



June 27, 2023

VIA EMAIL

Mark Ings
Acting Executive Director
Nunavut Impact Review Board
29 Mitik Street
PO BOX 1360
CAMBRIDGE BAY, NU X0B 0C0

Dear Mark Ings:

Comments and Recommendations on Nunavut Impact Review Board's Draft Rules of Procedure

Thank you for providing the opportunity to comment on the above-noted document. The Government of the Northwest Territories (GNWT) has reviewed the Nunavut Impact Review Board's (NIRB) draft Rules of Procedure and has provided its comments and recommendations in the requested table format.

All GNWT departments with interests related to NIRB were provided with the opportunity to review the draft Rules of Procedure. Comments and recommendations were provided by the GNWT Departments of Environment and Climate Change; Finance; Executive and Indigenous Affairs; Industry, Tourism and Investment; Education, Culture and Employment; Justice; and Health and Social Services.

Should the NIRB or any reviewers have questions about this submission, please contact Alison Heslep, Manager, Project Assessment Branch, by email at alison_heslep@gov.nt.ca or by phone at 867-767-9180, ext. 24021.

Sincerely,

Lorraine Seale
Director
Impact Assessment and Security Management
Department of Environment and Climate
Change

Attachment

Comment Number:	Subject:	Reference:	Priority:	Background/Rationale:	Recommendation to Address Issues:
Each specific comment, revision, or recommendation should be numbered to allow for effective cross-referencing of the submission	Identify the general subject or topic associated with the comment, revision, or recommendation (e.g., 'Filing of Motions').	Provide a clear reference to the applicable document, section, and/or page number where the text associated with comment, revision or recommendation may be found.	Identify the relative importance of the comment, revision, or recommendation to you/your organization/agency.	Provide background information and any rationale supporting the comment, revision, or recommendation.	If possible, provide recommendations regarding the best means of addressing the issue(s) identified, including, but not limited to, providing suggested changes to the text of the draft, identifying additions or deletions required, and discussing whether the NIRB should address the issue(s) outside the current draft document.
1	Definitions	Definition of "Community Representatives"	High	This is not a good term to use to describe a representative of an Indigenous government that is based outside of Nunavut. Any such representative is representing their Indigenous government rather than their community.	Delete the reference to "outside Nunavut" and add a reference to "within Nunavut" after "Community Representatives" in the definition of this term. The definition of "Intervenor" suffices to capture any representative of an Indigenous government based outside of Nunavut.

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2	Definitions	Definition of "Intervenor"	High	As Authorizing Agencies and Designated Inuit Organizations are automatically Intervenors and don't need to apply, the definition should indicate that this term refers to them, among potential others, rather than that the term may refer to them.	After the reference to "the term" at the start of the second sentence of this definition, add "...refers to Authorizing Agencies and Designated Inuit Organizations..." and delete the subsequent reference to "Authorizing Agencies."
3	Definitions	Definition of "Party"	High	The only references to what "Party" means should be the Proponent and Intervenors. Every other entity currently listed is automatically an Intervenor or would have to be granted Intervenor status to be able to participate. A member of the public just providing a comment, who	Recommend changing the definition of "Party" to read as follows: "Means the Proponent and Intervenors in the Board's assessment of a project proposal or other Board Proceedings."

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				does not request and obtain Intervenor status, should not be regarded as a "Party."	
4	Public Registry	Rule 22	Moderate	This rule seems unnecessary as the posting of any document on the registry should always constitute notice of that document.	Delete this rule or better clarify why it is needed.
5	Board Orders	Rule 31(d)	Moderate	This rule should also refer to, if applicable in the given context, the process and extent of coordination with a body in an adjacent jurisdiction that carries out environmental impact assessment.	Add a reference to, if applicable in the given context, the process and extent of coordination with a body in an adjacent jurisdiction that carries out environmental impact assessment.

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6	Interpretation and Application of Rules in Respect of Proceedings	Rule 33(b)	Moderate	There should also be a reference to the tradition of oral communications and decision-making by other Indigenous peoples where one or more other Indigenous peoples are involved.	Add the following to the end of (b): "...and, where applicable, that of other Indigenous peoples."
7	Relevance, Materiality, and Weight of Information	Rule 40	Low	There is a typo in the final sentence with two consecutive references to "in."	Delete one of the references to "in."
8	Relevance, Materiality and Weight of Information	No. 40, page 21	minor	Document states: "To assess whether information, Documents or evidence are "relevant," the Board will consider whether the proposed material tends to prove or disprove a fact in issue in in respect of a specific assessment or Proceeding."	Suggest changing the terminology to support or refute instead of prove or disprove.

