CANADA'S OIL & NATURAL GAS PRODUCERS

June 30, 2022

Daniel Barghshoon
Environment and Emergency Management Specialist
Canada Energy Regulator
517 10 Avenue SW
Calgary, AB T2R 0A8
(via email: opr-rpt@cer-rec.gc.ca)

Re: Onshore Pipeline Regulations Review – Discussion Paper

Dear Mr. Barghshoon:

Thank you for the opportunity to comment on the *Onshore Pipeline Regulations Review Discussion Paper*. The Canadian Association of Petroleum Producers (CAPP) and our member companies generally support the current regulatory regime for onshore pipelines that fall under federal jurisdiction. At the same time, we believe several areas of the *Onshore Pipeline Regulations* (OPR) could be enhanced with respect to how upstream pipelines are regulated, including as related to the advancement of reconciliation with Canada's Indigenous peoples.

We note that the discussion paper references alignment with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) at various points. CAPP and our members see reconciliation as a priority, and we endorse the principles of UNDRIP as a framework for reconciliation. We continue to support its implementation in a manner that is consistent with the Canadian Constitution and law.

This letter highlights our central recommendations for your consideration. Detailed technical feedback on the discussion paper questions can be found in the Appendix.

Upstream pipelines differ from transmission pipelines

The OPR focuses on operators of large-diameter transmission pipelines, whose core business is the transport of oil and natural gas across large distances. The core business of the upstream operators CAPP represents is the production of oil and natural gas, not their transport from producing areas to markets. Some of our members operate pipelines regulated by the Canada Energy Regulator (CER). In most instances these are smaller-diameter short segments that straddle provincial borders in Western Canada and are contiguous on either side with provincially regulated pipelines. These

upstream pipelines, commonly referred to as "sausage-link" pipelines, are small, low-risk gathering pipelines transporting relatively small volumes across short distances from wells to facilities. The challenge upstream operators face is that the OPR regulatory standards were conceived for larger pipelines but still apply to these smaller pipes. This approach, which treats all pipelines the same way regardless of their size and purpose, increases costs disproportionately to the risk posed by various types of pipelines. Also, under the current approach such smaller pipelines systems often fall under three distinct regulatory regimes, each of which has unique requirements. CAPP is therefore of the view that regulations for these smaller transboundary pipelines should be simplified, and the regulatory process be made more efficient for both the regulated community and the regulator. *See additional feedback on this topic in our response to question 11 in the Appendix*.

Recommendation: Ensure that regulations are fit for purpose and based on risk. Exclude upstream "sausage-link" pipelines used for gathering from the CER purview. These pipelines should be assigned to provincial regulators under an equivalency agreement. This approach would allow the CER to focus attention on the transmission pipeline systems for which the OPR are intended.

Standardized approach to auditing safety and loss management systems and audit equivalency

The review of the OPR presents an opportunity to develop standardized requirements for management systems and common audit criteria that could apply across Canada to federally and provincially regulated pipeline systems. Canadian provinces with onshore oil and natural gas pipeline systems have adopted *CSA Z662 – Oil and Gas Pipeline Systems* through their respective regulations, and the OPR also incorporate this nationally accredited technical standard. Each jurisdiction, however, builds on the CSA Z662 framework with requirements that apply in the jurisdiction of that specific regulatory authority. If the CER could strengthen its reliance on CSA Z662 while working with its provincial peers through the consensus-based CSA process to ensure the content of the standard meets the respective regulatory needs, more standardized requirements for management systems could be developed.

This approach would enable the development of common audit criteria to replace the numerous divergent approaches currently in use and would create significant efficiencies. For example, an upstream company that operates under the provincial authorities of Alberta and Saskatchewan, with some assets under CER jurisdiction, may have its safety and loss management systems audited by up to three regulators, each using their own requirements. Standardizing these requirements, developing common audit criteria and recognizing audit equivalency could create significant efficiencies and cost savings for the regulated community and regulators, while achieving the same policy objectives. The Western Regulators Forum has looked at this opportunity, and we are of the

view that this initiative should continue to be pursued. *See additional feedback on this topic in our response to question 1 in the Appendix*.

Recommendation: Work toward a standardized and common approach to management systems, including audit equivalency, to replace the current diverging approaches of federal and provincial technical and safety regulatory regimes. This initiative can build on the work started by the Western Regulators Forum.

Scope of the regulations

The CER discussion paper identifies a number of areas where the CER wants to amend the OPR to add elements that are already managed well under existing Provincial and Federal policies. This includes consultation policies, oversight of heritage resources and the integration of Indigenous knowledge. Pursuing this approach, may add additional burden and red-tape risk, ultimately working against broader CER goals.

For example, we believe the oversight of heritage resources, traditional land use and Indigenous knowledge is best suited to continue under other existing regulatory processes. At the same time, we understand there is a role for CER at the operations phase to include Indigenous participation through monitoring. The CER's Indigenous Monitoring Committee is an excellent example of how Indigenous people can be meaningfully engaged in pipeline oversight, while still offering industry proponents the operational flexibility required in conducting maintenance activities. Programs such as these are effective vehicles for Indigenous engagement in development and their continued support is important.

We understand the OPR applies to the design, construction, operation and abandonment of onshore pipelines, but not to the approval process. Instead, these regulations form the rules followed by companies with authorizations to build.

