunity to modernize the Rules and address the unique needs of Indigenous and specifically Métis Peoples within Canada’s regulatory processes.

While the Discussion Paper mentions Indigenous Peoples generally, it does not explicitly address Métis-specific issues, underscoring the need for this submission to highlight our concerns and priorities.

Key Areas of Feedback

1. Métis-Specific Considerations in Reconciliation and UNDRIP

The Métis unique status as a rights-bearing community must be acknowledged explicitly within the updated Rules. The CER Act's commitment to Reconciliation and the implementation of UNDRIP requires:

- **Recognition of Métis-Specific Rights:** Ensure Métis rights, distinct from those of First Nations and Inuit, are explicitly addressed in procedures and processes, regardless of individual provincial positions on Métis rights.
- **Métis Knowledge Inclusion:** Métis-specific knowledge, such as traditional ecological practices and insights, should have a dedicated framework for inclusion and protection.
- **Consultation Needs:** Recognize that Métis governance structures and decision-making processes may differ from those of other Indigenous groups, requiring tailored consultation approaches.

2. Indigenous Knowledge - Métis Perspectives

The Rules should explicitly address how Métis communities can provide Indigenous Knowledge in hearings, considering the following:

- **Flexibility in Knowledge Sharing:** Métis oral traditions and historical narratives should be respected and accommodated as evidence, with procedural safeguards for their integrity.

- **Confidentiality Protections:** The Rules must explicitly safeguard Métis knowledge shared in hearings, ensuring it is not used without consent or outside its intended scope.

3. Crown Consultation - A Métis Lens

While the Discussion Paper explores the Crown Consultation Coordinator's (CCC) role, it does not specify how Métis interests will be incorporated. We recommend:

- **Clarifying Métis Engagement:** Ensure the CCC explicitly accounts for Métis governance structures and includes Métis representatives in consultation processes.
- **Tailored Consultation Framework:** Develop guidance on Crown consultation that respects Métis-specific governance and reflects Métis community input and values.

4. Modernizing Processes for Métis Participation

The Métis Nation often faces barriers to participation in regulatory processes, including access to funding, geographic challenges, and capacity limitations. To address this, we recommend:

- **Accessible Funding Mechanisms:** Guarantee funding access for Métis communities to engage in regulatory hearings effectively, explicitly referenced in the Rules.
- **Procedural Flexibility:** Include flexibility in hearing timelines and formats to accommodate Métis communities, particularly those in remote areas.

5. Participant Funding

Funding mechanisms should explicitly address the Métis capacity needs, ensuring adequate resources are allocated for:

- Legal and technical support.
- Preparation and presentation of Métis Knowledge and evidence.
- Community consultation and decision-making processes at the local community level.

Specific Responses to Discussion Paper Questions

Indigenous Knowledge (Question 3)

To ensure the procedural rules respect Métis rights and traditions, the incorporation of Indigenous Knowledge must explicitly include provisions for Métis-specific Traditional Land Use (TLU) knowledge. TLU knowledge provides critical insights into historical, cultural, and ecological practices tied to the land. Its collection and integration should be mandatory before any development activities commence to avoid irreversible harm to Métis rights and interests.

Recommendations:

Mandatory Pre-Development TLU Knowledge Collection:

- Require project proponents to engage with Métis communities to gather TLU knowledge during the early stages of planning.
- Ensure that TLU studies are comprehensive, documenting Métis-specific practices such as traditional harvesting areas, migration routes, and cultural landmarks.

Community-Led Knowledge Sharing:

- Allow Métis communities to define how and what TLU knowledge is shared, emphasizing oral history and community traditions as valid evidence.

Safeguards for Confidentiality and Consent:

- Include procedural rules ensuring TLU knowledge is protected from unauthorized use, particularly in contexts where it may disclose culturally sensitive or sacred information.
- Ensure Métis communities retain control over how their TLU knowledge is used and shared.

Early Integration into Decision-Making:

- Establish timelines requiring TLU knowledge to be considered before regulatory decisions are made or approvals are granted.
- Require proponents to demonstrate how TLU knowledge has influenced project planning to mitigate impacts on Métis rights.

Cultural Site Protection:

- Develop a mechanism within the Rules to safeguard Métis cultural sites or areas identified through TLU studies, ensuring they are preserved or their impact is minimized.

Rationale:

By embedding Métis-specific TLU requirements into the Rules, the regulatory process will:

- Acknowledge the Métis cultural connection to the land.
- Ensure developments are planned with an understanding of how Métis rights, traditions, and livelihoods could be impacted.
- Strengthen the foundation for Reconciliation by respecting Métis autonomy in managing and sharing their knowledge.

