



Athabasca Landing Métis Community
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June 21, 2022

ATTN: Dan Barghshoon
Canada Energy Regulator
Onshore Pipelines Review – Discussion Paper
Email: opr-rpt@cer-rec.gc.ca

RE: Athabasca Landing Métis Community Association’s Submission to the Onshore Pipeline Regulations Review – Discussion Paper

Dear Mr. Barghshoon,

Athabasca Landing Métis Community Association (ALMCA) is pleased to submit this letter as part of the public discussion of the Canada Energy Regulator’s (CER) Onshore Pipelines Regulations Review (OPR Review).

ALMCA represents approximately 150 members who claim Section 35 rights and are connected to the historic Athabasca Landing Métis people. Our community members reside in and around Athabasca County but travel extensively through crownland areas to hunt, fish, trap and gather country foods and medicines. The traditional use activities of ALMCA members extend throughout much of the middle Athabasca River basin and into the Athabasca Oil Sands area.

Many of our members work or own businesses in the oil and gas sector and have extensive experience working on pipeline projects as contractors, employees, and environmental monitors. As such, our members have direct experience with the positive and negative effects of pipeline construction and operation within the Alberta oil patch.

ALMCA understands that the current Onshore Pipeline Regulations from 1999 do not reference Indigenous or Aboriginal rights or the duty to consult surrounding pipeline construction, maintenance, or operation.¹ ALMCA also understands that pipeline regulation involves different jurisdictions between the federal and provincial governments in pre-project planning and permitting, in addition to construction, operations and maintenance, depending on the size and scope of the pipeline project.

Considering Canada’s commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Canadian law and policy,² ALMCA expects that the OPR Review will reform the existing Onshore Pipelines Regulations to recognize and protect

¹ Canadian Energy Regulator Onshore Pipeline Regulations, 1999, SOR/99-294, NATIONAL ENERGY BOARD ACT, Registration 1999-06-23 <https://laws-lois.justice.gc.ca/eng/regulations/SOR-99-294/FullText.html>

² Canada – Department of Justice, 2021, United Nations Declaration on the Rights of Indigenous Peoples Act S.C. 2021, c. 14 Assented to 2021-06-21 <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html>



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Indigenous rights and the environment while ensuring the creation of jobs and benefits from safe pipeline construction.

ALMCA's input on the OPR Review Discussion Paper as it is presented here is a summary of the views of ALMCA members collected during a community engagement session on June 21, 2022 at Amber Valley Hall in Athabasca County. At the meeting, 11 ALMCA community members participated in the discussion of the OPR Review. They included 5 active trappers, 7 former or current pipeline workers and 3 contractors. All of those present were actively engaged in hunting, fishing, trapping, and gathering in areas subject to pipeline construction, operation, and maintenance.

Several days before the discussion, an email was circulated to the group with a copy of the CER's OPR Discussion Paper and questions. This was intended to provide all participants with an opportunity to read the paper and formulate responses. The questions were generally discussed in the order they appeared in the paper during the 3-hour engagement session on June 21, 2022, which coincided with National Indigenous Peoples Day.

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

The existing OPR encourage revegetation of pipeline right of ways and this generally means that animals can come back to the right of way once construction is complete and while the pipeline is in operation below the ground. The ALMCA group noted that current regulations result in the replanting of right of ways with grass seed blends. This is likely done so that roots do not interfere with operations. However, once pipelines have been abandoned, they are often not replanted with native vegetation. The OPR could be improved so that abandoned right of ways are returned to pre-disturbance conditions with equivalent vegetation cover rather than invasive grasses.

In the experience of ALMCA members, under the current OPR, notification for abandonment does seem to come through to trappers, landowners, and community members. Decommission comes first, then abandonment. It appears to the ALMCA group that this process is generally followed in accordance with the existing regulations. At present, companies notify of intent to abandon but typically there is no compensation for this process. Considering the disturbance to traplines and traditional use activity that results from the abandonment activities, consultation and compensation for affected parties could improve upon the existing process for abandonment.

More generally, what is currently working well with the existing OPR is that pipelines are still being built and jobs are being created. For the most part, when the regulations are followed, they do protect the environment, waterways, and safety of workers and local people.



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However, regulations should be adequately enforced to reduce the likelihood of spills, accidents, or emergencies.

ALMCA members noted that the Regulations should be general enough and effectively enforced so that they ensure companies respect the environment and Indigenous rights but not so narrow or onerous that they make pipeline construction too difficult, time consuming or cumbersome. The OPR should encourage and enable companies to build safe and environmentally sustainable pipelines.

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

ALMCA members made it clear during the engagement session that while the OPR are intended to regulate construction, operations and maintenance, pre-construction consultation remains essential to advancing reconciliation with Indigenous peoples. Further, consultation and ongoing communication over the lifecycle of a pipeline project are important steps forward toward reconciliation.

Very often in the environmental impact assessment process, upstream and downstream impacts are considered differently whereas Indigenous peoples are potentially affected by all phases of construction, operation, and maintenance. Consultation therefore needs to be ongoing and not limited simply by the location of a community in relation to a pipeline Project. For example, a pipeline in Fort McMurray may still impact ALMCA members since they travel long distances to hunt, fish, trap and gather.