CAPP members are firmly committed to meaningful consultation and engagement with Indigenous communities throughout a project's life cycle, including prior to regulatory approval. This consultation may result in changes to how a pipeline is constructed and the way a company conducts its operations. Consultation with Indigenous peoples is currently regulated at the approval stage of the project.

The CER paper outlines expectations of proponents to engage potentially impacted Indigenous communities during the pre-application phase and during the application phase of a project. However, this work is already being done by our members in the context of the regulatory process.

The discussion paper outlines an intent to increase the CER's oversight of the protection of heritage sites and sites of significance, to consider Indigenous knowledge, and to increase Indigenous participation in the oversight of activities regulated under the OPR. While these are all important considerations when working on the landbase, in CAPP's view, they are all considerations in other regulatory process. We therefore feel this direction lies outside the scope of the OPR, duplicates other processes, and could add delays to projects.

Recommendation: To ensure pipeline projects remain viable and globally competitive, ensure there is no duplication of existing regulatory processes that would add additional burden, delay and costs.

The challenge of additional regulation

Given the importance of prior consultation, and that policies related to Indigenous consultation and engagement are addressed in other government processes, the addition of new consultation provisions to the OPR would be duplicative.

While CAPP supports genuine and effective consultation and engagement, we are concerned that added regulation would add complexity to work that is well established and consistently undertaken. Industry recognizes our role in reconciliation, and we wish to build positive relationships with the communities in and around our areas of operation.

Industry's consultation and engagement with Indigenous peoples are highly context dependent. Indigenous peoples are diverse, as are the circumstances surrounding resource development projects. Because each community has individual needs and interests, flexibility is important. A good faith, relationship-oriented effort will drive the accommodations or measures that are appropriate to the given situation. Added regulatory oversight at the operations phase risks mandating a prescriptive, one-size-fits-all approach that is not suited to the circumstances, the proponent or the community. Furthermore, duplicative regulation creates more opportunity for misalignment among regulatory officials as well as added points of delay. This would frustrate the process from a regulatory perspective and undermine the objective of global competitiveness as outlined in Section 4 of the discussion paper. The CER's aim to enhance Canada's competitiveness through predictable and timely oversight requires non-duplicative and flexible processes.

Recommendation: It is important that any new provisions in the OPR do not duplicate, complicate, or conflict with regulatory processes already in place and that operational flexibility is maintained to reflect the uniqueness of individual projects and individual community needs. We would add the

CER's aim to enhance Canada's competitiveness is also important to reconciliation and, in particular, significant economic reconciliation occurring in the energy sector[1].

In conclusion, we would like to reiterate, as noted in the Appendix, that the various standards developed by the CSA provide effective references and tools for how pipelines should be managed. These requirements can help to develop a more consistent and standardized approach to pipeline regulations across Canada. Furthermore, Canada's regulatory regime for pipelines functions well in many respects and prospective changes should ensure progress towards greater efficiency and avoiding duplication with other existing federal or provincial regulations.

Thank you for the opportunity to provide these comments and recommendations. Should you have additional questions about the content of this submission, please do not hesitate to contact [redacted] Manager, Indigenous Affairs [redacted] We appreciate the opportunity to provide these initial comments and look forward to further engagement as the review of this regulation proceeds.

Sincerely,

[redacted]

[redacted]
Vice President, External Relations and Indigenous Affairs

The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and oil throughout Canada. CAPP's member companies produce about 80 per cent of Canada's natural gas and oil. CAPP's associate members provide a wide range of services that support the upstream oil and natural gas industry. Together CAPP's members and associate members are a solution-oriented partner to the world's needs for affordable, clean, safe and secure energy, and an important part of a national industry with revenues from oil and natural gas production of about $116 billion a year. CAPP's mission, on behalf of the Canadian upstream oil and natural gas industry, is to advocate for and enable economic competitiveness, with environmentally and socially responsible performance and is dedicated to advancing reconciliation with Indigenous peoples. CAPP is committed to ensuring that Canada is positioned to help meet global climate commitments as the supplier of choice in a world that demands a lower carbon energy future.

[1] CAPP, Indigenous Engagement and ESG Report, October 2021

Reference: Onshore Pipeline Regulations (OPR) Discussion Paper

Section 1 OPR – Lessons Learned

1. *What's working well in relation to the OPR, and its implementation, and what could be improved?*

   The OPR is a comprehensive regulation establishing the requirements for the full life cycle of federally regulated pipelines and associated infrastructure. The regulation and supporting *Guidance Notes for the Canada Energy Regulator Onshore Pipeline Regulations* (Guidance Notes) have provided clear direction to Canada's pipeline industry since their introduction in 1999. Also, the electronic accessibility of regulatory documents, including orders and regulations, are working well, and the information filling portal is easy to use.

   The following comments refer to areas that could be enhanced.

