

# CER Rules of Practice and Procedure Review

## Phase 1 Engagement

### Manitoba Métis Federation

December 6, 2024



# 1.0 Introduction

In the fall of 2024, the Canada Energy Regulator (CER), initiated a review of its *Rules of Practice and Procedure Regulations* (the Rules) to modernize and enhance its regulatory processes. The Rules set out the methods by which proponents can make applications to the Commission of the Canada Energy Regulator Board (the Board or the Commission<sup>1</sup>), other parties can intervene and participate in regulatory proceedings, and the form in which proceedings are to be conducted. The Rules were developed in 1995 and have not been modernized since the establishment of the 2019 *Canadian Energy Regulator Act* (CER Act).

A comprehensive update to the Rules is needed to align with the CER Act, which includes aligning with the current governance structure and modernizing approaches to match contemporary realities of engagement. Specifically, the CER has identified three core objectives for the Rules review:

- align with the CER Act, including the objectives outlined in the Act's preamble, such as the commitment to Reconciliation;
- enhance competitiveness through predictable and timely processes; and
- modernize practices and procedures.

The Manitoba Métis Federation (MMF) is the democratically elected national self-government of the Red River Métis. Linear energy projects have the potential to significantly impact how Red River Métis Citizens can use the land, harvest, and engage in a range of cultural practices. Combined with the substantial history of federally regulated pipelines across the National Homeland of the Red River Métis, the MMF maintain a significant interest in the oversight and decision-making process for pipeline activities. Similar interests are held for federally regulated electrical transmission lines given the interconnected nature of North America's electrical grid.

To support Phase 1 of the Rules Review, the MMF has reviewed the existing Rules, the CER's Discussion Paper which highlights priorities for Rules revision, as well we have also built on our own experience engaging through provincial and federal energy decision-making frameworks, to provide a summary of comments, concerns, and recommendations.

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<sup>1</sup> Note: "The Board" referring to the National Energy Board and "The Commission" referring to the Commission of the Canada Energy Regulator are used interchangeably for the purpose of this submission due to the change in language between the establishment of the *Rules of Practice and Procedure Regulations* (SOR-95-208), and the *Canadian Energy Regulatory Act, 2019*.



In working to develop modernized Rules, the MMF encourages ongoing dialogue to ensure that work continues to advance the CER's commitment to reconciliation and alignment with the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*.

## 2.0 Background—The Red River Métis and the MMF

### 2.1 The Red River Métis

The Red River Métis is an Indigenous collectivity and Aboriginal People within the meaning of section 35 of the *Constitution Act, 1982*. Based on our emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, interests, and claims throughout and beyond the Province of Manitoba.

Since 1982, Métis rights have been recognized and affirmed by section 35 and protected by section 25 of the *Constitution Act, 1982*. These rights were further confirmed and explained by the Supreme Court of Canada ("SCC") in *R. v. Powley*, 2003 SCC 43. Manitoba Courts also have recognized Red River Métis rights in *R. v. Goodon*, 2008 MBPC 59. These decisions have affirmed that the Métis hold existing Aboriginal rights throughout their traditional territories. Our Citizens and harvesters rely on and use the lands, waters, and resources of our traditional territory throughout the Province of Manitoba and elsewhere within the historic Northwest, to exercise their constitutionally protected rights and to maintain their distinct Red River Métis customs, traditions, and culture.

### 2.2 Red River Métis' Rights, Claims, and Interests

Based on its emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, claims, and interests throughout and beyond the Province of Manitoba consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination.

The MMF is mandated to promote, protect, and advance the collectively held Aboriginal rights of the Red River Métis. Through this mandate, the MMF engages with governments, industry, and others about potential impacts of projects and activities on our community. In 2007, the MMF Annual General Assembly adopted Resolution No. 8, which provides the framework for engagement, consultation, and accommodation with the Red River Métis. Designed by Métis, for Métis, Resolution No. 8 sets out the process that is to be followed by governments, industry, and other proponents when developing plans or projects that have the potential to impact the section 35 rights, claims, and interests of the Red River



Métis. It was unanimously passed by MMF Citizens and mandates a "single-window" approach to consultation and engagement with the Red River Métis through the MMF Home Office.<sup>2</sup>

In engaging the MMF, on behalf of the Red River Métis, the Resolution No. 8 Framework calls for the implementation of five phases:

- Phase I: Notice and Response;
- Phase II: Research and Capacity;
- Phase III: Engagement and Consultation;
- Phase IV: Partnership and Accommodation; and
- Phase V: Implementation.

