



As'in'i'wa'chi Ni'yaw Nation

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

Written Submission for the Commission of Canada

Energy Regulator Rules of Practice and Procedure Review – and comments on the National Energy Board Rules of Practice and Procedure, 1995

To whom it may concern;

The recommendations outlined below reflect potential changes to the Rules of Practice and Procedure based on Kelly Lake Cree Nations' (KLCN) experiences in written and oral testimonies during the hearing process. KLCN Leadership, field technicians, Knowledge Holders, and the Cultural Advisor have discussed incorporating Indigenous worldviews, perspectives, and reconciliation measures into these Rules.

Discussion Questions:

1) Are there specific process steps for cost apportionment applications that you would like to see made mandatory through the Rules?

- Nations that conduct site assessments or provide a Traditional Land Use (TLU) comprehensive report to the proponent, participate in oral and/or written testimonies, and act as intervenors should be compensated based on their level of participation and the amount of information shared through TLU and/or oral and written testimonies. The Rules should establish a standard rate to ensure that Nations with a higher level of participation are adequately compensated for their associated costs.
- It is essential to consider the government's priorities when engaging with Indigenous Nations and communities. If certain groups are compensated, a clear assessment should explain how the Canada Energy Regulator (CER) determines which communities receive compensation and the rationale behind those decisions. This should be based on equitable criteria such as citizenship status, territorial size, or a per capita formula. The CER must also consider First Nations' previous experiences with grant or contribution funding agreements and the relevant facts and issues raised by the parties involved, including the nature of the costs, existing agreements, and prior compensation paid.



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2) Are there specific process steps for compensation applications that you would like to see made mandatory through the Rules?

- Funding should be allocated based on formulas, mainly when agreements are made with First Nations, to ensure fairness in funding distribution. Acknowledging prior engagements and agreements with First Nations will help them understand and respect their unique needs and circumstances, fostering an equitable and supportive relationship.
- The nature of the requested activities or work must be thoroughly assessed. This includes a comprehensive evaluation of land use and its historical changes. Additionally, traditional land use and cultural heritage must be equally valued alongside other land-use planning considerations.

3) Do you have feedback on how the Rules could incorporate process steps to provide and protect Indigenous knowledge within hearings?

- One proposed solution is to establish closed-circuit arrangements. Nations should have the right to request closed-circuit setups for oral and written testimonies to protect sensitive information and maintain confidentiality.
- When a Nation requests to provide oral history or written historical information supporting either historical land use or occupancy on a project's footprint, consideration should be given to their request for a closed circuit rather than a televised open circuit to protect the confidentiality of Indigenous Knowledge.

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?

- There should be a specific section detailing the role of the Crown Consultation Coordinator (CCC) during Commission hearings. When First Nations present oral and/or written testimonies, understanding the CCC's independent and neutral role in interactions about proposed projects is crucial. After consulting with interested First Nations, the CCC recommends mitigations, recommendations, and potential accommodation measures to the Commission. By detailing the role of the CCC in the Rules, First Nations can better understand its specific nature.

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?

- A segment should be included in the "Short Title" section that articulates Canada's commitment to Reconciliation, ensuring proper engagement with Indigenous Peoples while recognizing self-determination, Treaty rights, and Section 35 rights.



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- Considerations in the Interpretations should suggest "Indigenous Perspectives" to align with the objectives of the CER Act and emphasize the importance of Indigenous knowledge in the regulatory process.

6) Do you have any suggested changes to the Rules to reflect hearings under the Canada Oil and Gas Operations Act or other legislation?

- "The purpose of the Canada Oil and Gas Operations Act is to promote, in respect of the exploring for and exploiting of oil and gas." "The process of the "Rules" is to set out the mechanisms for complaints, the conduct of public hearings, and determine the manner in which applications are to be assessed." The "Rules" can take into effect The Canada Oil and Gas Operations Act in how the mechanisms through a hearing process can determine the feasibility of a project by including Indigenous Knowledge as a factor for selecting a project.

7) Do you have feedback with regards to any timelines set in the Rules, additional timelines you would like to see added to the Rules, or the approach for computation of time (Rules, s. 5-7)?

- Common complaints for First Nations regarding timelines are that many are currently dealing with one or more projects simultaneously during the same timeframe. Community capacity building to train community members to respond to the filings needs to be considered. Some communities hire non-Indigenous people or consultants to assist in the regulatory process. If communities could train their members/citizens to allow for response to filings and applications, this can create self-sufficiency.
- Considerations can include a 2-week extension for any Nation requesting additional time.
- Send notices a week before a deadline to remind nations and communities to send in filings or applications.

8) Do you have feedback on the notice of motion process or suggested changes to support efficiency?

- Only comment is regarding Notice of Motion 35 (6), when a party gives a Notice of Motion orally, the decision is made by the Board at their discretion if admissible. If an option in such circumstances where a party may add vital information without filing can have an option to provide in a written statement after the fact and if wanting it as a filing, can be given an option to file.

9) Do you have feedback on the current process for fixing costs related to detailed route hearings?

- The fixed rate is applicable at the same cost to all First Nations. An option may be to determine eligibility on the level of participation. By providing testimony on culturally sensitive information, mitigation concerns, current land use, historical land use and by sharing the



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information orally, what are the tangible benefits to a Nation? Will it provide more agreements, or opportunities for employment training?