   Subsection 4(1) of the OPR incorporates several standards under the auspices of the Canadian Standards Association (CSA) to regulation through adoption by reference:

   > *4 (1) When a company designs, constructs, operates or abandons a pipeline, or contracts for the provision of those services, the company shall ensure that the pipeline is designed, constructed, operated or abandoned in accordance with the applicable provisions of*
   > *(a) these regulations;*
   > *(b) CSA Z276, if the pipeline transports liquefied natural gas;*
   > *(c) CSA Z341 for underground storage of hydrocarbons;*
   > *(d) CSA Z662, if the pipeline transports liquid or gaseous hydrocarbons; and*
   > *(e) CSA Z246.1 for all pipelines.*

   The technical backbone of Canadian pipeline regulations is *CSA Z662 – Oil and Gas Pipeline Systems* (CSA Z662). This nationally accredited standard details thousands of requirements, including management systems, pipeline design, materials selection, construction and joining, testing, corrosion protection, operations, maintenance, and abandonment through its adoption by the CER as well as by provincial regulatory authorities such as the Alberta Energy Regulator, the BC Oil and Gas Commission and the Ministry of Energy Resources

(Saskatchewan). All Canadian provinces with oil and natural gas pipeline systems have adopted CSA Z662 through regulation for onshore pipelines.

Canadian pipeline companies are universally required to develop and implement safety and loss management systems (SLMSs) as set out in clause 3 of CSA Z662:

> *3.1.1 Operating companies shall develop and implement a documented safety and loss management system for the pipeline system that provides for the protection of people, the environment, and property.*

The required content of these SLMSs is described in Clause 3.1.2 and includes:

- *Policy and leadership commitments to the development, implementation, and continual improvement of the safety and loss management system;*
- *Processes for the management of resources including the competency, training, and contractor management;*
- *Communication processes that support the effective implementation of the safety and loss management system;*
- *Document and records management processes;*
- *Documented processes and controls for:*
  - *Risk management;*
  - *Design;*
  - *Material selection, and procurement;*
  - *Construction;*
  - *Operations and maintenance;*
  - *Integrity management;*
  - *Engineering assessments;*
  - *Emergency preparedness, response, and recovery;*
  - *Security management; and*
  - *Deactivation and abandonment;*
- *Management of change; and*
- *Continual improvement including audits.*

The requirements in clause 3.1.1, coupled with the detailed technical content of the balance of CSA Z662, appear to align with many of the requirements in the OPR for management systems, programs and manuals for quality assurance, joining, construction, operations and maintenance, emergency management, integrity management , safety and security management, etc. The OPR requirements more clearly define these elements as mandatory processes. Enhancements can be made to the respective CSA clauses so their inclusion in the OPR is unnecessary.

Regulators across Canada have identified requirements over and above those in CSA Z662 within their regulatory frameworks through instruments like the OPR. These often include requirements for filing or other matters that are unique to the regulatory world but may also include technical requirements where the content of the standard is deemed inadequate or insufficient. When created through direct regulation, these additional requirements apply only within the context of that specific regulation and within the jurisdiction of that specific regulatory authority.

If the CER strengthens its reliance on CSA Z662 while ensuring the content meets its needs, it could reduce or eliminate the need for additional technical requirements within the OPR. This would ensure the same technical regulatory requirements which apply to federally regulated pipeline systems would apply to all pipeline systems equally across Canada. The CER's involvement in the standard bodies has worked well in establishing consensus-based requirements.

Standardized requirements for management systems in Canada allow for the development of common audit criteria which could be applied equally by regulators, companies or independent auditors for assessment and evaluation. This could result in significant regulatory efficiencies.

For example, consider a company that operates under the provincial authorities in Alberta and Saskatchewan as well as having some assets under the CER. At present, this company may have its SLMS audited by each of the three regulators independently applying their own criteria and methodology. Alternatively, if the requirements are standardized, the audit criteria were consistent and regulators recognize work done by other regulators, a single audit could replace the current need for three audits. This could create significant efficiencies.

CAPP Recommendation: Given the common goal of federal and provincial technical and safety regulatory regimes is the safe and environmentally responsible operation of Canada's pipeline infrastructure, a standardized approach to management systems, including audit equivalency as opposed to diverging federal and provincial requirements, is recommended.

CAPP Recommendation: The differing nature of operators' diverse business models needs to be recognized. A transmission company is built around the pipeline, so in essence its management system is its pipeline management system. An upstream company owns and operates wells, gathering system and processing facilities (operating a pipeline is not an upstream company's core business). Portions of an upstream company's management system coveralls all aspects of its operations, not just pipelines. It should therefore be

recognized that other systems exist, not only a pipeline-centric management system. Mandating separate management systems causes redundancy and can cause conflicts.

Section 2 Reconciliation with Indigenous Peoples

2. *How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?*

CAPP supports an approach to resource development that preserves and enhances opportunities for reconciliation, including economic, social and environmental benefits for Indigenous communities. Resource development has been one of the strongest paths for building Indigenous prosperity in Canada. An important objective of the OPR should be to create conditions that support investment attraction for resource development, including to Indigenous territories. Investment attraction and project development, is a fundamental underpinning of the economic reconciliation that has occurred in the sector.

CAPP's member companies seek to build positive relationships with Indigenous communities where they operate. Through ongoing dialogue, proponents and Indigenous communities identify priorities for approaches to development that create mutual benefits and mitigate impacts. The economic participation of Indigenous peoples in resource development – and engagement grounded in respect, cultural awareness, and a spirit of cooperation – can advance and even accelerate reconciliation.

Early and ongoing engagement enables companies and communities to explore interests, identify sites of significance, and mitigate concerns. In many cases, companies pursue collaborative agreements with potentially impacted communities prior to project approval. These agreements outline how the company will conduct its activities throughout the project's lifecycle, how communities will be involved and how communities will benefit.

