MISSISSAUGAS OF SCUGOG ISLAND
FIRST NATION

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To the attention of:

Rules Review Project Team
Canada Energy Regulator ('CER')
210-517 10 Ave SW
Calgary, Alberta
T2R 0A8

RPPR@cer-rec.gc.ca

January 31, 2025

Re: Invitation to Participate in the Commission of the Canada Energy Regulator's Rules of Practice and Procedure

Dear RRP Team,

The Mississaugas of Scugog Island First Nation (MSIFN) Consultation is pleased to provide comments on the CER's Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper. Comments on behalf of MSIFN Consultation are below:

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Table 1. Comments on the Discussion Paper.

Reference	Text from Discussion Paper	Comment
Engagement	*On the Rules Review, the Commission has planned for four phases of engagement, each of which is described below.*	- Please continue to send CER-related engagement opportunities to MSIFN Consultation via consultation@scugogfirstnation.com.

Discussion Questions	1) *Are there specific process steps for cost apportionment applications that you would like to see made mandatory through the Rules?*
	2) *Are there specific process steps for compensation applications that you would like to see made mandatory through the Rules?*
		- Yes, we recommend the following below:
		- Require that companies engage with Indigenous communities before submitting a project application, focusing on potential cost apportionment and compensation matters.
		- Mandate that applicants (e.g., companies) notify Indigenous communities of cost apportionment or compensation applications in a culturally appropriate manner. This could include but is not limited to:
		  ○ Using plain language;
		  ○ Providing notices in Indigenous languages where necessary; and,
		  ○ Utilizing community-preferred communication channels.
		- Establish a participant funding program specifically for Indigenous communities to support their involvement in compensation and cost apportionment disputes. Funding must address legal or expert assistance.

		- Provide flexible timelines for Indigenous communities to respond to or serve applications, recognizing their governance structures, decision-making processes, and resource constraints.
		- Create Alternative Dispute Resolutions ('ADR') processes that incorporate:
		  o Mediators with cultural competency in Indigenous legal traditions and worldviews.
		  o The option for Indigenous communities to use traditional decision-making methods or circle-based mediation processes.
		- Include specific provisions in the Rules allowing for non-monetary compensation (e.g., land access, cultural preservation measures) when Indigenous communities seek remedies.
		- Require cost apportionment applications to explicitly address disproportionate impacts on Indigenous communities, such as:
		  o Environmental degradation.
		  o Loss of access to traditional territories or resources.
		  o Cultural and spiritual disruptions.
		- Introduce steps for post-agreement monitoring to ensure companies fulfill compensation agreements, including financial, environmental, or other commitments.

		- Include a step where the CER provides education and training for Indigenous communities on navigating cost apportionment and compensation processes. - Require the CER to publicly report on how compensation and cost apportionment decisions address Indigenous concerns, rights, and reconciliation objectives.
	3) *Do you have feedback regarding how the Rules could incorporate process steps for providing and protecting Indigenous knowledge within hearings?*	- Yes, we recommend the following below: - Include a specific provision in the Rules recognizing that Indigenous Knowledge be weighted equally, should it be introduced and considered within a hearing. - "Nothing about us without us." Include a step where all Indigenous Knowledge shared with parties before a hearing must seek the informed consent of participating Indigenous communities before any Knowledge is shared in hearings. - Require that companies respect and commit to the principles of Ownership, Control, Assess, and Possession ('OCAP'). Any violation of these principles shall be subject to the Compensation and Cost Apportionment process through the CER Act. - Include a specific provision in the Rules allowing an Indigenous community's data sharing policy to be adhered to within hearings. - In the absence of a community-specific data sharing policy, the Rules should provide flexible timelines for Indigenous communities to respond to an Indigenous Knowledge

