Lac Ste. Anne Métis
Community Association

January 31, 2025

Canada Energy Regulator
VIA EMAIL/COURRIEL: rppr@cer-rec.gc.ca

Dear Sirs/Mesdames:

Re: Review of the Rules of Practice and Procedure – Lac Ste. Anne Métis Community Association feedback on the Discussion Paper

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On behalf of the Lac Ste. Anne Métis community, we set out within this letter our comments on the Canada Energy Regulator's ("CER") review of the Rules of Practice and Procedure.

The Lac Ste. Anne Métis Community Association ("LSAMCA") is a corporate entity designed and incorporated by members of the contemporary Lac Ste Anne Métis community ("LSAM") to represent the Métis Aboriginal rights and interests of the historic and contemporary Lac Ste. Anne Métis community, a section 35 *Constitution Act, 1982* Métis Aboriginal rights-bearing (*Powley*) community whose traditional territory encompasses present day west central and northwest Alberta. LSAMCA is the only legal entity representing the contemporary LSAM community regarding our Métis Aboriginal rights and interests. In its *Powley* decision, the Supreme Court of Canada defined the Métis rights-holding collective under section 35 of *Constitution Act, 1982* to be a Métis community.[1]

As the CER should be aware, in Fall 2022 the Government of Alberta recognized LSAMCA as the second Métis organization in Alberta to establish a credible assertion of section 35 Métis harvesting rights with respect to our historic and contemporary section 35 *Constitution Act 1982* rights-bearing *Powley* Métis community, the contemporary Lac Ste. Anne Métis community, represented by LSAMCA.[2]

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[1] *R v. Powley*, [2003] 2 S.C.R 207; 2003 SCC 43 ("*Powley*") at paras. 12, 13, 23 and 24.

[2] Alberta government's Métis organization establishes credible assertion, Lac Ste. Anne Métis Community Association – See Alberta Government webpage: https://www.alberta.ca/release.cfm?xID=84712636269 70-A2FD-DF8F-26B346D3257AF65D assessed on January 27, 2025.

Our community commends the CER for undertaking these critically important reviews with the involvement of Indigenous communities. CER regulated pipelines are a prominent industrial feature in our traditional territory, resulting in profound adverse direct, indirect, and cumulative impacts regarding the ability of our LSAM community members to exercise our Métis harvesting rights. A diminishing ability to carry out longstanding practices in our traditional territory , such as harvesting resources of cultural importance, negatively affects our way of life, and which affects extend to sustenance of our language, and the transfer of our Métis Knowledge to younger generations.

LSAMCA understands that the CER is updating the *Rules of Practice and Procedure ("Rules")* to align with the *CER Act, 2019,* including the CER's commitment to reconciliation. As such, the *Rules* and requirements specified within the *Rules* must be aligned with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The perspectives shared in this feedback submission are connected to our Métis Aboriginal rights and interests and draw from our experiences participating as intervenors in several National Energy Board (now CER) hearing processes, including the Trans Mountain Expansion Project, NOVA Gas Transmission ("NGTL") Projects, and the Peace River Mainline Abandonment Project. The LSAM community also actively participates in various ways with the CER through the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion Project ("IAMC-TMX"), including its Socioeconomic Subcommittee and Indigenous Monitoring Program, and since 2021 in the NGTL Indigenous Oversight Forum, including Indigenous Monitoring Program two Co-Writing Committees. While we write today to provide the CER with our community's initial comments and feedback on this important matter, we wish to also convey our support for continuing to expand opportunities for Indigenous communities to build capacity in the regulatory space and express our strong interest in continuing to be part of the CER's reconciliation journey.

To contextualize our feedback on the *Rules*, it is important to understand that Lac Ste. Anne Métis do not have an Indian Reserve, land claim settlement lands, or Métis settlement lands. Our representative organization, LSAMCA, does own land in various locations; however, in view of our situation, we have focused our feedback on concerns and opportunities for the *Rules* to enhance the use and protection of Indigenous Knowledge and ensure respectful hearing processes.

From LSAMCA's experience, the CER through the *Rules* and other regulator mechanisms, has an opportunity to address:

- ***Requirements for integration and application of Indigenous Knowledge into regulatory decisions*** – The *Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions* states that, "Indigenous Peoples will determine how they collect their Indigenous Knowledge, the purpose for which it is being collected and provided, and how their Indigenous Knowledge, even

when not provided in confidence, may be shared". LSAMCA advises that the *Rules* must define requirements for Indigenous Knowledge to be integrated and directly applied to determine if and how a project should be approved in the public interest and how cumulative effects should be assessed, managed, and addressed. The CER and proponents must collaborate with Indigenous communities, meaningfully, to determine how their Indigenous Knowledge is shared, used, and protected. For example, the Rules could specify requirements for early engagement with Indigenous communities and collaborative development of Indigenous Knowledge Protocols or recognition and adherence to any existing Indigenous Knowledge Protocols defined by the Indigenous community itself, such as the LSAM community. Protocols must define, at minimum, Indigenous community specific terms and definitions, preferences for using Indigenous language (if requested), and confidentiality and information management requirements.

