Review of the Commission of the Canada Energy Regulator Rules of Practice and Procedure

January 2025

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1 Introduction

The Métis Nation of Ontario (MNO) commissioned this review of the Rules of Practice and Procedure Discussion Paper ("Discussion Paper") and other associated documents to understand how future regulatory amendments may impact the rights and way-of-life of rights-bearing Métis communities in Ontario.

This document outlines details of the Discussion Paper and other associated documents; describes how these aspects may interact with Métis Section 35 rights, interests, self-government and way-of-life; and suggests items for consideration in discussion with the Canadian Energy Regulator ("CER") for future phases of regulatory development both within the scope of the Rules of Practice and Procedure and within CER operational scope.

1.1 Overview of the MNO, its Governance Structures, and Consultation Process

Beginning in the late 1700s, distinct Métis communities emerged in various regions surrounding the Upper Great Lakes and along the waterways and fur trade routes of what is now known as Ontario. These Métis communities developed their own shared customs, traditions, and collective identities that are rooted in their special Aboriginal relationship to the land, and a distinctive culture and way of life.

For well over 200 years, these Métis communities in Ontario have had a collective consciousness and have participated in various collective actions, petitions, and advocacy for the recognition and respect of Métis rights. For example, throughout the 19th Century, Métis in what is now considered northern Ontario and surrounding the Upper Great Lakes took political action in various forms, including the signing of petitions for lands and their interests at Penetanguishene, Sault Ste. Marie, Lake Nipigon, and Moose Factory demanding recognition of their rights and interests as 'Halfbreeds' (i.e., Métis). Métis took up arms in 1839 at Penetanguishene, at the Mica Bay in 1849, and notably in 1875, the 'Halfbreeds of Rainy Lake and River', negotiated a collective adhesion to Treaty 3 as Métis.

In more recent times, Métis communities in Ontario participated (along with other Indigenous communities) in the processes that ultimately led to the inclusion of Section 35 in the Constitution Act, 1982, which expressly includes the Métis as one of the three "aboriginal peoples of Canada." Flowing from this Métis specific inclusion in Section 35, a distinct group of Métis in Ontario established the MNO in 1993 as their Métis government in order to advance Métis self-determination and self-government. The MNO Statement of Prime Purpose sets out the mandate of the MNO, which includes (among other things) the following objectives:

• Establish democratic institutions based on the communities' inherent right of self-government;

• Re-establish land and resource bases;

• Ensure that Métis can exercise their Aboriginal and treaty rights and freedoms and in so doing, act in a spirit of cooperation with other Aboriginal and non-Aboriginal people.[1]

[1] MNO Statement of Prime Purpose, available at: https://www.metisnation.org/about-the-mno/statement-of-prime-purpose/.

The MNO is the democratically-elected representative government of seven regional rights-bearing Métis communities in Ontario,[2] as well as MNO citizens who ancestrally connect to these communities or to other Métis communities from the Métis Nation in western Canada, but who now live in Ontario and have voluntarily mandated the MNO to be their government.

The MNO – as a Métis government—is mandated to represent the collective rights, interests, and claims of the Métis communities and citizens it represents, which are protected under section 35 of the *Constitution Act, 1982*.[3] This mandate and authorization is obtained through citizens voluntarily applying to the centralized MNO Registry, which is maintained in accordance with the MNO's governance documents, as amended from time to time, and the Supreme Court of Canada's guidance in *Powley*, among other requirements.[4]

Based on the foundational mandate in the *Statement of Prime Purpose* as well as the inherent right to self-government and self-determination of the Métis communities it represents, the MNO has built a strong province-wide government for its over 30,000 citizens. Specifically, the MNO has established governance structures at various levels to represent the Métis communities and citizens wherever they live throughout the province. These include governance structures at the:

- Provincial level (i.e., MNO Secretariat[5] and Provisional Council of the Métis Nation of Ontario or "PCMNO");
- Regional level (i.e., MNO's nine administrative regions,[6] Regional Councillors who sit on the PCMNO, regional Captains of the Hunt, and Regional Consultation Committees or "RCC"); and

[2] These historic Métis communities include the Sault Ste. Marie Historic Métis Community recognized by the Supreme Court of Canada in *R v Powley*, [2003] 2 SCR 207 ("*Powley*") as well as the six other Métis communities jointly identified by the MNO and Ontario through a collaborative process to implement the *Powley* decision—i.e., the Rainy River / Lake of the Woods Historic Métis Community, Northern Lake Superior Historic Métis Community, Abitibi Inland Historic Métis Community, Mattawa / Ottawa River Historic Métis Community, Killarney Historic Métis Community, and Georgian Bay Historic Métis Community. These historic Métis communities continue today through contemporary, modern-day successor communities. For more information about these historic Métis communities, please see: https://www.metisnation.org/registry/citizenship/historic-metis-communities-in-ontario/

[3] 2023 Self-Government Agreement, a copy of which is available at: https://www.metisnation.org/wp-content/uploads/2023/02/MNO-MGRSA-2.0-Feb-23-2023.pdf; *Métis Nation of Ontario Secretariat Act, 2015*, SO 2015, c 39 at preamble.