Once construction begins, it is important that operations run smoothly. Efficiency during the operations phase avoids unnecessary cost overruns such as delays – every day of interruption adds considerable cost to a project. Furthermore, smooth and timely maintenance fosters safety for workers and the public. Awaiting further regulatory approvals during this time-sensitive period are unhelpful to a project's success and negatively impact Indigenous interest in the project.

From a regulatory perspective, the OPR applies to the design, construction, operation and abandonment of onshore pipelines. Ensuring that the OPR supports predictability through clear outcomes focused rules that support multiple paths to compliance is critical. We would note that consultation with Indigenous peoples is currently regulated by the CER at the pre-application and application phases.

CAPP Recommendation: Given the importance of prior consultation and considering that policies related to Indigenous engagement are addressed in other government processes, it is important that any new provisions in the OPR do not duplicate, complicate, or conflict with those processes. It is also important that regulations during the operations phase enable mutually agreed solutions between producers and communities to continue. The CER should have as a reconciliation objective, improving investment attraction for Indigenous lands.

Although many aspects of engagement are addressed in other CER processes, we believe monitoring can play a role in advancing reconciliation at the operations phase. The OPR can build on existing processes such as the CER's Indigenous Monitoring Committee to ensure Indigenous peoples are properly engaged in pipeline oversight.

3. *How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?*

   The protection of heritage resources is important in the development of infrastructure projects such as pipelines. Provincial policy and regulatory frameworks are found in every province. Provincial jurisdictions have robust measures in place to work with Indigenous communities to preserve and protect cultural heritage sites. If a historic resource is found during the course of a development project, developers are required to report the site to the provincial jurisdiction, and outline actions to be taken to ensure proper treatment and protection of sites.

   CAPP Recommendation: The OPR should aim towards equivalency with provincial Indigenous heritage protection policies to avoid duplication and associated negative impacts. In all policy processes, including changes to the OPR, it is essential that governments, Indigenous peoples and stakeholders understand and be aware of the existing policy and regulatory framework, which are currently working well.

4. *How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?*

   Pipeline design and in particular pipeline route selection is typically informed through dialogue during consultation and engagement with Indigenous peoples, governments, rights

holders and stakeholders. Robust consultation processes are in place both federally and provincially that must be satisfied prior to any project approvals. In many cases, this dialogue is successful in the identification of traditional land and resource use, as well as sites of significance, and mitigation efforts are discussed and agreed upon if necessary by the parties. Mitigation efforts may consist of avoidance or other means such as less intrusive construction methods.

CAPP Recommendation: No additional role for the OPR is recommended as it would be duplicative of existing processes and provisions in other regulations and legislation. Focus on relationship development, including prior consultation, and the process of dialogue to inform route selection and if necessary, mitigation measures will continue to be followed by proponents as a best practice. This approach enables Indigenous right-holders who are most affected to engage directly with proponent on their priorities in in terms of traditional land-uses in the context of local development.

5. *How can the use of Indigenous knowledge be addressed in the OPR?*

Consideration of Indigenous knowledge can play an important role in improving the overall performance of industrial projects. CAPP member companies have a range of experiences with the sharing and application of Indigenous knowledge in the context of resource projects.

CAPP understands the federal government is developing an Indigenous Knowledge Policy Framework which seeks to standardize how Indigenous knowledge is considered and utilized across several federal statutes. In our submission on the framework, CAPP noted the incorporation of Indigenous knowledge should include the following features:

1. A process supported by Indigenous communities, industry and government should clearly establish what is understood as Indigenous knowledge in the context of development.
2. While Indigenous knowledge and (western) science often complement one another, the federal government should develop a decision pathway to address situations where there is a divergence between knowledge sets in the context of project review.
3. The federal government should provide Indigenous groups with stable and predictable funding to support the capacity of Indigenous groups to document knowledge at the community level and to use this information to inform their own strategic planning initiatives.

4. Indigenous knowledge should be shared early in the process in a way that is transparent to project proponents. The resources, participants and timelines associated with the sharing of Indigenous knowledge and its application should be established at the outset.

CAPP Recommendation: CER should transparently share Indigenous Knowledge when such knowledge is being applied to decision process that affect industry operations. While an emphasis on the confidentiality of Indigenous knowledge is important with respect to the public, it is critical that such knowledge is transparent to proponents.

CAPP Recommendation: Follow the Impact Assessment Agency guidance on Indigenous Knowledge to avoid proliferation of differing guidance on approach. The inclusion of Indigenous Knowledge in the OPR should be coordinated with other federal processes. Much of the consideration of Indigenous Knowledge will occur during the approval phase a project – the OPR should not be duplicative but should complement those efforts.

6. *How can the OPR address the participation of Indigenous peoples in pipeline oversight?*

The CER's Indigenous Advisory and Monitoring Committee is an excellent example of how Indigenous people can be meaningfully engaged in pipeline oversight.

In addition, there are dozens of Indigenous Guardian Programs encompassing a wide variety of activities across Canada, including the monitoring of resource development, environmental monitoring, compliance monitoring and cultural activities such as heritage and language preservation or traditional practices.

