



## SAMSON CREE NATION CONSULTATION

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MEMORANDUM

**To:** Commission of the Canada Energy Regulator

**Re:** Samson Cree Nation's Comments on the Discussion Paper (Sept 2024)

**Date:** January 31, 2025

### I. Background and Context

Samson Cree Nation is pleased to submit comments on the Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper (“Discussion Paper”). As you may know, Samson Cree and the Canada Energy Regulator have partnered on enhancing collaboration, specifically as it relates to activities performed by the Organization of the Regulator. Samson Cree is incredibly excited about embarking on this journey with the Crown Consultation Coordinator and CER Leadership, and demonstrating to the public that the CER is making change in a manner that is both measurable and productive. It is in this context that Samson Cree submits these comments on the Discussion Paper. Samson Cree understands that the National Energy Board Rules of Practice and Procedure, 1995 (the “Rules”) set out the mechanisms for complaints, the conduct of public hearings, and the manner in which applications are to be assessed by the Commission. The Commission is seeking to align the Rules with the Canadian Energy Regulator Act (“CER Act”), which came into force in 2019. Samson Cree supports this work and encourages the Commission to be persistent in its efforts to align the Rules with the legislative intent of the CER Act, namely as it relates to First Nations jurisdiction and authority, as further described below.

Additionally, Samson Cree understands that the Commission is currently in Phase 1 of the government's engagement strategy, which has four total phases (Phase 1: Early Engagement (Fall 2024); Phase 2: Summary Report for Publication and Comment (Winter 2025); Phase 3: Draft Regulation Published in the Gazette (Fall 2025); Phase 4: Final Regulation passed (Winter 2025/2026). Samson Cree looks forward to continue working with the Commission during these additional phases of work, as and when appropriate. enhance collaboration, create process efficiencies, to the extent possible, and providing greater clarity to Samson Cree, the CER and proponents. Samson Cree understands that the CER is explicitly mandated to achieve reconciliation, implement the United Nations Declaration on the Rights of Indigenous Peoples (the “UN Declaration”), and enter into agreements with First Nations to maximize cooperation, coordination, and in the interim, collaboration. Samson Cree submits that changes to the Rules will need to be able to adapt to the CER entering into these sorts of arrangements

## **II. Three Regulatory Objectives**

The Commission's Discussion Paper identified three broad regulatory objectives for this review. Samson Cree understands that these include aligning the Rules with the CER Act, enhancing competitiveness through predictable and timely processes, and modernizing practices and procedures. Each objective is commented on below.

### ***A. Amending the Rules to align with the CER Act***

As you know, Samson Cree has participated in numerous NEB/CER hearings. From Samson Cree's perspective and experience, the implementation of the CER Act is now well underway and Samson Cree has already seen a significant amount of change from the Regulator. That said, the Rules need to be updated to (1) codify unwritten practices that can facilitate greater First Nations access and participation in CER Processes, and (2) align with the CER Act. These are gaps that Samson Cree believes need to be prioritized. One of the biggest changes to the federal NEB framework was the recognition of the important relationship and role that First Nations have vis-à-vis the Regulator and CER processes. As mentioned above, Samson Cree and the CER are working together to build a long-term relationship and on aligning Samson Cree and CER processes to under the CER Act. Ideally, these arrangements could evolve further by touching upon the Commission's processes too either indirectly or directly.

As stated in the Discussion Paper, the Commission is exploring ways to amend the Rules to align with the CER Act to ensure that the Rules are aligned with the Act's objectives and vision statements (i.e. recitals) vis-à-vis (1) achieving Reconciliation, (2) implementing UN Declaration, (3) making decisions based on Indigenous knowledge, and (4) clarifying Crown consultations. Samson Cree comments on the matters are as follows.