[4] See: *Powley* at paras 29-33.

[5] See: 2023 Self-Government Agreement at ss. 7.01-7.02, which confirms the MNO was required to incorporate the MNO Secretariat as its legal and administrative arm "to facilitation funding and intergovernmental relationships," and that the MNO's continued reliance on the MNO Secretariat until such time self-government is realized, "does not undermine or diminish the recognition of [its] self-government."

[6] Note: the MNO's current administrative boundaries include representation of both the successor communities of the seven historic rights-bearing Métis communities in Ontario, as well as MNO citizens who ancestrally connect to, but live outside their home community.

- Local level (i.e., approximately 30 Chartered Community Councils).

Notably, the RCCs—which are comprised of the elected PCMNO Regional Councillor, Captain of the Hunt (as an *ex officio* member), and representatives of each Community Council in a given region—are mandated through Regional Consultation Protocols to ensure the Métis communities and MNO citizens in a given region are effectively consulted and, where appropriate, accommodated on projects and developments occurring within a respective Métis community's traditional territory that may affect their collectively-held rights, interests, claims, and way of life.[7]

Over the last 30+ years, the MNO has made significant strides in advancing recognition and respect for Métis rights. This includes, among other accomplishments, supporting Steve and Roddy Powley in the landmark *Powley* case all the way to the Supreme Court of Canada, where the highest court in the country recognized that modern-day Métis communities may possess aboriginal rights protected by section 35 based on pre-effective control practices, customs, and traditions that are integral to their distinctive existence and relationship to the land that persist today. The Court concluded that "the Métis community in and around Sault Ste. Marie have an aboriginal right to hunt for food under s. 35(1)."[8]

Building on the total victory of the *Powley* decision, the MNO has reached a series of landmark agreements with Canada and Ontario advancing reconciliation, recognition, and respect for Métis rights and self-government, including:

- MNO-Canada Consultation Agreement (July 31, 2015) setting out the above RCC model as the MNO's preferred approach to consultation;[9]
- MNO-Canada Memorandum of Understanding on Advancing Reconciliation (February 3,2017);
- Canada-Métis Nation Accord (April 13, 2017);
- MNO-Canada-Ontario Framework Agreement for Advancing Reconciliation (December11, 2017);
- MNO-Canada Agreement on Advancing Reconciliation with the Northwestern Ontario Métis Community (December 11, 2017);
- MNO-Ontario Ministry of Natural Resources and Forestry Framework Agreement on Métis Harvesting (April 30, 2018);

[7] See: MNO-Ontario Framework Agreement on Métis Harvesting (April 30, 2018), for areas in the province where Ontario accommodates Métis harvesting rights, a copy of which is available at: https://www.metisnation.org/wp-content/uploads/2015/07/metis-harvesting-framework-agreement.pdf

[8] Powley, at para 53.

[9] MNO-Canada Consultation Agreement, (July 2015), available online at: https://www.Métisnation.org/wp-content/uploads/2010/10/mno-canada-consultation-agreement-july-2015.pdf.

- MNO-Canada Métis Government Recognition and Self-Government Agreement (June 27,2019);
- MNO-Canada Interim Fiscal Financing Agreement (February 26, 2021); and
- MNO-Canada Métis Self-Government Recognition and Implementation Agreement(February 23, 2023).

1.2 The CER

As described on the CER website, the CER is what is known as a lifecycle regulator (responsible for oversight during construction, operation and abandonment/decommissioning). It regulates the energy sector in Canada and is meant to provide oversight for energy facilities; make decisions/orders relating to energy export, tolls, tariffs, etc.; advise on energy matters; report on energy activities; and regulate energy development and trade.

Before the CER makes a decision or recommendation they are meant to factor in economic, environmental, and social considerations; and, based on language in the *Canadian Energy Regulator Act*, uphold and progress Reconciliation with Indigenous Peoples.

1.3 The Commission

The CER's organization and structure is set up into business units that reflect major areas of responsibility.[10] This includes a Board of Directors, an Indigenous Advisory Committee, the Commission and Commissioners, and the CEOs. The Commission is responsible for making adjudicative decisions and operates as a quasi-judicial body, maintaining an arm's length relationship from other parts of the CER governance structure and Natural Resources Canada. While part of the CER, the Commission's adjudicative role remains independent, contributing to the effective overall delivery of the CER's mandate and corporate outcomes.