The application of the CER Rules of Practice and Procedure has the potential to impact Red River Métis rights, claims, and interests and as such, engagement and consultation with the MMF, through the process set out above, must be followed. Federally regulated, energy projects are located within the National Homeland of the Red River Métis. The "postage stamp province" of Manitoba was the birthplace of the Red River Métis. We currently have an outstanding claim flowing from the Federal Crown's failure to diligently implement the land grant provision of 1.4 million acres of land promised to the Red River Métis as a condition for bringing Manitoba into Confederation and set out in section 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.<sup>3</sup>

Red River Métis section 35 rights are distinct from First Nation's rights and must be respected. The Manitoba Métis Federation is the National Government of the Red River Métis.

Prior to the creation of Manitoba, the Red River Métis had always exercised its inherent right of self-determination to develop its own self-government structures and institutions centered around the Red River Settlement and throughout the Northwest. As described by Louis Riel in his 1885 memoirs, Métis

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<sup>2</sup> More information about Resolution No. 8 is available online at: <http://www.mmfmb.ca/docs/2013-Resolution%208%20Booklet-VFinal.pdf>

<sup>3</sup> *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623 ("MMF Case"). The Supreme Court of Canada recognized that this outstanding promise represents "a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Constitution Act, 1982* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import" (para. 140).



self-government was well-established and functioning when Canada came to the Red River Métis in the late 1800s:

*When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it . . . but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.*

Métis self-government has evolved and changed over time to better meet the needs of the Red River Métis. Today, the MMF is the recognized, democratically elected, national self-government representative of the Red River Métis. On November 30, 2024 the Red River Métis and His Majesty the King signed the Red River Métis Self-Government Recognition and Implementation Treaty. The Treaty recognizes the Manitoba Métis Federation as the government of the Red River Métis.

Since 1967, the MMF has been authorized by the Red River Métis through a democratic governance structure at the Local, Regional, and national levels. As part of this governance structure, the MMF maintains a Registry of Red River Métis Citizens.<sup>4</sup> By applying for Red River Métis Citizenship, individuals are confirming the MMF is their chosen and elected representative for the purposes clearly set out in its Constitution,<sup>5</sup> including as related to the collective rights, claims, and interests of the Red River Métis.<sup>6</sup>

The MMF Constitution confirms that the MMF has been created to promote the political, social, cultural, and economic rights and interests of the Red River Métis. The MMF is authorized to represent the Red River Métis' collective rights, interests, and claims. This authorization is grounded in the MMF's democratic processes that ensures the MMF is responsible and accountable to the Red River Métis.

The MMF governance structure includes a centralized MMF President, Cabinet, Regions, and Locals. There are seven (7) Regions and approximately 135 Locals throughout Manitoba (**Error! Reference source not found.**). There are more than three thousand Citizens who live outside of Manitoba. All MMF Citizens are

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<sup>4</sup> MMF Constitution, Article III outlines the citizenship definition and application process. This definition ("Metis" is defined to mean "a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation ") aligns with the definition of what constitutes a section 35 rights-bearing Metis community as outlined by the Supreme Court of Canada in *Powley* at para. 30.

<sup>5</sup> *Newfoundland and Labrador v. Labrador Metis Nation*, 2007 NLCA 75 at para 47: "Anyone becoming a member of the [Labrador Metis Nation] should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This is sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in the present case."

<sup>6</sup> *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para 30: "[A]n Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s.35 rights."



