December 9, 2024

Canada Energy Regulator
210-517 10 Ave SW
Calgary, AB
T2R 0A8

Sent via email to: RPPR@cer-rec.gc.ca

Re: Friends of Michel Society Comments for Canada Energy Regulator *Rules of Practice and Procedure* Review

This submission is sent on behalf of the Friends of Michel Society ("FMS"). FMS is a representative group for descendants of Michel First Nation. Michel First Nation adhered to Treaty 6 in 1878 and held Reserve Lands located northwest of Edmonton, AB. Following signing of Treaty 6, Michel members were subject to enfranchisement efforts by the Government of Canada, culminating in 1958 when all but four members were stripped of their Indian Status under the *Indian Act* and Michel First Nation's remaining Reserve lands were sold by the Government of Canada.

FMS was established in 1991 to: 1) pursue the reinstatement of Michel First Nation and return of Indian Status to Michel descendants; 2) advocate for the recognition of Michel's Aboriginal and Treaty rights; 3) support and connect Michel descendants; and 4) revitalize and nurture Michel way of life.

Despite Canada's aggressive assimilation efforts, and the current lack of formal recognition of the Michel Band, Michel people continue to exercise their Aboriginal and Treaty rights as recognized under Treaty No. 6 and the *Alberta Natural Resources Act, 1930*, and protected under Section 35 of the *Constitution Act, 1982*.

FMS submits these comments in response to the *Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper* (the "Discussion Paper") as well as the content presented at the Canada Energy Regulator ("CER") November 21, 2024 virtual Early Engagement session (the "Engagement Session").

It is FMS' understanding that the CER is conducting a review of the *Rules of Practice and Procedure*, 1995 (the "Rules") in order to modernize this legislation and better align with the *Canadian Energy Regulator Act*, 2019 (the "Act"). The Discussion Paper states that the Rules govern the procedures of written and oral hearings, including complaints, conduct of public hearings, and the manner for applications to be assessed.

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FMS's comments are summarized below.

1. **Indigenous Knowledge**

   The updated Rules need to contain provisions for the protection, and meaningful incorporation, of Indigenous Knowledge in CER hearing components. The Discussion Paper suggests that the Rules should facilitate the provision of Indigenous Knowledge, as well as its protection in terms of confidentiality and integrity, but does not make any mention of the Rules ensuring that any Indigenous Knowledge provided will be adequately weighted and considered in hearings or the assessment of applications.

   It is FMS' experience that Western knowledge is given greater weight, and even cancels out, Indigenous Knowledge in the regulatory process. While FMS can appreciate that Western science has its place within regulatory processes, it should not be taken as absolute. Indigenous Peoples hold expertise that has been passed down and honed for many generations. This expertise is crucial and should be taken with equal or greater seriousness to Western knowledge rather than as novelty or supplementary.

   FMS notes that core consultation capacity is not provided to Indigenous groups. Any capacity funding that may be provided is project-specific and at the discretion of the proponent and the regulator. Many projects do not come with any capacity funding, particularly from the proponent, yet there is still an expectation for impacted Indigenous groups to engage and share information.

   As such, Indigenous groups are often required to carry the resource strains related to the collection and preparation of Indigenous Knowledge as part of consultation processes. This creates a significant barrier to meaningful participation.

   Updates to the Rules should include provisions that ensure sufficient capacity for Indigenous groups to collect and prepare Indigenous Knowledge and information on impacts to Aboriginal and Treaty rights, as well as ones that require regulators to consider Indigenous Knowledge on-par with, or greater than, Western science.

2. **Treaty Rights**

   The updated Rules need to be set up to make sure that the full scope of Aboriginal and Treaty rights is actively recognized and protected, and that all project impacts to them are adequately identified and directly and proportionately accommodated for.

   It has been FMS' experience that regulators, including the CER, do not meaningfully acknowledge or address the impacts created by industrial development (throughout all project phases, including construction, operation, maintenance, decommissioning,

abandonment, and reclamation) on Aboriginal and Treaty rights. Additionally, regulators do not typically acknowledge that project effects often migrate, creating impacts on the exercise of Aboriginal and Treaty rights that extend past the project footprint.

3. Cumulative Effects

Updates to the Rules should include requirements for the distinct assessment of cumulative effects for each proposed project.

There is a large gap in the assessment of proposed projects and their interactions with current conditions to lands and resources resulting from all past, present, and future projects in their vicinity (i.e., cumulative effects).

In the current regulatory system, impacts to Aboriginal and Treaty rights and the biophysical environment are only considered on a project-by-project basis. Cumulative effects are only considered if a residual effect is identified and determined to be non-negligible. Moreover, it is FMS' experience that when project-related impacts are raised, they are often labeled as 'out of scope' if they are not determined to be a direct project effect. When this occurs, very little to no follow-up occurs to understand or address those effects.

4. Guidance Documents and Enforceability

The updated Rules must contain minimum requirements for Indigenous consultation, with only additional or supplemental provisions left to the guidance documents.

During the CER Engagement Session, the host spoke about the differences between the Rules and the accompanying guidance documents. It was suggested that provisions regarding Indigenous involvement and consultation may be better suited for the guidance documents rather than the Rules. Reasoning for this was that the Rules were too rigid and difficult to change, and that the incorporation of Indigenous engagement aspects into the Rules would serve as a hindrance. If they are instead incorporated into the guidance documents, there would be more flexibility and room for amendments to better adapt to this rapidly evolving area.

FMS does not agree that provisions regarding Indigenous engagement and consultation should be kept out of the updated Rules. While it is certainly true that this type of engagement is not one-size-fits-all, the guidance documents are not legally binding, and therefore not sufficiently enforceable. Proponents are often not willing to do more than the minimum for consultation with Indigenous groups and look for ways to minimize or overlook information shared by Indigenous groups. In FMS' experience, even when

concerns on meaningfulness or adequacy of proponent engagement is raised with the regulator, there is very little that the regulator is willing or able to do to address these concerns.

We kindly request that the CER keep FMS apprised of any updates to the Rules and any amendments to what has been presented in the Discussion Paper.

It is FMS' expectation that provided comments will be wholly considered and integrated into the review of the Rules. We are available to further discuss any comments or concerns provided in this submission, or to answer any questions.

Sincerely,

[redacted]

Gil Goerz, President
Friends of Michel Society

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