The Commission consists of up to 7 full-time Commissioners, including the Lead Commissioner and Deputy Lead Commissioner, all appointed by the Governor in Council. At least one full-time Commissioner must be an Indigenous person. The Commission may also include part-time Commissioners.[11]

1.4 The Rules of Practice and Procedure

The *National Energy Board Rules of Practice and Procedure, 1995* ("the Rules") are meant to govern the procedures followed during both written and oral hearings of the Commission of the CER (previously known as the National Energy Board).[12] Some items the Rules set out include mechanisms

[10] Canadian Energy Regulator, Organization and Structure, https://www.cer-rec.gc.ca/en/about/who-we-are-what-we-do/organization-structure/

[11] Canadian Energy Regulator, Commissioners, https://www.cer-rec.gc.ca/en/about/who-we-are-what-we-do/organization-structure/commissioners/index.html

[12] CER Dialogue Page, Rules of Practice and Procedure, https://www.cerdialogue.ca/rules-of-practice-and-procedure-regulations

for complaints, the conduct of public hearings, and determination of the manner in which applications are to be assessed.

Under the *CER Act*, the Commission may make rules for the carrying out of its work and the management of its internal affairs including:

- Rules related to the powers, duties, and functions of the Commissioner,
- Rules related to its sittings,
- Rules related to its decisions, orders, and recommendations, and
- Rules related to its procedures and practices.[13]

The Rules have not been updated since they came into force in 1995 and were not updated with the implementation of the *Canadian Energy Regulator Act* ("*CER Act*") in 2019.

It has been acknowledged by the Commission of the CER that the Rules require a comprehensive update to, not only align with the *CER Act*, but also support the CER's commitment to Reconciliation with Indigenous Peoples. Indeed, within the *CER Act*, the Preamble specifies that:

> *"the Government of Canada is committed to achieving reconciliation with First Nations, the Métis, and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, co-operation and partnership"*.[14]

To initiate this update process for the Rules, the CER has developed and posted a Discussion Paper which describes the type and scope of amendments that are currently being considered. The Discussion Paper also includes specific engagement questions; however, interested parties were invited to comment on any topic that is or is not included in the Discussion Paper.[15]

1.5 Review

This review was undertaken in consideration of the following documents/websites:

- Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper,
- Rules of Practice and Procedure Review Webpage,
- Rules Review CER Dialogue Page,
- *National Energy Board Rules of Practice and Procedure, 1995*, SOR/95-208
- United Nations Declaration on the Rights of Indigenous Peoples, and
- *Canadian Energy Regulator Act*, 2019 S.C. 2019, c. 28, s. 10.

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[13] *The CER Act*, 2019, Section 35, https://laws-lois.justice.gc.ca/PDF/C-15.1.pdf

[14] *The CER Act*, 2019, Preamble, https://laws-lois.justice.gc.ca/PDF/C-15.1.pdf

[15] CER Dialogue Page, Rules of Practice and Procedure, https://www.cerdialogue.ca/rules-of-practice-and-procedure-regulations

2 Areas for Improvement

This section will outline various themes and areas of improvement from the MNO's perspective. To align with the Discussion Paper, these themes and areas of improvement are documented using the regulatory objectives from the Discussion Paper as a starting point and also includes other relevant feedback.

2.1 Government of Canada's Commitment to Reconciliation

In 2016, Canada officially removed its previous objector status to UNDRIP and announced that "we are now a full supporter of the Declaration without qualification."25 Shortly thereafter, in 2018, Canada began consulting on Bill C-15, which eventually became the United Nations Declaration on the Rights of Indigenous Peoples Act, ("UNDRIPA") that received royal assent on June 21, 2021.[16]

In UNDRIPA, Canada immediately affirmed that UNDRIP is "a universal international human rights instrument with application in Canadian law" and set out the legislative requirement to develop, in consultation and cooperation with Indigenous peoples, an Action Plan "to achieve the objectives of the Declaration."[17] The MNO worked with Canada on the development of the first Action Plan, which includes a specific measure (Action Plan Measure 34) that addresses the involvement of Indigenous Peoples in projects and matters regulated by the CER. Specifically, Measure 34 specifies that the Government of Canada must:

> *"Work in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to:*
>
> *(i) enhance the participation of Indigenous peoples in, and*
>
> *(ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the Canada Energy Regulator (CER)."*[18]

Steps to achieve this are listed as follows:

- "Develop regulations respecting the Minister of Natural Resource Canada's power to enter into arrangements that would **enable Indigenous governing bodies to be authorized to exercise specific powers, duties and functions under the Canadian Energy Regulator Act**.
- Amend the Canadian Energy Regulator Onshore Pipeline Regulations and Filing Manuals applicable to the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure, in a manner that:

[16] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [UNDRIPA].