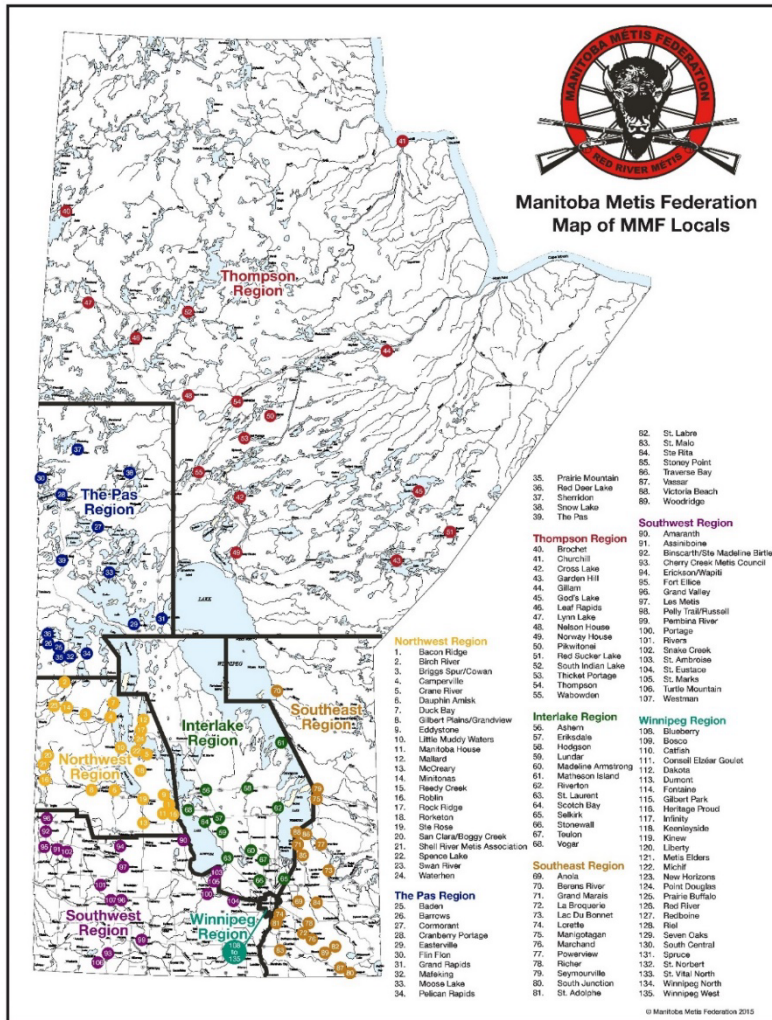


Figure 1. Manitoba Métis Federation (MMF) Regions.

and Family Services Authorities to administer and provide the delivery of services to various distinct Indigenous communities in Manitoba. It creates a Métis Child and Family Services Authority, the directors of which are appointed by the MMF.

In 2008, the courts in Manitoba further recognized that "[t]he Métis community today in Manitoba is a well organized and vibrant community. Evidence was presented that the governing body of Métis people in Manitoba, the Manitoba Métis Federation, has a membership of approximately 40,000, most of which

Members of a Local. Locals and Regions work together to authorize and support the MMF Cabinet, and the MMF's various departments and offices. Through elections held every four years, Citizens choose and elect the MMF Cabinet consisting of the MMF President, who is the leader and spokesperson for the MMF, a Vice-President of each Region, and two Regional Executive Officers from each Region. The MMF Cabinet also includes the spokeswoman from the Infinity Women Secretariat.

The MMF, as the duly authorized government of the Red River Métis, has been recognized by both the federal and provincial governments in agreements, policies, and legislation. For example, in 2002, *The Child and Family Services Authorities Act* recognized the MMF for the devolution of child and family services to MMF institutions. This Act establishes a series of Child



reside in southwestern Manitoba."<sup>7</sup> In 2010, the Manitoba Government adopted a Manitoba Métis Policy, and stated that:

*The Manitoba Metis Federation is a political representative of Métis people in Manitoba and represents in Manitoba the Métis who collectively refer to themselves as the Métis Nation. ... Recognition of the Manitoba Métis Federation as the primary representative of the Métis people is an important part of formalizing relationships.*<sup>8</sup>

In 2012, the *MMF-Manitoba Harvesting Agreement (2012)* negotiated between the MMF and the Manitoba Government recognized some of the collective section 35 harvesting rights of the Red River Métis and relied on the Citizenship processes of the MMF as proof of belonging to a rights-holding Aboriginal community:

*For the purposes of these Points of Agreement, Manitoba will recognize as Métis Rights-Holders, individuals who are residents in Manitoba and who hold a valid MMF Harvesters Card, issued according to the MMF's Laws of the Hunt. [. . . and will] consult with the MMF prior to implementing any changes to the current regulatory regime that may infringe Métis Harvesting Rights.*<sup>9</sup>

In 2013, the SCC recognized the "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada." It went on to grant the MMF standing as the "body representing the collective Métis interest" in the *MMF Case*.<sup>10</sup> Additionally, in 2016, the *MMF-Canada Framework Agreement* stated:

*the Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was "not a series of claims for individual relief" but a "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada" and went on to grant the MMF standing by concluding "[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court.*

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<sup>7</sup> *R. v. Goodon*, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007. .

<sup>8</sup> Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): [http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Metispolicy\\_en.pdf](http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Metispolicy_en.pdf)

<sup>9</sup> *MMF-Manitoba Harvesting Points of Agreement* (September 29, 2012), ss. 3, 6-7.