LSAMCA members have also expressed that in past experiences with the NEB, oral Traditional Knowledge hearings and Indigenous (Métis) Knowledge submissions feel tokenized or are a check box exercise to be completed by the CER and consultation staff. For example, LSAMCA members have noted that unlike the Western Science aspect of hearings, which include cross-examination and opportunities for clarification, oral traditional evidence presented in hearings rarely elicits any follow-up questions or seeking of further understanding on the part of the commissioners. This lack of engagement or attempts to understand leaves participants uncertain about how their Indigenous (Métis) Knowledge is understood or interpreted, how their Indigenous (Métis) Knowledge has informed decision-making about a project, or if it even matters.

Oral hearings are onerous, time-consuming, and costly for Indigenous communities as preparing for and participating in hearings can mean lost opportunities to focus on other areas of benefit to their communities. When Indigenous Knowledge that has been shared is not respected, understood and used appropriately to inform decisions, Indigenous communities view having participated in these processes as a waste of time, and in future may opt to not participate.

The *Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions* offers guidelines for how federal officials will meaningfully consider Indigenous Knowledge, and states that "In order to promote the accurate and respectful consideration of Indigenous Knowledge, federal officials will engage with Indigenous Peoples to clarify how Indigenous Knowledge is to be understood. For example, if Indigenous Knowledge is shared during a meeting, federal officials will validate the meeting summary with the Indigenous participants." LSAMCA members have shared that in the past, following after oral traditional evidence hearings, the CER has sent the hearing transcript back, relying upon Indigenous communities to take additional time to review and make corrections to place names, etc.. This is time-consuming and does not

meet requirements for having appropriately and respectfully engaged with the Indigenous Knowledge as it was shared at the time.

Further, the *Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions* includes guidelines for federal officials to "communicate with Indigenous Peoples the outcome of the project review or regulatory decision including how Indigenous Knowledge was considered." The *Rules* could formalize this guideline.

Readiness of Commissioners, Board, Panel adjudicators, and Crown Consultation Coordinators to engage with Indigenous Knowledge – LSAMCA members have expressed that often, commissioners, panel adjudicators, Crown Consultation Coordinators ("CCC"), and proponents are not adequately prepared to engage with the Indigenous (Métis) Knowledge being shared. In LSAMCA's 2021 submission to the *Indigenous Knowledge Policy Framework for Project Review and Regulatory Decisions*, LSAMCA stated "At its core, to meaningfully assist regulatory decision-makers integrate Indigenous Knowledge into their decisions requires a shift in perspective in how to receive information". LSAMCA advises the CER to consider opportunities to require Commissioners, Board, Panel adjudicators, and CCC to complete training and participate in cultural ceremonies and site visits before bearing witness to Indigenous Knowledge hearings. Indigenous communities should define the requirements they feel would adequately prepare decision-makers to engage with their Indigenous Knowledge. The regulatory authority of the CER, and its depth of institutional/Western expertise is not a reason to continue to rely disproportionately on only these understandings. LSAMCA has previously expressed that the CER should have Indigenous Knowledge experts involved in reviewing and determining the adequacy of the proponent's management systems. Similarly, the CER should have expertise in the integration, application, use and protection of Indigenous Knowledge, validating and ensuring that the commission, panel, and CCC is adequately informed, and that what is filed for the panel has been approved by Indigenous communities as culturally appropriate and meaningful.

- ***Protection of Indigenous Knowledge*** – The *Rules* must be flexible to allow Indigenous communities to determine how and if documents pertaining to hearings are filed in the public domain. The current requirement that documents pertaining to oral hearings be filed in the public domain does not protect Indigenous Knowledge. LSAMCA would like to highlight that the *Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions* promotes "respect the rights of Indigenous Peoples to maintain, control, protect, and develop their Indigenous knowledge." and specifies "there are tools developed by Indigenous Peoples and organizations that federal officials should understand and apply as applicable, for example First Nation principles of ownership, control, access and possession (OCAP)."