[17] UNDRIPA, ss 4(a), 6(1).

[18] The United Nations Declaration on the Rights of Indigenous Peoples Act, Action Plan, https://www.justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf

- incorporates specific localized knowledge held by Indigenous peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge
    - strengthens measures to prevent and address impacts to Indigenous rights and interests, including in relation to heritage resources and sites of Indigenous significance.
- Develop **a systemic model to enhance Indigenous peoples' involvement in compliance and oversight over the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure**. The model should integrate learnings from existing structures and relationships.
- Consult and cooperate to identify and take the measures needed **to support Indigenous governing bodies, and/or the potential establishment of new Indigenous decision-making institutions,** to exercise regulatory authority on projects and matters regulated by the Canada Energy Regulator, including:
    - Co-develop with First Nation, Métis and Inuit communities, governments and organizations and relevant federal departments and regulators the mandate of such bodies or institutions, as well as the mechanisms required for empowering them with certain regulatory authorities
    - Identify the actions and allocate the resources required to further develop capacity and expertise for the exercise of regulatory authority by such bodies or institutions.

  This work could lead to other federal departments, regulators or institutions, similarly working in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations, to:
    - enhance the participation of Indigenous peoples
    - set the measures that could enable them to exercise regulatory authority, in respect of federally regulated natural resource projects. (Natural Resources Canada, Canada Energy Regulator)" [emphasis added].[19]

Through the recognition of self-government, the MNO may require greater autonomy in CER processes such as exercise of specific duties and functions, ongoing oversight, and the establishment/participation in Indigenous decision-making institutions.

Currently, the MNO has both positive and challenging relationships with various proponents and regulators. These relationships can be dependent on the receptiveness of the parties to Métis involvement. Often the MNO's level of involvement relies on a "strength of claim" approach in scoping. This approach can be predominantly "land-based"; whereby First Nations, with established reserves in proximity to a project, are identified for higher levels of involvement than Métis. This approach has the potential to also be applied in relation to CER regulated projects and identification of Métis as governing Indigenous bodies.

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[19] The United Nations Declaration on the Rights of Indigenous Peoples Act, Action Plan, https://www.justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf

Despite having rights enshrined in the *Canadian Constitution Act, 1982* and a signed Métis Nation of Ontario and Government of Canada *Métis Government Recognition and Self Government Agreement,* Métis are often subjected to hierarchical treatment due to this "strength of claim" approach, leading to additional challenges for the MNO.

The scoping decisions made by the regulator also have implications for the level of engagement the MNO receives from project proponents. Proponents may perceive the MNO's involvement as less critical if they are identified to a lesser degree and consequently engage with them at a reduced scope. This reduced engagement not only limits the MNO's ability to voice their concerns and interests but also contributes to a broader pattern of diminished consideration in the decision-making process.

Addressing these challenges requires a re-evaluation of the scoping mechanisms and consideration of MNO as a governing Indigenous body broadly by the federal government. This could move the MNO and Canada towards greater Reconciliation.

While the Rules may not include specific direction relating to establishment of the MNO as an Indigenous governing body or the consideration of MNO's information on equal weighting with other Indigenous groups; guides, practices and processes can be developed to ensure the CER and the Commission are adequately educated on the nature of the MNO's governance structure and sufficiently allow for Métis involvement.

In relation to MNO involvement in compliance activities, in instances where a CER regulated project requires compliance in a rights-bearing region, the crucial issues of scoping and capacity for the involvement of Regional Consultation Committees (RCCs) must be considered and regional consultation protocols in place must be respected. As above, MNO involvement can be typically scoped and executed at lower levels than First Nations in similar geographic areas. This issue must be brought to the forefront and resolved prior to implementation of any proposed systemic model to enhance Indigenous peoples' involvement in compliance and oversight over project lifecycles. Additionally, capacity for ongoing involvement must be considered. The MNO can experience lower or more stringent requirements for financial capacity. This financial disparity further exacerbates the challenges faced by the MNO in adequately participating in any identified oversight activities.

Further, in relation to government supporting Indigenous governing bodies, and/or the potential establishment of new Indigenous decision-making institutions; this is an imperative for the MNO. The MNO, as per the *Métis Government Recognition and Self Government Agreement* and through MNO's longstanding governance representing Section 35 rights-holding Métis citizens in Ontario, is an Indigenous governing body. In this regard, future CER regulatory projects may be subject to MNO decision making and regional consultation protocols, where applicable. The CER and the Commission must grapple with how this will be guided (e.g., through Acts, Regulations, Guidance or otherwise); how it will be implemented in concurrence with other Indigenous governing bodies who may have overlapping interests; and how MNO decision making in relation to CER regulated projects will be funded.