These programs play an essential role in the development of long-term relationships among project proponents, provincial and federal governments, and Indigenous peoples:

- Providing meaningful participation of Indigenous people in infrastructure projects such as pipelines;
- Creating relationships between Indigenous peoples, project proponents and government;
- Enhancing the understanding of Indigenous people in the policy and regulatory framework governing projects;

- Providing an avenue for Indigenous knowledge to be employed by governments and project proponents; and
- Providing meaningful employment within Indigenous communities.

The most successful programs to date have been developed through a collaboration between Indigenous people and government and industry as partners.

Many Guardian Programs have been designed around the monitoring of all disturbances to the land base, instead of a single sector. Opportunity exists for expanded programs and funding through collaboration between the federal and provincial governments.

CAPP Recommendation: Increased resources from the CER to support participation of Indigenous people in programs for pipeline monitoring or other key activities. These should support Indigenous/Industry dialogue around the priorities and best models for each project.

CAPP Recommendation: The development of a monitoring program should not create duplicative process or add additional regulatory burden that would reduce Canada's global competitiveness.

Section 3 Engagement and Inclusive Participation

7. *How can the OPR support collaborative interaction between companies and those who live and work near pipelines?*

Awareness is a key element of damage prevention. The OPR includes a requirement for regulated companies to have damage prevention programs under section 47.2 and in accordance with the CER's *Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*. Section 16 of these regulations outlines a company's obligations for awareness programs.

By placing these requirements in law through federal regulation, the same requirements do not apply to provincially regulated pipelines (unless specifically enacted by each provincial regulatory authority). As such, there is no consistent requirement for the content or execution of damage prevention programs across Canada. A significant opportunity exists to migrate the requirements of the CER regulations into the CSA, within CSA Z662 or *CSA Z247 Damage Prevention for the Protection of Underground Infrastructure*.

CAPP Recommendation: The requirements for damage prevention programs and, correspondingly, awareness programs could be made universal if included in CSA and elevated to law through adoption. This would also mean a universal audit system could be developed for use by all regulatory authorities, replacing the need for individual audits by each jurisdictional authority in situations where companies operate in multiple jurisdictions.

8. *How could communication and engagement requirements in the OPR be improved?*

   The volume of communication and engagement with energy and pipeline companies (as well as companies representing other sectors) can be overwhelming and inefficient, given the volume of materials and the demands on time for meetings and other engagement.

   Consider a rural community with 15 or more pipeline companies and producer companies operating within its boundaries. Requiring each company to have their own engagement program and materials for emergency management is inefficient, confusing and potentially harmful.

   CAPP Recommendation: Collaboration in the development of consistent messaging and joint sessions could significantly reduce the number of interactions and ensure more effective communication while fostering enhanced relationships.

9. *How could the CER improve transparency through the OPR?*

   The CSA standards adopted by reference within section 4.1 of the OPR should be made publicly available to ensure these standards which are elevated to regulation are freely available.

   CAPP Recommendation: Should the CER rationalize regulation through greater use of CSA as the basis for management systems and programs currently required within the OPR, additional transparency could be provided through the development of third-party audit criteria and the use of certifying authorities (similar to the requirements found in regulations governing offshore development in Canada) across both provincial and federal regulatory regimes, all of which could be fully transparent.

   Further improvement can be realized when the CER provides information requests to an operator (e.g., ILI run data). Industry should know why the information is requested, the purpose, context and for what the information will be used. Requests should have a transparent purpose.

10. *Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:*
    a. *those people implementing the OPR; or*
    b. *those people who are impacted by the operational activities addressed in the OPR?*

    CAPP does not have any input or recommendations in regard to this question.

Section 4 Global Competitiveness

11. *How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?*

    Efficient and effective regulatory frameworks at the federal and provincial levels are key determinants of Canada's global competitive position and help enable the upstream oil and natural gas sector to attract the investment needed to further develop this sector. Regulatory efficiency is determined by regulations that are based on risk and fit for purpose. Regulatory screening should there be performance and risk based.

    As defined in the *Canada Energy Regulator Act* (CER Act), any pipeline used for the transmission of oil, gas or any other commodity between provinces is a pipeline regulated by the CER. This is consistent with interpretation under the previous *National Energy Board Act*.

    For large-diameter transmission pipelines, this ensures a singular federal regulatory regime applies, allowing for consistent regulation across provinces. In turn, it removes ambiguity for these pipelines and allows for optimization of the programs required through the regulations made under the CER Act.

    The outcome is less efficient for smaller transboundary pipelines often used for gathering and collecting produced fluids within the upstream sector. Gathering lines (sometimes referred to as "sausage links") are often designed, constructed, operated and ultimately abandoned under three regulatory regimes, each with unique requirements.

    Consider a pipeline operating near the boundary between Alberta and B.C. but wholly within B.C. This pipeline is clearly regulated under the Oil and Gas Commission Act by the BC Oil and Gas Commission (OGC). The same company operating this pipeline may also own and operate a different pipeline wholly within Alberta regulated by the Alberta Energy Regulator (AER). If the company constructs a pipeline to link these systems and crosses the provincial boundary, a third pipeline or portion of this pipeline is now regulated by the CER.

