Huu-ay-aht First Nation
Onshore Pipeline Review Submission

Preamble

The Huuayaht First Nation (HFN) is a self-government modern treaty nation. As such, it has legislation, governance and administrative capacity to administer its own affairs on its Treaty Lands. HFN signed its treaty in 2012 with other Maal Nuth Nations. HFN's principal community is located in Anacla, near Banfield on the west coast of Vancouver Island.

HFN, along with 25 other modern treaty nations across Canada, is negotiating with Canada on a number of strategic initiatives to address long standing issues in areas such as infrastructure, housing, lands and resources and culture and language. HFN is also responding to requests from government agencies for consultation on a range of issues.

Given the CER Act explicitly states the Crown's commitment to achieving reconciliation with First Nations, the Métis, and the Inuit through a nation-to-nation and government-to-government approach consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), it is hoped that the following responses will aid the CER in the practical fulfillment of this commitment to this land's First Peoples and to the substantial fulfillment of their Constitutionally recognized rights.

Question Responses

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

The Huu-ay-aht First Nation's (HFN) has limited experience with the On-shore Pipeline Regulation (OPR) so far. The Steelhead LNG project was proposed to the Nation, beginning with the signing of an Opportunity Development Agreement in Summer 2014. This progressed to the delivery of community engagement sessions in the Summer of 2016 and was followed by HFN voting strongly in favour of approving a co-management development arrangement for an LNG export facility in Sarita Bay titled the Kwispaa LNG facility. Unfortunately, Steelhead LNG decided to withdraw from the project in 2019.

The OPR should continue to enable and provide a supportive framework for these kinds of mutually agreeable co-management and co-benefit arrangements in the future, such that the territories of Indigenous Nations are respected and the Nation's decision-making authority over their traditional lands is recognized.

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

As stated in the OPR Review itself, a focus is needed on meaningful change such that CER regulated industry meaningfully and actively participates in reconciliation. The OPR needs to provide a framework with effective mechanisms to ensure regulated industry does not simply give lip-service to the necessary goals expressed in the OPR Review, nor treat the process as a box-checking exercise. It will take time and energy to facilitate this cultural shift based on a well-founded, long-term relationship of trust and cooperation; the OPR should seek to provide support for the development of this foundation.

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 OPR needs to take seriously the position of Indigenous communities on what constitutes significant heritage and what is sufficient for guaranteeing the integrity of those spaces, sites, and objects. The OPR needs to provide concrete guidelines for local Indigenous community involvement throughout all relevant stages of process, as well as incentivizing consequences for industry.

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?

In addition to the answer above which continues to apply here, one contribution the OPR can make is in requiring heritage protection to be priced-in throughout any project plan, and for cost distribution to be clear between industry and government; from an initial, thorough, and cooperative survey of possible sites to the ongoing co-managed stewardship of those sites in conjunction with stakeholder communities, all involved should benefit from a clear framework.

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

This question is perhaps overly broad to answer here, but let it suffice to say that stakeholder nations and communities should be properly consulted about knowledge which they feel is relevant to a given project. There should be a clear process for soliciting this knowledge, ensuring its relevance and application is understood, implemented where possible, and clear reasons given where it may be impractical, with a process for appeal if industry is deemed to be setting the bar for impracticality too low.

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

As addressed earlier, substantively involving Indigenous peoples in oversight will require the development of a long-term relationship which involves capacity building and professional development for involved members of stakeholder communities. Indigenous representatives who conduct oversight should have a sufficient understanding of the project and the variables involved such that they can be effective in speaking on behalf of their community's interests; this capacity would be both to the benefit of their own communities as well as industry in that there would be better foresight as to obstacles to development which are more efficiently encountered early in the planning process rather than once it is already underway.

It is imperative that affected Nations be involved in discussions at the earliest stage of pipeline development. Companies should be required to develop initial conversations at the concept stage and come to OPR with plans to involve Nations in the planning process. OPR should consider the development of a team of indigenous negotiators to lead this work.