		sharing request within a hearing. Funding shall be available should an Indigenous community seek legal or expert advice to share sensitive Knowledge. - Introduce steps for Indigenous Knowledge to be deleted from the record, including publicly accessible transcripts, webinars, and other media.
	4) *Would you like to see the role of the Crown Consultation Coordinator, and the nature of its participation in Commission hearings reflected in the Rules? If so, how?*	- Yes, we recommend the following below: - Include a specific provision in the Rules defining the "certain types of applications[1]" that supplement the Commission's consultation process through the Crown Consultation Coordinator ('CCC'). The definitions should not impede an Indigenous community's request to formulate a CCC beyond the Commission's assessment process. - Introduce steps for Indigenous communities to request a CCC to the Chief Executive Officer to supplement the Commission's consultation process, should project-specific concerns raised by Indigenous peoples not be adequately addressed through the Commission's assessment process. - The Rules should explicitly state that the CCC's role includes ensuring that Crown consultation complies with s. 35, aligns with UNDRIPA, TRC Calls to Action, as well as case law.

[1] https://www.cer-rec.gc.ca/en/consultation-engagement/crown-consultation/index.html#s3

		- The Rules shall clarify the CCC's role in resolving disputes arising during consultations, including:
		  o Acting as a mediator or facilitator if conflicts between Indigenous communities and project proponents emerge.
		  o Recommending additional accommodations or changes to project plans based on Indigenous feedback.
		- Introduce procedural steps requiring the CCC to report back to Indigenous communities on how their input has influenced decisions.
		- Establish provisions for the Indigenous Advisory Committee to provide independent oversight or evaluation of the CCC's performance in fulfilling Crown consultation duties.
		- Include a step where the CER provides education and training for Indigenous communities on navigating Crown consultation with the CER, especially if the CCC participates in Commission hearings and beyond. Education and training should also include instances and information for when the Commission is not the final decision maker.

	5) *Do you have other feedback related to how the Commission can align the Rules with the CER Act, including the objectives outlined in the Act's preamble,*	- Yes, we recommend the following below: - The preamble of the Act presents conflicting priorities. On one hand, the Government of Canada expresses its commitments to enhancing global competitiveness by fostering a regulatory system that ensures decisions are

	such as the commitment to Reconciliation, and the UN Declaration.	made in a predictable and timely manner. On the other hand, it commits 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, cooperation, and partnership. These commitments inherently place a timeline on achieving reconciliation within Commission proceedings. Furthermore, the Government of Canada assumes that First Nations, the Métis and the Inuit possess the internal capacity, as well as up-to-date information and Indigenous Knowledge, necessary to meet the Commission's established timelines. However, to truly fulfill the commitments outlined in the Act's preamble, the Rules must provide the Commission with mechanisms and tools that accommodate the interests and realities of First Nations, the Métis and the Inuit communities. For instance, the Commission should have the authority to require companies to move beyond consultation and actively co-develop project plans with Indigenous communities or establish procedural frameworks for joint-decision-making where appropriate. Moreover, any mechanisms and tools developed to address the interests of First Nations, the Métis and the Inuit should be clearly communicated throughout the process, specifically during early engagement, since First Nations,

		the Métis may not be fully aware of the CER's mandate and authorities regarding Indigenous-specific accommodations, compliance, and oversight. - The Rules should explicitly reference the UNDRIP principles, particularly Free, Prior and Informed Consent (FPIC) as a guiding framework in decision-making processes. - The Rules must establish a requirement for decision-makers, specifically the Commission, to explain how Indigenous rights and interests were considered and accommodates in their rulings. This includes FPIC in the final decision it makes. - The Rules must create a mandatory Indigenous Knowledge review process within the Commission's decision-making framework. - The Rules must mandate cultural competency training for all CER staff and Commissioners to ensure they understand Indigenous governance structures, the historical and ongoing impacts of energy projects, and the legal and cultural significance of Indigenous rights, using recent case law. - The Rules should mandate annual reporting on how CER processes are advancing reconciliation goals, including metrics on Indigenous participation and accommodation measures, tracking the integration of Indigenous

		Knowledge in decision-making, and public accountability for how Indigenous concerns are addressed. - The Commission should include provisions for regular review and revision of the Rules based on feedback from the Indigenous Advisory Committee to provide ongoing input into regulatory processes. - The Rules should clarify and provide pathways for Indigenous-led environmental assessments or joint-review processes, acknowledging the self-determination of First Nations, the Métis and the Inuit. - The Commission should require a company to submit an Indigenous Impact Assessment (IIA) as part of their application. The assessment should include the following key components: o Identify how the proposed project may affect Indigenous Rights and Title considerations; o Assess how the project could impact cultural and spiritual impacts; o Require proponents to integrate Indigenous knowledge in the IIA; o Evaluate potential effects on socio-economic impacts on Indigenous communities; o Outline how the proponent has incorporated feedback into project designs and mitigations strategies as well as FPIC;