Under current OPR, companies seem to conflate notification with consultation. It is not enough to discharge the duty to consult with mere notification of intended activities. In the view of ALMCA it is necessary for companies to obtain a level of consent. Rather than notifications being provided only to individuals (such as trappers), regulations should require that notifications should go to both individuals and Indigenous community representatives.

Further, notifications by mail are not sufficient to qualify as consultation. To notify is not to consult. Consultation requires consent and ongoing communications. In many cases, lack of capacity or resources makes it hard for communities to pass along information to members and affected trappers/hunters. Company personnel should be sent out to visit with harvesters and community members to follow up on mailed notification.

On the question of consultation, there are significant political differences among various groups who claim to represent Métis rights. When it comes to improving OPR and incorporating Indigenous Knowledge, protecting rights and the local environment, it is not sufficient to communicate with groups like the MNC, the MNA or other groups at the provincial or national level. Impacts from pipelines are felt locally, therefore local groups of Métis rights holders should be consulted.

It is through sustained and ongoing consultation with local Indigenous communities that Proponents can cooperate with Indigenous Knowledge holders to conduct participatory



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impact assessment, engage community members in site monitoring, and effectively coordinate emergency management.

Pipelines already have a bad name among many Indigenous peoples as in the past, under existing OPR, Indigenous rights and consultation were inadequately enforced. Regulations should be put in place to ensure broader consultation and consent. Part of this requires hiring Indigenous people as workers, supervisors, managers, monitors, and reclamation experts. The regulations should require companies to provide employees with courses on Métis history and culture.

More broadly, reconciliation with Indigenous peoples can be furthered through the expansion of ownership and equity in pipeline projects among Indigenous groups.

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?

Local Indigenous community members are often aware of the location of unmarked graves or other sites of importance along chosen pipeline right of ways. Usually, the pipeline companies do not have this information. There should be more interaction between the companies and the local Indigenous community, particularly land users such as trappers, to identify the location of sites of importance.

This type of consultation needs to take place prior to the permitting phase and must also continue during construction, operations, and maintenance. Even during the initial phases of assessments, much is missed about the site. Trappers, hunters, or plant harvesters might be overlooked or ignored. It is important that the regulations recognize the need for open opportunities of local people to provide input throughout the phases of a project's lifecycle, from route selection to mitigation to planning through to construction, operation, and maintenance.

Under existing rules companies are required to halt work and do an assessment if by chance they encounter previously undiscovered heritage resources, human remains or other sites of historic, spiritual, or cultural importance. However, the rules could be improved so that more complete community consultation can take place after chance encounters to ensure that discoveries are not ignored or overlooked.

A practical way to ensure that chance discoveries are not overlooked but are appropriately handled is to involve indigenous community-based monitors on site. These positions should be required in the regulations and paid by the pipeline companies.

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?



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Pipeline construction involves clearing right of ways that enable easier access to adjacent traplines. Traffic brings in people who interfere with trapping, steal property, create noise,

and endanger the safety of trappers. This makes it difficult for trappers to continue with their traditional way of life as people interfere with traps, scare away animals and even steal fur.

In addition, construction activity destroys beaver ponds and pushes game out of an area. Having lots of pipelines through a trapline makes it unviable for trapping as this practice requires undisturbed space. The OPR should be improved to ensure that pipelines are effectively spaced to reduce the footprint of linear disturbance and spaced far enough apart to ensure there are large buffers of undisturbed land between pipelines.

The emphasis under the current OPR seems to focus the attention on the protection of heritage resources, human remains, etc. This is important. However, for ALMCA members, protection of valued intergenerational harvesting areas such as blueberry patches is just as important to the viability of traditional culture and harvesting rights.

The best way to ensure traditional land and resource use is protected during construction, operation and maintenance is to do a better job during pre-approval consultation and impact assessment. Many communities have never done baseline traditional land and resource use studies. These must become more widespread long before pipeline construction, operations, and maintenance. This may require a broader effort on the part of the CER, pipeline companies and the Impact Assessment Agency of Canada to ensure that each Indigenous group can conduct a territory-wide traditional use baseline study.

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

More importance needs to be put on the use of Indigenous knowledge to identify sites of importance for environmental health and safety such as muskeg ecosystems that should not be disturbed.

Indigenous knowledge has a role to play in pipeline route selection, right down to the landscape level. Indigenous knowledge will often reveal places to avoid particularly sensitive areas for the local environment and harvesting activities during right of way route selection.

Likewise, employing Indigenous community-based monitors within pipeline companies during construction, operation and maintenance is another way to ensure that Indigenous knowledge plays a role in environmental protection and the protection of Indigenous rights, heritage resources and traditional use of land and resources.

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

More Indigenous people should be hired in positions of oversight on pipeline construction, operations, and maintenance to ensure that regulations are followed.



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The OPR should be updated to require companies to have community liaisons whose jobs are to deal consistently and comprehensively with Indigenous community members, individual trappers, and to take note of concerns.

