

Clean Electricity Regulations Policy Review Manitoba Métis Federation

February 23, 2024



1.0 Introduction

Canada's Clean Energy Regulations, introduced in 2023, establish a performance standard of an annual basis emission performance standard of 30 tonnes for fossil-fuel generated electricity starting on January 1, 2035, with some exceptions, notably for natural gas and liquid fuel generation. The regulations are intended to achieve emission reductions in line with a net-zero economy, these regulations are applicable to electricity generating units:

- With a capacity of 25 MW or greater,
- That use any amount of fossil fuels to generate electricity, and
- Are net-exporters to the North American Electric Reliability Corporation (NERC) regulated electricity system.

The regulations build on Canada's existing frameworks for emissions regulation, designed to influence progress toward low-carbon electricity generation, while ensuring reliability of service, and allowing ongoing fossil fuel generation within regulated thresholds without imposing limits on developments. The regulation makes exceptions for units less than 25MW or to units not connected to the broader NERC grid, to accommodate the technical challenges of a major energy transition by Indigenous, rural, and remote communities. The Government of Canada has committed \$520 million to support clean energy initiatives in communities within these categories.

The MMF, in advancing the goals of the Red River Métis, views Canada's Clean Energy Regulations as important in reducing Canada's contribution to climate change. Limiting climate change, improving air quality, and mitigating other adverse impacts of fossil fuels, are crucial for Red River Métis Citizens' health and safety, and continued ability to exercise rights and practice culture. While we support the regulations in principle, we have several concerns. It will be crucial that Canada ensure the reliability and affordability of electricity to our Citizens to avoid disproportionate barriers to access affordable and sustainable energy in Métis households. However, we recognize that the endurance of our way of life is shaped by the successful transition away from fossil fuels. The Government of Canada must ensure that investments in both clean technology research and development, and Indigenous-led and partnered projects, which have clear and defined opportunities for the Red River Métis, are adequate and substantial enough for Canada to meet its commitments both to Indigenous Peoples and inter-governmental agreements. The MMF is concerned that the \$520 million dollars committed to Indigenous, rural and remote communities is insufficient to meet these requirements, nor does it invite the active participation of the Red River Métis as enthusiastic partners in the energy transition.

The MMF looks forward to meaningfully partnering with government and industry in the clean energy transition, both in terms of the installation and retrofitting of upgrades to existing covered units,



remediation of deprecated sites, partnering in clean electricity development. The MMF anticipates the further roll-out of additional programming for opportunities for involvement, in these aspects and in the decision-making processes involved in all projects of interest to our Citizens throughout the National Homeland of the Red River Métis, to ensure that decision-makers, developers and contractors understand impacts of actions and decisions on our rights, the lands and waters of the National Homeland and our way of life.

1.1 Project Overview

Following the release of the *Clean Energy Regulations* (CER), the Manitoba Métis Federation (MMF) has reviewed the CER, *Technical Backgrounder*, and *Technical Briefing Webinar* and offers comments and recommendations aimed at improving both the regulations and implementation.

In our review, which was completed with support from Shared Value Solutions (SVS), we focused on examining the impacts of the CER on the rights, interests, and values of the Red River Métis. Fundamentally, we support the development and implementation of measures to encourage the reduction of GHG emissions by all and support the use of robust and innovative tools to achieve the broad goals of minimizing Canada’s GHG emissions to mitigate the impacts of climate change.

To focus our review, we examined the protocol from the following perspectives:

- Jurisdictional Challenges in Supporting Canada’s Clean Energy Regulations
- Opportunities for Nation-to-Nation Collaboration and Potential for Impacts on Rights
- Indigenous, Rural, and Remote Communities
- Shortcomings Regarding Decarbonisation

In each of the three cases, we see a significant opportunity for the MMF to work with Canada and other partners in supporting the delivery of the CER, such that Canada can better achieve its GHG emission reduction targets while minimizing the potential cost or burden that is placed on individuals.

2.0 Background—The Red River Métis and the MMF

2.1 The Red River Métis

The Red River Métis is an Indigenous collectivity and Aboriginal People within the meaning of section 35 of *the Constitution Act, 1982*. Based on our emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, interests, and claims throughout and beyond the Province of Manitoba.