<sup>10</sup> *MMF Case*, *supra* note 6 at para 44.



*[and that] Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.<sup>11</sup>*

The MMF signed the *Manitoba Métis Self-Government Recognition and Implementation Agreement* (MMSGRIA) on July 6, 2021. This marked a major step forward in reconciliation between the Red River Métis and Canada. The MMSGRIA, among other things, immediately recognized the MMF as the National Government of the Red River Métis and sets out a path forward towards the completion of a modern Treaty. As noted above, that Treaty was signed on November 30, 2024.

Consistent with the direction of our Citizens, MMF removed the arbitrary provincial borders from our Constitution that separated Red River Métis who live outside of Manitoba from those within. Today, the MMF represents over 125,000 Citizens within Manitoba, and thousands more across our National Homeland, and around the world. Because of this the MMF has a regional, provincial, national, and international mandate.

Our modern Treaty was ratified by thousands of Red River Métis Citizens in June 2023 and builds upon the important work of the MMSGRIA. The signing of the Treaty with His Majesty the King, and passage of its implementation legislation will enable the Red River Métis, acting through its National Government the MMF, to renew its partnership with Canada.

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<sup>11</sup> MMF-Canada Framework Agreement on Advancing Reconciliation, November 15, 2016, Preamble.



## 3.0 Regulator Rules of Practice and Procedure Review

### 3.1 Land Takings, Compensation, and Cost Apportionment

The CER maintains guidance for the factors which should be considered when determining compensation and cost apportionment for disturbance to private lands, both in the CER Act itself as well as a supplementary guidance document *Guidance on land-related compensation disputes*. However, in instances where a compensation dispute requires a hearing, the Rules do not provide any form of guidance on the structure required by the CER or the Board in considering the adjudication of such a dispute. Further, the Rules, along with the Act, and supplementary guidance fail to consider factors beyond land valuation and economic use of the land which is impaired by activities which fall under the scope of the CER Act.

#### 3.1.1 Consideration of Aboriginal Rights within the Scope of Compensation Rules

In an instance where the MMF holds fee simple lands used for the benefit of Red River Métis Citizens; financial compensation may not be enough as this not only impacts personal rights but also requires a discussion about Aboriginal/Section 35 rights. This could also apply in instances where a Red River Métis Citizen (or other private individuals) holds lands that are widely used with the landowner's permission to allow Red River Métis Citizens to exercise Aboriginal rights. Paragraphs 327(2)(h)-(j) of the CER Act begin to contemplate this, however, consideration for compensation for a loss of anything beyond use and personal rights is not specifically considered.

Beyond the contemplation of Aboriginal rights as defined by the Van der Peet<sup>12</sup> test, it is worth considering the relevance of Aboriginal rights under the emerging test established by R. v. Montour<sup>13</sup>, which considers the inclusion of commercial activities within the scope of Aboriginal rights if so, established by a recognized Indigenous government. While this decision is not nationally binding as it stems from the Quebec Superior Court, it may gain broader acceptance as it has been appealed to the Supreme Court of Canada. In contemplating a scenario where the Montour test does apply, not only would it be important to consider how compensation would apply to lands where conventional Aboriginal rights are exercised (e.g., utilizing the Van der Peet test), but also in which lands are held as fee simple by a Red River Métis Citizen to facilitate commercial activities accepted as rights-based activities by the MMF. This could

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<sup>12</sup> R. v. Van der Peet, 1996 CanLII 216 (SCC), [1996] 2 SCR 507

<sup>13</sup> R. v. Montour, 2023 Q.J. No. 11554



include lands where rights-based commercial activities occur, or where access to areas where rights-based commercial activities occur (e.g., lands used as a boat launch which are rendered inaccessible or otherwise impacted by the construction and/or operation of a pipeline).

Regardless of how Section 35 rights are specifically defined, compensation must be specifically contemplated for how these rights will be accommodated. These rights extend simply beyond compensation for the loss or impairment of surface rights under common law.

### **3.1.2 Costs Associated with Compensation Negotiations**

The MMF supports the Commission's efforts to encourage compensation agreements through bilateral negotiation, or alternative dispute resolution to avoid a hearing. It is, however, important that in encouraging this approach the Commission does not inadvertently create a scenario in which Proponents are given an advantage in negotiations simply by reason of having access to more resources and understanding of the system than a private citizen. The Commission in establishing an equitable compensation process, must consider establishing a rule in which the Proponent is required to cover reasonable costs for private citizens, or organizations subject to land takings or other disturbance by activities subject to the CER Act, for the retention of a lawyer, agent, and/or other technical specialist(s) intended to support the valuation of lands and/or engage with Proponents for compensation negotiations, alternative dispute resolution, and/or Commission proceedings.