The result is a complex mix of regulation that arguably does little to improve safety. In fact, there is an agreement (February 17, 2015, BC Order in Council) under the Trade, Investment and Labour Mobility Agreement between Alberta and B.C. that specifically addresses this complexity by acknowledging that the regulatory regimes between B.C. and Alberta provide an equivalent level of safety and environmental protection:

> *1. RECOGNITION OF SUBSTANTIAL EQUIVALENCY*
> *1.1 For the purposes of the Rules, the Parties recognize and agree that the regulation of upstream oil and gas and pipeline regulatory regimes, and their respective regulatory system objectives for the protection of public safety, the environment, resource conservation and economic development are substantially equivalent.*

Assuming a similar agreement is developed between the CER and provincial authorities, it is possible a singular regime could be applied to these smaller transboundary pipelines that would not contain the same requirements that apply under the CER to large-diameter transboundary transmission pipelines such as those operated by Enbridge or TC Energy.

CAPP Recommendation: Considering that regulations should be fit for purpose and based on risk, upstream sausage-link pipelines used for gathering should be removed from the CER purview and assigned to provincial regulators under an equivalency agreement, which would also allow the CER to focus attention on the transmission pipeline systems for which the OPR is intended.

The discussion paper also speaks to performance-based approaches and risk-based compliance. Goal-based regulation needs to be truly that, but it is often the case that regulations include prescriptive requirements. Effective risk-based approaches have been adopted in the upstream sector, but further work needs to be done by regulators. A large-diameter, high pressure transmission gas line close to densely populated areas should not be equated to a small-diameter low pressure line in an unpopulated and remote area. The risk associated with the two are vastly different, as are the risk-mitigation activities. These differences are not currently well recognized in the OPR (further supporting discussion above on “sausage links”).

Regulations and their implementation should also be made more goal-oriented with regular audits performed. The approach should be higher frequency on poor performers and lower frequency on good performers. In respect to the risk associated with the managed assets, note that one of the important principles of pipeline management systems is scalability. The CER should take management system scalability into consideration when performing audits

based on the risk assets under CER jurisdiction pose to the public and environment. Currently, audits produce black and white outputs while in reality, some of the stated requirements may now carry nearly the same weight depending on the risk the managed assets pose.

CAPP Recommendation: Regulatory approaches to compliance should be made more performance or outcomes-based as well as risk-based.

12. *How can the OPR support innovation, and the development and use of new technologies or best practices?*

    Clause 1.8 of CSA Z662 (adopted into regulation through reference as previously described) states:

    > *It is not the intent of this Standard to prevent the development of new equipment or practices, or to prescribe how such innovations are to be handled.*

    CAPP Recommendation: The CER should consider a standard exemption process (perhaps defined within the OPR) to provide clear direction on how to employ new technologies or practices which are potentially at variance with or not covered by the requirements of the OPR or its reference standards. The OPR need to clearly state that an engineering assessment may override some rules. As the OPR deals on a high level with processes, this may not be as applicable, but somehow it needs to be stated that regulations leave room for the proven technologies and approaches.

13. *What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?*

    CAPP Recommendation: Standardized reporting should be developed between federal and provincial regulators allowing amalgamation and comparisons of data across Canada (and ideally globally).

    The development of such metrics may entail changes to reporting criteria, including the definition of an "incident" and quantifying the impact of each incident within the OPR. Not all incidents are equal, and inconsequential, or low consequence incidents should be

reported separately from more meaningful ones. Many low-consequence incidents should not be taken as a precursor indicator for potentially larger ones.

14. *Are there opportunities within the OPR for data and digital innovation that could be used by the CER and by companies regulated by the CER?*

    In addition to standardized reporting and terminology as described in the response to Question 13, there are likely advantages to be gained through dialogue with other regulatory agencies on compliance management and assessment prioritization tools.

    CAPP Recommendation: This question should be discussed among regulatory agencies and with the regulated community to identify where innovation in data collection and use could enhance the performance of both regulators and the regulated industry.

15. *How can the OPR be improved to address changing pipeline use and pipeline status?*

    The technical requirements for changes in service or status are properly addressed in CSA Z662, ensuring equivalent safety and environmental protection for all Canadian pipelines.

    CAPP Recommendation: Reporting requirements should be included within the OPR, ideally consistent with reporting requirements at the provincial level.

    Most substance classifications the CER uses are more oriented to transmission systems, not those of the upstream. Per #11, perhaps best to divest regulator jurisdiction to provincial regulators or adopt their substance classifications for these types of pipelines.

Section 5 Safety and Environmental Protection

16. *What further clarification, in either the OPR (e.g., structure or content), or in guidance, would support company interpretation and implementation of management system requirements?*

    As discussed in the response to Question 1, further clarification regarding the interpretation and implementation of management system requirements would best be done through CSA or other collaborative forums with other Canadian regulators.

    CAPP Recommendation: Both federal and provincial regulatory regimes should seek equivalent safety and environmental goals. And if the same goals are sought, there should be no need for additional requirements over and above the common basis within the standards.

Of course, if the requirements within CSA are deficient with respect to regulatory needs, they should be brought to the attention of the respective CSA technical committees for consideration and standards be upgraded to meet the needs of Canadian regulators. Upgrading CSA means all pipelines in Canada benefit from the improvements rather than a singular jurisdiction.

