



## **INTERIM Protocol for Interactions Related to Project-specific Crown Consultation**

### **Purpose**

The purpose of this Protocol is to protect the independence and fairness of the Commission of the Canada Energy Regulator's (**CER**) adjudicative processes in light of the CER's Crown Consultation responsibilities.

### **Scope**

This Protocol outlines the principles for interactions among staff, management, and Commissioners involved in project-specific adjudication or Crown Consultation activities. The Protocol applies from the point an application is filed with the CER until a decision or recommendation is issued by the Commission.

All CER staff are bound by general obligations relating to confidentiality, adjudicative independence, and fairness as outlined in the [CER Employee Code of Conduct](#). This Protocol contains specific requirements with respect to Crown Consultation activities undertaken by CER staff in support of adjudicative applications before the Commission.

The Commission has responsibility for a number of adjudicative functions and as part of the CER's normal internal working activities there will be regular interaction and communication between Commissioners, management, and staff throughout the CER. Nothing in this Protocol takes away from the ability for all management, staff, and Commissioners to interact and communicate, subject to the constraints set out in this document.

### **Accountability**

The Chief Executive Officer (**CEO**) is accountable for this interactions Protocol and will be supported in its implementation by the Secretary of the Commission, General Counsel, and Executive Vice President (**EVP**) Transparency and Strategic Engagement.

### **Roles and Responsibilities**

Building meaningful relationships with Indigenous peoples, advancing Reconciliation, and upholding the honour of the Crown is an obligation shared by all of the CER, including the Commission. Specific roles related to this Protocol are described below.

#### Commission

Adjudicative decisions and recommendations made by the Commission must be made independently and on the basis of a transparent record and a fair process.

The Commission must consider the adverse effects of any decision or recommendation on the rights of Indigenous peoples and determine whether Crown Consultation with Indigenous peoples and associated accommodation has been adequate for the purpose of its decision or recommendation.

### Staff Project Working Group

A group of CER staff, with multidisciplinary expertise form a Project Working Group (**PWG**) that supports the Commission in carrying out its duties and functions. Staff are typically from the Energy Adjudication, Field Operations, Energy Information, the Office of the Secretary, and Legal Services Business Units.

### Crown Consultation Team and Crown Consultation Working Group

As an agent of the Crown and Crown Consultation coordinator, the CER has a responsibility to implement and coordinate Crown Consultation activities associated with Commission decisions and recommendations. While the Commission's adjudicative process is the key component of Crown Consultation, in appropriate circumstances CER staff may undertake supportive and complementary Crown Consultation and coordination activities, including communicating the nature and outcome of those activities on the record of Commission proceedings.

The Crown Consultation Team (**CC Team**) within the Indigenous Relations and Reconciliation Business Unit is a team that is responsible for the overall carrying out of supporting Crown Consultation activities with Indigenous peoples. When a specific application requires supporting Crown Consultation, a Crown Consultation Working Group (**CC Working Group**) will be assembled to lead supporting consultation activities. The CC Working Group reports to the Director of the CC Team. The CC Team will include subject matter experts from other business units including Legal Services. Typically, at least one staff person from the CC Team will be assigned to lead the CC Working Group. The CC Working Group will coordinate with other government departments and communicate directly with the proponent relating to the Application. Once Crown Consultation is complete for the application, the CC Working Group will be dis-assembled. The Vice-President of Indigenous Relations and Reconciliation, EVP Transparency and Strategic Engagement, and CEO are accountable for the implementation of the CER's Crown Consultation activities.

### **Interactions Protocol**

#### CC Working Group:

- All project-specific concerns raised by Indigenous peoples to the CC Working Group or other CER staff regarding project impacts are only to be shared with the Panel via information filed on the record.
- Comments regarding proposed hearing steps or processes, including the timing of such steps, should also be filed on the record. One limited exception being the internal coordination regarding the timing of project information sent to Indigenous peoples. This supports the consistency of information received and avoids duplication.
- The CC Working Group will not liaise with assigned Commissioners in respect of the application or application assessment process, other than through filings on the record.
- Individual staff that are part of the CC Working Group may have other CER functions. Such staff may carry out those functions, including communications with Commissioners or the CER generally, on topics unrelated to the specific hearing to which the CC Working Group is assigned.
- The CC Working Group will not liaise with assigned PWG staff in respect of the application or application assessment process, other than with the Process Advisor in respect of the coordination of Indigenous protocols or ceremony or process questions.