### **3.1.3 Consideration of Aboriginal Rights in Crown Land Takings**

In instances where Lands held by the Crown are taken with consent from the Crown to construct or operate a project subject to the CER Act, the MMF is concerned that beyond requirements under Section 35 of the *Constitution Act*, the CER Act specifically does not contemplate the need for compensation for the loss of lands used for the exercise of Aboriginal Rights. Red River Métis Citizens rely on Crown Lands to harvest for sustenance, culture, and commerce. As these lands are not held as fee simple, the Citizens who rely on them are not specifically subject to compensation under the CER Act. Throughout the National Homeland of the Red River Métis, natural and public lands have been slowly but systematically eroded, resulting in fewer and fewer lands available for the exercise of Aboriginal Rights by Red River Métis Citizens. Further loss of Crown land, especially for linear disturbance, would only serve to further exacerbate this issue. Noting that subsection 317 (1) of the CER Act speaks to the requirement for the council of a band to provide consent where a pipeline is constructed on reserve lands, the MMF feels it appropriate for the CER to expand this approach to all lands in which Aboriginal rights are exercised.

## **3.2 Consultation and Inclusion of Métis Knowledge**

The Commission's reliance on its ability to make or break specific rules based on the needs of given proceedings, is a double-edged sword for both Proponents and Indigenous intervenors in a process, as



while it creates a tremendous amount of flexibility in the Commission's ability to adapt to the needs of the proceedings which may include creating exceptions for individuals on how they share Indigenous knowledge, how that knowledge is protected, or how it is considered within the scope of the proceedings, these inherent flexibilities creates significant uncertainty for all parties.

### **3.2.1 Form of Métis Knowledge**

Notwithstanding the Board's ability to alter the Rules, the Rules as presented require that evidence be largely presented in a written fashion. Where evidence is given orally, the Board may require that a written affidavit be provided by the witness presenting evidence. The MMF is concerned that in establishing these requirements, the Board may inadvertently risk losing the context of evidence which is shared as Métis Knowledge through some non-written/oral form of expression, or that the Board's requirements may present barriers (real or perceived) in the presentation of evidence resulting in that evidence not being entered into the proceedings.

The hearing process must acknowledge that evidence does not only reside in the form of written or oral submission but may exist in a wide variety of expressions (e.g., art, music, stories, crafts and activities). As a result, the Board in requiring a witness affidavit must be flexible in how this information is captured such that it can benefit the process but does not degrade the substance of the evidence.

The MMF does support the Commission's discretion to continue to modify procedural rules based on the circumstances which arise, however, the MMF believes that additional guidance for how, when, and why these rules are to be modified be included within the Rules for greater clarity for all parties.

## **3.3 Process Efficiency and Competitiveness**

### **3.3.1 Dispensing with or Varying Rules**

Section 4 of the Rules, outlines broad powers held by the Board enabling it at any time, and where in consideration of public interests and fairness to:

- (a) Dispense with or vary these Rules or any part thereof; or
- (b) Extend or abridge the time fixed by these Rules or otherwise fixed by the Board and may do so of its own volition or in response to a motion by any party whether or not the motion to extend or abridge the time is made after the time so fixed has expired.

These discretionary powers are substantial, and while the Board is guided by efforts to ensure procedural fairness and the maintenance of the public interest, there is little beyond those tenants to limit the application of these powers. The MMF believes that in considering the Board's discretionary power, there



is a need for flexibility in the application of the Rules to ensure that the Board's process can be tailored to the unique situation which presents itself in each file. This should continue to include timelines.

The MMF acknowledges that the intention for the Board to make discretionary decisions regarding rules and timelines, the intention is to provide consideration of public interests and fairness. We agree with these factors, however, suggest that upholding the Crown's Duty to Consult and other constitutional obligations where applicable also be included as specific factors to guide the Board's disposal or variation of rules.

### 3.3.2 Computation of Time

The Board can fix time for the *doing of a thing* within the Board's Rules. Currently, this is based on the number of calendar days assigned to a specific task except when the expiry of the time falls on a Saturday or a holiday. In these instances, the thing may be done on the next day that is not a holiday or a Saturday. The CER has indicated that it intends to amend the Rules to base timelines on Business Days rather than Calendar Days. The MMF supports this change, however, is concerned that it may not go far enough in ensuring that the MMF has an opportunity to participate in the *doing of a thing*.