(Question 4) Crown Consultation Coordinator:

Reflect the CCC's obligation to engage Métis communities directly, accounting for their governance systems and decision-making structures.

(Question 5) Reconciliation and UNDRIP:

Include clear references to the Métis in the Rules to align with Reconciliation and UNDRIP commitments.

(Question 7) Timelines and Computation of Time:

Existing provisions in Sections 5 to 7 generally ensure procedural fairness by accounting for holidays and weekends in the computation of time. However, for Métis communities, additional flexibility is critical to reflect the unique challenges we face, including the need to engage community members dispersed over large areas, coordinate culturally significant consultations, and incorporate traditional knowledge into submissions. The timelines should explicitly allow extensions when Indigenous communities require additional time to conduct meaningful internal discussions or to prepare submissions.

While the current rules address extending deadlines for weekends and holidays (Section 7), additional guidelines should be included for when unforeseen events, such as community emergencies or seasonal constraints (e.g., traditional harvesting periods), hinder participation.

(Question 9) Do you have feedback on the current process for fixing costs related to detailed route hearings?

While the current process provides a mechanism for recovering expenses such as legal fees, expert reports, and travel, the current framework presents challenges for equitable participation. For Indigenous communities like the Elk Valley Métis, financial barriers often arise due to the lack of upfront funding, the limited scope of eligible costs, and the administrative burden of submitting claims. The framework also does not adequately account for the steep learning curve that many communities face as the application process and the technical details in the applications can be new to the communities technical staff. There are also distinct costs associated with traditional knowledge sharing, community consultations, or cultural practices. The CER should consider implementing an advance funding mechanism to address the immediate financial needs of Indigenous communities, enabling full participation from the outset of proceedings. The scope of eligible costs should explicitly include expenses related to capacity building of community technical staff and traditional ecological knowledge, elders' honoraria, and culturally significant activities. Simplifying the application and adjudication processes for cost claims would reduce administrative burdens, and clear communication about funding availability would ensure transparency and accessibility.

(Question 10) Are there processes that you would like to see written into the Rules?

Elk Valley Métis, suggest adding clear steps for including Oral Traditional Evidence in the rules. Drawing from what we learned during the Trans Mountain hearings, we believe it's

crucial to have dedicated opportunities for sharing our stories and insights in ways that respect our traditions

(Question 11) Do you have feedback regarding changes that could be made to the information request process to clarify its use and support efficiency?

Elk Valley Métis experience is that multiple rounds of IRs occur and the proponent does not really address the issue or concern raised. When proponents can use the “Back of forth” of written IRs it is possible to avoid directly answering the IR. Elk Valley Metis finds the IR process frustrating with limited valuable information being exchanged. Elk Valley Métis suggest that some other type of process be added to the IRs so that this does not occur.

(Question 12) Can you identify rules of other regulators or tribunals that support efficiency and could inform the Commission’s Review?

Although the Elk Valley Métis are not familiar with the New Zealand Waitangi Tribunal process, we often see it referred to as a successful process for meaningful consideration of Indigenous issues and concerns in energy developments.

(Questions 13, 14, 15, 16)

Elk Valley Métis do not have any comment on the filing questions.

(Question 17) Do you have feedback regarding what type of notice publication requirements are appropriate in a digital age and where Commission approval is necessary?

Elk Valley Métis experience is that multiple processes for notification need to be used. Even within communities, the variety of ways members use to access information is varied. Printed notifications, bill boards, direct mail deliver, Facebook, chatgroups, and others are all used. The notification process has to be multi-faceted and not rely on a single way to inform communities.

(Questions 17, 18)

Elk Valley Métis do not have any comment on these questions.

(Question 20) Is there other feedback or suggestions you have related to the Rules Review?

Elk Valley Métis want the new rules to ensure that the views and concerns of Métis and other Indigenous groups are not only heard but also visibly integrated into the final decisions. Too often information is shared at a hearing and there is no evidence that it actually influenced the hearing decision.

(Question 21) Would you like to see guidance on any specific topic related to the Rules Review?

Elk Valley Métis would like to be involved in the next steps of this process.

Conclusion

The Elk Valley Métis believe this review represents an opportunity to create a more inclusive regulatory framework that respects Métis rights, knowledge, and traditions. We urge the Commission to address the gaps in recognizing Métis-specific concerns and ensure the Rules align with the CER Act, Reconciliation, and UNDRIP.

We appreciate the opportunity to participate and look forward to continued dialogue on this important matter.