



# KELLY LAKE FIRST NATION

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“A Community Located in British Columbia”



February 18, 2025

Canada Energy Regulator  
Rules Review Project Team  
Suite 210, 517 Tenth Avenue SW  
Calgary, Alberta T2R 0A8

## ***Rules of Practice Phase One – Response to Discussion Questions***

Kelly Lake First Nation (KLFN) applied to participate in the Canada Energy Regulator (CER) Rules of Practice Review. The comments below pertain to the Nation’s initial responses to the questions posed by the CER, and are provided in good faith, with the intent of collaborating for improvements in the hearing process. KLFN did not engage legal counsel in any discussions regarding this work. It should be noted that in some instances, KLFN did not feel it had the knowledge or the capacity (staff or monetary) to thoroughly research the background information necessary to provide comments. As this project evolves, the Nation hopes to gain the required expertise to contribute more fully to this exercise.

### **Discussion Questions**

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

In reviewing the background information (Regulatory Approach for Section 335 Cost Apportionment – Update), it appears that the CER engaged with various municipalities, landowners, regulated companies, and Indigenous communities in 2019. KLFN has no record of participating in these discussions and as such is unfamiliar with the background information. Noted in the Update however are some guiding principles should the CER choose to incorporate this into the regulations.

KLFN agrees with the recognition that no two circumstances will be the same, and therefore flexibility is essential.

Reference is made in the Update Document to “consideration of *land changes over time*.” This suggests that the concept of understanding terrestrial impacts, both project-specific and industry inclusive, which is of serious concern of the Nation. Linear project impacts have recently been considered in project applications through the environmental assessment sections, and while this is a good first step, it is narrow in its approach. This discussion extends well beyond the scope of a specific proponent’s application but is of major significance. Progress cannot be made until *all* industry players find alignment in a collective response to the impacts of resource development.



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

KLFN is unfamiliar with this process step and resource constraints have limited its ability to gain an understanding of the elements related thereto. As such, the Nation is unable to provide comment at this time. Knowledge in this area may be gained as this project phases evolve, and if so, comment will be provided at a later date.

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

KLFN is actively involved in a number of CER projects that are looking at various aspects related to proposed revisions to the Onshore Pipeline Regulations review (13 policy statements), workshops pertaining to key topics associated with the management of Heritage Resources, and discussions with NRCan on the proposed Indigenous Ministerial Arrangements Regulations. All the aforementioned discussions focus on of for the provision and protection of Indigenous knowledge. Further conversations are needed on these subjects to gain clarity before providing answers that align with the intent of the proposed changes.

It is clear that substantive changes are required if the CER is going to achieve alignment with the 46 articles contained within the United Nations Declaration on the Rights of Indigenous Peoples, starting with a common understanding on terminology such as *free prior and informed consent, meaningful consultation, and heritage resources*. Additionally, when dealing with data and the data sovereignty, many Indigenous communities are now asserting the principles of OCAP<sup>1</sup> and therefore the CER should consider these values alongside all its ongoing review.

KLFN has raised concerns in each of these sessions as to what appears to be a “siloeed” approach to the work and has posed the question regarding the potential for conflicting alignment, overlap and lack of holistic input. Moreover, KLFN recognizes the intent behind these co-created initiatives, however the results will depend on the policies and practices that are eventually mandated in the filing manuals, and project approval conditions. This in and of itself will be challenging in that not everything can be captured in this manner, and it will ultimately be dependent on the proponent’s level of acceptance and willingness to change. Policy changes are not implemented simply with the stroke of a pen; they require time and effort to integrate into practice at both management and field levels.

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<sup>1</sup> <https://fnigc.ca/ocap>



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#### 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?

KLFN has found the role of the Crown Consultation Coordinator (CCC) to be helpful, particularly in their role in facilitating the consultation process. The purpose of the CCC is "responsible for overseeing and managing the "duty to consult" process with Indigenous communities when a project or decision could potentially impact their established or asserted Aboriginal rights, ensuring proper communication and engagement throughout the consultation process; they typically develop consultation plans, assess potential impacts, and propose mitigation strategies to accommodate Indigenous concerns<sup>2</sup>." The determination of *when* the CCC will be engaged with Indigenous communities is currently determined by the CER under the various application categories, with no say from the Indigenous communities. The very nature of resource development has the potential to impact rights.

KLFN would like to see the role of the CCC expanded to allow for consideration to include its involvement on a case-by-case basis. Case in point is the recent Enbridge Aspen Point project.