Since 1982, Métis rights have been recognized and affirmed by section 35 and protected by section 25 of the *Constitution Act, 1982*. These rights were further confirmed and explained by the Supreme Court of Canada ("SCC") in *R. v. Powley*, 2003 SCC 43. Manitoba Courts also have recognized Red River Métis rights in *R. v. Goodon*, 2008 MBPC 59. These decisions have affirmed that the Métis hold existing Aboriginal rights throughout their traditional territories. Our Citizens and harvesters, rely on and use the lands, waters, and resources of our traditional territory throughout the Province of Manitoba and elsewhere within the historic Northwest, including in and around the area of the Project, to exercise their constitutionally protected rights and to maintain their distinct Red River Métis customs, traditions, and culture.

2.2 Red River Métis' Rights, Claims, and Interests

Based on its emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, claims, and interests throughout and beyond the Province of Manitoba consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination.

The MMF is mandated to promote, protect, and advance the collectively held Aboriginal rights of the Red River Métis. Through this mandate, the MMF engages with governments, industry, and others about potential impacts of projects and activities on our community. In 2007, the MMF Annual General Assembly adopted Resolution No. 8, which provides the framework for engagement, consultation, and accommodation with the Red River Métis. Designed by Métis, for Métis, Resolution No. 8 sets out the process that is to be followed by governments, industry, and other proponents when developing plans or projects that have the potential to impact the section 35 rights, claims, and interests of the Red River Métis. It was unanimously passed by MMF Citizens and mandates a "single-window" approach to consultation and engagement with the Red River Métis through the MMF Home Office.¹

In engaging the MMF, on behalf of the Red River Métis, the Resolution No. 8 Framework calls for the implementation of five phases:

- Phase I: Notice and Response;
- Phase II: Research and Capacity;

¹ More information about Resolution No. 8 is available online at: <http://www.mmfb.ca/docs/2013-Resolution%208%20Booklet-VFinal.pdf>



- Phase III: Engagement and Consultation;
- Phase IV: Partnership and Accommodation; and
- Phase V: Implementation.

This project has the potential to impact Red River Métis rights, claims, and interests and as such, engagement and consultation with the MMF, through the process set out above, must be followed. The Project is located within the traditional territory of the Red River Métis, and in the heart of our Homeland. At one time, this was the “postage stamp province” of Manitoba. This is the birthplace of the Red River Métis and where we currently have an outstanding claim flowing from the Federal Crown's failure to diligently implement the land grant provision of 1.4 million acres of land promised to the Red River Métis as a condition for bringing Manitoba into Confederation and set out in section 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.²

Red River Métis section 35 rights are distinct from First Nation’s rights and must be respected. The Manitoba Métis Federation is the National Government of the Red River Métis.

Prior to the creation of Manitoba, the Red River Métis had always exercised its inherent right of self-determination to develop its own self-government structures and institutions centered around the Red River Settlement and throughout the Northwest. As described by Louis Riel in his 1885 memoirs, Métis self-government was well-established and functioning when Canada came to the Red River Métis in the late 1800s:

When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it . . . but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.

Métis self-government has evolved and changed over time to better meet the needs of the Red River Métis. Today, the MMF is the recognized, democratically elected, self-government representative of the

² *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623 (“MMF Case”). The Supreme Court of Canada recognized that this outstanding promise represents “a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Constitution Act, 1982* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import” (para. 140).



Red River Métis and on July 6, 2021, it signed along with the Government of Canada, the Manitoba Métis Self-Government Recognition and Implementation Agreement.

Since 1967, the MMF has been authorized by the Red River Métis through a democratic governance structure at the Local, Regional, and national levels. As part of this governance structure, the MMF maintains a Registry of Red River Métis Citizens.³ By applying for Red River Métis Citizenship, individuals are confirming the MMF is their chosen and elected representative for the purposes clearly set out in its Constitution,⁴ including as related to the collective rights, claims, and interests of the Red River Métis.⁵

The MMF Constitution confirms that the MMF has been created to promote the political, social, cultural, and economic rights and interests of the Red River Métis. The MMF is authorized to represent the Red River Métis' collective rights, interests, and claims. This authorization is grounded in the MMF's democratic processes that ensures the MMF is responsible and accountable to the Red River Métis.