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				In general, facts are not proven or disproved, but evidence is provided to support or refute them.	
9	Relevance, Materiality, and Weight of Information	Rule 42	Moderate	It seems inappropriate for NIRB to have this level of discretion to not even include material and relevant evidence and Documents on the public registry. Further, it's very difficult to foresee how any evidence or Document that is material and relevant under Rule 40 could conceivably be outweighed by the factors in (a)-(c). It's highly likely that	Consider limiting this rule to (d) (redundant and repetitious nature of the materials).

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				anything that would fall under (a)-(c) would be frivolous or vexatious, so would have no potential to be determined to be material and relevant under Rule 40.	
10	Motions	Rules 46(e) and 48(d)	High	There is no indication that a statement of the law must be provided as part of a motion or response to a motion if the motion deals with an issue of law or mixed fact and law.	Add the following after the reference to "facts:" "... and, if applicable, the law...."

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11	Motions	Rule 47	Moderate	The deadline for Parties to respond to a motion should be based upon when the motion is posted on the public registry, not when each Party receives the motion. The dates of receipt will differ, NIRB won't know if the motion is received unless it requires an acknowledgement to be received upon a recipient opening the e-mail, and the deadline for recipients will therefore differ.	Replace "the Parties' receipt of the motion" with "posting on the public registry."
12	Transcripts	Rule 53	High	A written transcript of the oral component of a public hearing should be required, as there are various reasons a transcript is legally essential. A written transcript should also	Specify that a written transcript will be prepared of the oral component of a public hearing (and technical meeting).

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				probably be required for a technical meeting.	
13	Notice of Proceedings	Rule 60	Moderate	The reference to "...being held in a potentially affected community..." could be misinterpreted as suggesting that physical notice needs to be provided in the potentially affected community or communities where the Public Hearing or other Proceeding is being held.	Delete "...being held in a potentially affected community..." The requirement in (b) that the place of the Proceeding be specified in the notice makes the key point in a way that is much clearer and has no potential to be misinterpreted.
14	Board Retention of Experts	Rule 72	Moderate	Procedural fairness will almost always require that Parties have an opportunity to provide written submissions in response to any	Consider reframing this section to clarify that Parties will typically be given the opportunity to provide written submissions in response to the expert's written submissions and/or

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				written submissions of an expert retained by NIRB and/or the opportunity to ask oral questions.	the opportunity to ask oral questions.
15	Adjournments	Rule 80	Low	A comma should be added after "45-51."	Add a comma after "45-51."
16	Funding of Participants in Proceedings	Rule 84	Low	A comma should be added after "85."	Add a comma after "85."
17	Pre-Hearing Conference	Rule 105(a)	Moderate	If there is any deficiency in the information provided by the Proponent, only the Proponent can be required to address that deficiency. If that information can only be obtained from another party, the Proponent is still responsible for obtaining and providing that information.	Delete the following: "...or parties participating in the Board's assessment of the project proposal..."

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18	Pre-Hearing Conference	Rules 108-112	Moderate	As Community Roundtable Session is not a defined term, it should not be capitalized.	Uncapitalize community roundtable session. Add "session" after "community roundtable" in Rule 108 and Rule 112.
19	Pre-Hearing Conference	Rule 111	High	It is not clear whether representatives from Indigenous governments outside of Nunavut may be invited to participate in a Community Roundtable Session. This should be specified.	If representatives from outside of Nunavut may be invited, add the following after the second reference to "Community Roundtable Session": "...and, if applicable, representatives of Indigenous governments based outside of Nunavut..." and edit 111(c), 112, 113(e), and 118(l) appropriately. If representatives from outside of Nunavut will not be invited to any Community Roundtable Session, make a clear statement to that effect.
20	Public Hearings Conducted in Communities	Rule 113(e) and 114	Moderate	The reference to "other parties" should be replaced with a reference to the defined term "Intervenors."	Replace "other parties" with "Intervenors."
21	Public Hearings Conducted in Communities	Rule 118(d)	Moderate	Capitalize "Parties" as the defined term is appropriate to use here.	Capitalize "Parties."

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22	Public Hearings Conducted in Communities	Rule 118(h)	Moderate	Replace "parties" with the defined term "Intervenors."	Replace "parties" with "Intervenors."
23	Public Hearings Conducted in Communities	Rule 118(i) and (j)	Moderate	Delete all references to "Authorizing Agencies and" as Authorizing Agencies are Intervenors.	Delete all references to "Authorizing Agencies and."
24	Project Certificate Workshop	Rule 138	Moderate	All text in the second sentence after "Authorizing Agencies" should be deleted as the subsequent text is apparent from the definition of "Authorizing Agencies."	Delete all text in the second sentence after "Authorizing Agencies."
25	Project Certificate Workshop	Rule 138	Moderate	The reference to "Parties" in the final sentence of this rule is problematic as the indication earlier in this rule is that only the Proponent and Authorizing Agencies will be invited to the	Depending on what is intended, replace "Parties" with "Proponent and Authorizing Agencies" or broaden the previous references in this rule to "Parties."

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				Project Certificate Workshop.	