- The CC Working Group will include staff who are authorized to undertake or approve CC documentation for a particular application, along with any assigned LSU staff.
- The CC Working Group are not part of the PWG for the Project and will not be on PWG distribution lists.
- The CC Working Group does not review, advise or otherwise have input into the PWG assessment, or provide advice to or answer questions from the PWG relating to the merits of the Project.
- The CC Working Group is responsible for preparing and maintaining project-specific Crown Consultation documentation. This information must be access controlled, and not accessible by PWG staff and Commissioners. The CC Working Group cannot access PWG or Commissioner documentation relating to the application.
- The CC Working Group's presence at any in-person hearing events will be akin to members of the public or hearing participants and they will not privately interact with the Panel, in the manner the PWG can.
- Members of the PWG and CC Working Group who attend workshops or oral portions of the hearing should remain physically/visually separated from each other where possible.
- The CC Working Group will be bound by the Commission's hearing process including deadlines and may request changes or extensions relating to its work if needed by filing a request on the record. The CC Working Group's submissions will reflect that:
  - It is a part of the CER yet operates separately from the independent Commission;
  - It is a unique participant in Commission processes fulfilling a unique/specific purpose to support the Commission process; and
  - Unless there are unique circumstances, the CC Working Group takes no position on the merits of the application before the Commission, or on any other requests for relief except those that impact its participation or ability to carry out its work. The information that the CC Working Group provides to the Commission is focused solely on the CER's responsibilities with respect to Crown Consultation. Should a specific Indigenous community take a position for or against an application, the CC Working Group may pass on that position to the Commission on the hearing record.

PWG:

The PWG, including hearing managers, process advisors, and hearing counsel, is responsible for supporting the Panel's assessment of the application and providing technical and legal advice to the Panel. The CC Working Group is not part of the PWG. The PWG should not provide advice to or answer questions from the CC Working Group relating to the project, with certain exceptions for process advisors noted below or to coordinate the timing for process information to be sent to Indigenous peoples.

- Members of the PWG and CC Working Group who attend workshops or oral portions of the hearing should remain physically/visually separated from each other where possible.
- No PWG members will be on a CC Working Group for the same application.

Commissioners (Panel):

The Panel is an independent adjudicative decision maker. In some cases, the Panel will make recommendations to Governor in Council. The Panel will see the results of the CC Working

Group's activities via information filed on the record. Commissioners who have been assigned as the Panel on a project do not interact off the record with the CC Working Group on matters related to that application, including at any workshops or oral portions of the hearing. Any interaction that may occur between the Panel and the CC Working Group on matters related to the assigned application should occur on the public record.

- The Panel controls its process and may issue procedural directions that include timelines for Crown Consultation information being filed.
- The Panel does not approve or provide input into documentation prepared by CC staff. The Panel may assess the weight or relevance of such documentation as part of its rulings, recommendations or decisions.
- Subject to limitations outlined in this Protocol, all Commissioners may communicate and interact with individual members of the CC Working Group, staff and management or technical leaders as part of their overall CER responsibilities. However, specific applications should not be discussed by assigned Panel members with the CC Working Group for the application.

#### Process Advisor:

The CC Working Group should work closely with the process advisor to ensure the consistency of information provided to external hearing participants.

- Given the process advisor is part of the PWG, the process advisor should ensure that all conversations with the CC Working Group are process related only. Process discussion should be focused only on the process that has been publicly set out and should be consistent with conversations with any third-party participant. Any decisions about future processes are up to the Panel and may include consideration of comments about process received on the hearing record.
- The CC Working Group should also work with the process advisor to ensure that any relevant protocol or cultural information from Indigenous communities is gathered in advance of the oral portion of the hearing.

#### CER Management:

In this document, CER Management means Directors, Vice Presidents, Professional Leaders, EVPs and the CEO. It also includes Technical Leaders and the Secretary of the Commission.

Individuals in CER Management may provide substantive input, advice or direction to either the CC Working Group or the PWG / Panel. This is subject to the Panel being the decision maker for Panel decision points. If CER Management provides substantive input to the CC Working Group, they should not provide substantive input to the PWG / Panel and vice versa. It is expected, however, that CER Management will have briefing and information from a variety of sources within the CER and external to the CER. The Protocol does not limit this normal interaction and management exchange of information, nor would such a limitation be appropriate.

#### Grants and Contributions (G&C):

The CC Working Group should work closely with G&C staff to ensure that they have the most up to date information about the G&C, including amounts available, deadlines for signing agreements, submitting claims, etc. Since PFP staff operate independently from the Commission and do not interact with Panels, the CC Working Group is not precluded from interacting with G&C Staff.