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To: Canada Energy Regulator
From: Tom Howard (Manager, Intergovernmental Relations – High Bar First Nation)
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Subject: Comments on Canada Energy Regulator Rules of Practice and Procedure Review

I. Background & Purpose

The Canada Energy Regulator (CER) is undertaking a review of its rules of practice and procedure (the Rules) with respect to the Commission's oral and written hearings. The Rules are meant to provide the Commission with a complaint mechanism, a framework for assessing applications, and guidance on the overall conduct of hearings. The existing Rules are a holdover from the former National Energy Board (NEB), which was effectively supplanted by the CER with the passage of the *Canada Energy Regulator Act, 2019* (the Act). The purpose of the CER's review, as described in discussion paper provided by the CER (the Discussion Paper), is to bring the Rules into alignment with the terms of Act and its general commitment to reconciliation, including Canada's statutory duty to implement the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP); to enhance competitiveness through predictable and timely processes; and to modernize practices and procedures.

In October 2024, High Bar First Nation (HBFN) applied for and received a $6,000 grant from the CER to support the development of a written submission regarding the CER's review of the Rules. HBFN understands that its written submission will be incorporated into the first of four phases in the CER's review process. This document constitutes HBFN's written submission under phase one of the CER's review.

II. Scope

The Discussion Paper provides twenty-one questions that are designed to guide, but not necessarily constrain, feedback from participants. Most of the questions are concerned with specific, technical aspects of the hearing process such as timelines, process steps, and notice requirements. Apart from one question concerning the role and purpose of the Crown Consultation Coordinator (CCC; Question 4), the Discussion Paper eschews posing larger structural questions about whether certain process steps – such as issuing and resolving information requests, or assessing impacts to rights (including developing appropriate methodologies and conducting any required studies to do so) – might be more appropriately and effectively deployed in a *pre-hearing context* before the 450-day statutory timeline for the Commission's review is engaged by a completeness determination. While this limited framing is consistent with the CER's commitment to a narrow review of the Rules, it imposes serious constraints on the CER's stated commitment to both reconciliation and efficiency, which is legally required under the Act and pursuant to the federal implementation legislation for UNDRIP.

As discussed in greater detail below, information deficiencies and impacts to rights are optimally addressed *prior* to the CER's issuance of a completeness decision. Attempting to deal with these issues within the context of an adversarial hearing, as is current practice, not only undermines the efficiency of the overall regulatory process, but also and more crucially the Governor in Council's (GIC) ability to uphold the honour of the Crown and the satisfy their fiduciary and common-law duty to protect the Aboriginal and inherent rights enshrined in section 35 of the *Constitution Act, 1982* (Section 35 rights).

It also must be noted that the Rules themselves are both length and complex. Meaningful feedback on the Rules must rely upon understanding both the technical details of the Rules as well as the broader regulatory process in which they are enacted. Given these constraints, the limited capacity funding provided by the CER is not adequate to support a complete review and analysis of the rules, much less an ensemble of recommended changes.

With these limitations in mind, the following analysis should be understood as *scoping* future phases of engagement in a preliminary and partial fashion. This analysis is intended to illuminate some potential issues *within* the Rules, alongside issues within the CER's regulatory process more broadly. HBFN has had neither time nor capacity to examine either in sufficient detail: it would be more appropriate and effective to do so *with* the CER in future phases of engagement.

III. Discussion

Once the Commission has determined the completeness of a proponent's filings, the Commission is legislatively bound by the Act to deliver a report to the Minister within 450 days (subject to an extension).[1] The Act is silent as to whether the Commission is required to consider comments on completeness before moving to a hearing, or, indeed, what factors the Commission should consider when determining whether an application is complete. However, the text of sections 183(1) and (4) of the Act make it clear that a 'completeness' determination is a discretionary power of the Commission:

> Section 183(1): "If the Commission considers that an application…is complete…it must prepare and submit to the Minister…a report" (emphasis added); and
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> Section 183(4): The Commission is required to submit said report within 450 days "after the day on which the applicant has, in the Commission's opinion, provided a complete application."

Firstly, soliciting comments on completeness is within the Commission's jurisdiction in light of the open-textured language of these provisions. Building in a process at the level of the Rules to do so (rather than leaving it to be decided on a case-by-case basis in individual project assessments) would be: (i) consistent with administrative law procedural fairness requirements; and (ii) an incremental step toward implementing UNDRIP in the context of Commission proceedings by increasing meaningful Indigenous participation in those proceedings.

