



File Hills Qu'Appelle Tribal Council's Response to the Canada Energy Regulator's Request for Feedback on Their Rules of Practice & Procedure Review Phase 1

Dear Canada Energy Regulator:

Please find our comments for a more meaningful policy development process for the Canada Energy Regulator's Rules of Practice and Procedure Review.

Context for File Hills Qu'Appelle Tribal Council's Comments

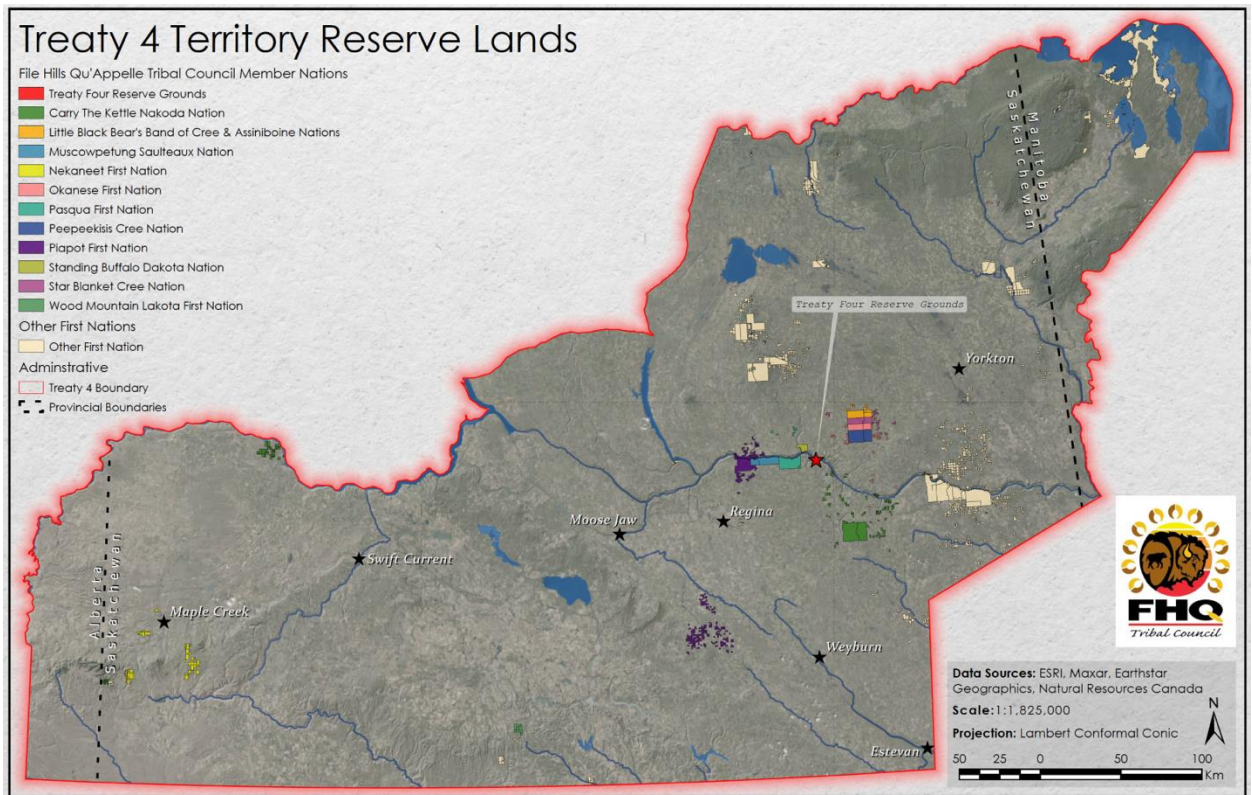
Established in 1982, the File Hills Qu'Appelle Tribal Council (FHQTC) is a non-profit organization that carries out a variety of service delivery programs to its Member First Nations. FHQTC represents 11 First Nation communities and more than 20,000 Citizens in the Treaty Four Territory of southern Saskatchewan. FHQTC's mandate is to promote, advocate, and protect Inherent, Aboriginal and Treaty Rights of all Member Nations as well as to address their common interests equitably and professionally while respecting the priorities of First Nations' culture as Lakota, Dakota, and Nakoda ,Cree (Nehiyaw) and Sauteaux (Anishinaabe). FHQTC First Nations have systems of individual sovereign governance and collective First Nation governance.