17. *How should information about human and organizational factors, including how they can be integrated into a company's management system, for both employees and contractors, be provided in the OPR, and/or described in related guidance?*

Human and organizational factors, such as competencies, training, accountabilities and organizational structure, must be defined in accordance with SLMS requirements in CSA Z662 clause 3.1.2 paragraphs (a) through (c):

> *The safety and loss management system shall cover the life cycle of the pipeline system and shall include the following elements:*
>
> *a) a clearly articulated policy and leadership commitment to the development, implementation, and continual improvement of the safety and loss management system;*
>
> *b) an organizational structure with defined responsibilities and authorities that supports the effective implementation and communication of the safety and loss management system;*
>
> *c) a process for the management of resources, including:*
>
> *i) the establishment of competency requirements;*
>
> *ii) a training program that includes a process for evaluating the effectiveness of the training provided and for maintaining training records; and*
>
> *iii) contractor selection and performance monitoring that ensures services are performed in a manner that conforms to the requirements of the safety and loss management system;*

Additional guidance is provided in the commentary which accompanies CSA Z662.

CAPP Recommendation: The CSA management systems technical subcommittee already has an action item to consider additions of further inclusion of human and organizational factors from the CSA express document (CSA EXP248). If additional requirements are included in CSA Z662, they would apply consistently across Canada to all pipeline infrastructure should they be incorporated in CSA as an alternative to amendments to the OPR.

18. *How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?*

The CER is unique among Canadian pipeline regulatory authorities in that it has delegated authority regarding employee and contractor safety under the *Canada Labour Code* (last publicly available agreement updated between the CER and Employment and Social Development Canada on April 6, 2016). Provincially, employee and contractor safety are most commonly regulated by provincial occupational health and safety organizations such as WorkSafeBC.

CAPP Recommendation: The safety of persons during the full life cycle of pipeline infrastructure is paramount, regardless of how the regulatory framework applies. As discussed above, there needs to be acknowledgment that upstream companies may have elements in overarching safety management systems that cover safety for all their business aspects, not just pipelines. Duplicating these systems purely for pipeline systems does not add value. Perhaps an organization like the Western Regulators Forum could review the safety performance of regulated companies and discuss how they (as oil and gas regulatory agencies) might change the regulatory framework to improve the safety performance of the pipeline industry.

It is worth noting that 2020 data from the U.S. Bureau of Labour Statistics indicates the incident rate per 100 fulltime workers was between 0.5 and 1.8 for incidents resulting in an absence from work for all forms of pipeline transportation and 0.3 for pipeline construction. The rate of incidents for government in the same reporting period was 2.1. Similar data for Canadian industry from Employment and Social Development Canada shows a reported injury frequency of 0.72 for the federally regulated pipeline sector in 2019, the lowest frequency in the *2019 ANNUAL REPORT Occupational Injuries Amongst Employees Under Federal Jurisdiction*.

19. *How can respect and personal workplace safety be assured at CER regulated sites?*

The existing regulatory regime as referenced in the CER letter dated April 15, 2021, titled All Company Letter regarding conduct in the field and associated enforcement actions, provides the necessary tools for ensuring compliance and a respectful workplace. Health and safety in our places of work are top priorities and industry is willing to work with the CER to ensure proper application of frameworks related to ensure the safety of all persons who visit or work on our sites.

CAPP Recommendation: The Canada Labour Code and the CER's Enforcement Policy already provide a comprehensive enforcement framework that can be used effectively for both education and remedial action. CAPP members are committed to safe and respectful places of work.

20. *How should the CER be more explicit about requirements for contractor management?*

CAPP Recommendation: CSA Z662 already covers aspects of contractor management. If there are issues with gaps in operating companies, compliance meetings can provide a useful mechanism to promote of compliance and highlighting areas of regulatory importance, such as contractor management.

In reviewing the CER's website and materials, its uncertain if planned compliance meetings still form part of the annual compliance plans. While it is recognized that regulated companies must understand the regulatory framework and manage for compliance, periodic meetings between the regulator and companies provide an invaluable tool for communication and ensuring companies are aware of areas of concern for the CER (and other regulators).

21. *How should the OPR include more explicit requirements for process safety?*

The need for process safety is already implicit within clause *3.1.2 Safety and Loss Management Systems* of CSA Z662.

CAPP Recommendation: If a decision is made to incorporate requirements more explicitly for process safety within CSA Z662 (e.g., *CSA Z767 Process Safety Management* or elements thereof), this should be raised with the responsible CSA technical subcommittee.

22. *How can the OPR drive further improvement to the environmental performance of regulated companies?*

Environmental protection programs which govern how the environment is protected throughout the life cycle of pipelines have already been required for more than 20 years under the CER. Similar plans are often required as an outcome of provincial environmental assessments.

CAPP Recommendation: If the requirements for broader environmental protection programs could be moved from the OPR into a standard under CSA (or perhaps a protocol developed by the Western Regulators Forum), then these could be consistent across

Canada and potentially reduce duplication and complexity. CSA Z662 2019 edition includes some aspects of environmental impact with the inclusion of designated geographic areas (DGAs), which could be expanded within the standard.

A singular standard for such programs would allow for clarification of the role of project-specific plans for environmental protection within full lifecycle programs, all of which would be captured under a company's management system (ideally the SLMS within CSA Z662 for uniformity and simplicity).

23. *How can the connection between the Environmental Protection Plan, specific to an individual pipeline, and the company's Environmental Protection Program, designed for a company's pipeline system, be improved?*

    See the response to Question 22.