The CER has a statutory and common law duty to consult, and where appropriate accommodate, First Nations on the basis of potential and actual impacts to Section 35 rights. The honour of the Crown is at stake. It is assumed that the Crown intends to fulfill its promises[2] and it must act diligently in pursuit of its obligations.[3] If the Crown has delegated these responsibilities to the CER, in the manner established in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, then it out to determine potential and actual impacts to Section 35 rights *before* a completeness decision is made by the Commission. If assessments of impacts to Section 35 rights are deferred to the hearing stage, the mandatory 450-day timeline triggered by section 183 of the Act will place unwarranted and deleterious pressures on these assessments to be conducted solely in the adversarial hearing context. This approach jeopardizes the CER's capacity to uphold the honour of the Crown and discharge its fiduciary duty towards Section 35 by compelling impact assessments that may be rushed and incomplete, as they are performed within the constraints and pressures of a 450-day timeline.

The technical information submitted by proponents for completeness review are a window into both the *location* and *intensity* of real and potential impacts to the practice of Section 35 rights. If that work is done in a vacuum, without the meaningful input of impacted First Nations, the entire process is set up to be difficult and inefficient

[1] *Canada Energy Regulator Act, 2019*, section 183(4).
[2] *Haida Nation v British Columbia,* 2004 SCC 73 at paras 16 and 20.
[3] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 78.

from the start. In that regard, in our response to Question 5, below, HBFN has set out its firm view that the CER must take a more rigorous approach to completeness to ensure that the viewpoint of an impacted First Nation has been meaningfully taken into account before an application is ever filed before the Commission.

Further, and along these same lines, HBFN is of the view that information request procedures ought to take place *prior* to the completeness determination. Information requests provide an opportunity to determine whether proponents have gathered the relevant information and assessed impacts to rights to the satisfaction of the First Nations to which Crown is a fiduciary. Placing information requests before a completeness decision will be of particular assistance in a situation where a proponent has not meaningfully engaged with a First Nation before filing its application, and so the First Nation has real concerns as to whether its views have been appropriately taken into account. Under the current Information Request structure in the Rules, if a proponent's responses to an information request are vague, unhelpful, or even obfuscatory (i.e.), then First Nations have little room to meaningfully compel additional and sufficient information once the Commission's 450-day countdown has begun, especially if that information could only be gathered and studied in time-limited windows that are impractical to execute on while the 450-day countdown is ongoing.

For example, assessing impacts to rights may, for instance, necessitate site-specific analysis of migratory species that are only present in impacted areas within seasonally-delimited time periods. The Commission ought to determine whether a proponent's studies of such species has been sufficiently accomplished *before* arriving at a completeness decision, as the exigencies of seasonal migration may obstruct future studies that must be performed within a 450-day time period. Information requests are, in this instance, an effective way of examining the sufficiency of technical studies that are required to determine impacts to rights.

Beyond the issues raised above, and as described further below in response to Question 5, HBFN's view is that the Commission is required, as a matter of Canada's legislative obligations to implement UNDRIP, to take a more rigorous view to assessing whether an application is complete than it has done in the past.

IV. Response to Specific Discussion Questions

Question 3: Do you have feedback regarding how the Rules could incorporate process steps for providing and protecting Indigenous knowledge within hearings?

HBFN is currently involved in a CER hearing regarding a pipeline expansion project (Sunrise Expansion Project; SEP) proposed by Westcoast Energy Inc. The hearing includes opportunities to submit oral Indigenous knowledge at three in-person hearing-style meetings spread across three locations (Prince George, Kamloops, and Chilliwack), with each meeting ranging from four to five days in length (ie: fourteen days total).

Requiring participants to travel for these meetings, which take place within limited time windows and within an adversarial context, runs roughshod over the diversity of cultural practices and protocols surrounding knowledge-sharing. Owing to the both the depth of community commitments and in many cases the age of Indigenous knowledge-keepers, both the exigencies of time limitations window and travel burdens imposed by this in-person format may be untenable for many prospective participants.

Providing a more flexible time window for Indigenous knowledge submissions, while allowing for Indigenous to be submitted via modern teleconferencing technologies, would be (a) more respectful to the diversity of community protocols and cultural practices regarding knowledge-sharing, (b) more responsive to exigencies and pressures that may prevent knowledge-keepers, many of whom are elders, from travelling within tightly delimited time winds, (c) more conducive to Indigenous ways of knowing and being that may require certain issues be discussed in confidence, as discussed below, and (d) generally more modernized and in keeping with the principles of UNDRIP.