		○ Analyze how the project contributes to cumulative impacts when combined with past, present and future projects; ○ Require proponents to propose mitigation and accommodation measures, such as benefit-sharing agreements, land set-asides, or investment in Indigenous-led initiatives; and, ○ Require proponents to develop an Indigenous-led monitoring and adaptive management plans that include mechanisms for Indigenous dispute resolution if commitments are not met.
	13) Do you have other feedback related to how the Commission can update the Rules to enhance competitiveness through predictable and timely processes?	- Mechanisms and tools used by the Commission used to update the Rules to enhance competitiveness must advance reconciliation with Indigenous Peoples. In *Thomas v Rio Tinto Alcon Inc*, the Supreme Court left open the ability for section 35 rightsholders to sue private parties in tort (and not just the Crown) for breaches of their Aboriginal rights. This creates additional risk for third parties (i.e., companies) seeking to advance projects that may interfere with the common law rights of 35 rightsholders. In light of this information, enhancing competitiveness means adopting, modifying or using existing mechanisms and tools that prioritize reconciliation in the Rules. For example, the Commission could incentivize companies to settle claims brought forward by

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		Indigenous peoples before authoring a project. This will help ensure that statutory authorizations do not infringe on constitutionally protected rights, reduce risks for companies, and strengthen relationships between companies, Indigenous communities, and the Crown. Moreover, by prioritizing reconciliation in "enhancing competitiveness," Canada will maintain its international reputation as a leader in UNDRIP implementation.
	17) Do you have feedback regarding what type of notice publication requirements are appropriate in a digital age and where Commission approval is necessary?	- Notices, for rightsholders, should be shared according to protocols outlined in a consultation policy. In the absence of a consultation policy, notices should be distributed via e-mail and fax. Leadership and consultation coordinators must have access to this information. - The CER must provide sufficient time for Indigenous communities to review, consult internally, and respond. A minimum of 30-60 days is preferable. Additionally, the use of follow-up notices and reminders before deadlines must be utilized to increase participation and engagement. - Notices must include visuals like maps, diagrams, or infographics to explain project details and impacts. Ideally, GIS shapefiles will also be available.
	19) Do you have other feedback on how the Commission can update the Rules to modernize practices and procedures?	- The Rules must include cultural practices and traditions in the Commission's hearing process. For instance: o The Lead Commissioner of the Commission should offer tobacco to Indigenous leaders and elders

		providing opening/closing remarks or oral interventions. ○ Hearings should allot 15 – 30 minutes for opening and closing remarks. ○ Hearings must make arrangements with building owners to allow an indoor smudging ceremony to occur before oral interventions. ○ The hearing room layout should be configured in a traditional circle, respecting that we are all on the same level. ○ Indigenous oral intervenors should be able to hold an eagle feather while speaking to the Commission. ○ Adequate speaking time must be provided to Indigenous intervenors. The use of timers or clocks should be refrained. ○ Indigenous intervenors and their team should be provided a dedicated space in the hearing room with tables and charging outlets. Refreshments should also be made available.
Other	*N/A*	- The proposed Rules aim to enhance Indigenous participation but do not go far enough in addressing financial disputes related to a company's use of Treaty lands and equity participate in projects. While the CER Act grants the Commission authority to decide on compensation and cost apportionment disputes, the

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		current approach relies heavily on voluntary dispute resolution, which often disadvantages Indigenous communities. To ensure fair and transparent outcomes, the Rules should explicitly incorporate standard process steps for these disputes and explore the establishment of an Indigenous decision-making body – such as an institution authorized under the CER Act or the CER's Indigenous Advisory Board – to oversee and adjudicate these matters.

Miigwech,

Mississaugas of Scugog Island First Nation

Consultation Department