The MMF governance structure includes a centralized MMF President, Cabinet, Regions, and Locals. There are seven (7) Regions and approximately 135 Locals throughout Manitoba (Figure 1). There are more than three thousand Citizens who live outside of Manitoba. All MMF Citizens are Members of a Local. Locals and Regions work together to authorize and support the MMF Cabinet, and the MMF's various departments and offices. Through elections held every four years, Citizens choose and elect the MMF Cabinet consisting of the MMF President, who is the leader and spokesperson for the MMF, a Vice-President of each Region, and two Regional Executive Officers from each Region. The MMF Cabinet also includes the spokeswoman from the Infinity Women Secretariat.

³ MMF Constitution, Article III outlines the citizenship definition and application process. This definition ("Métis" is defined to mean "a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation ") aligns with the definition of what constitutes a section 35 rights-bearing Métis community as outlined by the Supreme Court of Canada in *Powley* at para. 30.

⁴ *Newfoundland and Labrador v. Labrador Métis Nation*, 2007 NLCA 75 at para 47: "Anyone becoming a member of the [Labrador Métis Nation] should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This is sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in the present case."

⁵ *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para 30: "[A]n Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s.35 rights."



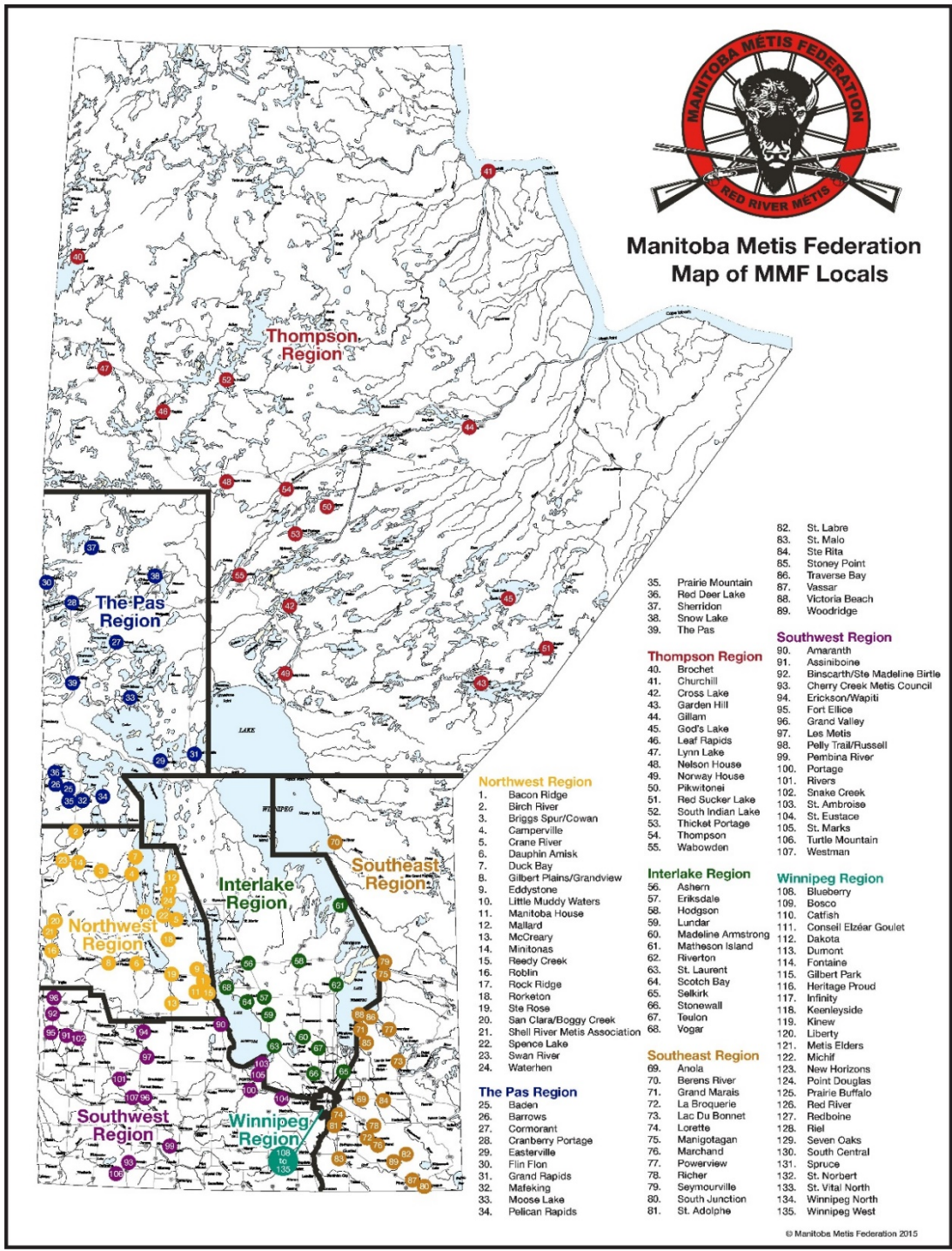


Figure 1 MMF Regions and Locals



The MMF, as the duly authorized representative of the Red River Métis, has been recognized by both the federal and provincial governments in agreements, policies, and legislation. For example, in 2002, *The Child and Family Services Authorities Act* recognized the MMF for the devolution of child and family services to MMF institutions. This Act establishes a series of Child and Family Services Authorities to administer and provide the delivery of services to various distinct Indigenous communities in Manitoba. It creates a Métis Authority, the directors of which is appointed by the MMF.

In 2008, the courts in Manitoba further recognized that "[t]he Métis community today in Manitoba is a well organized and vibrant community. Evidence was presented that the governing body of Métis people in Manitoba, the Manitoba Métis Federation, has a membership of approximately 40,000, most of which reside in southwestern Manitoba."⁶ In 2010, the Manitoba Government adopted a Manitoba Métis Policy, and stated that:

The Manitoba Métis Federation is a political representative of Métis people in Manitoba and represents in Manitoba the Métis who collectively refer to themselves as the Métis Nation. ... Recognition of the Manitoba Métis Federation as the primary representative of the Métis people is an important part of formalizing relationships.⁷

In 2012, the *MMF-Manitoba Harvesting Agreement (2012)* negotiated between the MMF and the Manitoba Government recognized some of the collective section 35 harvesting rights of the Red River Métis and relied on the Citizenship processes of the MMF as proof of belonging to a rights-holding Aboriginal community:

For the purposes of these Points of Agreement, Manitoba will recognize as Métis Rights-Holders, individuals who are residents in Manitoba and who hold a valid MMF Harvesters Card, issued according to the MMF's Laws of the Hunt. [. . . and will] consult with the MMF prior to implementing any changes to the current regulatory regime that may infringe Métis Harvesting Rights.⁸

⁶ *R. v. Goodon*, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007. .

⁷ Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Métispolicy_en.pdf

⁸ MMF-Manitoba Harvesting Points of Agreement (September 29, 2012), ss. 3, 6-7.



In 2013, the SCC recognized the "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada." It went on to grant the MMF standing as the "body representing the collective Métis interest" in the *MMF Case*.⁹

Additionally, in 2016, the *MMF-Canada Framework Agreement* stated:

the Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was "not a series of claims for individual relief" but a "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada" and went on to grant the MMF standing by concluding "[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court.

*[and that] Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.*¹⁰

On July 6, 2021, the MMF and Canada signed the Manitoba Métis Self-Government Recognition and Implementation Agreement which immediately recognized the MMF as the national government of the Red River Métis.

3.0 Jurisdictional Challenges in Supporting Canada's Clean Energy Regulations

The MMF, in advancing the goals of the Red River Métis, views Canada's *Clean Energy Regulations* as important in reducing Canada's contribution to climate change mitigation. The regulations have been designed to guide the energy market toward net-GHG emission reductions, and must be realized at a range of scales, while ensuring reliability. In Canada, the provinces are largely responsible for energy production and storage. While the Canada has taken important steps since 2016 to develop a collaborative federalist approach to climate change mitigation, several of the provinces today are highly focused on fossil fuel development and taking actions that risk undermining national emissions reductions targets.