Further issues arise with respect to confidentiality. There is a formal motions procedure which allows communities to apply to submit Indigenous knowledge confidentially. The Rules are burdened by a presumption that the hearing process, like standard court proceedings, should be "open" by default, and that communities must justify attempts to "close" Indigenous knowledge submissions. This process directly contravenes Indigenous ways of knowing and being in many instances and moreover imposes an unwarranted administrative burden.

Several renovations could address the above-mentioned confidentiality concerns. The motion-based procedure to apply for confidentiality might be removed altogether. Forms for the written Indigenous knowledge submissions could simply allow applicants to specify which parts are confidential and which parts are not. Oral Indigenous knowledge sessions might include days specifically focused on confidential, closed-door sessions. The CER ought to consider all of these options in deeper consultation with communities, *before* it has unilaterally determined the format for Indigenous knowledge submissions within a hearing process.

Question 4: Would you like to see the role of the Crown Consultation Coordinator, and the nature of its participation in Commission hearings reflected in the Rules? If so, how?

HBFN's experience regarding SEP thus far has been that the CCC is effectively a notetaker role that has no real authority to grapple with HBFN's concerns. When HBFN has posed a question on any substantive matter to the CCC, the CCC has invariably deferred answers to the Commission process itself. This type of notetaker role was found to not be consistent with the requirements of proper consultation in *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153. Indeed, it has long been recognized in the case law that a "traffic cop" type-role that simply directs "issues to other persons and bodies" does not achieve the requirements of consultation with respect to Section 35 rights.[4]

Relatedly, in an Early Engagement Report (C29820-2) provided as part of the SEP process, the CCC has appeared to be planning, from the outset, to include a "Phase 3"-style consultation process in its engagement. Under the heading "The Role of CCC" on page 2 of the report: "The CCC also conducts supplemental consultation after the close of the Commission's hearing record for the Project and issues a Crown Consultation and Accommodation Report (CCAR), which provides its view on whether Canada's duty to consult and accommodate has been fulfilled". The case law makes clear that such an approach to consultation is essentially a 'Hail Mary' to attempt to fill gaps where the preestablished regulatory process has failed to address all Indigenous concerns, as explained in this exact regulatory context in *Tsleil-Waututh Nation*:[5]

> [529] As stated above, meaningful Crown consultation can be carried out wholly through a regulatory process so long as where the regulatory process relied upon by the Crown does not achieve adequate consultation or accommodation, the Crown takes further steps to meet its duty to consult by, for example, filling any gaps in consultation on a case-by-case basis (*Clyde River*, paragraph 22).
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> [530] In the present case, Phase III was designed in effect to fill the gaps left by the Phase II regulatory process—Phase III was to focus on outstanding concerns about the Project-related impacts upon potential or established Indigenous or treaty rights and on any incremental accommodation measures that Canada should address. ...
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> [Emphasis added.]

[4] See *Dene Tha' First Nation v. Canada (Minister of Environment)*, 2006 FC 1354 at para. 41.
[5] *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 at paras. 529-530.

Past experience (including from *Tsleil-Waututh Nation*) show that "Phase 3" consultation is legally risky and uncertain to execute, as significant momentum will have already built behind the findings of the Commission's report. It is also conducted in a rushed environment, as orders regarding Project approval or rejection are required to be issued by the GIC "within 90 days after the day on which the report under section 183 is submitted" unless an extension of time is granted.[6]: CER Act, section 186(3).

Rather than adopting an approach from the outset that assumes the Commission process will not be adequate, HBFN's firm view is that the CCC should be working more actively with Indigenous groups and its client federal departments to ensure that the Commission process will in fact be adequate, obviating the need for a "Phase 3" approach.

The preferred approach for which HBFN advocates could take the form of, for example, the CCC, its client federal departments, and Indigenous groups putting before the Commission jointly agreed-upon views for how the Commission process ought to be structured and executed to ensure it can achieve adequate consultation without the need for a risky and uncertain "Phase 3". This could be in the prehearing phases (i.e. the completeness phase) in process workshops convened with affected Indigenous communities, and continue throughout the hearing (i.e. collaboration between the CCC and Indigenous groups to impress upon the Commission the need for issues of concern to be raised and adjudicated upon during the hearing rather than being unaddressed and left to a Phase 3).

