

Mountain Cree (Smallboy Camp) CER Rules of Practice Review and Feedback

CER Engagement Questions

Discussion Questions:

1. Are there specific process steps for cost apportionment applications you would like to see made mandatory through the rules?
 - a. Consider **Activity-based** cost apportionment based on specific tasks that a First Nation, Inuit, Metis, or Traditional band may need to contribute to. Also, consider **Proponent Responsibility-based**: If a First Nation, Inuit, Metis, or Traditional band incurs expenses related to a CER-regulated project, it should be the proponent's responsibility to fund the costs associated with the project.
 - b. **CER Act SS.327** is written for landowners and companies it does not indicate recognition of Aboriginal Land Entitlement, potential amendments for recognition of Inherent and constitutionally recognized Aboriginal Rights and Title and Traditional Land entitlement for the **Determinations of Compensation. CER Act SS.327 (2) (A) to (J)** Factors do not align with the recognition of Aboriginal and Treaty rights recognized in the Constitution Act 1982 Section 35. The areas of Compensation can only be determined by the Nations they affect. Review of this portion for future consideration of amendments. This would create parallels in policy for Indigenous people that landowners and companies have.
2. Are there specific process steps for compensation applications that you would like to see made mandatory through the rules?
3. Do you have feedback regarding how the rules could incorporate process steps for providing and protecting Indigenous knowledge within hearings?

Adoption of Indigenous Data Sovereignty practices: To guide data practices, follow established frameworks for Indigenous Data Sovereignty, such as the CARE Principles or OCAP® Principles. This allows for collaboration with First Nations, respect for Indigenous knowledge, promotion of transparency, and mitigation of marginalization.

- A. Engage in meaningful consultation.
- B. Adopt ethical guides (Indigenous Data Sovereignty practices) OCAP, & CARE Principles.
- C. Support capacity building: Invest in training and resources to empower Indigenous communities to oversee their data protection of Indigenous knowledge.
- D. Advocacy for policy change: Support policies and legislation that recognize and protect Indigenous data sovereignty rights.

Indigenous Data Sovereignty is a crucial aspect of advancing Indigenous self-determination and justice. By respecting and supporting Indigenous peoples' rights to control and manage their data, equitable and ethical practices can be established that honour Indigenous Knowledge, Intellectual Property, and Cultures.

The CER's "Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions" is an excellent resource that could be utilized to co-develop Indigenous Data practices that respect and protect Indigenous knowledge during the hearing process.

4. Would you like to see the role of Crown Consultation Coordinator, and the nature of its participation in the commission hearings reflected in the rules? If so how?
 - A. The CCC's role and responsibilities in the commission hearing are difficult to provide feedback on, due to the structure of the overall practice. Through processes that may not allow for intervention unless applied for and granted by the board. As a neutral party, it is difficult to participate without being biased. Due to the fiduciary duty to Indigenous peoples of Canada. Before hearings even begin, there is a lot of preparation that needs to be taken into consideration, a large part of what the role does outside of the hearing can be included and is listed below.
 - B. Having a clear description of CCC Role: <https://www.cer-rec.gc.ca/en/consultation-engagement/crown-consultation/>
 - It is a neutral party in its interactions with proposed projects
 - Seeks to gather information on the impacts of the rights and interests of Indigenous peoples.
 - The Capacity the role has to influence & develop potential mitigations, recommendations and potential accommodation measures.
 - The CCC's duties include filing information on the commission's hearing record for consideration by the commission in its assessment and project applications.
 - The role in engaging with Indigenous communities, the proponent, and federal and provincial departments and agencies.
 - Preparation of Crown Consultation and Accommodation reports for the Minister of Natural Resources to help inform decision-making.
5. Do you have other feedback related to how the commission can align the rules with the CER Act, including the objectives outline in the Act's preamble, such as the commitment to Reconciliation, and the UN Declaration?
 - A. Acknowledgment and implementation of Truth and Reconciliation Commission call to action #57, if not already implemented, create a strategic plan to deliver training based on Intercultural competency, conflict resolution, human rights, and anti-racism. This should be developed collaboratively with the TRC, and or with a third-

party independent trainer that can deliver training on a mandatory and reoccurring basis of 3 years for all CER staff and contractors.

