Gordon W. Dalzell
[redacted]

January 29, 2025

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To Whom It May Concern:

SUBJECT: National Energy Board Rules of Practice and Procedure, 1995 - Phase I – Rules of Practice and Procedure Review

This letter is to provide my comments and recommendations on the review of the National Energy Board Rules of Practice and Procedure, 1995 - Phase I – Rules of Practice and Procedure Review as part of the ongoing Phase 1 review.

Please note that these comments and reactions to the many topic areas are prepared from a community member's perspective and in this case an interested party involved in the environmental movement.

As a member of the public with a vested interest in ensuring that energy regulatory processes are transparent, fair, and inclusive, I appreciate the opportunity to contribute to the review of these important procedural rules.

Attached, you will find my detailed comments and recommendations, which address specific aspects of the Rules that I believe could benefit from clarification, modification, or enhancement. My intention is to offer constructive feedback that would help ensure the Rules better reflect the evolving needs of community stakeholders and interested parties and continue to promote a balanced and effective regulatory framework.

I welcome the Board's consideration of my feedback and would be happy to provide any additional information or clarification as required.

Thank you for your attention to my submission. I look forward to the continued development of the National Energy Board's regulatory framework and hope that my input will contribute positively to this review.

Respectfully submitted,

[redacted]

Community Member
Saint John, New Brunswick

Attachment: Phase 1 Review -National Energy Board Rules of Practice and Procedure, 1995

Gordon W. Dalzell, [redacted]

January 29, 2025

EMAIL TO: rppr@cer-rec.gc.ca

REFERENCE: **Comprehensive review of the National Energy Board Rules of Practice and Procedure – Phase I**

On behalf of the Citizen, Coalition for Clean Air, an environmental public interest group advocating for clean air, this writer Gordon W. Dalzell welcomes the opportunity to participate in this Phase 1 regulatory engagement for the Commission of the Canada Energy Regulator's Rules of Practice and Procedure.

Over the last 30 years, this writer on behalf of this environmental non-governmental organization has participated in a number of public engagement activities either or intervenor, attending hearings or reviewing past NEB regulatory review processes. This writer on behalf of our ENGO were actively engaged in the Maritime Northeast Pipeline Project along with the Energy East Pipeline proposal. Over the years, this writer has been an informal intervener making oral presentations on past energy related projects. One of the most memorable public engagement events was in 2001 when the entire National Energy Board Commissioners visited Saint John, New Brunswick to hold public engagement sessions at which time this writer made an oral and written submission to the NEB Commissioners. The NEB Commissioners were on a cross Canada tour to hear from Canadians on how to enhance and improve public engagement.

At the end of the session, a photo was taken with our members and the NEB Commissioners. This writer would recommend your NEB archives unit retrieve my submission as well as a transcript of the discussions and comments during our specific scheduled with the former NEB Commissioners. As part of this current engagement and outreach consultation currently seeking input from stakeholders and interested parties, you need to review our presentation along with so many other ones presented to the Commission during their national tour, listening to Canadians.

This is timely as many of the former Rules from the NEB period are still in place under the National Energy Board Rules of Practice and Procedure 1995.

In fact, as you know, those Rules still govern the procedures that I followed during the Commission hearing at the Canada Energy Board (CEB).

In our past engagements, such as mechanism for complaints, conduct of public hearings, application reviews and dispute resolution, polling, procedures, etc., this writer had taken various opportunities to communicate to the former NEB on how to improve and strengthen public engagement processes.

As this reviewer was preparing his commentary and answers to the questions in the discussion paper, many of my responses and comments are very much aligned to my earlier submission made to the Commission during their national public outreach consultation tour seeking input from Canadians on how to improve public engagement, opportunities and activities.

Hopefully, as part of this early engagement Phase one; you can retrieve and review my oral and written submission to the National Energy Board Commissioner in May 2001.