Consultation within this framework, *pre-completion*, has the opportunity to reveal opportunities where a proponent may has additional work to do to prepare a complete application. The benefit of consultation at this stage would reduce friction and conflict within the stage, thereby arriving at the efficiency sought in the CER's review of the Rules.

Additionally, HBFN's experience has been that the roles and responsibilities of the CCC vis-à-vis its client federal departments is very obscure and needs to be made more transparent and predictable, including on the following points:

- Do federal departments give "instructions" to CCC as to consultation-related matters that are relevant to a particular federal portfolio? Or does the CCC act more autonomously than that?
- Does the CCC have any ability to make commitments, during consultation, on behalf of federal departments? Or is it limited to a reporting role to federal departments?
- If the CCC is limited to reporting to federal departments, how does the CCC's role meet the minimum legal requirements for how to discharge consultation in this context (in which the courts have already held that a mere 'notetaker' or 'traffic cop' is inadequate)?

Question 5: Do you have other feedback related to how the Commission can align the Rules with the CER Act, including the objectives outlined in the Act's preamble, such as the commitment to Reconciliation, and the UN Declaration?

HBFN is of the firm view that an isolated review of the more procedural aspects of the Rules is insufficient to bring its practices in line with the Crown's statutory obligation to implement UNDRIP, common law obligations under the duty to consult, fiduciary duty towards First Nations' Section 35 rights, and both the specific terms and broad reconciliation agenda of the Act. In order to do so, a review of the Rules must be accompanied by a review of the CER's approach to determining completeness under section 183 of the Act that is focused on a more rigorous defence

[6] *Canada Energy Regulator Act, 2019*, section 186(3).

of Section 35 rights. For purposes of the current exercise, this guidance could be included directly into new or additional Rules that provide clarity on how the CER assesses completeness.

The text of the Act's relevant provisions (referenced in section 3 of this document) do not provide explicit guidance on how the Commission is to assess completeness. However, pursuant to the principles of statutory interpretation, the context of the Act, when read in light of the purpose of the 'completeness' process,[7] compels the CER to adopt a more rigorous approach to the determination than it has in the past, where the Commission or its predecessor, the National Energy Board, has:

- understood completeness to be a 'low bar';
- emphasized that 'not every detail' needs to be contained in an application for it to be found complete; and
- emphasized the preliminary nature of the completeness step, encouraging participants to focus their attention on the (time-limited) merits hearing.[8]

In light of Canada's commitments to implement UNDRIP, HBFN's view is that a more progressive approach to completeness is legally required to be implemented into the day-to-day work of the Commission. Because of the open-textured language of section 183 of the Act, there is ample room for the CER to do so at the level of making changes to the Rules and/or the Filing Manual.

The Supreme Court of Canada has condoned the ability of administrative bodies such as the Commission to depart from their "internal precedent" or "longstanding practices" in cases where "that departure is justified" by the circumstances – especially where, as is made clear below, the Commission's internal precedents and longstanding practices have been overtaken by other legal developments imposing legal obligations on the Commission to, among other things, implement UNDRIP.[9]

Here, such a departure is amply justified, to adopt a more robust approach to completeness, for the following reasons.

First, an important piece of context within the Act itself suggests that Parliament's intention was for proponents to take the time to responsibly assemble a substantively complete application before it is filed. Specifically, there is no time limit by which a proponent is required to submit a 'complete' application to the Commission. This is in contrast to the mandatory 450-day deadline for the Commission to provide a report to the responsible Minister once a 'complete' application has been submitted, found in section 183(4) of the Act.

This dichotomy shows that Parliament's intention is for a proponent to 'get it right' before a matter proceeds to a public hearing. Viewed from this perspective, a rigorous 'completeness' analysis allows the hearing stage to be focused on true issues of substance that still need to be resolved before the Commission, rather than having all manner of procedural, substantive, and scope issues forced into a 450-day deadline with no possibility of extension available under the Act.