24. *How can contaminated site management requirements be further clarified, in the OPR or in guidance?*

    Once deleterious materials or contaminants are introduced to the environment through spills, emissions or other mechanisms, they are rarely confined to the immediate federally regulated footprint of the infrastructure. As such (and as noted in the Discussion Paper), both federal and provincial legislation and regulatory regimes apply. This makes remediation complex as companies must meet with multiple levels of government in executing their initial response and subsequent site remediation, which may take years.

    CAPP Recommendation: The CER could consider equivalency agreements (or similar) with provincial authorities for remediation and reclamation: accepting a single regime and established criteria for remediation which would be consistent with the surrounding environment outside of the confines of the federal infrastructure.

25. *Are there any matters related to the Emergency Management Program in the OPR that require clarification? If so, what are they? Are there any matters for which further guidance is required?*

    As noted in the Discussion Paper (paraphrased for clarity):

    CSA Z246.2 Emergency preparedness and response for petroleum and natural gas industry systems (CSA Z246.2) allows a standardized approach to be taken across jurisdictions when coordinating an emergency response process.

CAPP Recommendation: The CER, in collaboration with the Western Regulators Forum and across the balance of Canada, should work collectively to ensure the requirements within CSA Z246.2 fulfill their regulatory needs. A uniform and well-regulated basis for emergency management in Canada's pipeline and energy sector is critical to safety and environmental protection. In addition, the CER and its colleagues should continue/expand their work with other regulatory agencies responsible for emergency management and response, ensuring that practices are shared across sectors and enhancing opportunities for mutual aid.

In addition, we would like to offer the following comments:

- Clearer lines of communication with Indigenous communities would be beneficial when it comes to emergency management. Companies are required to have Accountable Officers. There would be a benefit to industry if the CER worked with Indigenous communities to determine a point of contact in each community should an emergency occur so companies have an official designated representative with whom to communicate and who is authorized to make decisions on behalf of the Indigenous community. There would also be a benefit in the sharing of consultation area boundaries so companies would know which Indigenous communities should be contacted in the case of an emergency.
- The oil and gas industry is required to invite provincial/federal regulators and emergency management authorities. While operators understand the intent to invite local participants, the CER is encouraged to recognize that requiring companies to invite a broad spectrum of those who are not emergency responders to mandatory exercises could distract from the primary purpose of ensuring operations are prepared for emergency situations and require additional resources and capital to ensure compliance.

26. *How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?*

The requirements in *CSA EXP 13:21 Quality assurance requirements for pipe and components* appear suitable for large pipeline corporations and large-scale projects. The standard could be difficult to apply to smaller projects or singular material purchases by smaller companies.

CSA Z662 and the associated Z245 material standards already contain quality assurance program requirements, and recent improvements were made to the standard based on concerns raised by the CER, including those highlighted in the CER white paper on improving quality assurance of Q&T pipeline fittings.

CAPP Recommendation: If future work is deemed necessary, the CER could work with material suppliers and CSA or a similar standards organization to ensure that materials sold within Canada conform to more stringent quality assurance and quality requirements. **This approach would shift the onus for auditing and verification from regulated companies to the manufacturers. The CER could then seek authority (ideally in collaboration with provincial regulators) to audit and ensure standards are being met.**

Companies are already required to ensure the materials they purchase are fit for service per their SLMS clause 3.1.2(f).

27. *How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of steel and the relative strength of the weld area?*

The requirements for welding and joining in CSA Z662 are extensive and (excepting the issues under investigation by the Pipeline and Hazardous Materials Safety Administration and the CER) comprehensive. It is noted that CSA Z662 welding requirements are different from other standards which would have been used in the failure case studies highlighted and would further minimize the risk of this phenomenon from occurring. This is likely a significant contributing factor why the issue has been only seen outside of Canada.

CAPP Recommendation: The best way to ensure the continued safety of Canada's pipelines is to incorporate changes as may be necessary for welding high strength pipe into CSA Z662 directly, so that they apply to every pipeline in Canada, not just those regulated by the CER.

In response to these issues, CSA Z662 has already formed a task force to look at the issue and has proposed changes to address the issue in the upcoming 2023 edition.

If a more immediate approach is needed, the CER has used the *Notice of Proposed Regulatory Change* (NOPRC) process effectively. Such an approach should be used in collaboration with other Canadian regulators to ensure consistent safety practices.

Section 6 Implementation Objectives

28. What are your recommendations for compliance promotion at the CER?

There is an opportunity for regulators having authority over pipelines in Canada to collaborate in the promotion of compliance. Federal and provincial regulatory frameworks governing the life cycle of pipelines in Canada are complicated as outlined in many of the responses in this document. Shared messaging would help clarify how safety and environmental protection for pipelines across Canada is practically and effectively regulated as well as helping all regulators with regulatory integration and rationalization.

CAPP Recommendation: Common reporting and performance metrics between regulators will further assist in helping all audiences understand how the CER and other Canadian regulators are delivering on their mandates. It would also allow sharing of compliance intelligence across jurisdictions, reducing potential duplication and increasing regulatory efficiency.

29. How do you want to be engaged by the CER in the development of technical guidance?

While the question is specific to the development of technical guidance, it is presumed there will also be opportunities to further contribute to the development of amendments to the OPR itself.

CAPP Recommendation: CAPP would like to continue to provide feedback on the development of the regulatory amendments and any technical guidance through forums or through more opportunities such as has been provided with the Discussion Paper.