At the end of my presentation and interactive discussion, the NEB chairperson thanked this writer for what he described as a “compelling and persuasive presentation”.

This writer concluded that the Commissioners welcomed and valued what they heard. Many if not all my feedback, comments and answers for this submission are consistent with and similar to my earlier comments to the National Energy Board members during their national consultation tour of Canada.

As noted in the discussion paper, currently the National Energy Board Rules of Practice and Procedure 1995 (the rules) govern the procedures to be followed during written or oral hearings of the Commission of the Canada Energy Regulator (CER).

As you carry out this review, it is of paramount importance to achieve the right balance between the formal legal framework and procedures with the need to develop such changes to capture the need to incorporate citizen user-friendly approaches in the modernization of these new rules and processes.

Keeping in mind at the end of the day, it is the public interest that must be served. Case has to be taken to ensure changes are user-friendly, especially for community members as interested parties, community neighbourhood organizations, such as the one in our local neighborhood Champlain Heights Community Association.

When Maritime Northeast Pipeline and the Saint John John Lateral was planned right through our neighbourhood that is within the Emergency Evacuation Zone (EEZ), individuals and our ENGO participated in the public review process. Many current and future projects will impact local communities, resulting in a wide range of community members, ENGO, community groups, etc., wanting to be carefully engaged with meaningful participation.

My concern is that with this modernization of the Rules, the legal procedures, processes will impede, the comfort level and capacity for community based interested parties to be overwhelmed and scared off by both the formal legal process as well as the legally trained representatives of the proponent, along with other technical experts, representing other vested interest stakeholders who are there to serve their own corporate interest, not necessarily the public interest.

So please make these new Rules user-friendly to those in society who will be directly impacted, such as landowners, neighborhood organizations, environmental groups, and individual community members. One of the most illustrative examples was during the first day of the National Energy Board public hearings at the Beaverbrook Hotel in Fredericton, NB, for the Maritime Northeast pipeline project in 2005, now named Emera Brunswick Pipeline.

This writer and an associate intervenor walked in this large meeting ballroom with at least 100+ intervener sitting at individual tables all dressed in business attire with multiple binders in front of them ready to proceed.

By contrast, another committee member representing an environmental public interest group walked in with informal street clothes (tie no suits) and felt overwhelmed and intimidated by the army of well, dressed, legal and professionally train, intervenors representatives of the proponent. The community members such a formal environment can be intimidating.

This writer's past experience is offered to illustrate how important it will be to ensure that the community interveners won't be overwhelmed by these quasi-legal procedures and processes. Yes, these are formal and informal participation opportunities in the hearing reviews, as well as intervener funding opportunities where interested parties can engage their own experts, but not everyone at the local neighbourhood level can or elects to apply for these Intervener Funding (IF)Programs

As an alternative to the formal intervener funding process, the Rules need to have built-in to them a means for reimbursement of childcare expenses, typing, administration services, parking fees, related incidental expenses associated with their participation at the hearing as well as intervention preparation activities as part of the entire public review of the documents, etc. needed to effectively participate at these hearings.

Responses to the potential amendments and engagement questions

This reviewer, as a non-indigenous person, certainly welcome the alignment with the CER Act, including the objectiveness outlined in the Act preamble such as a commitment to Reconciliation.

This writer recognizes and values that in 2021, the United Nations Declaration on the Rights of Indigenous People Act came in effect in Canada.

Within that legal mandate, especially the action required in that Act which directs the Federal government to take steps to ensure that all federal laws are consistent with the United Nations Declaration on the. Rights of Indigenous Peoples.

As well, the act is supported by an Action Plan, which includes a specific Action Plan Measure (Action Plan Measures 34) related to de participation of Indigenous people in projects and matters that are regulated by the CER. Considering the CER Rules in many respects were from the former National Energy Board days past this writer suspects that this will be challenging unless you do a full rewrite or makeover of Canadian Energy Regulator Act and its pursuant

regulatory regime to be consistent with the new mandates and legal frame works that were not in place with the past NEB Rules.