Overall, in order to ensure Reconciliation is at the forefront of updates to the Rules, the guides, practices, and processes must be developed in partnership with the MNO to ensure the CER and the Commission are adequately educated on the nature of the MNO's governance structure and sufficiently allow for the ongoing and robust involvement of rights-bearing Métis communities in Ontario within CER regulatory initiatives of interest.

2.2 Indigenous Knowledge

Since 1995, when the Rules took effect, the participation of Indigenous Peoples in CER hearings has continually evolved. Through the Rules review, the Commission, supported by CER staff, is examining if the Rules adequately allow for a fair process to integrate Indigenous information and continue to adapt over time.

The Commission acknowledges that Indigenous Peoples, as participants, are best positioned to decide what information to share with the Commission and the manner of sharing it.[20] With that in mind, the Rules should continue to be sufficiently flexible to allow Indigenous Peoples to make those decisions.

With the introduction of the *CER Act*, the consideration of "factors" related to Indigenous interests, concerns, and effects on the rights of Indigenous Peoples by the Commission has become a formal legislative requirement.

The *CER Act* specifically requires that the Commission must make its recommendations taking into account the Indigenous knowledge it has been provided, including:

- The interests and concerns of Indigenous Peoples, including information related to their current use of lands and resources for traditional purposes, and
- The effects on the rights of Indigenous Peoples recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

One way this has been implemented, to date, is through the addition of Indigenous knowledge sessions that are additive to participation in steps in the hearing process.

One of the Commission's objectives in its hearings is to facilitate opportunities for substantive information gathering while maintaining procedural fairness. This aim, in relation to information provided by Indigenous groups, is supported through direct language in the *CER Act* which introduced provisions to protect the confidentiality of Indigenous knowledge upon request (*CER Act*,

[20] Canadian Energy Regulator, Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper, https://ehq-production-canada.s3.ca-central-1.amazonaws.com/03ab76bd5f795e0a7214634017506a96f1ab44b3/original/1725898273/fdb6ff78f80757149232103295b55bcc_Discussion_Paper.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKIOR7VAOP4%2F20241118%2Fca-central-1%2Fs3%2Faws4_request&X-Amz-Date=20241118T174209Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=59c87a04f41564c80cdd5fbbb3fd41dbfab6f271e4690b22c7c8dc093d6ee208

section 58). This aim is also supported by the Government of Canada's Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions.[21]

The Discussion Paper indicates that the Rules review can provide an opportunity to consider whether parts of the procedural aspect of receiving Indigenous knowledge belong in the Rules.

The first step in incorporating Indigenous information into hearing processes, proceedings, and ensuring consideration in outcomes, is understanding what Indigenous information is, the various formats it can be provided in, and decolonized ways of collecting and working with it. Indigenous knowledge is distinct and specific to a particular Indigenous groups/geography. As such the knowledge of Métis citizens in Ontario is unique. Better incorporation can be completed through ongoing engagement with the MNO to prioritize inclusion of the voices of MNO leadership and knowledge holders in the Rules, building in accountability, and ensuring the data is valued appropriately by the Commission.

The Rules can codify this by building in requirements for the CER and Commission to collect disaggregated data to account for various Indigenous perspectives in hearing processes, specifically the MNO perspective/knowledge. This means when proponents file their applications for consideration at hearings, it must present any Indigenous data in a disaggregated format. This is specified in the Rules under the 'Contents and Form of the Application' for general data, but provision for specific Indigenous data would allow for more equitable application submissions.

In addition to this practical addition to the Rules, the CER and Commission can work with the MNO for education on how the voices of MNO leadership and knowledge holders can be prioritized in hearings and hearing documents, including following protocol established by its RCCs and/or PCMNO. This would allow for the CER and the Commission to acknowledge and remedy any harmful data practices that may have been implemented in the past and ensure the value of Métis data is understood moving forward; contributing to decision making where applicable.

2.3 Crown Consultation

Currently, the CER undertakes Crown consultation as part of the Commission's process. In some cases, the CER may conduct additional consultation activities to supplement the Commission's process and is carried out by a Crown Consultation Coordinator. This Coordinator works independently from the Commission and files information on the Commission's hearing record for consideration by the Commission.

If a Governor in Council decision is needed, the Crown Consultation Coordinator will consult Indigenous communities on the Commission's Recommendation Report. These consultations aim to address any remaining project impacts on Indigenous rights and interests. The Crown Consultation

[21] Ibid.