The CER appear to be designed limit unabated fossil fuel energy generation toward an ambitious net-zero target, in the hope of 'signaling' a transition to clean electricity while remaining 'technology neutral.' However, the MMF is concerned that if concrete changes anticipated to come from the CER are

⁹ *MMF Case*, *supra* note 6 at para 44.

¹⁰ *MMF-Canada Framework Agreement on Advancing Reconciliation*, November 15, 2016, Preamble.



not expanded to limit continued development of covered units, the CER will be ineffective in reaching its larger emissions reduction goal by allowing widespread thermal generation to proceed and allowing emitters to disproportionately damage our environment and threaten the future of humanity. Sufficient technology and data are attainable to supply reliable and clean energy within enforceable and affordable limits, if Canada is willing to make adequate investment and negotiation efforts. It is crucial that Canada implement effective and meaningful relationship-building with the provinces and ensure that needs are met to facilitate a fair energy transition of fossil fuel intensive provinces, rather than the Government of Canada remaining ineffectively neutral for political purposes.

3.1 Opportunities for Nation-to-Nation Collaboration and Potential for Impacts on Rights

The MMF supports the Government of Canada's ambition to transition to a net-zero emissions electricity grid. According to the CER, Canada is investing \$520M nationally to support the needs of Indigenous, rural, and remote communities together through the *Clean Energy for Indigenous, Rural and Remote Communities* program and the *Indigenous Off-Diesel Initiative*. Limiting climate change, improving air quality, and mitigating other adverse impacts of fossil fuels, are crucial for MMF Citizens' health and safety, and continued ability to exercise rights and practice culture. Our culture and way of life are dependent on the ongoing health and integrity of natural ecosystems and the harvest of culturally-important species. The health of our Citizens depends on healthy, uncontaminated country foods harvested from the National Homeland. For this reason, the MMF requests that the Government of Canada provide sufficient support for MMF communities to actively participate and contribute to a substantial and effective energy transition, toward meeting national emissions reduction targets. This accelerated and reliable transition must include the effective and timely regulation of natural gas production and consumption, and adequate and substantial investment in reliable clean energy production to its replacement.

The MMF requests that the Government of Canada specify how they will ensure that the Red River Métis energy needs are met outside of large urban areas. Red River Métis are not geographically specific as with First Nations communities, rather our Citizens live dispersed across the National Homeland, in urban centers and smaller rural communities, from north to south. It is crucial to ensure that MMF's rights are met to the same degree as First Nations and Inuit. The MMF is concerned that the planned investment, intended to include Indigenous communities will be insufficient to support MMF communities' energy requirements. Financial and technical support ought to be provisioned equitably and sufficiently across Indigenous Nations, notwithstanding the cultural and geographical particularities of the Red River Métis.

With regards to the economic participation of the Red River Métis in the clean energy transition, the MMF is interested in partnering in government and industry led projects within our territory. We look forward to participating in meaningful shared-decision making from the early planning stages



throughout the lifecycle of proposed projects of interest to our members and leadership. The MMF prioritises the economic prosperity and environmental wellbeing of our communities, and we look forward to partnering with those who wish to develop on our land.

3.2 Indigenous, Rural, and Remote Communities

The CER specifies that electricity generating units in remote communities are exempt from the regulations, in recognition of technical challenges to transitioning to clean energy in remote locations and plans to invest \$520M as described above (s.3.1). The MMF supports the Government of Canada's strategy in principle, however, we are concerned that this amount of funding will be insufficient to meet the investment needs across the country's vast rural and remote areas, and the thousands of communities that fall within these categories. Adequate and substantial investment in the energy transition in Indigenous, remote, and rural communities will be necessary to successfully achieve Canada's ambitious national GHG emissions reduction targets. These contributions and required efforts and investments must not be underestimated to ensure a safe and healthy future.

Given the dispersed nature of Red River Métis Citizens the National Homeland, the MMF requests that the Canada clarify what is meant by "rural and remote communities" to qualify for exemption, beyond not being connected to NERC-regulated electricity system. Approximately 40% of Manitoba's population lives across 98 expansive rural municipalities, demographics which are shared throughout the entire National Homeland of the Red River Metis. It is unclear at this time which communities will be exempt from the CER, and which will be required to comply with the regulations.