Local ownership of pipelines is the only way that Indigenous peoples can have a true stake in pipeline projects. Having shares in the hands of communities or even whole projects owned by groups of Indigenous communities should be one of the goals of reforming the OPR and encouraging reconciliation.

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

As contractors, pipeline construction companies need to be flexible and have the ability to complete work quickly. However, there needs to be some notification and communication and even compensation for damages to traplines and to Indigenous harvesting rights.

The Project proponent should be responsible for funding compensation, environmental regulations and protection and ensuring respect for Indigenous rights – not simply the prime contractor which has pressure to finish job quickly. The costs should be paid by the Pipeline/proponent.

One idea is to form a local community council or oversight committee to monitor pipeline activity in a given region. This council would have representation from various groups including Indigenous groups, crownland users, private landowners, the CER and company representatives. The appropriate geographic level should be narrow enough to reflect local rights and interests but broad enough to have a variety of voices at the table.

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

During the community engagement session, one of the ALMCA trappers discussed his experience with a pipeline company. Over time, he has a relationship with the consultation staff. They discuss issues and work together to try to solve problems. With expansion of pipeline activity, there is more pressure on the wildlife. This is a double-edged sword – economic development provides jobs from pipeline development, but it also creates impacts to wildlife and traditional activities. Ensuring that pipelines are safe and economically beneficial without harming local Indigenous peoples like trappers requires ongoing cooperation and relationship building.

In the experience of ALMCA members, big companies have open houses and stakeholder engagement. The larger the impact of the companies' pipelines, the more public engagement they seem to do. Unfortunately, these engagement activities are not personal and do not encourage sustained problem solving at the right of way level. In contrast, smaller companies occasionally fly under the radar and can get away with less public engagement.



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However, they must not neglect to build relationships with trappers, hunters, and other land users on the ground and in the field. Rather than open houses, ALMCA trappers request that companies develop relationships with them and come and visit with them personally. Instead of passive notification letters, active phone calls and in-person engagement is preferable.

At present, when there is a spill, the regulator is notified and the proponent (and any private landowner), but there should be public notification and downstream communities should be notified. There need to be clearer regulations about who is notified in the case of spill, which groups, public land users, Indigenous communities, etc. regardless of whether the spill is on private land or crown land.

The difference between AER and CER regulated pipelines creates some different practices in the field between larger operators and smaller companies. The rules should be consistent.

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

The CER could improve its transparency with more regular meetings with the public and with Indigenous communities. It is important that any written publications or notices remain in plain language that members of the public can understand. There needs to be more effort put into explaining the OPR to the general public. This will raise awareness on the need for a safe pipeline system that is built, operated, and maintained with respect for the environment and Indigenous rights.

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

Politics have played a part in the approvals process in recent years. The divisions between federal and provincial regulations have created economic uncertainty. OPR should be clear enough and streamlined to ensure environmental protection and Indigenous consultation but enable Canada to be competitive economically. The public and investors will see value in a pipeline system that has broad support and consent among Indigenous peoples because it is built to be safe and in respect of the highest environmental standards.

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

Pipeline design and regulations depend on the material it is supposed to transport. The regulations may be updated to promote conversion of pipelines to transport different materials. The key is that any such change should promote environmental protection and not allow companies to cut corners.

Because of design and engineering specifications for different materials, it is difficult to change pipeline use. An alternative would be to ensure that pipeline construction going



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forward is done in such a way that design encourages or enables changing use or status, for example, using thicker or higher quality pipe.

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

The owner of the contents of the pipeline, the shipper, typically pays the costs of environmental protection. There should be an environmental protection fund in place that companies pay into to fund cleanup, orphan wells, decommissioned pipeline, etc.

Conclusion

The input provided by ALMCA members encourages the reform of the Onshore Pipeline Regulations so that they require companies to build safe and sustainable pipelines in a way that respects the environment and Indigenous rights.

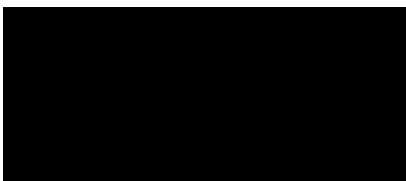
Such efforts would require companies to build pipeline to the highest standards of safety, in ongoing consultation with local Indigenous peoples as partners in pipeline development.

If this is the case, Canada's pipeline sector will be more likely to earn the consent of local Indigenous peoples. Further, it is more likely to draw investment as investors will be attracted to a sector characterized by safe and sustainable operations that reduce risk and liability.

ALMCA members have long lived with the impact of pipeline construction, operations, and maintenance on their traplines, hunting areas and gathering places. At the same time, ALMCA members have benefitted as workers, contractors, and environmental monitors from pipeline development.

ALMCA is pleased to have this opportunity to provide input on the OPR Review. It is about time that the OPR were updated to require Canada's pipeline sector to operate to a high standard of environmental health and safety in respect of and partnership with Indigenous peoples.

Sincerely,



President, Athabasca Landing Métis Community Association