The MMF recognizes holidays which are of importance to the Red River Métis. This includes Louis Riel Day and National Indigenous Peoples Day, which are not all observed as federal statutory holidays and therefore not subject to Section 7 of the Rules. Additionally, the MMF typically enters a period of holiday shutdown between Christmas and New Year's Day. Aside from the statutory holidays of Christmas, Boxing Day, and New Year's Day, other days within the holiday shutdown are not subject to Section 7 of the Rules unless they are a Saturday.

In some instances, Proponents or other parties in understanding anticipated shutdowns, non-Federal holidays, and or cultural engagement, may aim to take advantage of how the Board fixes time strategically to minimize potential review by intervenor(s). In considering how timelines are fixed both within the Rules and through variance to the Rule, the Board must be sympathetic to the practical realities of all parties and ensure that ample opportunity is provided for meaningful participation.

### 3.3.3 Timelines for Intervention

Where a hearing has been ordered, interested parties may intervene by serving the Board and applicant with a written intervention that:

- (a) in the case of an oral hearing, states whether the person intends to appear at the hearing and the official language in which the person wishes to be heard;
- (b) sets out the name of the person and any authorized representative of the person and the mailing address, address for personal service, telephone number, and any other telecommunications numbers of the person or the person's authorized representative;



- (c) establishes that the person’s interest justifies intervenor status in the proceeding; and
- (d) subject to subsection (2), states the issues that the person intends to address at the hearing or, where the person does not intend to participate actively at the hearing, states the reasons why the person’s interest justifies intervenor status in the proceeding.

If the intervenor is unable or lacks sufficient time to study an application, resulting in the intervenor being unable to include information required by paragraph 28(1)(d) of the Rules, then the intervenor is required to provide a statement explaining why there was insufficient time and within 15 days of the date of service of a copy of the application or 15 days after the date of filing of the written intervention, whichever is later, file with the Board and serve on the applicant, if any, a supplement to the written intervention containing the information requested in paragraph 28(1)(d) of the Rules.

It is acknowledged that the Board has the authority to alter timelines at the Board's discretion, however, the MMF is concerned that the ability to request a timeline extension is not clearly articulated within the Rules.

The MMF recommends that an option be provided for the party to propose an extension to be considered by the Board in the instance where the information required by paragraph 28(1)(d) cannot be submitted by the deadline outlined in subsection 28(1), along with the written explanation described in paragraph 28(2)(a).

## **3.4 Modernization of Practices and Procedures**

### **3.4.1 Requirements for Hard Copy of Documents and In-Person Service**

Several instances throughout the Rules require that documents be served as hard copies to various parties involved in a hearing. While this approach was reasonable in 1995 when the Rules were first established, they no longer reflect current business practices used by many, nor the confidence which exists in technology that enables secure transmission of documents between parties. Further, in some instances, the requirement to serve hard copies of documents to another party within a timely manner can present a barrier to some in engaging in the hearing process. The MMF supports rule changes which would allow for documents to be virtually served to a party and further recommends that where possible documents intended to be open to the public be required to be posted on the public registry. The CER serves a unique role in not only regulating activities but also as a coordinator of information. As a result, it is recommended that rather than parties serving each other documents, the CER act as a centralized hub for information in which all documents are submitted to the CER who will either serve another party and/or post the submitted information on the registry and then providing notice to appropriate parties that such information has been posted. Through this approach, individuals or parties are only responsible for



meeting the timeline requirements of the Board for the submission of documents rather than specifically the service of another party.

The MMF agrees that in instances where a company serves a private landowner under Part 5 of the Rules, or persons or organizations impacted by Part 6 of the CER Act, it should remain the responsibility of the company to ensure that landowners are appropriately notified of an application to access or use lands for activities described in the CER Act. The MMF feels that while electronic forms of engagement may be reasonable, on their own they may not be exhaustive or reasonably thorough to ensure landowners are kept informed of their rights. Further, in instances where same-day service is not logistically feasible, the MMF recommends that a company serving a landowner do so on the same day that the application is filed with the Board or within 14 days prior to the application's submission. The combination of physical and timely service will help ensure that landowners are fully aware of their rights and options for recourse.