### ***B. Advancing Reconciliation, the UN Declaration, SCN Knowledge and Crown Consultations***

Samson Cree understands that the CER is on a path of advancing reconciliation. It is transforming the way it works with Indigenous Peoples, with a commitment to implementing the UN Declaration as a framework for reconciliation. Samson Cree understands that the CER has made reconciliation a Strategic Priority within its 2024-2027 Strategic Plan. Samson Cree submits that the Commission should build off of this work including the CER's Statement on Reconciliation and consider how it can transform the relationship between Samson Cree and the Commission, guided by the UN Declaration, the Calls To Action of the Truth and Reconciliation Commission, and the Principles respecting the Government of Canada's relationship with Indigenous Peoples. One of the principles of reconciliation that Samson Cree believes in is the power of harmonizing Samson Cree knowledge into CER decision-making processes, including those relating to the Rules, is absolutely critical for achieving reconciliation. Samson Cree is currently finalizing its SCN Knowledge Protocols and would like to extend the opportunity for the Commission to learn more about these with Samson Cree in the context of the Rules and changes that are contemplated in the Discussion Paper. One challenge that Samson Cree is currently experiencing with CER initiatives is ensuring that proper and adequate support is in place to support our efforts to help the CER advance this important work from a rights-holder perspective. This Phase I process and the grant of \$6,000 is limiting in the amount of engagement SCN may invest into this initiative. Samson Cree is a small organization, as compared to the CER, and resources (both human and financial) are not limitless. That said, Samson Cree is invested in building a long-term relationship with CER and has not let cost offsetting concerns from contributing to CER-led initiatives. Based on Samson Cree's experience, we know that the Rules and the Commission's decisions throughout hearing processes play an important role in advancing or impairing reconciliation. Over the

years, Samson Cree has brought forward a number of motions that required the Commission to make a decision on and balance various interests such as protecting Indigenous rights and the environment and ensuring that there is procedural fairness. Generally, these motions relate to the follow:

- Requests For More Full And Adequate Disclosure Of Information By The Proponent, Including Earlier On And Without The Need For Multiple Motions Brought By First Nations In Order To Compel Information Production;
- Requests For Time Extensions In Order To Provide Comments And To Have Adequate Time To Review, In Order To Have Meaningful Consultation (Generally Timelines Seen As Insufficient For Adequate Consultation);
- Concerns Over The Use And Protection Of Oral Traditional Evidence & Knowledge In CER Proceedings; And
- Requests For Ways To Ensure The Meaningful Participation Of Indigenous Groups (E.G. Considering Funding, Location Of Hearings, Time Of Year, How Oral Traditional Evidence Is Provided To The CER).

Samson Cree encourages the Commission to ensure that the Rules are up to date with the evolving legal standards set by Canadian courts relating to reconciliation. In particular, in performing powers, duties and functions under the Rules, Samson Cree would like clarity around how the Commission's decision or action either advances or impairs reconciliation between the Crown and Samson Cree. Samson Cree understands that this exercise is a constitutionally-required consideration. The Rules also need to clarify how consultations are carried out throughout the life cycle of a project, including how the Commission will treat agreements that the CER enter pursuant to Section 76 and 77 of the CER Act.

### **C. Enhancing Competitiveness**

As mentioned above, Samson Cree's resources (human and financial) need to go through a process or prioritization. One of the many reasons for pursuing a long-term relationship with the CER is to establish process efficiencies, so that Samson Cree can focus on Nation priorities. Samson Cree believes that one additional pathway for enhancing competitiveness is by supporting, at the Commission level, collaboration mechanisms that Samson Cree and CER have invested a tremendous amount of work on. Samson Cree is open to exploring these discussions and nuances with the Commission, as and when appropriate.

### **III. Conclusion**

The Commission's work on Phase I is laudable. Although Samson Cree can acknowledge that change takes time, it respectfully encourages the Commission to consistently and persistently work on achieving the objectives relating to reconciliation and the UN Declaration.

If you have any questions on these comments, Samson Cree would be happy to meet with the Commission to discuss.

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