

June 27th, 2022

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

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

Dear Mr. Barghshoon,

On behalf of the Lakeland Métis Community Association (LMCA), I am pleased to present LMCA’s submission regarding the Canada Energy Regulator’s (CER) Onshore Pipelines Regulations Review (OPR Review).

LMCA is a community-based organization in northeastern Alberta that represents the interests of its members who claim Section 35 rights and who are connected to the historic Lac La Biche Métis people.

Among the 50 families represented by LMCA are people who work or own businesses in the oil and gas sector. Many individuals in our community have worked directly on pipeline projects. As Métis harvesters who hunt, trap, fish and gather food on crownlands, our members have direct experience with the environmental and socioeconomic effects of extensive pipeline construction and operation within our traditional territory which includes the Athabasca Oilsands Area.

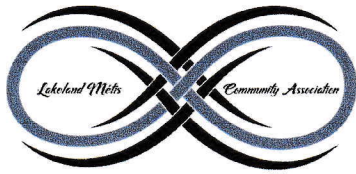
LMCA is aware that the existing Onshore Pipeline Regulations from 1999 do not reference Indigenous or Aboriginal rights or the duty to consult surrounding pipeline construction or operation.¹ Considering Canada’s commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Canadian law and policy,² LMCA expects that the OPR review will reform the existing Onshore Pipelines Regulations to recognize and protect Indigenous rights.

LMCA’s input on the OPR Review Discussion Paper follows the order of the discussion questions. Some questions have more input than others and in some cases no response are provided.

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

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>



The existing OPR regulations purport to promote a culture of safety based on site-level documentation and environmental protection planning. However, compliance and enforcement of regulations is difficult considering the extent of Canada's pipeline infrastructure, large distances, and a fragmented regulatory approach between areas of federal and provincial jurisdiction.

Enforcement of environmental health and safety regulations and increased CER oversight for safety inspections is more desirable rather than a self-regulated approach that leaves compliance in the hands of operators. This enforcement should involve cooperation and partnership with local Indigenous community members, particularly when it comes to fieldwork and site-level inspections.

More broadly, there needs to be more Indigenous oversight of the compliance and enforcement activities of the CER, including transparency in the selection of Indigenous Advisory Committee members.

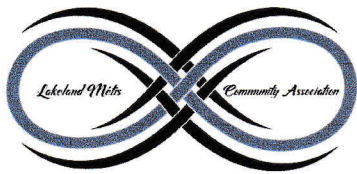
2. How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?

There is a great deal of diversity among Indigenous peoples in Canada. Even among Métis people, there is great diversity and regional distinctiveness in culture, ways of living, and political affiliation. In some cases, several groups claim to represent Métis rights when it comes to consultation over industrial impacts. In LMCA's territory, due to a history of migration within the regional economy, there are now shared and overlapping territories between Métis and First Nations people. Just because a pipeline company or a government agency consults with one group that claims to represent Métis interests does not mean that the duty to consult has been met with all local rights-bearing groups.

Reconciliation with Indigenous peoples requires clear and direct provisions in laws and policies that require companies to implement concrete measures to promote Indigenous participation in environmental and socioeconomic protection and enhancement. The creation of Indigenous Monitoring Programs and the Indigenous Advisory Committees are good examples of positive steps in this direction. However, these committees need to reflect the diversity among Indigenous groups and create opportunities for input at the community level, not just at the "Nation-to-Nation" level.

The membership of the Indigenous Advisory Committee to the CER should be expanded to include members of Métis communities who are not affiliated with the Métis National Council. Likewise, participation in local Indigenous Monitoring efforts on specific pipelines or within particular geographic areas should be broadened to include a broader range of Indigenous groups, regardless of their affiliation with various provincial or national groups that claim to speak for Indigenous people.

Since the pipeline companies profit from operations but local Indigenous communities live with the effects of spills and accidents, it is only fair and just that pipeline companies (and not the public) should fund initiatives such as the Indigenous Monitoring Programs. If the funding comes from proponents, it is desirable that it would be managed through a publicly accountable trust fund with a strong level of Indigenous engagement and oversight. This should include local representatives from communities in proximity to pipeline projects.



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?

In cases where heritage resources are only discovered during construction, operations, and maintenance, one is tempted to think that perhaps the pre-approval planning, consultation and field assessment of heritage resource potential was inadequate. The protection of heritage resources should begin early in the planning and assessment phase. To adequately identify potential or known locations of heritage resources in relation to pipeline projects, consultation with local knowledge holders is essential. It is not sufficient to consult with broader regional or provincial organizations who claim to represent members at the “Nation-to-Nation” level.

