



KELLY LAKE FIRST NATION

P.O. Box 116, Toms Lake, BC V0C 2L0
Cell: 780-518-3082 or 780-228-1872
Email: kellylakefirstnation@gmail.com

“A Community Located in British Columbia”



August 19, 2022

Canada Energy Regulator
Suite 210-tenth Ave SW
Calgary, Alberta
T2R 0A8

Re: Onshore Pipeline Regulation Review – Response to Discussion

The following is Kelly Lake First Nation’s (KLFN) response to the request for feedback on the Onshore Pipeline Regulations Review Discussion Paper.

The Canada Energy Regulator (CER) granted KLFN an extension to its submission in light of a number of unforeseen circumstances in the community.

The Nation’s comments and observations to the paper are noted below:

General Comments:

- ✚ Some of the questions asked are technical in nature and would require professional assistance to answer with any degree of accuracy. The Nation’s comments in these sections states this.
- ✚ It would have been helpful to have had a series of workshops to complete this assessment in a group setting. This would have enabled more fulsome discussions, opportunities for participants to probe, gain understanding and clarity and hopefully give the CER more robust and meaningful feedback.

Sessions tailored by provincial jurisdictions would have been very enlightening and beneficial.
- ✚ The matter of cumulative effects is of utmost importance and is certainly front and center in terms of land stewardship and Indigenous traditional ways of life. This needs to be factored into the regulations and manual requirements going forward.



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SECTION 1. OPR – LESSONS LEARNED

1.1 What’s working well in relation to the OPR, and its implementation, and what could be improved?

- KLFN has had little interaction with the CER relative to onshore pipelines, primarily in that the majority of the projects within the traditional territory have been at the Alberta and British Columbia jurisdictional level.
- The Nation has little capacity to invest time in the full review and interpretation of the manual and its contents. As such it is only able to respond to the requests of proponents or process deadlines, as required. This results in a level of naivety in terms of the Nation’s rightful position to pursue various avenues of project assessment. Greater educational support would be welcomed – for instance, a series of workshop to present and educate practitioners on the various sections of the manual.
- Further to the above comment, capacity funding to participate in various workshops, hearings etc. is disproportionate to the amount of effort required to comply with the reporting conditions. This becomes even more so for Indigenous groups such as Kelly Lake First Nation. A needs-based approach or sliding-scale support model could assist in this regard.
- The CER website is cumbersome and difficult to navigate. Again, an educational workshop, along with an instruction “cheat sheet” would assist.
- Communication between the Agency and KLFN could be improved. While it is understood that the process requires independence, additional guidance would assist the Nation in its reviews and project understandings.
- The Nation would appreciate receiving clarity regarding the role of the Crown Consultation department within the CER, particularly given its tasked with providing input and recommendations to the same organization that has the authority to approve/decline projects.



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SECTION 2. RECONCILIATION WITH INDIGENOUS PEOPLES

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

- What is the CER’s definition of “Reconciliation”? The term has a different meaning for different groups and communities. Ensuring here is a clear understanding and mutual understanding is an important first step.
- Ensuring that the values and commitments of the CER align with those of the proponents is a significant challenge. While condition requirements could be imposed, without documented follow up, there are is no assurance as to accountability.
- Educational workshops are needed to provide information on the Indigenous Monitoring Program. KLFN responded to a Request for Information relating to the NGTL 2021 project. No progress has been made to date.
- As previously stated, capacity is a significant barrier. While some Indigenous communities are advanced in their land management and consultation departments, KLFN is not. Assessing the needs of each community and aligning education supports accordingly would be of benefit to those communities that lack financial and operational capacity.
- Process timelines are often in conflict with Indigenous cycles. Moreover, the imposed deadlines are difficult to achieve when Nations are lacking capacity. In some instances, request will go unanswered, simply to reduce the inordinate workloads the departments face.

2.3 How can the CER contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?

- There is disparity between western science and traditional value components. Often, proponents will discount the importance of certain plants/berries, and/or fail to recognize the relational connection these have on the eco-system as a whole.
- Achieving alignment within and between federal/provincial/municipal governments as well as other regulatory bodies is challenging.



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

- Ensure there is a greater level of knowledge, awareness, and *acceptance* of the importance of Indigenous traditional value components. As stated above, there is disparity between western science and traditional value components, which plays out in the discussions with proponents in the mitigation and accommodation discussions.
- Require that proponents incorporate the wisdom of the affected Indigenous groups in the early planning stages of the project.
- Require that proponents ensure its prime contracts, and related subcontractors are knowledgeable and respectful of Indigenous engagement and participation.
- Incorporate a more holistic view of the contributing factors that support (or destroy) the integrity of the value components identified by the Indigenous groups. Example: the various terrestrial factors that create and sustain a moose lick.

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

- Respect and value Indigenous knowledge on a “level playing field” with western science.
- Ensure that the fee structure to acquire Indigenous knowledge/wisdom is equal to that of other professional opinion.
- Ensure the proponents engage with Indigenous communities in the very early stages of planning.
- Ensure that proponents include/introduce the Indigenous communities to their respective prime and sub-contractors.
- Consider additional Indigenous wisdom on the CER Board of Directors.



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

- Ensure Indigenous groups are updated and consulted at a field-level perspective on a frequent basis. While this practice exists within the regulatory process at a corporate level, there is little to no contact at field level during construction, or when in operation. Bi-annual face-to-face meetings would be beneficial.
- The use of Indigenous monitors should be a standard practice. In order to implement an **effective** monitoring program Indigenous perspective must be included throughout the project, starting at the pre-planning stage, and carrying through to project reclamation.
- Set targets for Indigenous inclusion. Follow up to ensure compliance.