- ***Trauma-informed oral hearing and consultation processes*** – LSAMCA members have shared that formal adjudication and hearing processes can be intimidating and triggering, particularly for Elders, as it represents a colonial process that is not responsive to Métis cultural ways. LSAMCA understands that these processes are quasi-judicial in nature, but with this comes a tendency to privilege Western approaches and knowledge which replicates pre-existing power imbalances. The CER has an opportunity to consider how hearing and consultation processes could allow for flexibility for Indigenous communities to co-define certain aspects of the process, such as location, room setup, or opportunity for ceremony and/or opening the session in a good way. The CER should review literature on the concept of 'Ethical Space'; in particular:
    - Ermine, W. 2007. The Ethical Space of Engagement. Indigenous Law Journal, 6, 193-203
    - Video: Enacting Ethical Space in Knowledge Sharing. Dialogue with Elder Dr. Dave Courchene Jr., Elder Ira Provost, Elder Elmer Ghostkeeper, Dr. Vicki Kelly, Danika Littlechild (moderator), Dr. Kelly Bannister, Karin Smith-Fargey, and Dr. Gleb Raygorodetsky.
- ***Accessibility of filings for Indigenous Communities with limited time*** – LSAMCA is supportive of the modernization of requirements to allow for electronic filings but highlights that the REGDOCs system is cumbersome and difficult to navigate. We have concerns that an overreliance on electronic filing without concomitant improvements to support the ease of navigation may serve to challenge Indigenous communities to track filings they wish to review.
- ***Timelines and funding for Indigenous Communities to fully participate*** – Any process steps and timelines defined by the Rules must consider the number of referrals, notifications and requests received by Indigenous communities and reflect an understanding that timelines appropriate for companies may not be sufficient or appropriate for Indigenous communities. As previously shared by LSAMCA in relation to the *Indigenous Knowledge Policy Framework for Project Review and Regulatory Decisions,* meaningful and effective integration of Indigenous Knowledge by regulators into project decisions necessitates providing sufficient time and resources to allow Indigenous communities to have in-depth discussions on how to integrate Indigenous knowledge into project reviews. In addition to setting requirements for integration and application of Indigenous Knowledge, the *Rules* have an opportunity to define requirements for capacity funding to be in place before any timelines start, or are set, for application reviews.

  Further, LSAMCA would like to express that enhancing competitiveness through predictable and timely processes should not be undertaken only to the favour of the proponent through tight and strict timelines but rather should incorporate flexibility to ensure that Indigenous communities are able to respond. The CER has an opportunity to create clarity by specifying when and how Indigenous communities can request more time and additional support to intervene and

respond to Applications adequately. These opportunities through the formal process can avoid lengthy, unpredictable delays if Indigenous communities are forced to file for legal injunctions, or judicial review decisions.

Regarding Indigenous collaboration, as stated previously, LSAMCA has been involved in various initiatives involving the CER and applauds the CER's efforts to find ways of involving Indigenous peoples in the implementation of its mandate. In our involvement with the CER and CER-regulated pipelines, we have found that the lack of explicit requirements pertaining to Reconciliation, as well as to the rights and well-being of Indigenous communities, is a significant gap, including in the *Rules*. There is an opportunity for the *Rules* to be expanded to explicitly include the requirements for advancing Reconciliation with Indigenous peoples. For example, adding specifications under the Contents and Forms of Applications for Application to contain concise statements about the impacts on Indigenous communities and Section 35 rights as well as the potential economic benefits Indigenous Peoples and affected Indigenous communities may gain from the Project.

LSAMCA submits that in relation to costs for participation in CER processes, including hearings, Indigenous communities should be fully compensated for all aspects of their participation, including legal costs incurred on a solicitor-client basis – this can help to support fair and balanced processes and is in accordance with the objectives of reconciliation, including recognition of rights, respect, cooperation and partnership. This should be explicitly addressed in the *Rules*.

Often, Indigenous communities do not benefit from the regulated activity or project that is proceeding – and typically, in our case that activity or project will have direct, indirect, and cumulative negative impacts on our ability to exercise our Métis harvesting rights (as outlined previously), and further, as outlined above, Indigenous communities participation in CER proceedings often means lost opportunities to focus on other areas of more direct benefit to their community given our limited human and financial capacity. As such, it should be an explicit requirement in the *Rules* that all costs for Indigenous organizations' participation be compensated given that Indigenous communities should not be forced to pay for their own participation in any CER processes. LSAMCA's experience has been that our community often ends up not being fully compensated for all time involved in participating in CER processes, including consultation and hearing processes – meaning we end up subsidizing the very process through which we will be further dispossessed , i.e. in the case where projects end up getting approved despite our objections based on negative impacts to our Métis harvesting rights and our non-consent to the project.

LSAMCA has been following the update of regulations and guidance associated with the Impact Assessment Act and the BC Environmental Assessment Act. Of particular interest are the consent decision-making agreements and collaboration agreements (e.g. Lake Babine Nation Collaboration Agreement) between the BC Environmental Assessment Office and Indigenous Nations that specify how assessments of projects

will proceed, including process steps. The Yukon Environmental and Socio-economic Assessment Board's Rules for Reviews Conducted by Panels of the Yukon Environmental and Socio-economic Assessment Board are also worth reviewing, particularly Part 11 Integrating Scientific Information, Traditional Knowledge and Other Information and Part 12 Designating and Handling Confidential Information. We are hopeful that in undertaking this modernization of the *Rules*, that the CER is looking at all instances where rules have been modernized to better align with Indigenous cultural and governance systems.

In closing, we wish to thank you for the opportunity to provide feedback and invite you to reach out if there are any questions regarding our submission. We look forward to further opportunities to discuss revisions to the *Rules* to better address the needs of our Indigenous community. Coincidentally, LSAMCA is participating in the OPR and Filing Manual reviews and has begun engaging directly with the CER on the development of the *Indigenous Ministerial Arrangements Regulation*. This involvement aligns closely with our interests to be more directly involved in regulatory oversight in the future

Yours truly,

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