In cases where heritage resources are encountered during construction, operations, and maintenance, the OPR should be explicit about the protocols to be followed, including notifying the local representatives on the Indigenous Advisory Committee, notifying local Indigenous governments, cordoning off the area, etc. At the site level, some flexibility in the route planning should be allowed so that heritage resource discoveries could be avoided. Beyond site level avoidance, more collaborative research involving archaeologists, historians and Indigenous communities should accompany pipeline assessment, planning and approvals.

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?

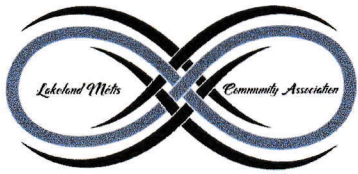
To ensure protection of traditional land and resource use sites during construction, operations and maintenance, the OPR must ensure that there is input and communication with local people who use the area and who are impacted directly by operations.

The OPR must recognize that Indigenous peoples have rights to use crown lands and resources for traditional purposes *a priori* and that they do not need to prove to pipeline proponents that these rights will be impacted.

The OPR must be rewritten based on the assumption that any pipeline through crownland area will impact in direct and indirect ways the ability of Indigenous people to use that area for traditional purposes, whether due to linear disturbance of wildlife habitat that cause predator-prey dynamics to shift, loss of native vegetation or species that are traditionally harvested, noise-related impacts to wildlife, increased human access to areas by recreational users, etc.

The reforms to the OPR must remove the burden of proof from local Indigenous communities to assert in the case of each pipeline how their traditional use will be impacted. It should be understood as a given that impacts will occur. Instead, the OPR must put the onus on pipeline proponents to work with local Indigenous communities and the CER to prove that their mitigation measures will be effective through meaningful and sustained consultation through the lifecycle of the project.

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



Inviting the participation of Indigenous knowledge holders from local communities in all phases of pipeline planning, assessment, construction, operation, and maintenance should be the goal of the OPR. Having adequate funding for Indigenous monitors, regular training and community-level input into Indigenous Advisory Committees will ensure that Indigenous knowledge is respected and protected.

Indigenous knowledge is a powerful tool for the assessment of potential adverse effects of pipeline projects on the local environment and on Indigenous rights. Extending the incorporation of localized, Indigenous knowledge to the construction, operations and maintenance phases of pipeline projects will ensure greater protection of Indigenous rights and the local environment.

It should also be understood that Indigenous knowledge should be respected and documented in ways that are appropriate and comfortable for the knowledge holders. Further, field monitoring by adequately trained teams of Indigenous monitors and environmentalists would ensure compliance with the best practices in environmental protection (which are themselves informed by Indigenous Knowledge).

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

There are several ways that greater participation of Indigenous peoples in pipeline oversight could be achieved. One is expanding the membership in the Indigenous Advisory Committee to include a broader range of voices at the local, regional, and provincial levels, rather than just at the “Nation-to-Nation” level.

Another way is to require companies to employ Indigenous monitors with full benefits, training and permanent full-time employment-status. At present, Indigenous Monitors are often employed casually, part-time or on an ad-hoc basis. Ensuring permanent full-time employment of Indigenous monitors will ensure long-term and meaningful participation in pipeline oversight.

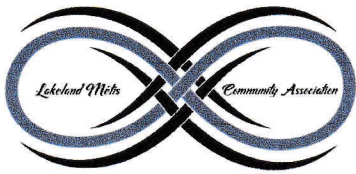
One of the key obstacles to Indigenous participation in pipeline oversight is a lack of capacity, opportunities for training and lack of awareness about opportunities among students and Indigenous youth who are just entering the workforce.

The OPR should make explicit that companies are required to establish Indigenous Monitoring Programs and provide training and employment for Indigenous monitors with a focus on recruitment and training of young people.

More broadly, the best way to ensure participation of Indigenous peoples in pipeline oversight is through the creation of opportunities for co-management and co-ownership of pipeline projects.

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

The OPR should be reformed to promote collaborative interaction between companies and those who live and work near pipelines, including Indigenous people. One option is through the creation of regular public forums or meeting spaces where company representatives can



attend to answer questions and address concerns, particularly regarding the adequacy of reclamation activities.

