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Grand Council Treaty #3
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Canada Energy Regulator
210-517 10 Ave SW
Calgary AB, T2R 0A8

Via Email: RPPR@cer-rec.gc.ca

Re: Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper

1. Grand Council Treaty #3 Background

The comments below are representative of the Territorial Planning Unit ("TPU") of Grand Council Treaty #3 ("GCT3"). GCT3 is the Traditional Government of the Anishinaabe Nation in Treaty #3 (comprised of 28 First Nations). Grand Council's mandate is to protect the future of the Anishinaabe people by ensuring the protection, preservation, and enhancement of inherent and Treaty rights. The TPU is a department within GCT3 that works with the Treaty #3 Leadership to protect the lands, water, and resources within the 55,000 square miles of Treaty #3 Territory. The TPU operates under the guidance of Manito Aki Inaakonigewin (Great Earth Law) and the Treaty #3 Nibi (Water) Declaration, rooted in Anishinaabe law.

Governance in Treaty #3

Treaty #3 territory is governed by Anishinaabe law, called Manito Aki Inaakonigewin (Great Earth Law), and the Nibi declaration. Manito Aki Inaakonigewin represents respect, reciprocity, and responsibilities with all relations regarding Mother Earth. The law signifies the duty to respect and protect lands affected by over-usage, degradation, and unethical processes. The law is unique to Treaty #3 territory and passed on through our Elders and knowledge keepers.

The Nibi Declaration represents respect, love, and the sacred relationship with nibi (water) and the life that it brings. It is based on teachings about water, lands, other elements like air and wind, and creation. The Nibi Declaration is meant to preserve and share knowledge with youth and future generations. The Declaration guides us in our relationship with nibi so we can act individually, in our communities, and as an Anishinaabe Nation to help ensure healthy, living nibi for all creation.

2. Feedback on the Rules of Practice and Procedure

General Feedback

Grand Council Treaty #3 is providing feedback on the Discussion Paper for the Canada Energy Regulator's Rules of Practice and Procedure ("the Rules") that outlined in the sections below. We also wish to provide feedback to CER in response to questions and comments asked by industry representatives during the online engagement session on November 27, 2024.

CER is committed to ensuring the new Rules achieve reconciliation and align with UNDRIP. Presently, it is not apparent to what extent the new Rules are a way to implement CER's

reconciliation efforts as many aspects of CER's reconciliation efforts may be out of scope of the new Rules. However, CER should consider how its new Rules have potential to renew the Nation-to-Nation Treaty #3 relationship and the Rules' potential to advance reconciliation through Indigenous communities exercising regulatory authority – authority that ensures consent and joint decision-making. Thus, CER is urged to develop the new Rules with reconciliation and the Treaty relationship at top of mind, meaning CER considers how all aspects of the new Rules may impact Indigenous communities from a reconciliatory and Treaty lens.

Part of this work also includes CER changing the way it approaches consulting and accommodating First Nations. During the November 27th engagement session, CER indicated it does its best to follow Canadian law with respect to its consultation efforts. A necessary part of reconciliation is CER going well beyond the minimal legal requirements of consultation and accommodation to a place of true partnership and cooperation for its activities.

Respect Indigenous Legal Orders

When creating the new Rules, it is important for CER to consider how it can harmonize its process with Indigenous legal orders, protocols, and practices specific to each community. This is an opportunity for CER to recognize and respect Indigenous laws and processes and ensure CER has the flexibility to implement processes unique to the Indigenous peoples impacted by a CER-regulated project.

Two UNDRIP Articles support this:

> 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
>
> 32.2: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories …[1]

For example, the Anishinaabe Nation in Treaty #3 has a sacred relationship to the land, water, air, and all relations, which carries responsibilities. These rights and responsibilities have governed the Anishinaabe's relations with Mother Earth since time immemorial. The authoritative versions of these laws are oral and in ceremony but are also shared in writing to the extent possible: Manito Aki Inaakonigewin (MAI) and the Nibi Declaration.

These eco-centric laws[2] were a gift from Creator to the Anishinaabe Nation in Treaty #3 to respect, protect, and preserve Mother Nature and guide a decision-making process rooted in ceremony. The MAI process outlines the responsibilities of the Crown, proponent, and the Anishinaabe Nation in Treaty #3 and sets a framework for exercising inherent jurisdiction throughout Treaty #3

[1] The United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly, September 13, 2007, art 32.2.
[2] There is no word in the Anishinaabe language for "law" – Inaakonigewin does not directly translate. It can be described as a way of knowing and being.

through decision-making that encompasses what a full consultation process must include. For example, protecting the environment, economic development, partnerships, and revenue sharing.

There is opportunity for meaningful and contemporary consultation and participation in regulatory processes when the principles under MAI are followed – it is a way to harmonize Anishinaabe laws and processes with Canada's. MAI ensures affected First Nations can self-determine whether the consultation/regulatory process is complete rather than CER deciding when it is complete. The MAI process does not displace Treaty #3 communities' jurisdiction and processes, but rather supplements and complements them.

Harmonizing processes is a way to respect and implement shared jurisdiction and decision-making authority over Treaty #3's 55,000 square miles. Manito Aki Inaakonigewin is what meaningful consultation and regulatory participation looks like. CER can read more about MAI in the MAI Toolkit.