Coordinator then prepares a Crown Consultation and Accommodation Report for the Minister of Natural Resources to aid in decision-making.[22]

While this process, in theory, is positive; in practice, it can be problematic as the Crown Consultation Coordinator can end up acting as an intermediary between the Indigenous groups and the Commission with no direct contact between the two; as the Commission is meant to be arms length. This means that the Indigenous group does not have specific or direct discussion with the recommender for the regulatory action; and has no influence on their decision making through direct interpretation of their Indigenous evidence except through a colonial hearing process.

Ideally, the Crown Consultation Coordinator should assist Indigenous Governments- such as the MNO- in navigating the process; provide and guide funding discussions; and engage in dialogue; but also should not be the stop-gap between the Indigenous Government and the Commission. There should be opportunity, outside of the direct hearing proceedings, to dialogue with the Commission to ensure there is a depth of understanding of the Indigenous Government's issues, concerns, information, and desired outcomes in order to facilitate a direct nation-to-nation, government-to-government relationship. If this relationship cannot be fostered with the Commission due to procedural fairness, then the relationship should supersede it as a recommender and be required with the Minister of Natural Resources, instead, as the decision maker. This will allow for dialogue between the MNO and the Minister on the outcomes and decisions prior to finalization and ensure the process is truly nation-to-nation.

2.4 Enhancing Competitiveness

The Discussion Paper outlined ways the Rules may be updated to enhance the competitiveness through streamlining processes. The Commission will be reviewing all timelines set in the Rules and consider whether any new time limits should be added, timelines shortened, or extended.

For instance, the Commission is evaluating adjustments to the method for calculating time (the Rules, section 5-7), as using "business days" instead of "calendar days" may provide greater clarity for participants.[23] The use of business days is a positive consideration by the Commission and is supported by the MNO as MNO staff, political representatives, and volunteers adhere to a standard work calendar and this will better align with the operational style of the Nation. In addition, the Commission should consider a provision in the Rules to account for seasonal timing windows of availability for Indigenous groups. For example, the MNO holds an Annual General Assembly yearly,

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[22] Canada Energy Regulator, Crown Consultation, https://www.cer-rec.gc.ca/en/consultation-engagement/crown-consultation/index.html

[23] Canadian Energy Regulator, Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper, https://ehq-production-canada.s3.ca-central-1.amazonaws.com/03ab76bd5f795e0a7214634017506a96f1ab44b3/original/1725898273/fdb6ff78f80757149232103295b55bcc_Discussion_Paper.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKIOR7VAOP4%2F20241118%2Fca-central-1%2Fs3%2Faws4_request&X-Amz-Date=20241118T174209Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=59c87a04f41564c80cdd5fbbb3fd41dbfab6f271e4690b22c7c8dc093d6ee208

there are specific regional events organized by Community Councils throughout various Regions, and there are regular and predictable office closures that may or may not align with CER calendars (e.g., closure for Louis Riel Day, seasonal holiday closure). Requiring the MNO to consider/review documents or meet timelines in these periods is unreasonable and adds strain to staff, political representatives, and volunteers. The Rules could require consideration of seasonal timing windows for Indigenous Governments involved, or intervenors, where applicable. This is especially crucial for hearings which are time intensive and there is currently no real or constructive mechanism for input into the scheduling for Indigenous groups.

In addition, the CER and the Commission must consider how the computation of time is completed in the first place, and how this computation is weighted. Currently this consideration is more heavily weighted to project applicants and their needs; and must be more inclusive of Indigenous considerations. This must be explored in partnership with the MNO to ensure the time provided is adequate to support meaningful involvement; particularly in instances where the MNO is considered an Indigenous governing body and/or an intervenor, as the varying responsibilities may have varying levels of time requirement considerations.

The Discussion Paper also indicates that the Commission is evaluating potential modifications to update the notice of motion procedure (the Rules, section 35) to enhance efficiency, such as incorporating oral notice of motion processes where suitable.[24] The MNO is supportive of the addition of oral notice of motion processes, where required. This can support the needs of MNO knowledge holders and allow for provision of information in a more preferred format. This aspect must be discussed further with the MNO and potentially expanded to other facets of the hearing process.

In addition, the Discussion Paper requested feedback regarding changes that could be made to the information request process to clarify its use and support efficiency.[25] Information requests are onerous processes for Indigenous Governments, requiring retention of expert support, in most cases, to ensure the procedural requirements for the information requests are met, the information responded to effectively, and also typically require legal support to ensure applicability and format. This, in turn, creates extensive financial capacity requirements for Indigenous Governments. Currently, for information requests there are fixed time limits for response, the response must be provided in writing, and must be numbered consecutively. This must be explored with the MNO to allow for centering on Métis specific frameworks and data practices that provides the information the Commission requires in a less rigid format. Additionally, discussion is required to promote greater

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[24] Ibid.