FHQTC Member First Nations are:

- Carry The Kettle Nakoda First Nation
- Little Black Bear's Band of Cree & Assiniboine Nations
- Okanese First Nation
- Peepeekisis Cree Nation
- Muscowpetung First Nation
- Nekaneet Cree Nation
- Pasqua First Nation
- Piapot First Nation
- Star Blanket Cree Nation
- Standing Buffalo Dakota Nation
- Wood Mountain Lakota First Nation

In addition, FHQTC Member Nations collectively steward Treaty Four Ground Reserve IR 77, a collectively held reserve on the shore of the Qu'Appelle River and Mission Lake.

The integrity of our land is deeply entrenched in our way of life. The ancestral connection with our lands and everything tied to it – the water, the environment and its resources are intrinsically tied to our Natural Laws. It is a process guided by sacred protocols that must be adhered to for the continuation of our way our life. Our vision is to support our Member Nations as they bring their laws forward responsively and respectfully to enable them to carry out their responsibilities to the land and ever-changing environment.



Treaty Four is a pipeline corridor and there is concern about impacts to Treaty and Inherent Rights of Nations downstream of pipelines. Cumulative effects from pipelines and other development can damage way of life, land use, culture, and knowledge preservation of our 11 Member First Nations.

Treaty Rights are enshrined in Canada's Constitution Act, supported through the Truth and Reconciliation Commission (TRC) and Canada's ratification of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Canada's Constitution Act (1867 to 1982, 35 (1)) states: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." Calls to Action 43 to 44 of the TRC call on Canada to implement UNDRIP, which came into force in 2021 through the United Nations Declaration on the Rights of Indigenous Peoples Act. Of particular relevance here is Article 26 of UNDRIP:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

These acts set the context for our comments.

Response to Request for Feedback

With the TRC and UNDRIPA, there is a new precedent in Canada for the co-creation of government policies. File Hills Qu'Appelle Tribal Council would welcome a meaningful collaborative policy development process for the Canada Energy Regulator's Rules of Practice and Procedure. However, the parameters of this request for feedback do not reflect our understanding of a meaningful policy development process for the following reasons. First, requesting a high-level legal analysis to determine the alignment between the Canada Energy Regulator Act and the Rules and Practice policy is the role of the federal government, not Indigenous governments. Second, there appears to be a conflation of public hearings and Duty to Consult obligations, which are not made clear through this request for feedback. Third, the resources provided, and the timeframe requested for the feedback, constrain our ability to offer our contributions to the standard we would want. Fourth, and most importantly, the request was to add to and amend the existing Rules and Practice rather than start anew. Meaningful collaborative policy development begins at the start with both parties.

We appreciate the request for feedback but cannot adequately offer feedback in the current process. Please see our recommendations for a more meaningful process.

A Meaningful Process

A meaningful process would be distinction-based; respect First Nation languages; meet the best standards for Duty to Consult obligations and UNDRIP's free, prior, and informed consent (FPIC); and begin from a place of requisite funding, capacity-building, and relationship-building.

1) Distinction-Based Approach

Until now, Canada has adopted a reductivist distinction-based approach that negates the distinct culture, languages and customs of First Nations across Canada. A distinction-based approach acknowledges and respects the unique context of First Nations. Unique context refers to FHQTC Nations' distinct languages and cultures as Lakota, Dakota, and Nakoda, Cree (Nehiyaw) and Saulteaux (Anishinaabe).

2) Respect for Indigenous Languages

The 2019 Indigenous Languages Act sets out that First Nations have a constitutional right to their languages. The Act supports language revitalization, reclamation, and strengthening through funding and process change. Articles 5 (d) and (e) state:

(d) establish measures to facilitate the provision of adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages;

(e) facilitate cooperation with provincial and territorial governments, Indigenous governments and other Indigenous governing bodies, Indigenous organizations and other entities in a manner consistent with the rights of Indigenous peoples and the powers and

jurisdictions of Indigenous governing bodies and of the provinces and territories;
(e.1) facilitate meaningful opportunities for Indigenous governments and other Indigenous governing bodies and Indigenous organizations to collaborate in policy development related to the implementation of this Act.

Following this Act, a constitutional right to First Nation languages and respect for the linguistic diversity of our Member First Nations should be supported through all policy development across federal agencies.