Second, the Supreme Court of Canada has held that "[t]he statute book as a whole forms part of the legal context in which an Act of Parliament is passed"; and "one statute may influence the meaning of the other, so as to produce

[7] *Dow Chemical Canada ULC v. Canada*, 2024 SCC 23 at para. 101, *per* Kasirer J., for the majority.
[8] See, i.e., references to the low threshold of past completeness determinations by the then-National Energy Board in *Tsleil-Waututh Nation v. Canada (National Energy Board)*, 2016 FCA 219 at paras. 91, 93.
[9] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 131, *per* the majority.

harmony within the body of the law as a whole".[10] In this regard, the Commission once again must look to the federal implementing legislation for the UNDRIP and the Supreme Court's related comments, reproduced here for reference:

- UNDRIP has been affirmed by Parliament in the text section 4(1) of its federal implementing legislation as "a universal international human rights instrument with application in Canadian law".[11]

- The Supreme Court of Canada has interpreted this provision as meaning that "the Declaration has been incorporated into the country's domestic positive law".[12]

Accordingly, when determining the proper threshold for the analysis in light of the open-textured language of the 'completeness' provisions, the Commission will once again be required to ensure its interpretation and approach, including the ways in which it has assembled and revised its Rules, is in accordance with its legal obligations to implement UNDRIP.

In this regard, the relevant Articles of UNDRIP point toward a more rigorous approach to the 'completeness' analysis, being:

- Article 18: the right to participate in matters affecting the rights of an Indigenous group.

- Article 26(1): the right to the lands, territories, and resources which Indigenous peoples have traditionally owned, occupied or otherwise used or acquired.

- Article 26(2): the right to own, use, develop and control the lands, territories, and resources that Indigenous groups possess by reason of traditional ownership, occupation, or use.

- Article 29(1): Indigenous rights to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Further, as noted above, Canada's Action Plan for implementing UNDRIP Measure 34, at p. 33 specifically references working with Indigenous peoples to, among other things, "enhance the participation of Indigenous peoples…in respect of, projects and matters that are currently regulated by the Canada Energy Regulator."

Having a 'completeness' analysis that is effectively just a box-ticking exercise with all matters being deferred to the merits hearing conflicts with the above-noted Articles and Action Plan directions. Doing so condones an outdated and unilateral approach to developing project applications, whereby proponents do all of their work behind closed doors and present a predetermined plan to affected Indigenous groups as to how their rights and interests will be relevant to and impacted by the project.

By contrast, a more rigorous 'completeness' analysis sends strong direction to proponents – consistent with UNDRIP and the Commission's obligations to implement it – that they must work together with Indigenous groups before filing a project application to ensure the best chance of it being determined to be complete by the Commission for purposes of section 183 of the Act. This, in turn, will greatly increase regulatory efficiency before the Commission and reduce the administrative burden on Commission staff: the more that proponents have already worked together with Indigenous groups before the Commission ever sees an application, the less adversarial the hearing is likely to be (i.e. fewer motions, fewer information requests, fewer contested issues, etc.).

[10] *65302 British Columbia Limited v. Canada*, [1999] 3 S.C.R. 804 at para. 7.
[11] *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14
[12] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para. 15.

It is contrary to Parliament's intention to have the bar on completeness be so low as to almost be non-existent, and in a manner that fails to go toward implementing UNDRIP. Rather, the Commission must approach the 'completeness' analysis "in a way that fulfils the important gatekeeping function" of the requirement within the *CER Act*.[13]

In particular, an application ought to be determined to be incomplete if it has been prepared in such a way as to frustrate the ability of interveners to meaningfully scrutinize and assess the application – and correspondingly the ability of the Commission to prepare a report under section 183(1) of the Act.

While this may arise from obvious technical omissions in an application (such as the complete failure to include a section required by the Filing Manual), the interpretation of the Act that best fulfils the Commission's gatekeeping function and implements the UNDRIP also suggests an application should be deemed incomplete if, for example, it:

- was prepared unilaterally by the project proponent without collaboration with impacted Indigenous groups (i.e. without co-developed methodologies or agreed-upon areas of study);

- fails to have completed foreseeable/planned baseline studies (in contrast to novel issues that may arise in the hearing and Information Request process) that will be unable to be realistically revisited within the 450-day timeline in the Act for the Commission to prepare its recommendation report (such as impacts on fish and wildlife breeding/spawning cycles);

- defers critical substantive matters central to the project to be studied in the post-approval phase where there is too little time to do so and which could be avoided at the determination of completeness stage; or

- commits to collaborating with Indigenous groups in only vague, undefined, or unrealized ways that lack a clear link to how the proponent intends to structure its project application.

These types of factors continue to respect the dividing line between the 'completeness' assessment and the substantive hearing on the merits, while also giving greater meaning to the language of section 183 of the aAct in light of the binding requirements of UNDRIP.