The optics of the CCC being associated directly with the CER remains a difficult concept to grasp and/or take full comfort in. While the Nation has been assured on many occasions that its role is distinctly separate from the Commission, skepticism remains.

#### 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?

Reconciliation with Indigenous Peoples is a complex undertaking that requires engagement with every community to gain an understanding of the traditional values, governance models and engagement strategies, specific to each. A pan-Indigenous approach to this work will not yield the results the Government of Canada requires to achieve its mandate. ***In the case of KLFN, it must be understood that the Nation's governance is from the People of the Nation, and that it has not been given or taken away by the Canadian State.***

There are common ground concrete actions that can be taken to make progress towards achieving the goal. These are not new concepts and have been laid out in the UN Declaration, TRC and many others. Below are the main themes that KLFN sees as being fundamental to achieving progress.

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**Collaborative Decision-Making:** Engage throughout the project lifecycle in decision-making processes related to resource projects on traditional lands. This includes *meaningful* consultation and obtaining free, prior, and informed consent.

**Funding and Support:** Provide *adequate* funding and support for full participation, not only during the hearing process, but also in the early engagement, construction, decommissioning and abandonment phases.

**Indigenous Guardians Programs:** Great support for Indigenous Guardians programs that monitor and protect traditional lands and resources.

**Legal Frameworks:** Strengthen legal frameworks to ensure Indigenous rights are respected and upheld in resource development projects. This starts with firstly recognizing that Indigenous peoples have rights and title as given to them not under just as affirmed through section 35 of the Canadian Constitution, but by Creator. These rights have not been rescinded, nor can they be taken away. Additionally, each Indigenous community has the right to its laws and governance systems.

It is important to highlight the fact Indigenous Peoples, as **rights holders**, possess specific legal rights recognized under national laws, treaties, and international agreements, which are distinct from and different than stakeholders. These rights can include land rights, cultural rights, and self-governance rights. Many Indigenous communities also hold traditional and modern-day treaty rights that are legally binding agreements between the Indigenous communities and the government. In the case of KLFN, its rights are recognized under international of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These rights include the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions.

**Capacity Building:** Invest in capacity-building initiatives to enhance Indigenous communities’ ability to manage and protect their resources. This includes training, education, and technical support.

**Environmental Stewardship:** Promote Indigenous leadership in environmental stewardship and sustainable development. Indigenous peoples have been environmental stewards of their traditional lands for generations.

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

KLFN is unfamiliar with this process step and resource constraint limited its ability to gain an understanding of the elements related thereto. As such, the Nation is unable to provide comment at this time. Knowledge in this area may be gained as this project phases evolve, and if so, comment will be provided at a later date.



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**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)?**

KLFN recognizes the importance of setting timelines, and in an ideal world these timelines could be achieved on a more regular basis if the adequate capacity were available to complete the tasks associated therewith. The CER is well aware that Indigenous communities are overwhelmed with workload, and responsibilities, and are often unable to respond as fully as they would like (or perhaps not at all) given the limited monetary capacity to hire or train up competent staff. The changes associated with the proposed changes will result in additional capacity needs that **MUST** be met in order to achieve effective change. **Funding should not deter this important work.** If the CER is serious about its intentions to truly demonstrate its commitment to change, adequate funding is a critical success factor in enabling progress.

With respect to the filing timelines associated with the hearing process itself, there are administrative efficiencies that can easily be achieved (i.e., acceptance of digital filings).

**8. Do you have feedback related to the notice of motion process or suggested changes to support efficiency? Do you have feedback on the use of oral notice of motion processes to support efficiency?**

As with most aspects of the hearing process, it is set in a colonial system that does not align with Indigenous practices. While these processes are common practice for the legal professionals, many Indigenous communities (including KLFN) do not have the financial resources to engage legal counsel and as such struggle to follow the colonial requirements imposed through act. The CER would be well served to review these practices and processes to find a less intimidating way to achieve the same end result. It should be noted that KLFN has provided comments on these issues in the past through the NorthRiver Midstream NEBC hearing.

KLFN is not in support of accepting oral notices of motions as proper and full records of engagement should be common best practice.

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

KLFN is unfamiliar with this process step and resource constraint limit its ability to gain an understanding of the elements related thereto. As such, the Nation is unable to provide comment at this time. Knowledge in this area may be gained as this project phases evolve, and if so, comment will be provided at a later date.

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

The discussions currently underway on the various other initiatives (OPR/Efficiency reviews/NRCan IMARs) should culminate in suggestions that would assist KLFN in providing constructive suggestions for consideration. Further comments will be provided at a later date.