10) Are there processes that you would like to see written into the Rules?

- As suggested in the “interpretation,” include Indigenous peoples about Question 5. The overarching term “party” refers to “peoples.” Can there be a description for nations that are interested in participating? To include “Indigenous peoples” as Nations, communities that “make an application or an intervenor. The “Rules” has no mention of Indigenous peoples.

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

- Obtain informed consent from the community before collecting any information, explaining the purpose of the data collection, how it will be used, and who will have access to it.
- Adapt language and communication style to respect Indigenous cultures and protocols.
- Adhere to the OCAP principles, ensuring Indigenous communities have ownership, control, access, and possession over their data.

12) Can you identify rules of other regulators or tribunals that support efficiency and could inform the Commission’s Review?

- Currently with a push for many regulatory processes to standardize the inclusion of Indigenous participation by requesting feedback on how the best practices can be introduced, it is simultaneously happening currently. “With the introduction of the CER Act, the Commission's consideration of Indigenous knowledge has become a formal legislative requirement (CER Act, ss. 183(2))”.

TCEI Toolkit, ECCC amendment on SARA accommodation, The First Nations Principles of OCAP. Currently other regulators have been working with First Nations on inclusion.

13) Do you have other feedback on how the Commission can update the Rules to enhance competitiveness through predictable and timely processes?

- Considerations have been expressed, voiced that timelines need to be more streamlined to accommodate or at best flexible for Indigenous Peoples. This will require a broader discussion and thought.

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

- Some communities are set up to accept electronic filings, while others are not up to date on modernization. Each community may or may not have the capacity to have the same level to set up systems to have access to respond to an electronic filing.



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15) Do you have feedback regarding the potential removal of signature requirements in certain instances (e.g., physical signatures on applications and notice of motions)?

- An option for either a digital or a physical signature would allow communities to choose.

16) Do you have feedback regarding removal of the current requirement for the company/applicant and the CER to have a hard copy of project applications on site for public inspection (Rules, s. 24)?

- There needs to be a requirement for Indigenous people who are also working to be provided with the following information about the proposed project: • project description; • scope and location of the project (maps); • any potential short and long-term impacts; • authorizations and timelines.

17) Do you have feedback regarding what type of notice publication requirements are appropriate in a digital age and where Commission approval is necessary?

- Notice of Consultations with First Nations Under Environmental Assessment Legislation:
- The Minister is set to engage in consultations with First Nations as stipulated by the Indian Oil and Gas Act, fostering collaboration and open dialogue.
- - The First Nations Tax Commission invites public input on proposed amendments to standards, encouraging community participation and valuable feedback.

- Recent statistics reflect that Facebook remains the primary social network among Indigenous households, with 84% usage—slightly lower than the average Canadian's 87%. Instagram follows closely, with 55% of Indigenous users participating, compared to 53% of average Canadians. Additionally, 39% of Indigenous individuals use TikTok, highlighting the growing diversity in social media engagement. These insights can help shape future outreach and support initiatives within Indigenous communities.

- CER can create a social media strategy involving Indigenous communities to access only the public notice requirements.

18) Do you have feedback on how the Rules could better support accessibility to and throughout Commission processes?

- To be given a few location options that will allow communities accessibility to towns that are regionally close to travel to. Grant funding for those requesting in-person submissions; if a community requests an online platform, that is a current option.

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

- Changes can be made along with an approach to co-exist with long-standing Indigenous traditions. Considerations can include oattaking with an eagle feather and having community



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Elders offer a prayer in their language along with providing support. Incorporating smudging between each testimony. Smudging offers a cleansing method for restoring positive thoughts, grounding oneself, or cleansing negativity from a room.

- If a language speaker feels more comfortable speaking in their language, allow for an interpreter to be present to translate what is being said.
- Participating in a public forum that integrates traditions that respect Indigenous worldviews or ways of thinking will allow reconciliation efforts to be practiced and earn trust. Trust is vital in relationship building to foster understanding and compassion.
- Cultural competency training can be provided for CER staff and the CCC to gain a better understanding of historical injustices and learn how policies implemented through the Residential Schools, Day Schools, and Indian Hospitals enacted harm on Indigenous peoples. To teach a better understanding of who Indigenous peoples are and the classifications of the treaty, status, non-status, and Metis peoples. To learn of treaty promises, section 35 rights, and if cultural competency training can be done by nations that can provide the training to use our voices and experience.

20) Is there other feedback or suggestions you have related to the Rules Review?

- Further dialogue with First Nations on how the Commission will make the changes is needed. A committee can be set up to work with the Commission to provide guidance, offer support or make suggestions on how to align with feedback from participating First Nations.

21) Would you like to see guidance on any specific topic related to the Rules Review?

- More workshops on the “Rules” are needed for communities to better understand the process. The workshops can include lands departments in communities and/or interested community members who want to understand the “Rules.”

I appreciate the chance to share feedback from Kelly Lake Cree Nation and look forward to our ongoing collaboration with the CER. If you require further information, please contact Shelley Calliou at scalliou@kellylakecreenation.com.

Submitted by:



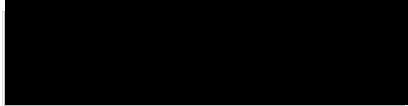
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On behalf of Kelly Lake Cree Nation



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