



Elk Valley Métis Nation

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Canadian Energy Regulator

Onshore Pipeline Regulation Discussion Paper Review and Comments

Email: opr-rpt@cer-rec.gc.ca

Please find below the comments from Elk Valley Metis Nation regarding the Discussion Paper for Onshore Pipeline Regulation. As noted in the instructions for the Discussion Paper, we have responded to just the questions that we had substantive comments on. In general we would like all government regulators to take a more co-development and co-management approach working with Indigenous communities during the oversight of natural resource development projects.

Elk Valley Metis Nation appreciates the opportunity to review and comment on this regulation.

Sincerely,

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President, Elk Valley Metis Nation

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

Ability to access information on application and on existing operations is difficult.

Public information on the CER website is not intuitive. Simple things like maps, with the ability to click on a specific area of a pipeline would be helpful. There tends to be more information on project that are in the regulatory approval process, but if you want to know about the most recent inspections and audits it is not easy to find.

TC Energy (NGTL) is applying for and has been approved for pipeline work in the Elk Valley and down into the US (*West path Delivery Foothills Zone 8*). EVMN members use that land regularly for traditional use and a member asked us how the existing gas pipeline that runs through the Elk Valley and down into the US was working? Had there been any problems or compliance issues with the existing line? So we went onto the CER website to find out ...

We went to “compliance and enforcement” page and then “inspections” link, then we went to “CER compliance verification activity reports” and then a table finally came up (not a map). There were about 168 reports, but the oldest seemed to be from 2020, but there must be previous inspections, but we couldn’t find them. The table we searched, there were a lot of reports about Transmountain, North river Midstream and West Coast Energy pipelines. But we could not see any reports about the existing pipeline in SE corner of BC. So, then we tried the “Inspection Office Order” tab, and looked at the 54 reports there, but again, nothing about the project in our traditional territory. Then we tried the “Audits Report” tab, but nothing seemed to relate to our pipeline. At this point we quit trying and the EVMN member said:

“So they don’t even tell us if their monitor the existing line, what do you think they will do with the new one (West path Delivery Foothills Zone 8) ?”

It is possible that somewhere in the CER website there is an inspection report, or something, for the pipeline in our traditional territory, but we couldn’t find it. So, either there is not information or its too difficult to find, either way it’s unacceptable that we can’t easily access the information. There should be map of the CER regulated pipelines and you should be able to click on the map in the area you are concerned about and any report (inspection or audit or warning letter, or whatever) for that piece of pipeline should come up.

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

EVMN would like to see meaningful involvement in the decision-making process and oversight of pipelines in our traditional territory. From our perspective, this would mean involvement throughout the lifecycle of the Project. When the Project is first announced, EVMN would like to collaboratively work with CER and industry to develop the requirements for environmental assessments. Reconciliation is not having a non-indigenous entity bring us a draft term of reference our outlines of required studies and asking for our opinion and input, reconciliation is sitting down with the Indigenous communities with a blank piece of paper, discussion the requirements that studies must meet for the non-indigenous regulations and discussing the requirements that studies must meet from an indigenous world-view and then jointly building the study terms of reference together.

Economic partnership is also an important component of reconciliation for EVMN. The Metis way of life was born out of the fur trade and our culture is a mix of traditional Indigenous ways of living and working in the wage economy. The EVMN is working hard towards developing business partnership, joint ventures with the goal of having our own EVMN owned and operated business in a few years. Ensuring that all CER regulated projects have a requirement to set targets for Indigenous economic participation and report annually on those targets. This should apply to all CER regulated projects, where they are just getting their approvals or have been operating for years.

The CER Indigenous Advisory Committee is a good start to improving relations between CER, Pipeline Operators and Indigenous communities. EVMN understands that the IAC has had a slow start due to the Covid Pandemic, and we hope to have communication with the IAC and its sub committees in the near future. CER has also recommended an Indigenous Oversight Committee for NGTL system, which might operate within the IAC system or on its own. We are aware that

CER hires Indigenous Monitors on the NGTL system, but we are not sure who is monitoring pipelines in our traditional territory. As the pipelines in the EVMN territory are operated by NGTL, we assume they are part of the NGTL system, although they are technically outside of Alberta. Either way, EVMN would like a role in the Indigenous Oversight Committee and as an Indigenous Monitor on the projects.