Question is whether the new proposal Rules can accommodate the UN declaration of the Rights of Indigenous People Act along with the Action Plan component. The discussion paper needs to address this issue as part in the ongoing regulatory review.

This may be more challenging than you think unless you develop a more comprehensive consultation process with Indigenous People of Canada maybe hard to get consensus here as these may be competing leadership perspectives. On the other hand, proponents could be indigenous people while those opposed could be from the same community.

Your timeline may need to be extended to capture the many dimensions of incorporating these two legislative mandates within an older National Energy Board framework model, which is heavily legalistic in a quasilegal court model. I wish you the best with this task.

With regards to indigenous knowledge, this Rules review must ensure the Rules sufficiently allow for a process to provide and protect Indigenous knowledge that is procedurally fair and is able to evolve.

The question whether parts of the procedural aspect of receiving indigenous knowledge belong in the Rules, is the challenging part, especially the confidentiality component. How can other participants at the hearings raise questions or even understand such indigenous knowledge issues when such knowledge is confidential?

This needs further explanation for all affected parties.

Procedural, fairness and transparency, needs to be part of the new CER/Rules' changes without such knowledge being made available to other stakeholders, it could put them at a disadvantage unintended consequence.

Indigenous knowledge certainly must be considered in the overall decision making, but whether such knowledge belongs in the Rules is questionable. It is not because this writer doubts such knowledge as valid an invaluable based on 10,000 years plus history. The question is how does knowledge fits into the Canadian Energy Regulator Rules.

Discussion, questions, number three and five, please refer to my above comments.
Regarding question number one and two and four, it is very difficult for a non-indigenous person such as myself to adequately offer any meaningful feedback other than to reinforce and fully accept the government of Canada as a duty to consult with indigenous people when the Crown contemplates conduct that might adversely affect asserted or established indigenous rights.

Question is whether the specific process and steps for compensation application have to be made mandatory through the Rules. As long as they are assured legally guaranteed from other legislative mandates and policies, I question whether that vehicle needs to be through the Rules.

For example, intervener funding is part of the requirements for interveners to fully participate utilizing experts. The Rules are like the Rules of Court utilized in court hearings, that cover process, procedures, evidence, etc. There is already ample opportunity for supplemental crown consultation with the CCC conducts additional consultation with Indigenous people to supplement the Commissions process.
This writer questions, whether the Rules should address the role of the CCC in Commissions hearings.

This could be cumbersome and difficult for the other intervener who would not be familiar with indigenous knowledge. For example, there are these interrogators that ask questions with response process within the rules' process.

The funding mechanisms cost apportionment applications do not need to be integrated into the Rules as part of the hearing context.

Question #4
Considering how important and central these Rules are, it is difficult to justify why the Crown Consultation Coordinator (CCC) participation should not be reflected into the Rules that govern its participation in Commission hearings.

The Rules are legal processes and procedures, they are not the actual key legislative mandates and authority base to ensure Indigenous Knowledge and role of CCC are assured and protected. In this respect, the Rules are not the only key methods to assure these rights and obligations are guaranteed. As long as they are protected and assured that is the bottom line.

Enhanced Competitiveness Throught Predictable and Timely Process
This first question comes to mind, for who? Is it to protect the industrial corporate proponents or are such changes designed to protect the environment and the public interest. If these new proposed changes are there to ensure proponents can get their projects fast tracked and protect their economic interest then such changes, our counter indicated.

So long as the public interests are not compromised or weakened then this writer would not have any serious concern about new proposed changes. This writer is not convinced this will be the case based on the information included int eh Discussion Paper.

Regarding "enhancing competitiveness to predictable through and timely processes".

What is meant by timely processes? If it means a fast tracking or short-changed approach to full public engagement and meaningful consultation/participation to facilitate quick approvals, then caution is urged in rewriting these Rule changes. This writer is concerned that they will favour the interests of the proponents not the public interest.

