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<b>BACKGROUND</b>
<p>The National Energy Board’s 1995 Rules of Practice are being updated to align with the Canadian Energy Regulator Act (CER Act) (2019) and to modernize governance practices. For MCFN, whose territory includes environmentally, and culturally sensitive areas impacted by the oilsands industry, hydro electric dams, and urbanization, these updates represent an opportunity to address historical grievances, strengthen environmental and cultural protection, and enhance participation in regulatory processes. The updating process is described below from the discussion paper:</p> <p>Phase I (Fall 2024): Early engagement with Indigenous Peoples, including MCFN, to identify areas of improvement and potential amendments to the rules. Funding support is available for participation.</p> <p>Phase II (Winter 2025): Publication of a summary report incorporating feedback. MCFN will have the opportunity to review and provide additional input if desired.</p> <p>Phase III (Fall 2025): Draft regulation review (Canada Gazette Part I). MCFN can submit formal comments on proposed regulatory changes. MCFN may wish to lobby on these changes and request direct consultation prior to the rules of practice being finalized.</p> <p>Phase IV (Winter 2026): Final regulation publication (Canada Gazette Part II). A strategic discussion on how to approach this component given the 2018 decision that references Mikisew and the legislative branch of government(s).</p>

<b>SUMMARY</b>
<p>Updates to the Canadian Energy Regulator (CER) Rules of Practice and Procedure may impact the Mikisew Cree First Nation (MCFN) in northeastern Alberta. Certainly, with respect to the oilsands industry. Mikisew’s s35 rights are infringed and unmitigated due to cumulative effects. Further, all upstream impacts should be in scope for any CER projects that distribute energy products from North Eastern Alberta outside of the province. Canada and Alberta have yet to accommodate Mikisew adequately and meaningfully to date. Consultation is not the last step, only the first.</p>



## **1. Reconciliation and UNDRIP Implementation**

The CER updates prioritize commitments to reconciliation and integrating UNDRIP principles into regulatory frameworks. This includes recognizing the right of Indigenous Peoples to participate in decisions impacting their lands, resources, and way of life.

MCFN has long advocated for stronger protections for their lands and waterways from the environmental impacts of oilsands and other development. Aligning the CER rules with UNDRIP and FPIC can empower MCFN to assert their rights and ensure meaningful participation in decisions related to development. The development of principles in the spirit of reconciliation as they are applied to the CER's rules of practice require flexibility as Mikisew is a large and complex Nation spanning 5 communities and over 3,000 members.

## **2. Indigenous Knowledge Protection**

Under CER Act Section 183(2), Indigenous knowledge must be considered in hearings and decision-making processes. Provisions for confidentiality (Section 58) are crucial to safeguard sensitive cultural information shared by MCFN.

Oilsands projects often impact traditional lands and water systems central to MCFN's cultural and subsistence practices. Enhanced rules ensuring the respectful inclusion and protection of Indigenous knowledge can influence project approvals and environmental assessments. The respect and protection Mikisew would be seeking would be bound by a sharing agreement between the crown agency, CER, and Mikisew Cree First Nation.

## **3. Crown Consultation Coordinator (CCC)**

The CER's CCC role—facilitating consultation between Indigenous groups and the Crown—is evolving and should be formalized under the updated rules. The Impact Assessment Agency of Canada has been using this best practice for over a decade.

For MCFN, clear procedural guidelines for the CCC could help address gaps in consultation and ensure that their concerns, such as those related to CER Projects and cumulative effects on the Athabasca River, are adequately represented. All scoping should be executed jointly and signed off by MCFN and the CER.

## **4. Funding and Participation**

MCFN can benefit from CER's funding programs, which aim to support Indigenous participation in engagement and regulatory review processes. This funding could enable MCFN to conduct their own environmental assessments and ensure adequate



representation in CER hearings related to oilsands projects. Funding and funding decisions should be done in advance. These would be reviewed annually and have access to an arbitration process outside of the crown agency appointed by both parties.

## **Additional Recommendations**

### **5. Hearing Processes**

Following the TECK Frontier Joint Panel Review hearing in fall of 2018, MCFN considered the hosting of part of the hearing in Fort Chipewyan a best practice. Especially the land-users panel for Mikisew Cree First Nation, which spoke exclusively in Cree. Ideally, if hearings are continued to be held in Fort Chipewyan it could include ‘on the land’ portions for an immersion into the culture of the people of the land.

### **6. Jurisdictional Gaps**

Since the SCC decision on the jurisdictional challenge on the authority of the Impact Assessment Agency or Canada, Mikisew has experienced a retreat of federal authority. However, it is not acceptable to abandon Treaty signatories to a jurisdiction that lacks respect for the same Treaty that allows them to exist. Functionally, there are no remedies available to Mikisew Cree First Nation because of the dysfunctional Integrated Resources Management System and regulatory regime within the province of Alberta. Therefore, Mikisew expects the CER to consult with Alberta regarding bi-lateral agreements made before the federal government and Mikisew with respect to Mikisew’s Treaty Rights, mitigation measures, and accommodations.

## **DOCUMENTS**

- CER Act: [CER Act Legislation](#)
- UNDRIP Act: [UNDRIP Legislation](#)
- Indigenous Knowledge Policy Framework: [Policy Framework](#)
- CER Crown Consultation Information: [CER Crown Consultation](#)



This modernization presents an important opportunity for MCFN to shape how energy projects are reviewed and regulated, ensuring that their rights, lands, and cultural values are respected and protected in alignment with Canada’s commitment to reconciliation and UNDRIP.