Conversely, and in continued consideration of the National Homeland's geographic extent, large cities are major consumers of energy and appear to be the focus of the regulations, which exempt rural and remote areas. As cities become increasingly electrified, moving away from fossil fuel intensive energy and transportation, electricity demands will increase significantly. There is a risk of electricity shortages during times of peak demand, particularly in areas required to comply with the regulations outside of high-consuming cities. It will be necessary to ensure that sufficient clean electricity supply is in place to adequately ensure provision to all regulated areas, to ensure the ongoing health and safety of Red River Métis Citizens.

Likewise, the MMF is concerned that, in this crucial transition to clean energy, the prices of electricity will become unmanageable for our membership's livelihoods to support. The cost of living in Canada has already increased to unsustainable levels, with Indigenous communities already being disproportionately impacted. To ensure a reasonable quality of life for Red River Métis Citizens, the Government of Canada will have to manage the energy market in such a way to ensure fair pricing for all people. Investment in Indigenous communities' energy transitions must not be limited to development and infrastructure, but to ensuring that community members are comfortable and able to afford a quality of life equal to that which all Canadians deserve. The next 10 years will be crucial in planning and



investment in systemic integration of the clean energy economy, and under all agreements to which Canada is signatory, as well as *United Nations Declaration on the Rights of Indigenous Peoples Act, 2021*, the Red River Métis, other Indigenous peoples ought to be at the fore of Canada's plans and partnerships.

3.3 Shortcomings Regarding Decarbonisation

The modelling produced in support of the CER assumes that low or non-carbon energy systems will replace fossil fuel production in the years prior to and following the implementation of the regulations. However, the Government of Canada has elected not to implement any standard in advance of 2035 to guide the energy market toward low carbon energy technologies, nor put a limit on non-emergency gas-fired electricity generation after 2035. By allowing development to continue without limit, the Canada is knowingly choosing to allow ongoing development to lock-in Canada's fossil fuel energy mix, while also allowing existing carbon storage to continue to be taken up unabated for 11 years more. Natural gas and liquid fuel generation will be phased into the standard over 20 years from existing unit's End of Prescribed Life, under a total emissions threshold during peak demand, and allowing full intensity during emergency periods.

Canada declared a climate emergency five (5) years ago already, and although the Government has modelled the proportionate energy mix that will be required to meet net-zero targets starting in another 11 years, they have chosen not to implement mechanisms to ensure this outcome, electing rather to "signal" the time for transformation of the catastrophically stubborn fossil fuel market. Currently, without an effective plan to phase out fossil fuel dependence, the regulations risk creating an opportunity for fossil fuels to continue to suppress innovation and uptake in sustainable energy science and technology, effectively limiting the attainability of a sustainable future. Canada must increase its investments in research and development into clean energy technology and energy mixes now, to ensure reliability and affordability of clean energy within an accelerated timeline.

We simply do not have another 15 years for the Government of Canada to appease natural gas producers, before phasing in effective fossil fuel abatement regulations and advanced clean energy technology. Natural gas energy production cannot be decoupled from its environmental impacts. It produces methane emissions at every stage of its extraction, production, and provision, with 80 times the potency of atmospheric CO₂. Further, natural gas extraction's hydrological impacts are notorious and threaten the Red River Métis way of life. The Red River Métis rely on the land and water for continued cultural practice, protected under s.35 of the *Constitution Act, 1982*. The continued contamination of our atmosphere, waterways, fish, and wildlife by natural gas development due to ineffectual regulation is unacceptable, and entirely within the regulator's reach. MMF requests that progressive standards implemented in advance of 2035 implementation, with a more stringent revised application starting in 2035, and a limit be placed on the proportion covered units permitted within Canada's energy mix post-implementation, and enhanced investment in sustainable technology.



4.0 Next Steps

The MMF reiterates its interest in partnering with government and industry toward the transition to a net-zero energy economy, while ensuring with due diligence that Red River Métis Citizens' energy needs are met within reasonable expense, and with respect to our Aboriginal rights. We see the implementation of the CER as a positive development and exciting opportunity for organizations, including our own, to collaborate toward an equitable, safe, and healthy future. Our people have rich knowledge and insight that will be of high value to ensuring the positive outcomes of this transition, and we anticipate full and meaningful participation in projects, research, and development undertaken within our National Homeland.