[25] Canadian Energy Regulator, Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper, https://ehq-production-canada.s3.ca-central-1.amazonaws.com/03ab76bd5f795e0a7214634017506a96f1ab44b3/original/1725898273/fdb6ff78f80757149232103295b55bcc_Discussion_Paper.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKIOR7VAOP4%2F20241118%2Fca-central-1%2Fs3%2Faws4_request&X-Amz-Date=20241118T174209Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=59c87a04f41564c80cdd5fbbb3fd41dbfab6f271e4690b22c7c8dc093d6ee208

understanding of typical financial requirements to allow for better alignment with potential MNO needs.

2.5 Electronic Filing and Service

The Discussion Paper states that the Commission plans to amend the Rules to modernize various practices and procedures.

The current requirements state that when a person files a document with the Commission electronically, they must follow up with an original hard copy within a reasonable period after filing (the Rules, subsection 9(8)). Similarly, the Rules require that when a person serves a document electronically, they must provide an original hard copy to the recipient within a reasonable period of time (the Rules, subsection 8(9)). These requirements are being considered for modernization to potentially allow for electronic filing and service without the need for subsequent hard copies, when appropriate.[26] Filing hard copies for previously electronically filed documents is an administrative burden that could add another layer of unnecessary work for an Indigenous Government whom already struggle to meet capacity needs. In addition to this change, the Commission must also consider allowing for digital signatures, where appropriate rather than physical signatures on items such as notice of motions to streamline and modernize the process. Many MNO staff, political representatives and leadership are throughout the province of Ontario and digital signatures would be helpful for streamlining processes for the MNO.

The Commission is also contemplating the elimination of the existing requirement for the company/applicant and the CER to maintain a hard copy of project applications on site for public inspection (the Rules, section 24). Instead, interested parties could request a copy of the application on an individual basis or access it online at any time.[27] The MNO is supportive of this change as the current process for public inspection is limiting and outdated; virtual inspection is preferred.

In addition to these modernizations proposed by the Commission, the Commission must also consider re-evaluating the need and requirement for a written statement where there is the inability or insufficient time to study an application which leads to intervenors not including sufficient information in their written intervention. Instead, in these instances, brief email correspondence or verbal communication could streamline the process and still identity the reasoning for lack of necessary detail within a response. This would benefit any intervenor who is constrained.

[26] Ibid.

[27] Canadian Energy Regulator, Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper, https://ehq-production-canada.s3.ca-central-1.amazonaws.com/03ab76bd5f795e0a7214634017506a96f1ab44b3/original/1725898273/fdb6ff78f80757149232103295b55bcc_Discussion_Paper.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKIOR7VAOP4%2F20241118%2Fca-central-1%2Fs3%2Faws4_request&X-Amz-Date=20241118T174209Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=59c87a04f41564c80cdd5fbbb3fd41dbfab6f271e4690b22c7c8dc093d6ee208

2.6 Other Feedback

In addition to the topics touched upon in the Discussion Paper, the MNO also has various critiques on the Rules which must be considered by the CER.

The first item for discussion is the overall quasi-judicial format of CER hearings. This format, in many ways, contravenes MNO's governance systems. For example, when an Indigenous group files a document with the CER, the CER may require the Indigenous group to verify the document or parts of the document through an affidavit. This process devalues the Indigenous information and the method it was provided – requiring a verification system to prove validity outside of the MNO's validation process. This must be considered in relation to Indigenous knowledge and how this information is valued. The process of securing affidavits can also be resource intensive requiring legal, technical, and staff support – of which only part is eligible for participant funding reimbursement. This resource intensive nature persists for all aspects of the hearings including filing of interventions, filing letters of comment, notice of motion, etc. Not to mention to prohibitive costs of hearing appearance. This must be re-evaluated by the CER in consultation with the MNO to ensure a more suitable format.

Additionally, there must be consideration for terminology used when referring to Indigenous participants. Currently, all interested parties are classified as intervenors. This terminology may or may not be applicable for those Métis participants that are interested in the project. It sets out a perception of an adversarial process between the Métis parties and the CER and should be reconsidered. Instead consideration should be given to utilising titles agreed upon by the MNO.