As a matter of practice and the most efficient functioning of the Commission process during the merits hearing, it is critical for a proper approach to 'completeness' to take into account the extent to which the proponent worked together, in advance, with impacted Indigenous groups, for the following reasons:

- Ensuring Indigenous input into the design of studies and methodologies in advance of filing a project application will greatly simplify and streamline the hearing on the merits. Parties and the Commission will be free to focus on the merits of the project application and how to apply the factors in section 183(2) of the Act during the assessment and in the preparation of the Commission's recommendation report.

- By contrast, great friction will be generated by an approach (such as what the current version of the Filing Manual and Rules condones) that allows a project proponent to unilaterally develop methodologies and studies based on the 'professional judgment' of consultants hired to solely advance the interests of the proponent, and then build a purportedly 'complete' application based on that approach.

- Rather than substantive matters, a hearing built on such an approach has a high risk of being bogged down in what ought to have been answered as threshold process questions – e.g. proper methodologies, whether all necessary studies have been completed, etc. In the background, the 450-day requirement for the Commission

[13] See, by analogy, discussion of a leave requirement before filing a judicial review: *Raincoast Conservation Foundation v. Canada (Attorney General)*, 2019 FCA 224 at para. 16.

to prepare its report will keep ticking down, placing significant roadblocks in the way of the ability of the Commission to direct the proponent to fix what fundamental scoping issues with an application.

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

Notwithstanding comments regarding the proper role of information requests in the CER's overall process (ie: that they should precede the Commission's completeness determination), HBFN is of the view that the CER should provide greater clarity on the amount of time available for First Nations to review proponents' responses to information requests, and to subsequently provide additional requests for clarity.

Information requests often address technical topics. In many cases, First Nations must hire consultants to supply the necessary technical expertise to not only help prepare information requests, but to analyze and assess the completeness and adequacy of responses to information requests by proponents. Time is required for both the administrative process of hiring and retaining consultants, as well as the actual process of the aforementioned technical work.

The Rules give the Commission discretion to determine the amount of time allocated for information requests to be requests and for parties to respond to said requests.[14] The Rules are silent on the length of time that a party will have to compel additional information from another party, should they find their response to said information request incomplete, inaccurate, or otherwise lacking. Within the current SEP hearing, however, HBFN was allocated a two-day window to file a motion compelling additional information following responses to information requests by the proponent. Requiring communities to complete reviews of proponents' responses in such brief time period effectively compels a surplus of rushed and potentially vague motions for the Commission to review. Apart from undermining opportunities to evaluate potential impacts that might be revealed through information requests, the surplus of potentially unhelpful motions produced by these time limitations are inefficient from a process standpoint. HBFN therefore recommends that information procedures be not only moved to the pre-completion phase of the CER's process, but that the CER moreover develop specific rules around time allotments for information requests that permit a more robust and responsible review of proponents' submissions.

Question 14: Do you have feedback regarding the modernization of requirements to allow for electronic filing and service in most instances?

The user interface on the CER's online regulatory database (ie: REGDOCS) only allows a single user to file documents on behalf of a First Nation. Because REGDOCS furthermore requires two-factor authentication as part of the filing process, it is impractical to have multiple potential filers share a single account. Canada's chronic underfunding of Indigenous governments has left many First Nations struggling with capacity issues: as a result, individuals designated by First Nations to file on their behalf are liable to be generally overworked. HBFN sees nothing in the Rules that compel the unnecessary administrative burden imposed by the REGDOCS interface. It is our recommendation that the CER permit more than one account to be created for each First Nation for the purpose of document filing.

[14] *National Energy Board Rules of Practice and Procedure, 1995*, sections 32 and 34.

Question 19: Do you have other feedback on how the Commission can update the Rules to modernize practices and procedures?

Per the Rules: "where a person files a document with the Board by electronic means, the person shall provide an original hard copy of the document to the Board within a reasonable period after the document is filed."[15] The administrative burden imposed by this requirement is unwarranted in light of (a) the superior convenience and accessibility of electronic means of communication, (b) the capacity deficits facing many First Nations, and (c) the negative and unnecessary monetary and environmental costs of needlessly shipping potentially large volumes of paper across the country, in many cases from remote and expensive-to-access areas. HBFN recommends that this requirement removed completely.

[15] *National Energy Board Rules of Practice and Procedure, 1995*, section 9(8).