This reviewer gets the sense that timely processes are being driven by large corporate industrial proponents not so much for a typical community group, ENGO or local landowner who could be adversely impacted by one of these large projects. These new changes seem to be industry corporate proponent driven. This makes me suspicious as to whose interests will be protected with these new Rules being considered.

Question #2 -
Can you identify the Rules of other regulators or tribunals that support efficiency and could inform the Commission's review?
This writer over the last few years, has had more involvement with the Canadian Nuclear Safety Commission (CNSC) as an intervener, providing commentary on the Annual Regulatory Oversight Report for Nuclear Generating Facilities. Additionally, this writer has been both formal and informed interveners at various CNSC Hearing over the years.

This writer would recommend the CNSC public hearing processes for the Point Lepreau Nuclear Generating Station CNSC Renewal process be studied. The Commissioners held the public hearing in Saint John, New Brunswick. The format, processes and public opportunities to participate was excellent. Having formal and informal processes to participate and offer input was excellent. In this case, this reviewer submitted a written submission. This type of changes if not already built into the existing Rules, needs to be expanded. Oral presentations by selected witnesses are a positive future of the Canadian Nuclear Safety Commission public hearing process. The public participation environment of those hearings is a model to be created with the new Rules.

The Commissioners were the ones who asked the questions or interacted with the presenters. There were no regulatory lawyers or proponents or representative challenging or questioning the presenters. The officials would prepare written response for the Commissioners to use as a reference to their own comments and questions for the interveners.

These presenters (intervener)were in a non-adversarial, non-threatening environment.

The CNSC Rules created and orderly efficient comfortable setting that need to be integrated into any further hearings of the Commission of the Canada Energy Regulator.

As part of this initial Phase 1 public engagement, please carefully review and study how public review hearings are conducted by the Canadian Nuclear Safety Commission.

My concern is that the new changes to CER Rules will maintain this formal stiff legal adversarial format built on traditional judicial count hearings. That formal model and process limits and restricts as well as scares many community members and smaller ENGOs who would like to be more engaged in these CER public reviews/hearings.

There must be enhanced flexibility and accommodation to meet the needs of community stakeholders and interested parties. The use of our Public Intervener during the New Brunswick Energy Utility Board hearings is a model I would like to see incorporated in the new CER Rules changes. Those hearings were on NB Power's request for rate increases.

These hearings with the Public Intervenor were very effective in protecting the public interest. If the CER rules do not have such provision for a Public Intervener such provision needs to be added or strengthened into these new CER rules. Please review NB's EUB model as part of this review.

If proponents can get their projects fast tracked and protect their economic interests then such changes, our counter educated. The use of a public intervener model is highly recommended in addition to the normal public intervenor process.

So long as the public interest are not compromised or weakened then this writer would not have any serious concern about new proposed changes. This writer is not convinced this will be the case.

Regarding "enhancing competitiveness through predictable and timely processes".

What is meant by timely processes? If it means a fast tracking or short-changed approach to full public engagement and meaningful consultation/participation to facilitate quick approvals, then caution is urge in rewriting these changes.

This reviewer gets the sense that timely processes are very driven by large corporate industrial proponent not a typical community group, ENGO or local landowner who could be adversely impacted by one of these large projects. These new changes seem to be industry proponent driven. This makes me suspicious as to those whose interests will be protected.

Question#2 - Can you identify Rules of other regulators or tribunals that support efficiency and could inform the Commission's Review?
This writer over the last few years, has had more involvement with the Canadian Nuclear Safety Commission as an intervener, providing commentary on the Annual Regulatory Oversight Report (ROR) for Nuclear Generating Facilities.