Recommendation: the Rules of Practice and Procedure must respect Indigenous laws and processes and have the flexibility to harmonize CER processes with Indigenous processes.

Notice to First Nations

During the CER engagement session on November 27th, an industry participant asked CER whether it planned to bring more clarity to traditional territories and determining where consultation is owed. Industry further asked about the large variance between provincial and CER consultation contact lists. Government and industry confusion about who is owed consultation impacts Indigenous communities' abilities to participate and protect their rights.

Assumptions about which communities are impacted and who should be consulted leads to potentially impacted communities missing important aspects of the consultation process or consultation altogether. The "proximity model" for consultation does not work. It is not transparent and harmfully impacts trust between First Nations, governments, and proponents. First Nations must self-determine if they are potentially impacted by a project, not the Crown or CER.

This confusion has also led to project notices sent to the wrong contacts, incomplete contact lists, and notifications sent in ways that are not appropriate to the community. As a result, First Nations may miss consultation opportunities altogether due to the overwhelming amount of consultation requests received. Generally, in person notice is preferred and most appropriate. Under MAI, proponents must also notify and apply to Grand Council Treaty #3 for authorization.

Failed or incomplete notice can have consequences. It impacts the abilities of First Nations to participate in regulatory processes, to complete their internal processes, and their overall ability to protect their rights. For example, CER may not assess key aspects of a project because notice was issued too late or did not include an impacted community. In Treaty #3, this situation led to judicial review of a National Energy Board decision.

Recommendation: All communities in Treaty #3 should receive appropriate notice about any CER-regulated activities that may impact their Treaty lands. Each community should decide whether they should be consulted on the proposed project.

Timing of Procedural Elements

One of CER's primary objectives for updating the Rules is to enhance competitiveness through predictable and timely processes – this must not occur in a way that impacts the inherent and Treaty rights of Indigenous communities nor environmental protections. Regulated timelines are often too short and inflexible. This is a way the Rules could negatively impact the Anishinaabe Nation in Treaty #3 by preventing meaningful participation in CER proceedings. Ensuring there is ample time to do things right is a core principle under Manito Aki Inaakonigewin (Weweni).

For example, the new Rules should not make regulated timelines surrounding the consultation activities of CER's Crown Consultation Coordinator. Timelines for consultation must remain flexible to ensure First Nations can freely decide that consultation and accommodation is determined complete and adequate.

Recommendation: Timelines in the new Rules that potentially affect Indigenous communities, must be flexible and adaptive. One mechanism to consider is collaboratively determining timelines with participating Indigenous communities.

Accessibility: Plain Language Rules

The Rules are legislated in regulations and are inherently inaccessible for the public to read and understand. This is particularly so for Indigenous communities where further accessibility barriers may exist. The CER must make plain-language and translated versions of the new Rules available.

Recommendation: The CER must make plain-language and translated versions of the new Rules available.

Indigenous Knowledge

CER is seeking feedback on whether procedural aspects of receiving Indigenous Knowledge ("IK") belong in the new Rules and whether the Rules allow a process to provide IK that is procedurally fair and able to evolve. The *Canada Energy Regulator Act* ("CER Act") legislates the confidentiality of IK in CER proceedings and the Rules currently do not contain provisions with respect to IK. Thus, it is currently difficult to provide detailed feedback on this request. Accordingly, GCT3 may have further comments on this in future engagement opportunities.

However, given the possible sensitive nature of IK, the person or entity providing the IK must have the opportunity to withdraw IK from the regulatory process. This is applicable where the CER Act mandates circumstantial disclosure in s 58(2)(b) and (c) of the CER Act[3]. The opportunity to withdraw IK could occur in consultations under s 58(2.1). Further, in relation to s 59 of the CER Act, the Rules should not prescribe when IK can be disclosed without written consent – IK should always require written consent from the provider to disclose.

[3] *Canada Energy Regulator Act*, SC 2019 c 28 s 10.

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Recommendation: The Rules should ensure a process for the "person or entity" that provided Indigenous Knowledge to withdraw it from regulatory proceedings where disclosure is necessary under s 58(2)(b) and (c), should the consultation under s 58(2.1) not result in a satisfactory outcome.

3. Final Remarks

For a long time, Treaty #3 Nations have been subject to economic and social hardship resulting from generations of colonization while many non-Indigenous peoples have benefitted from developing Treaty #3's resources. This is a moment to reconsider CER's relationship and role in this history. This is a new opportunity for CER to uphold Indigenous rights and respect Indigenous jurisdiction as it updates the Rules of Practice and Procedure.

These comments do not represent a full or final assessment from Grand Council Treaty 3. Further, these comments are prepared by the Territorial Planning Unit of Grand Council Treaty #3 and shall be without prejudice of any interests or rights of Treaty #3 First Nations nor derogate from the protection of existing inherent and Treaty rights. Our mandate is the protection and preservation of inherent and Treaty rights and individual Treaty #3 communities will designate their position as guided by Manito Aki Inaakonigewin.

Grand Council Treaty #3 welcomes the opportunity to participate in further engagement regarding CER's Rules of Practice and Procedure.

Miigwech,

[redacted]

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