#### Form of Submission

As noted, in many instances parties are directed by the Board or the Rules to make submissions in writing when considering matters related to a proceeding. This includes:

- (a) the clarification or simplification of issues;
- (b) the necessity or desirability of amending an application, notice of motion, answer, intervention or reply for the purpose of clarification, amplification or limitation;
- (c) the admission of certain facts or the verification of those facts by affidavit, or the use by any party of documents of a public nature;
- (d) the settling of matters that relate to information requests;
- (e) the procedure to be adopted in the proceeding;
- (f) the exchange of documents among the parties; and
- (g) any other matter that could aid in the conduct and disposition of the proceeding.

While it is valuable for record-keeping to ensure that there is an adequate paper trail for requests, it is not always practical. To a degree, this is an advantage to parties able to hire representation who is well-versed in Board processes and can best articulate submissions. The MMF feels that this is unnecessary in many instances and seeks to ensure that submissions to the Board are based on relevance or merit rather than process. The MMF recommends that the Board if directing parties to make submissions consider matters that relate to (a) - (g) accept submissions in any reasonable form (e.g., oral, written, visual), removing barriers for meaningful merit and relevance-based participation.



### 3.4.2 Failure to Comply

Where an applicant fails to provide information described in Sections 15 or 16 of the Rules, or otherwise does not comply with a request from the Board, the Board may stay the application until the information is provided. Subsection 20(2) further states that this general approach and information requirement applies to all parties and that the Board may take such other steps as are just and reasonable to conduct a fair proceeding. The risk is that the requirements to ensure the correct form of document means that

- a) it does not align with contemporary realities,
- b) it does not allow for non-written submission as a form of evidence, and
- c) it is at the advantage of applicants or other parties able to ensure form of documentation aligns with that which is outlined in the Rules even if that does not follow a) or b)

The MMF is concerned that to prioritize procedural fairness, the Board may overlook the real need to ensure accessibility to the Board's processes. The MMF recommends that in updating the Rules, a strong focus be applied to ensuring that the process is accessible to all possible participants, not simply those who have advanced knowledge of the Rules.

### 3.4.3 Formulation of Issues

It is the Board's discretion to formulate issues which will be the focus of a Public Hearing. This approach limits Indigenous governments from clearly pursuing questions of material interest to them as they relate to an application. So long as an issue is not considered vexatious, Indigenous governments serving as formal intervenors with approved standing should be able to identify issues for themselves.

The MMF expects the Rules to reflect the spirit and principles of meaningful consultation and engagement, as outlined in Resolution 8<sup>2</sup>. To this end, we see the need for the MMF to specifically be involved in the co-formulation of issues within a Public Hearing where the rights of the Red River Métis are impacted. Enshrining this approach within the Rules will ensure that issues which are of importance to the Red River Métis are discussed in a meaningful manner.

### 3.4.4 Letters of Comment

Letters of comment can be filed by individuals (or on behalf of a group(s) or organization(s)), outlining statements that the individual, group(s) or organization(s) wishes to make to the Board for their consideration, but does not seek to intervene. If an intervenor does file a Letter of Comment they will lose intervenor status.

It is unclear why an intervenor would lose intervenor status if providing a Letter of Comment, so long as the Letter of Comment is for the benefit of the hearing process. While we agree the substance of a Letter



of Comment is best provided as part of a written intervention, there may be an instance such as where an Indigenous government shares with all parties a letter written on behalf of a Citizen which it represents, but for some reason it does not wish the Letter to be contained within the substance of the intervention. The MMF sees this as an approach to encourage more private individuals affected by a project to submit comments. As a result, the MMF would encourage the Rules to reflect this nuance.

### **3.4.5 Motion Timelines**

Within a Hearing, parties may submit a notice of motion on any matter that arises within the course of a proceeding that requires a decision or order of the Board. These motions shall be in writing and allow for another party to answer the notice of motion within 10 days of receipt of the notice of motion. The party responsible for the initial motion shall have five (5) days to then answer the response. The exception to this is within an oral hearing where motions may be given and responded to orally.

The MMF views this approach in many instances as cumbersome. First, the MMF supports the use of oral motions wherever reasonable and that all parties are present to respond if appropriate. Second, concerning the timelines outlined in subsection 35(4)-(5) of the Rules, there must be an opportunity to a) consider motions on an urgent and time-sensitive basis that does not afford the prescribed timelines, and b) still enable adequate opportunity for all parties to respond to a motion.

It is therefore expected that the Board would alter its rules to address these considerations if such a scenario were to arise.