This writer would recommend the public hearing processes for the Point Lepreau Nuclear Generating Station Renewal. The Commissioners held the public hearing in Saint John, New Brunswick. The format, processes and public opportunities to participate was excellent. Having formal and informal processes to participate and offer input was excellent. In this case, this review was submitted a written submission. This type of changes if not already built into the existing Rules, needs to be expanded. Oral presentation by selected witnesses is a positive future of the Canadian Nuclear Safety Commission public hearing process.

The Commissioners were the ones who asked the questions or interacted with the presenters. There were no regulatory lawyers or proponents or representative challenging or questioning the community presenters.

These presenters were in a non-confrontational environment. These CNSC public hearings were non-confrontational or adversarial.

Their Rules created and orderly efficient comfortable setting that need to be integrated into any updates to the hearings of the Commission of the Canada Energy Regulator.

As part of this initial process, please carefully review and study how public review from/hearing as conducted by the Canadian Nuclear Safety Commission.

My concern is that the new changes to CER Rules we maintain this formal/legal adversarial format built on traditional judicial count earrings paragraph that formal limits, restricts and scares many community members and smaller ENGO' S who would like to be more engaged in these public reviews/hearings.

There has to be enhanced flexibility and accommodation to meet the needs of community stakeholders and interested parties. They use of public interveners during the New Brunswick Energy Utility Board hearings for NB Power's rate increase request was very effective. It the new Rule do not have provision for an appointed Public Intervener, such provision needs to be added and or enhanced. Please review the New Brunswick Energy, utility board model as part of this review

Comments on updating processes
This writer notes that the Commission will examine all timelines set in the Rules and consider whether new timelines limits should be added.

When it comes to public reviews and hearings, the word "limits" cause this writer concern. Should be further expanded, not limits that restrict community groups/neighbour's organization, ENGO, interested parties to be able to fully participate.

Caution required when you want to shorten timelines or limit opportunities for interested parties to be engaged/involved.

Comments on modernize, practices and procedure procedures
There's nothing wrong with modernization of various practises and procedures, but when it comes to regulatory public interest, oversight, regulators like CER need to be careful to ensure that the proponents of these large project do not shortchange, weaken or restrict public from being adequately informed and engaged with meaningful public participation.

Quite frankly, there are many elements under the current Rules that have served a public interest in procedural fairness. Yes, the current Rules have to be consistent with the Canadian Energy Regulator Act but complying reasons have to be initiated in your next report as part of the Phase 2 draft process.

Right now, the general public impacted by these future projects may conclude that the regulator wants to fast track these approval process to assist the proponents and they are very strong advocate. If this writer misunderstands this assumption, please correct in your next phase of this consultation process

Comments on Access to Project Application
Does this mean removing the current requirement for the applicants for the CER to have a hard copy of project applications on site for public and inspection in the actual hearing location?

These hardcopy documents need to be available for public inspection to accommodate those without electronic means to access these documents.

Not all community members are online and for some who are using the online participation format can be difficult.

Modernize Practices and Procedures
Electronic filing of services with modernization is expected but caution must be used so as not to diminish or limit interested community parties including individuals ENGO from effective meaningful consultation and participation in CER hearings. CER has to be mindful so that there are legitimate valued community members, neighbors, ENGO you may find it challenging to use or maneuver, those electronic digital document filing processes.

I am concerned that from a digital future record that such digital record will eventually be removed from proponent website or even Regulators as well. This will prevent future researchers from accessing these public records including provincial public archives. Several years ago, I was advised by NB Public archivist that hard copies or records are desired for archival storage.

Digital records often disappear in future years, but hard copies last. This writer, over the year, provided years of hard copy records regarding applications and past hearing material on Maritime Northeast Pipeline Project along with many other NEB public reviews of energy projects. The provincial archivist welcomed hard copies as digital records often taken off one over time.

Such hard copies were welcomed as these digital copies have a tendency to disappear or taken down from Corporate proponents' websites. You can test this by searching how many of NEB past hearings are still up on the websites. I didn't see many as an NEB no longer exist and was replaced with CER. The question is whether the past NEB past public hearings / decisions are currently online.