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

As stated in question 7 there are administrative efficiencies that can be gained through greater use of technology.

While likely misplaced in the context of this specific question, a point worthy of mention and fulsome consideration is that of the use of artificial intelligence (AI) in the documentation being presented in the reports that are filed on record during the hearing processes, as well as in relation to the condition requirements that follow thereafter (i.e. environmental assessments, socio-economic assessments etc.) There exists a lack of transparency in the use of AI and therefore it is crucial for Indigenous communities to understand when and how it is being used in reporting submissions in order to mitigate the risks associated with its use. AI-generated data must be verifiable, and this work can only be done by Indigenous communities, not within the context of a colonial system.

**Misrepresentation and Misuse:** AI systems can misinterpret or misuse Indigenous data, leading to inaccurate or harmful representations of Indigenous communities. This can perpetuate stereotypes and undermine the authenticity of Indigenous knowledge.

**Loss of Control/Privacy Violations:** It is difficult for Indigenous communities to decipher AI-driven data collection and analysis and determine exactly how the data is being used, which results in a loss of control and ownership. This can lead to unauthorized access, use, and sharing of sensitive information. The application of OCAP principles is of critical importance.

KLFN intends to adopt these principles and in an effort to protect its data sovereignty, the Nation will be requesting that authors of reports adhere to these standards going forward.

**Cultural Insensitivity:** AI algorithms are not designed to understand and respect specific Indigenous cultural contexts, leading to inappropriate or disrespectful use of data. This can erode trust between Indigenous communities and data users.

**Bias and Discrimination:** AI models can inherit biases from training data, leading to discriminatory outcomes. This can disproportionately affect Indigenous communities, exacerbating existing inequalities and discriminatory outcomes, such as biased hiring practices, demographic diagnostics, racial profiling etc.

**Erosion of Traditional Knowledge:** AI undermines traditional knowledge systems and practices, as digital data does not capture the full depth and nuance of Indigenous knowledge.

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



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KLFN has not been involved in any other processes that would lend insight into this question. There are, however, a number of existing reports and methodologies that are readily available for review and consideration, many of which have been references in this response letter. An additional resource is that of an expert panel review undertaking that led to the development of framework document titled Building Common Ground. The full report can be found at the link provided below<sup>3</sup>.

### **13. Do you have other feedback related to how the Commission can update the Rules to enhance competitiveness through predictable and timely processes?**

KLFN respectfully points out that this question implies that the Commission’s primary goal is that of finding ways to streamline the approval process for timely approval of applications. The Nation would like to see this question re-worded to include stewardship of the land and land net gain restoration/preservation practices. Taking the broader perspective of responsible resource development practices is essential to ensure that natural resources are extracted, managed, and used in a way that is environmentally sustainable, socially equitable, and economically viable, and in alignment with key Indigenous land values.

KLFN recognizes that each project submission is reviewed in the context of the process currently prescribed under the act. In taking a holistic approach to the process, and in looking at finding efficiencies, not just for the Commission but for the Nation, KLFN suggests the CER:

- ✚ Revamp its website to improve and streamline its access to information. The current system is cumbersome and very difficult to find information.
- ✚ Consider the workload and timeline pressures placed on Indigenous communities that are participating in parallel hearing processes. As stated earlier, capacity is beyond stretched in most communities and unlike the Commission does not have the wherewithal to readily ramp up expertise to accommodate multiple projects.

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

Please refer to KLFN’s response in question 7 and 11.

### **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)?**

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<sup>3</sup> <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>



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Acceptance of digital/electronic signatures has become fairly common place and have proven to be upheld in legal proceedings. As such, KLFN would suggest that this process, with the appropriate procedural assurances obtained from the users, be implemented.

**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)?**

This question is best answered by the company/applicant, depending on their internet and/or electronic data storage. That said, KLFN suggests that the proponent have the option to have a hard copy or an accessible digital copy available for reference. The upside to the digital option is the ability to quickly find certain requirements through a document search.

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

Again, with the advancements and acceptance of the flow of information traffic via electronic means, The Commission should consider effectively incorporating these technologies into its processes. Checks and balances will need to be implemented to ensure robust cybersecurity oversight.

**18. Do you have feedback related to how the Rules could better support accessibility to and throughout Commission processes?**

This question will be better answered once more knowledge is gained through the other initiatives that are underway.

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

None other than those stated above.

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

Not at this time.

**21. Would you like to see guidance on any specific topic related to the Rules of Practice?**

Not at this time.

Respectfully Submitted on behalf of Kelly Lake First Nation