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

In a word, communication; there should be a regular flow of information from government and industry to stakeholder communities that is concise and easily understood as to what is at stake. This communication should be open and two-way, with the opportunity to respond, ask questions, and raise concerns where they exist.

HFN found in its deliberations with its own citizens around the LNG plant, that it takes considerable time and patience to deal with concerns, address questions and above all, address the benefits to the Nation.

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

As above, with an emphasis that any requirements should be clear to all parties and have a clearly laid out framework for how to proceed, with clear incentivizing consequences for adherence or non-adherence.

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

Trust cannot be emphasized enough, both as one of the most important aspects of the foundational relationship necessary to foster progress in reconciliation, and as one of the largest obstacles to many projects moving forward with full Indigenous stakeholder support. Trust is difficult to gain, easy to lose, and there is a great deal of negative Indigenous experience with government and industry to overcome. The CER needs to take their role as guarantor for industry and representative of government in this way seriously, as it can be difficult to distinguish varied government and industry parties when trust is deemed to be breached and so the consequences of such a breach tend to be far reaching and long-lasting. Transparency is a good first step, but further to that mediation of issues with reparative outcomes is also required.

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?

Ensure that all identities in stakeholder groups have the opportunity to be heard, to receive a clear and considered response, and to have their interests considered on their own intrinsic merits with every reasonable effort made to understand the values at play in those interests from the speaker's perspective.

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

Certainty for industry should mean certainty for Indigenous nations, their jurisdiction, and their territories. If the CER's reconciliation aspirations are to have substance, it needs to take seriously that certainty for industry cannot come at the expense of Indigenous peoples. In order to ensure this, the

OPR needs to embody the values of UNDRIP within its logic and contain clear processes for adapting and learning as the myriad emergent relationships between Indigenous nations and industry continue to grow and generate better experience and understanding. With this kind of certainty, Canada can be a global leader economically, environmentally, and with regard to Indigenous rights.

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

Where Indigenous communities are concerned and are stakeholders in a project, the OPR could support capacity building within those communities so that they can more effectively participate in all aspects of the project which concern them and can knowledgeably advocate for their interests. Innovation in Indigenous communities means innovation for project design and operation; to the extent that the OPR is concerned with a just form of efficiency, this is a necessity. Effective and beneficial technologies should of course be implemented as they are available, though what constitutes a best practice in terms of the nature of the efficiency it creates needs to be carefully considered.

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

Where Indigenous Nations and communities are stakeholders, quantitative metrics could include the following: number of Indigenous stakeholder delegates trained in participatory oversight, time and expense deployed in engaging with Indigenous communities, fair benefit sharing ratios between industry and Indigenous stakeholders, number of Indigenous stakeholders trained and employed, number of complaints issued by stakeholders and number resolved to their satisfaction, etc.

Qualitative metrics could include the following: regular surveys of both well-informed Indigenous leadership as well as broad community opinion on the way a project and/or industry partner is proceeding, stakeholder perspective on whether a project is overall benefitting them and their community, and whether a project is in the long-term best interests of future generations.

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?

See above.

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

The Commission should ensure that the standards by which a company might either abandon or decommission a pipeline are stringently high, especially where Indigenous stakeholders could be directly affected. Special provision may be required in the regulations for decommission or abandonment procedures for pipelines that were built in the area of traditional territories or in the reasonable proximity of a sacred and/or heritage site. Where there is a need for ongoing monitoring of an abandoned or decommissioned pipeline, training and jobs could be deployed for Indigenous stakeholder members to take on this role.

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?

The phrase "nothing about us, without us" comes to mind; where companies and industry require guidance in compliance with the OPR, Indigenous stakeholders should have ample opportunity to receive training and employment in offering that guidance and ensuring compliance.

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 contactors, be provided in the OPR, and/or described in related guidance?

It should be recognized that approaching a project with Indigenous stakeholders within a nation-to-nation and government-to-government context as appropriate is likely to introduce novel variables which may affect human and organizational factors and related outcomes. For instance, what constitutes environmental safety as an outcome may differ, or group dynamics and team coordination and communication may require adaptation to be effective for all parties.