There are intervenors who still need to have hard copies of documents. Regarding the rule SS9(8), I am not in favour of the Commission modernizing these regulations to allow for a filing and services without subsequent provision process of hard copies where it makes sense to do so. Do not remove the hard coy option. Explain “where it makes sense to do so”.

It should be optional to ensure community members, individuals, small ENGOS and organization etc. can easily access the documents as per their individual needs and requests.

No problem with parties making requests on a case-by- case basis or to view online.

I have concerns that application will no longer be available at local public libraries or in proponents’ office location as it is currently the case.

Publication and notices responses to question

This reviewer supports and values the current requirement that when a person files a document with the Commission by its electronic means that they follow up with an original hardcopy documents within a reasonable period of time after the document is filed.

It is not uncommon for digital/computer technologies to fail, lose signals or have system related interruptions. In some areas of Canada, problem receiving signals or people such as community members have inadequate operating system or inadequate storage to store hearing documents. This is another reason to provide hard copy options for those who request them.

Added to this are millions of Canadian who are unable to Manoeuvres the various computer screens or are not just online anymore for a variety of reasons. An aging population is a reality that the CER must keep in mind.

For those members of the public, obtaining a hard copy may be the only way for many to be informed and/or participating in public review. Using electronic means only will deny many impacted community members who presents with non-digitally and limited means to be involved in these future public hearing processes.

This writer, for the above reason objects to proposed changes to allow for electronic filing and services without the subsequent provision of hard copies.

Speaking to the New Brunswick Provincial Archivist a few years ago, this agency was pleased to receive this writer’s hard copies of past NEB, CNSC, other regulator’s documentation that this writer had retain over a 30-year period.

I was advised that these copies of public electronic documents are often taken down from proponents’ website after several years upon the approval of these projects. They are simply no longer available to either Provincial Archives or the Corporate proponents. As part of your Phase 1 review, can you research this issue to validate whether this reviewer is correct in my understanding of this issue. Perhaps the former NEB has an archived database, where everyone of past public hearings are retained.

I suspect that such an archival record over the last 40 years, may not be available and if so, limited records are still available to the public.

This question of keeping hard copies access and availability needs a deeper analysis from various perspectives prior to making a substantive decision to change current Rule practices.

This writer notes in the discussion paper, which this writer supports ensure accessibility to hard copy filing in and services would remain an option and services.

Having flexibility and such an option may be part of the solution to address this writer‘s concern but it’s not the complete or full answer as noted with examples above.

Publications and Notices

Use both, the traditional printed format in newspaper, public bulletins, board in libraries, municipal offices, etc., as well as social media format/sites. Provision has to be made for CER to compile with ongoing updates, a master list of ENGOs, community organizations, community members, professional associations, who could or are interested parties stakeholders etc.

Start with ENGO members registered and listed with every Provincial Environmental Networks as an example: check out New Brunswick Environmental Network that list 140 environmental groups in New Brunswick. Notices of these proposed projects should be sent to every Provincial Environmental Network in Canada.

Health associations are important as well many of these future projects have real and potential health impacts. When the Commission updates the Rules, please use plain language and avoid legalistic wording.

These hearings and those well-experienced regulatory affairs representatives of the proponents and other formal stakeholders, often get caught up into the legalistic procedural aspects of the CER processes.

This can be intimidating and threatening to ordinary Canadians (interested parties) not used to being involved in these Public Hearings Review processes.

Any changes have to be written with built-in flexibility and discretionary language that will allow the CER Commission to intervene in the process Rules so as to allow the rest of us committee members to be heard, with meaningful notices, engagement and comfortable participation in this quasi-legal court like environment.

This concludes my comments on this Phase 1 Discussion Paper on upcoming changes to the Rules under the Canadian Energy Regulator.

Respectfully submitted,

Gordon W. Dalzell