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?

Protecting sites along the RoW begins with Indigenous communities being resourced to visit the RoW, access routes, laydown yards and other areas to be disturbed by the project. It is important that CER regulations require Industry to work with (and resource) all Indigenous communities who have historic knowledge of an area or who are currently practicing traditional use on the lands around the project. From EVMN perspective the CER has done a good job of identifying and working with traditional knowledge holding communities.

After sites are identified the regulations should require protection, wherever possible. Industry generally wants to have a construction RoW where they can disturb the full temporary construction space. However sometimes important site are found in the temporary construction area, and the regulations should require industry work around those areas, even if it is inconvenient for the construction crews.

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

As described in the guide “... *The Preamble of the CER Act states that the Government of Canada is committed to taking into account Indigenous knowledge in decision-making ...*” (Underline added).

This implies that the Western System is in control and the Indigenous System must fit its knowledge into the western way of thinking. Fundamentally, the processes for using Indigenous Knowledge should be co-developed with the Indigenous communities, so that both systems are on an equal level, with both systems working as equals. The flow of knowledge should go both ways, it is not just IK that is trying to inform and be used by CER Regulatory system, it should be a joint management process, where both knowledge systems are treated equality and a process is established that is not just about IK being added to Western Science and CER process.

A co-decision making and co-management system in which to make CER decisions is needed. It is not just Indigenous communities “giving” Indigenous Knowledge to the CER; it is the CER and the Indigenous Communities co-creating a process to use Indigenous Knowledge and Western Science to make decisions.

The regulations should also be clear that both current and historical traditional use are valid sources of Indigenous knowledge. This is very important, as often the regulators are only looking for historical use/knowledge, but as Indigenous peoples continue to use the land they enhance their knowledge, as the land and IK are interwoven and IK is contained in the cultural fabric of the Indigenous Communities, and this includes the contemporary communities, not just historic.

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

The CER has also recommended an Indigenous Oversight Committee for NGTL system. Having direct Indigenous involvement in the oversight of pipelines, such as with TMX and Line 3, would be a good step. As mentioned previously, EVMN has tried to look up oversight or monitoring activities on pipeline in its territory and was not able to find anything on the CER website, so having EVMN involved in the oversight of NGTL pipelines, or whatever the extension of the NGTL line in BC is called, would provide some confidence to EVMN members that CER is monitoring existing pipelines.

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

The co-development of performance metrics related to CER-regulated facilities would help ensure indigenous knowledge is considered when creating the metrics. This would increase the transparency of the CER oversight work.

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?

As described above a more user-friendly interface on the CER website would improve stakeholders ability to find information on projects. As well, it is importance when using data from Indigenous knowledge, that the knowledge is interpreted in collaboration with Indigenous group to ensure that it is not used inappropriately or out of context.

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

Decommissioning or “leave to abandon” a pipeline is an important consideration. From the perspective of EVMN there would be a couple of key considerations when making this decision. The first is safety, which option is safest, should be considered. Secondly, is what happens to the RoW above the pipeline. EVMN would prefer whatever options allows vegetation to be replanted on the RoW, including overtop of the pipeline.

If companies are applying for permits to change the products in the pipeline or the direction of flow in the pipeline, EVMN would again be concerned about safety issues and any changes this would have on the ground in the RoW.

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

Very important issue, as it does occur. Each company should keep a record of grievances they have received workplace safety or respect. The grievance redress log should include information on when the grievance was filed, the process for reviewing the grievance, as the individual or group who filed the grievance was involved in the process and informed of the review, the outcome of the grievance redress and if the outcome was satisfactory for the individual or group who filed the grievance. This log should be reviewed annually by the CER and used as measurement of the effectiveness of the company’s workplace safety plans.