SECTION 3. ENGAGEMENT AND INCLUSIVE PARTICIPATION

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

- Ensure Indigenous groups are updated and consulted at a field-level perspective on a frequent basis. While this practice exists within the regulatory process at a corporate level, there is little to no contact at field level during construction, or when in operation. Bi-annual face-to-face meetings would be beneficial.
- Align CER requirements with the provincial regulatory bodies (Forestry, Fish and Wildlife, provincial environmental bodies etc.)
- While this is not within the context of this review, it is extremely difficult for Indigenous groups to adhere to different regulatory standards and practices at the provincial level. This becomes increasing more onerous for those groups that have traditional territory that spans different provincial boundaries (i.e., Alberta Energy Regulator and British Columbia Oil and Gas Commission).

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

- Host regular and workshops to present and discuss topics of interest. Encourage collective discussion and information sharing.



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- Provide simple and clear communications, which include hyperlinks to reports and documents.
- The website to cumbersome and difficult to use. Provide training on its use and provide a simple instruction booklet to assist.

3.9 How could the CER improve transparency through the OPR?

- Provide more timely updates (i.e., NGTL 2021 Indigenous Monitoring Program).
- Provide feedback on the outcomes of decisions made after seeking Indigenous input.
- Provide more timely information relative to process steps, delays, timelines etc.

3.10 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?

- In the spirit of inclusivity, we believe that all subgroups should be considered in the analysis. Exclusion would nullify the intent of implanting a GBA analysis process.
- Each project should have an Indigenous support person on staff to assist with cultural integration and advice. Prime and sub-contractors, including field supervisory staff should be receive Indigenous sensitivity training, tailored to the local work force (not a pan-Indigenous approach).
- Ensure that local Indigenous communities are asked to participate and “given first right of refusal” in the work opportunities involved in the project construction and the corresponding ancillary services.
- All Indigenous peoples will be affected by project development within their respective territories, however the Elders, Traditional Knowledge and Trapline holders more so. The land disturbance will disturb the natural rhythm, which will impact the eco system. Sufficient notice to allow for harvesting or relocation of plants is essential in order to lessen the impact.



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SECTION 4. GLOBAL COMPETIVENESS

4.11 How can the OPR support a predictable and timely regulatory system that contributes to Canada’s global competitiveness?

- Become a leader in environmental practices, while balancing the need for competitive pricing and shareholder value.
- Incorporate Indigenous traditional knowledge into the environmental process at a level that is recognized to be equal in value to western science.
- Incorporate the applicable Truth and Reconciliation Calls to Action and the United Nations Declaration on the Rights of Indigenous Peoples into the Agency’s policies, processes, and procedures.

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

- Be open to new fresh ideas that push the thinking beyond current rules and regulations.
- Conduct more frequent reviews and updates to the manual to incorporate new concepts.
- Incorporate Indigenous wisdom into decision making processes.

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

- Utilize more smart technology solutions to assist with metrics monitoring. Encourage proponents to invest in Similar technology.
- Set targets for performance and follow up for timely and accurate reporting.

4.14. 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 comments provided in 4.13



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SECTION 5. SAFETY AND ENVIRONMENTAL PROTECTION

5.15 How can the OPR be improved to address changing pipeline use and pipelines\status?

- Provide further focus and requirements to address the issues with respect to abandoned well sites.
- Consider a mandated annual set aside program to assist with eventual decommission and reclamation.
- Work more closely with the provincial jurisdictions to ensure sites are properly cleaned up in a timely manner.

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

- Early engagement by Indigenous peoples.
- Incorporating Indigenous monitoring at every stage of a project.

5.17 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?

- Encourage proponents to incorporate programs and processes that assist in the (further) inclusion of an Indigenous workforce, to include job readiness, training and apprenticeship, community-owned and entrepreneurial work opportunities, scholarships, community engagement, and cultural sensitivity training.

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

- Incorporate review processes to measure the project performance requirements (inspect what you expect).
- Mandate reporting metrics that proponents implement with their prime and sub-contractors.



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5.19 How can respect and personal knowledge safety be assured at CER regulated sites?

- See comments provided in 5.18.

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

- Ensure that proponents incorporate all components of the project process throughout its entire supply chain. Often, accountability stops at the prime contractor, whereas the majority of interaction takes place in the field and is performed by sub-contractors.

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

- See comments provided in 5.20.

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

- As referenced several times within this response, the impact of cumulative effects is a significant concern for Indigenous peoples.

5.23 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?

- Integrate Indigenous wisdom into the policies, [processes and procedures.
- Encourage other jurisdictions to do the same.

5.24 How can contaminated site management requirements be further clarified, in that OPR or in guidance?

- Tighten up the timelines for cleanup.
- Include Indigenous monitoring in the process.



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- Encourage other jurisdictions to do the same.

5.25 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?

- One-on-one engagement with the communities within the project footprint.
- Host joint meetings to create a more inclusive plan.

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

- Timely follow up and reporting.
- Include Indigenous monitoring in the process.

5.27 How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of the weld area?

- Unqualified to respond.

SECTION 6. IMPLEMENTATION OBJECTIVES

6.28 What are your recommendations for compliance promotion at the CER?

- Inclusion of Indigenous perspective in the meetings.
- Full disclosure of the discussions



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

- Additional training and ongoing workshops to assist with the navigation and interpretation of the manual, particularly for those communities that are under resourced.
- Additional training for field staff to understand and implement the appropriate processes and reporting mechanisms.
- Capacity funding to enable the Indigenous communities to gain the knowledge internally, with less reliance on outside consultants.