Makwa Sahgaiehcan First Nation

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December 2, 2024

Canada Energy Regulator
210-517 10 Ave SW
Calgary, AB
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Sent via. email to: RPPR@cer-rec.gc.ca

RE: Makwa Sahgaiehcan First Nation Submission for *Rules of Practice and Procedure* Review

This letter is sent on behalf of Makwa Sahgaiehcan First Nation ("MSFN") Chief and Council. The Chief and Council of the Nation have the elected authority and responsibility to act on behalf of the Nation and ensure the protection and maintenance of the Nation's rights. MSFN is a signatory of Treaty 6. MSFN holds Aboriginal and Treaty rights as set out by the spirit and intent of Treaty 6 and recognized and affirmed under Section 35 of the *Constitution Act*, 1982. MSFN also holds collective *Natural Resource Transfer Agreement*, 1930 rights on all unoccupied Crown lands and other lands where there is a right of access throughout the Province of Saskatchewan.

MSFN understands that the purpose of this review is to gather feedback to inform updates to the *Rules of Practice and Procedure*, 1995 (the "Rules") to align with the *Canadian Energy Regulator Act*, 2019 (the "Act"). The Rules govern the procedures to be followed during written and oral hearings of the Commission of the Crown Energy Regulator (the "CER"), including:

- Complaints,
- The conduct of public hearings, and
- The manner in which applications are to be assessed.

MSFN has read the *Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper*[1] (the "Discussion Paper"), as well as attended the virtual Early Engagement session held on November 21, 2024 (the "Engagement Session") and offers the following comments and concerns outlined below.

1. **Rules vs. Guidance Documents**

   In the Engagement Session, a CER representative expressed the challenge of including elements of Indigenous engagement and participation in the Rules themselves, as this is a rapidly evolving area that requires more flexibility and adaptability than the Rules would allow. As such, the representative suggested that these aspects be captured in guidance documents rather than in the Rules, as these can be more easily changed and adapted to fit diverse situations and needs.

[1] https://www.cerdialogue.ca/40988/widgets/186950/documents/138411

While MSFN understands and appreciates the degree of flexibility required to sufficiently address issues pertaining to Indigenous engagement, we are concerned that guidance documents do not carry enough weight in the regulatory process to ensure that proponents and regulators are held responsible for adequately and appropriately incorporating Indigenous engagement and Traditional Knowledge into the regulatory context.

It is our experience that proponents and regulators only adhere to what is legally required of them when it comes to Indigenous engagement and consultation. As guidance documents are not legally binding, MSFN does not have confidence that provisions regarding Indigenous engagement and consultation will be enforced or adhered to, resulting in no meaningful change in the process.

Further, given that the Rules themselves are seldom updated, it is extremely important that this round of revisions reflects the importance of conducting adequate consultation and incorporating Traditional Knowledge and does not leave it up to interpretation or to the CER or proponents' discretion. The updated Rules must set out minimum requirements for how Indigenous Peoples should be consulted and involved and leave the rest to the guidance documents.

2. Indigenous Knowledge

The Discussion Paper mentions that the Rules should allow for a process to provide and protect Indigenous Knowledge, and that Indigenous Peoples are best suited to choose what information to share and how to share it. MSFN points out that it is also crucial for the Rules to have a process that not only allows for the sharing and protection of Indigenous Knowledge, but also ensures that the Indigenous Knowledge that is shared is meaningfully considered and incorporated into the regulatory process and hearing components. Indigenous Peoples often dedicate their limited time and resources to participating in CER hearings and other parts of the regulatory system, only to have their knowledge, expertise, concerns, and recommendations discarded in lieu of Western science or industry priorities.

Environmental Assessments ("EAs") are most often used as the benchmark for project impacts in the regulatory system. When Indigenous Knowledge contradicts the findings of an EA, the EA is prioritized. For example, if Indigenous Knowledge indicates that a given project will result in changes to the water, but the EA determines that it will not, the Indigenous Knowledge is discarded as it is not given equal weight to Western science.

Indigenous Peoples expend significant time and resources in order to make these determinations (e.g., review of project information, site visits, monitors, water sampling, community engagement, etc.) with little to no capacity support from the regulators or proponents to conduct these activities. Updates to the Rules should ensure that processes are in place to ensure that Indigenous Peoples are supported in collecting and sharing data and Indigenous Knowledge, and that the Knowledge provided is equally considered alongside Western scientific data.

Additionally, the current Rules do not adequately assess impacts to Aboriginal and Treaty rights. When Indigenous Peoples identify these impacts, the CER does not acknowledge the extent of these impacts, and as a result, does not protect Aboriginal and Treaty rights. They are told to simply exercise these rights elsewhere, or that the identified impacts do not actually exist, especially regarding impacts that migrate off the project footprint. In the

regulatory system, considerations to Aboriginal and Treaty rights are most often reduced to traditional land and resource use ("TLRU") which requires Indigenous Peoples to "prove" land use, where the regulators then limit the scope of impacts to Aboriginal and Treaty rights to those identified areas. This is not an accurate or effective way to measure or represent these impacts.

3. Cumulative Effects

The current Rules do not adequately assess cumulative effects of development and human activity in any given areas – past, present, or future. Each instance of development and human activity creates significant and lasting impacts to the biophysical environment and Aboriginal and Treaty rights which interact with the impacts from past, existing, and future projects. Considering individual project impacts in isolation does not create a complete picture of the effects of development on the environment or Aboriginal and Treaty rights.

While the CER does not have control over provincially regulated projects, it should be aware of the current conditions of the lands and the broader context of development in which federally regulated projects occur. As such, the assessment of cumulative effects must be incorporated into the Rules to ensure they are sufficiently considered for each and every project.

MSFN looks forward to the next stage of engagement on the Rules review and to receiving more information on the review as it progresses. Do not hesitate to contact us regarding any of the comments or concerns provided in this submission.

Sincerely,

[redacted]

Chief Melvin Mooswa
Makwa Sahgaiehcan First Nation

[redacted]

Councillor
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