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

No comment.

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

Especially where Indigenous stakeholders become employees and partners, workplace safety and respect are critical. Unfortunately, as this review document alludes to, safety and respect are often lacking for Indigenous members. While workplace training and avenues for complaint and mediation are important, these are unlikely to change the minds of those with entrenched and problematic viewpoints which manifest in unsafe and disrespectful behaviour towards Indigenous people.

While long term culture-shift toward understanding, acceptance, and respect should always be actively pursued, short-term mitigating solutions are required to ensure Indigenous stakeholders can participate fully wherever needed. These may need to take the form of practical material consequences for those engaging in harassment, beginning with a nominal gesture for minor issues with a clear path to escalate toward substantive consequences. These need not necessarily be punitive at first, with reconciliatory and restorative measures being preferred. Indigenous employees and partners should similarly be made keenly aware of these processes and be made comfortable in bringing issues to a trusted and effective entity.

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

Where reporting and oversight requirements become a disproportionate amount of the workload, there can be a tendency to begin treating them less earnestly and more as a box-checking exercise. It may be possible to introduce a tiered-review approach whereby there is an initial phase of high oversight to ensure compliance, and where substantive engagement and high standards are demonstratively being kept, the company/contractor can be incentivized with a more normalized reporting requirement. This being said, there should be on-going third-party observation/audits as well as clear and anonymous

avenues where any might raise a concern where standards are falling and this would result in a review and possible increasing of stringency of oversight at the contractors fault and expense.

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

One avenue which is becoming more common, especially among Indigenous territories, is to legally recognize a territory as having legal personhood, such that an area can be 'injured' on its own environmental merits and remedies can be sought by stakeholder parties. Employee injury is often a focus of safety measures at least in part because of the serious material and legal consequences if a person is injured. Internalizing environmental damage within regulations as having inherent material consequences not tied to human harm is one measure a regulation could take to show it takes environmental integrity and Indigenous stewardship seriously. Even if not internalized in its own regulation, territories with inherent rights and remedies to damage are likely to become a more common legal context in which industry needs to operate in future, and it is to industries benefit to learn and prepare to navigate this space early.

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

In addition to the logic of the above approach to environmental rights and inherent well-being, which could be regulatorily internalized, Indigenous stakeholders should similarly have a clearly defined and empowered role in setting expectations and reviewing proposed Environmental Protection Plans for any project area which intersects with their traditional territories. Again, the capacity and training to engage in this role should also be substantively supported and promoted by the CER.

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?

An environmental protection program should provide a framework for a given plan to adapt to contextual differences and not simply be applied in a cookie cutter, but with differently coloured sprinkles, approach. This can be fostered via the inclusion of well-informed, trained, and employed Indigenous stakeholders from relevant communities. As this practice grows, even this capacity building and training could be conducted by other Indigenous professionals from other communities who have trained and engaged in the work previously.

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

Without having reviewed the new Remediation Process Guide thoroughly, comment will need to be withheld as to how it can be improved.

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?

There should be clear processes for addressing Emergency Management with regard to environmental damage to traditional Indigenous lands as distinct from Crown lands, and an even higher standard where this damage is in proximity to a heritage or unique site. It should go without saying that any possibility of human health impact should be mitigated at the highest standard.

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

Where the possibility of Indigenous community impact is present and/or there is an Indigenous stakeholder interest, Quality Assurance review should include a trained and employed Indigenous community member, as local to the project as possible.

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?

No comment.

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

1. Support the development of indigenous capacity to respond by establishing educational programs to provide input to companies and act as liaison between Nations and companies.
2. Establish communications with the 25 self governing Nations through CERNAC as part of the development of indigenous capacity in the lands, natural resources and treaty negotiation process and support the development of specialists in pipeline review.

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

If further elaboration of any of the above, or discussion of additional matters, would be of any assistance, please do not hesitate to contact ███████ at Huu-ay-aht First Nation via ███████████