File Hills Qu'Appelle Tribal Council represents 11 Member Nations with five distinct official languages and cultures (Nakoda, Saulteaux, Cree, Dakota, and Lakota). These languages are a core component of the Inherent and Treaty Rights and oral knowledge of FHQTC Member First Nations. To recognize First Nation languages as Inherent and Treaty Rights and international human rights, effective processes are needed for the translation of Canada Energy Regulator's Rules and Practice, supportive engagement.

3) Duty to Consult and Free, Prior, and Informed Consent

The Government of Canada has a legal and fiduciary duty to consult with First Nations when decisions and projects may negatively impact their Treaty and Inherent Rights. One of the Government of Canada's guiding principles for Duty to Consult is that "[c]onsultation and accommodation will be carried out in a manner that seeks to balance Aboriginal interests with other societal interests, relationships and positive outcomes for all partners." They outline a meaningful process as:

- "Carried out in a timely, efficient and responsive manner;
- transparent and predictable;
- accessible, reasonable, flexible and fair;
- founded in the principles of good faith, respect and reciprocal responsibility;
- respectful of the uniqueness of First Nation, Métis and Inuit communities; and,
- includes accommodation (e.g. changing of timelines, project parameters), where appropriate."

While the request for feedback meets several of these process principles, we believe the distinction-based and accommodation components may be absent.

Free, prior, and informed consent (FPIC) means obtaining consent (yes or no) from First Nations for activities and developments on their territories. "FPIC describes processes that are free from manipulation or coercion, informed by adequate and timely information, and occur sufficiently prior to a decision so that Indigenous rights and interests can be incorporated or addressed effectively as part of the decision making process" (Government of Canada 2021). FHQTC cannot provide their consent on this request because we believe the informed component in particular of FPIC is not fulfilled. The information is not as accessible, clear, language inclusive, and culturally appropriate as required.

4) Financing, Relationship-Building, and Capacity-Building

Amending the Rules and Practice of the Canada Energy Regulator requires starting from the beginning together. Relationship-building and capacity-building are essential to start this process. Relationship-building takes time to build connections and create mutual trust between FHQTC, the 11 Member Nations, and the Canada Energy Regulator. Relationship-building can be supported through capacity-building. Capacity-building involves support to build the required skills to develop and analyze policy, offer feedback, and adequately represent FHQTC's 11 Member Nations' needs. This comes at a cost for time, travel, meeting organization, policy and legal analysis, drafting, reviewing, and note taking.

The \$6,000 funding for the Rules Review is not adequate to meet these costs. From the perspective of FHQTC, relationship-building, capacity-building, and sufficient funding are needed to support a policy and legal analysis that is inclusive of Leadership, the Youth Advisory Council, Women's Council, Language Keepers, Land Users, Citizens, and technicians. The phases of review for the Rules offer a linear timeline with minimal opportunity for engagement let alone for relationship-building and capacity-building. We believe adequate financing, relationship-building, and capacity-building are essential to the development of a new set of Rules and Procedures for the Canada Energy Regulator that respects Treaty Four.

File Hills Qu'Appelle Tribal Council would welcome a meaningful policy development process that is distinction-based, respects First Nations' languages, upholds Duty to Consult and FPIC obligations, and builds the capacity through adequate financing for policy development with all of FHQTC Councils – Leadership, the Women's Council, Youth Advisory Council, Language Keepers, Citizens, and technicians.

Recommendations for Consideration:

Overall, we recommend that the Canada Energy Regulator:

- Develop a distinction-based approach, with the inclusion of First Nations' distinct languages and cultures;
- Offer requisite funding for relationship and capacity building to each of our Nations & their collective governing entities such as our Tribal Council;
- Does not use engagement as a check-mark exercise; and
- Respect and uphold inherent rights, treaty rights and free prior informed consent within the Canada Energy Regulator's Rules and Practice policy

Thank you for your consideration

References

- Government of Canada (2023) United Nations Declaration on the Rights of Indigenous Peoples Act. <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>
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- TRC (2015) Truth and Reconciliation Commission of Canada: Calls to Action. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf
- UN General Assembly (2007) United Nations Declaration on the Rights of Indigenous Peoples. <https://www.refworld.org/docid/471355a82.html>