- B. Revisions to the rules can include the steps for early engagement that are needed for the rigorous process of a public hearing and the preparedness that is needed to engage with the commission, and companies proposing projects.

Enhance Competitiveness through predictable and timely processes.

- 6. Do you have any suggested changes to the Rules to reflect hearings pursuant to the Canada Oil and Gas Operations Act or other Legislation?
 - A. **The Canadian Oil and Gas Development Plans s. (5.1(3))** may consider the inclusion of Free Prior Informed Consent relating to the proposed plans of development. Nowhere in the section does it identify for consultation with First Nations, Inuit and Metis.
 - B. **Benefits Plan Approval s. (5.2(1))** Outlines how the proponent may give opportunities to Canadians in the following areas: employment, the use of Canadian Manufacturers, consultants, contractors, and service companies through a competitive basis. This section does not outline any potential benefits to First Nations, Inuit and Metis in the areas of the following: employment, the utilization of Indigenous Manufacturers, Indigenous Consultants, Indigenous Contractors, and Indigenous service companies. Creating a requirement for Indigenous procurement percentages increases the engagement of Indigenous businesses in the mainstream economy. Creating space for Indigenous Business development and allowing for more revenue generations for First Nation, Inuit and Metis wanting to pursue these opportunities that may be outlined in a benefits plan. Rigour must be practiced when vetting Indigenous businesses for the authenticity of Indigenous ownership.
 - C. **Affirmative Action Programs s.(5.2(3))** May consider provisions including for the training to employment of local community members, First Nations members, Inuit and Metis within the described area in the development plan.

- 7. Do you have feedback with regards to any timelines set in the rules, additional timelines you would like to see added to the Rules, or the approach for computation of time (Rules, s. 5-7)?
 - **(Rules, s.9(8))** there is no clarification as to what a reasonable amount of time is in regarding filing documents electronically with the board.

- 8. Do you have feedback related to the notice of motion process or suggested changes to support efficiency? Do you have feedback on the use of oral notice of motion processes to support efficiency?

The process of a Notice of Motion serves the purpose of addressing issues that may arise, and to seek resolutions. The potential use of an oral notice of motions is outside of the procedural order in **(Rules, s.35 (1-7))** which in **(Rules s.35(6))** it addresses the fact oral motions will be disposed of by the board in procedures the board directs. Furthermore, the use of oral motions creates space for Indigenous peoples to voice their concerns through traditional methods of orally passing information on, this can be supported by the CCC to write the motion and what has been said. To formally deliver the motion to the correct channels after the oral motion.

9. Do you have feedback on the current process for fixing costs related to detailed route hearings?
10. Are there processes that you would like to see written into the Rules?
 - A. Consideration for integration of **Canadian Energy Regulator Act (s.56-59)** into the rules of practice with discretion and guidance from First Nations.
11. Do you have feedback regarding the changes that could be made to the information request process to clarify its uses and support efficiency?
12. Can you identify rules of other regulators or tribunals that support efficiency that could inform the commission's Review?
13. Do you have other feedback related to how the commission can update the rules to enhance competitiveness through predictable and timely processes?
14. Do you have feedback regarding the modernization of requirements to allow for electronic filing and service in most instances?

Electronic Filing creates accessibility to filing files from anywhere, with current events such as the CUPW postal strike continuing. This restricts the ability of to file documents through mail. Security of the Data is one of the underlying issues that may cause deep consideration of the measures of protection that will need to be in place.
15. Do you have feedback regarding the potential removal of signature requirements in certain instances (e.g., physical signatures on applications and notice of motions)?
16. Do you have feedback regarding removal of the current requirement for the company/applicant and the CER to have a hard copy of project applications on site for public inspections (Rules, S.24)?
17. Do you have feedback regarding what type of notice publication requirements are appropriate in a digital age and where commission approval is necessary?

18. Do you have feedback related to how the Rules could better support accessibility to and throughout commission processes?
19. Do you have other feedback on how the Commission can update the Rules to modernize practices and procedures?