## **3.5 Emergence of IMARs and the Applicability of Rules to IMAR Processes**

In 2024, the CER announced that it would begin consultation on the development of Indigenous Ministerial Arrangements Regulations (IMARs). These IMARs enabled under Sections 77 and 78 of the CER Act, would allow for the Minister of Energy and Natural Resources to agree with Indigenous governing bodies to share duties or functions concerning matters regulated under the CER Act with Indigenous governing bodies.

At this stage in the IMARs development and the Rules of Practice and Procedure Review, it is unclear how these two may intersect. The MMF although concerned with some of the practical elements of the IMARs, does see potential benefits in enhancing Indigenous-led oversight and decision-making regarding federally regulated pipelines and transmission lines. However, if the proposed IMARs create a pathway to Indigenous-led decision-making replacing the Board's processes, there would be a need to also require wholesale changes to the Rules which align with the unique decision-making processes of the participating Indigenous government(s). To accommodate these situations, the MMF would seek to ensure that there be clarity in the IMARs, the Rules, or both to define the rule of practice and procedure which would apply in projects where a ministerial arrangement is in effect.



## 3.6 Accessibility

A chief concern of the MMF is that the CER Act, the Rules, and in turn the entire CER regulatory process are not considered accessible by laypersons. In many instances to conform to the CER Act and Rules, legal advice is needed, and further, the requirements of the CER Act and Rules for a person to participate, bring forward motions, interventions, or applications create unnecessary barriers to meaningful participation. Although the revised CER Act has made headway in clarifying the CER's regulatory processes, the Rules in an effort to prioritize procedural fairness and abide by its quasi-judicial nature offer a significant advantage to experienced legal and technical professionals. The MMF acknowledges that the process does offer capacity support funding in many cases to limit barriers, however, this may not be an opportunity afforded to individual Red River Métis Citizens affected by a CER Act-regulated activity, with the result that they may not be positioned to fully participate in the CER process, or that the nature of the process be intimidating to the point of Citizens not wanting to participate.

The MMF supports the CER's efforts to modernize the Rules, however, believes many of the barriers and inefficiencies which exist within the current iteration of the Rules are a result of poor communication resulting in inaccessibility of the process. The MMF strongly recommends that these concerns be addressed by ensuring layperson resources such as videos and guidance documents written in plain language serve as a compendium to the revised version of the Rules.

## 4.0 Conclusions

The Canada Energy Regulator's (CER) Rules of Practice and Procedure are foundational to ensuring fair, transparent, and inclusive decision-making for projects regulated under the CER Act. As demonstrated throughout this review, the existing rules require modernization to align with contemporary realities, uphold constitutional obligations, and reflect principles of equity, inclusivity, and respect for Indigenous rights.

The MMF has identified several critical areas for improvement, including:

- **Compensation frameworks** that fully account for Aboriginal and Section 35 rights, recognizing their broader implications beyond surface and personal rights, especially in cases involving Red River Métis Citizens.
- **Equitable cost apportionment** to ensure Citizens and Indigenous governments are not disadvantaged in compensation negotiations and regulatory proceedings.
- **Cultural and procedural inclusion**, such as enabling Métis Knowledge to be shared in diverse formats, acknowledging Métis-specific holidays in timelines, and ensuring flexibility for meaningful participation by all stakeholders.



- **Procedural clarity and accessibility**, particularly in the application of discretionary powers, computation of time, and the formulation of issues.

The MMF also emphasizes the importance of aligning the rules with emerging regulatory realities, including the potential implementation of Indigenous Ministerial Arrangements Regulations (IMARs). These developments could enhance Indigenous-led oversight and decision-making, necessitating a seamless integration of Indigenous-specific procedural frameworks.

The MMF encourages the CER to adopt rules that explicitly address gaps identified during this review, with particular attention to:

1. Codifying protections and considerations for Aboriginal rights in both Crown and privately held lands.
2. Establishing mechanisms to level the playing field in compensation processes and ensuring procedural fairness for all participants.
3. Ensuring that the Board's practices reflect the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and support reconciliation efforts.
4. Enhancing flexibility, accessibility, and cultural sensitivity in all procedural requirements.

The MMF believes that with thoughtful revisions to its Rules of Practice and Procedure, the CER can further its commitment to fairness, inclusivity, and reconciliation while creating processes that better serve all Canadians, including Indigenous peoples. By addressing the specific needs of Red River Métis Citizens and other impacted communities, the CER can foster greater trust, collaboration, and equitable outcomes in its regulatory processes.