Within Section 25 – Formulation of Issues, there should be more formalized language under subsection 25(2) which indicates that the CER will work in collaboration with Indigenous groups and information from that process will be taken in aggregation with other identified issues facilitate the government-to-government relationship. As a matter of standard operation for every hearing, Indigenous knowledges and rights *must* be considered (if information is provided by the impacted Indigenous groups). Further, there must be specific consideration given to recognizing the distinct, place-based, and culture diverse variations of Indigenous knowledge to ensure a pan-Indigenous lens is not applied. Also, within subsection 25(3), it specifies that parties proposing issues shall explain the issue's reliance and justification for considering it in the proceeding. This subsection should specify that Indigenous issues are exempt from this requirement as this would have been previously discussed as part of the government-to-government discussions and would be duplicative in this case.

Also the Commission should consider an exemption of Métis knowledge from cross examination; in particular when this information is provided by a Métis knowledge holder. Métis knowledge is gathered through direct contact with the environment, constitutes lived experience and is based on observations, practices, beliefs, historic practices and community consciousness. Cross examination of this information from knowledge holders sets out an adversarial environment and questions the foundational systems of Indigenous groups. Instead, collaborative forums or discussion groups would be more suited to this information – bringing together the parties on equal footing in the spirit of learning.

Additionally, as previously noted in various sections, the costs for participating in CER hearing processes can be prohibitive for Indigenous groups. There must be additional discussion with the CER and the Commission to promote greater understanding of fixed hearing costs and how the CER can guarantee capacity certainty to involved Indigenous groups. The process for notifying Indigenous groups of funding opportunities and the process for costs allocation should be set out in the Rules for certainty for all parties and also discussed. In particular, the Rules must specify direct notification to distinct Indigenous groups (i.e. First Nations, Métis and Inuit) as many notifications only go to First Nation's, leaving the MNO and the Métis communities represented by the MNO, and at a disadvantage through the process.

Finally, it would be helpful to the MNO to have a detailed listing of CER practices that influence Indigenous involvement not codified in the Rules or instances where the Rules have been dispensed under section 4 for the benefit of Indigenous participation. This would allow for evaluation of whether those practices or dispensations should be integrated into the Rules moving forward.

3 Conclusion

Overall, the review of the CER Rules of Practice and Procedure Discussion Paper and Associated Documents identified many opportunities for additional engagement between the CER, the Commission and the MNO to ensure the alignment of the Rules with the commitment to Reconciliation is met. Key areas for consideration within the Rules include:

- Building in requirements for the CER and Commission to collect disaggregated data to account for MNO-specific perspectives in hearing processes,
- Evaluation of adjustments to the method for calculating time and using "business days" instead of "calendar days",
- How the computation of time is completed, and how this computation is weighted,
- The addition of oral notice of motion processes, where required,
- Potential changes that could be made to the information request process,
- Allow for electronic filing and service without the need for subsequent hard copies, when appropriate.
- Elimination of the existing requirement for the company/applicant and the CER to maintain a hard copy of project applications on site for public inspection,
- Re-evaluation of the need and requirement for a written statement where there is the inability or insufficient time to study an application and the intervenor did not include sufficient information in their written intervention,
- Intervenor terminology,
- Formalized language related to Indigenous involvement in "Formulation of Issues",
- Exemption of Indigenous knowledge from cross examination and alternative process, and
- Cost Allocations.

Key areas for consideration in processes or procedures adjacent to the Rules include:

- Recognition of MNO's Self-government and addressing the issue of a perception of a hierarchy of rights in Indigenous engagement processes,
- Engagement on how the MNO, as Metis Government, will be integrated in future processes; how this will be guided (e.g., through Acts, Regulations, Guidance or otherwise); how it will be implemented in concert with other Indigenous Governments who may have overlapping interests; and how MNO decision making in relation to CER regulated projects will be funded,
- Ongoing engagement with the MNO on prioritizing Métis voices in the Rules, building in accountability, and ensuring the data is valued appropriately by the Commission,
- Education on how the voices of Métis leadership and knowledge holders can be prioritized in hearings and hearing documents,
- The Crown Consultation process and how this impedes the nation-to-nation, government-to-government relationship,
- The quasi-judicial format of CER hearings,
- Discussion of cost allocations and capacity certainty,
- Provision of details of practices that influence Indigenous involvement not codified in the Rules, and
- Provision of information related to instances where the Rules have been dispensed under section 4.

These key areas should be further explored between the CER, the Commission, the MNO, and potentially, Natural Resources Canada to ensure the draft regulations are inclusive of the needs of rights-bearing Métis communities in Ontario.

As noted above, in order to ensure Reconciliation is at the forefront of updates to the Rules, guides, practices and processes, these items must be developed in partnership with the MNO. This co-development will ensure the CER and the Commission are adequately educated on the nature of the MNO's governance structure and sufficiently allow for ongoing and robust Métis involvement in CER regulatory initiatives of interest.