Creating social media groups and email lists of potentially affected groups and members of the interested public, including the staff of Indigenous organizations, is another idea. The OPR should require companies to report on these activities and provide annual updates on the level of public engagement, the issues and concerns that were raised through these avenues, and the measures the company has taken to address these concerns.

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

The OPR should be reformed to require companies to have communication and engagement protocols in place that ensure adequate and up-to-date dissemination of information to the public about pipeline construction, operation, maintenance, reclamation, and emergency measures.

There also needs to be clarity regarding Métis consultation, as it should happen at the grassroots-community level to ensure that constitutionally protected Aboriginal rights of our community members are protected, while balancing for the industrial proponents to have clarity about who and how to consult.

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

The OPR should include measures to provide capacity to local Indigenous organizations to participate in periodic audits or safety reviews of pipeline operations and CER compliance and enforcement activities. If it does not already have such a feature in the works, the CER website should include a map-based feature that shows existing pipeline operations and reports on incidents and/or safety concerns.

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 experience of LMCA members, pipeline construction, operation and maintenance tend to be male dominated. The OPR and related regulations should include measures to ensure a safe, diverse and gender-aware workplace.

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

LMCA believes that implementing OPR that protect and respect the environment and Indigenous rights does not have to create long regulatory delays between application and operations. If sufficient resources are provided to those who may be impacted by a pipeline project in a timely manner, then appropriate mitigation, enhancement, and monitoring measures can be put in place with meaningful participation and informed consent of Indigenous rights holders.



The key point is that capacity must be provided by the proponents to ensure that there is free, prior and informed consent for a Project in the interests of local people but also the broader economy and the imperative of global competitiveness. Being competitive should not encourage cutting corners in consultation but doing things in respect of the environment and Indigenous rights does not have to create long delays if the regulations are clear, targeted to address key concerns, and adequately enforced by the CER.

An even better way to ensure free, prior, and informed consent for a Project among Indigenous rights-holders is to develop more co-managed and Indigenous-owned Projects that are run for the economic benefit of Indigenous people. Creating opportunities for Indigenous entrepreneurs to thrive will grow local economies and reverse economic inequality which will in turn contribute to global competitiveness for current and future generations.

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

To avoid situations where companies decommission pipelines without adequately fulfilling the leave to abandon requirements (including cleaning the sites, removing infrastructure and properly reclaiming sites); the OPR should be updated to require companies that decommission pipelines to fully prove compliance with abandonment regulations with 3 to 5 years or within another appropriate period subject to public input and consultations. Of course, companies would still be permitted to fully abandon pipelines within a shorter interval, but this time limit from decommissioning to abandonment would remove the uncertainty over the status of out of use pipelines under current OPR.

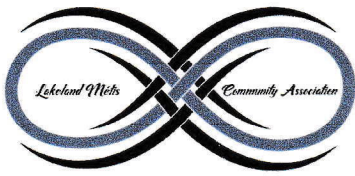
22. How can the OPR drive further improvement to the environmental performance of regulated companies?

In addition to environmental protection measures, the OPR should require companies to regularly report on and update their performance on socioeconomic mitigation measures and on measures to mitigate impacts to traditional land and resource use, heritage resources and Indigenous rights.

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

The OPR should make explicit that all conditions and measures on the permits for pipeline companies also apply to subcontractors or to prime construction contractors. For example, if company X agrees to hire Indigenous contractors or companies in its operations, but then subcontracts construction to another company, the subcontractor should still be required to honour the commitments.

Conclusion

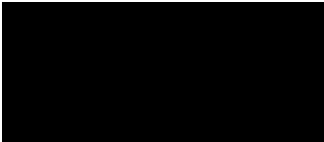


LMCA's input on the OPR Review – Discussion Paper can be summed up by some key principles: those who live with the effects of pipeline construction, operations and maintenance should have ongoing input into the process and receive up-to-date information for the lifecycle of the Project.

The best way to ensure free, prior and informed consent among Indigenous peoples for pipeline projects is through co-management. Until this becomes the norm, the OPR regulations should at the very least ensure adequate consultation and consent is achieved among local community members.

While the formation of Indigenous Advisory Committees is an important first step, the tendency toward "Nation-to-Nation" relations in the early phases of the implementation of new OPR should give way to more targeted and meaningful collaboration between local Métis communities, pipeline operators and government agencies in a responsible, respectful and mutually beneficial manner.

Sincerely,



President/CEO
Lakeland Métis Community Association