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VIA EMAIL: (opr-rpt@cer-reg.gc.ca)

June 30, 2022

Canada Energy Regulator
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ATTENTION:

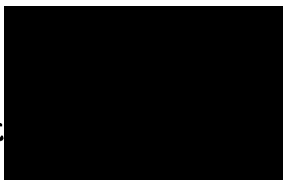
To Whom it May Concern:

Re: Onshore Pipeline Regulations Discussion Paper Input

Please find enclosed responses to the Onshore Pipeline Regulations Discussion Paper. This input is submitted on behalf of the Indian Resource Council, as part of Phase 1 of the Canadian Energy Regulator's review of the Onshore Pipeline Regulations.

Yours truly,

Rae and Company



for:

cc. [Redacted] (via email)
[Redacted] (via email)

Canada Energy Regulator
Onshore Pipeline Regulations Review
Phase 1

**Submission of the Indian Resource Council
to the Canada Energy Regulator
with respect to the Onshore Pipeline Regulations Discussion Paper**

June 30, 2022

Prepared by:

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Email: [REDACTED] / [REDACTED]

Attention: [REDACTED]

On behalf of:

Indian Resource Council
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Section 1. OPR – Lessons Learned

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

As the discussion paper states, the Canadian Energy Regulator (CER) oversees a regulatory framework that is focused, in part, on respecting the rights of the Indigenous peoples of Canada. In implementing the OPR, the CER demonstrate awareness that the rights of the Indigenous people include the rights to mineral resources and the right to full economic rents from the production of these resources. Additionally, in implementing a regulatory framework, the CER must keep in mind that the fiduciary obligations of Canada to First Nations and the honour of the Crown always take precedence when looking to build strong relationships with Indigenous peoples.

The Indigenous Advisory Committee, with which the CER intends to collaborate throughout the regulation-making process, must include representatives of the oil and gas producing First Nations accompanied by adequate capacity for participation.

Section 2. Reconciliation with Indigenous Peoples

Question 2: How can the OPR contribute to the advancement of Reconciliation with Indigenous Peoples?

Truth and Reconciliation Commission’s Calls to Action 43, 44 and 92

Calls to Action 43 and 44 call upon all levels of government to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), and calls on the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of UNDRIP.

Call to Action 92 calls upon the corporate sector in Canada to adopt UNDRIP and apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources.

These Calls to Action are in line with the input discussed above, requesting the CER to demonstrate awareness of the right of Indigenous peoples to mineral resources and full economic rents from the production of these resources, and implement a regulatory framework that prioritizes fiduciary obligations to First Nations and honour of the Crown.

The Discussion Paper states that the CER is working towards enhancing the involvement of Indigenous peoples, and that its Indigenous Advisory Committee facilitates the integration of Indigenous perspectives, knowledge, teachings, values, etc. These perspectives must include the right of First Nations to the economic rents from hydrocarbon production as an Aboriginal right.

The CER aims to make meaningful change in the CER’s requirements and expectations of regulated industry to advance Reconciliation. Reconciliation can only occur if Canada acknowledges the rights of First Nations to the economic rents from mineral production and that these are included in the Aboriginal rights of First Nations.

The Indian Resource Council (IRC) recognizes, and Canada must also recognize, that certain Aboriginal rights of First Nations can be in conflict or inconsistent with the Aboriginal rights of other First Nations. Resolutions of these conflicts can only be achieved by the affected First Nations, not by Canada or through interference by Canada.

Question 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 CER Act requires the Commission to consider the rights, interests and concerns of Indigenous peoples, including with respect to their use of lands and resources for traditional purposes. Canada must recognize that these traditional purposes include First Nation extractive rights to hydrocarbons and other mineral resources.

The Indigenous Advisory Committee, which must include representatives of the oil and gas producing First Nations, must clearly outline how heritage resources are being identified and protected during construction, operation, and maintenance.

Question 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?

The CER provides at the application stage, that the CER Act requires the Commission to consider the rights, interests and concerns of Indigenous peoples, including with respect to their use of lands and resources for traditional purposes. The CER should provide additional oversight and ensure that there are binding requirements implemented before and during companies' operations that provide additional protections for lands and resources.

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

Input from Indigenous communities, particularly those located near proposed project sites, must be included. Any input given needs to be meaningfully considered and reasons for inclusion or exclusion of the input needs to be communicated to the Indigenous community that provided it. Additionally, adequate capacity needs to be provided to all participants providing Indigenous knowledge.

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

The CER should ensure that the Indigenous Monitoring Program includes representation from the oil and gas producing First Nations. Direct participation of Indigenous peoples would incorporate unique knowledge related to the lands and resources of the Nations' traditional territories into the development and assessment of projects' design, effects, and mitigation measures, and result in better oversight.

Section 3. Engagement and Inclusive Participation

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

Companies must acknowledge that where pipelines transit across First Nations' lands, those First Nations are entitled to a share of the resource rents, either by way of throughput charges or forms of severance taxes.

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

The OPR should clearly outline consultation requirements and the process the CER will follow when consultation is required with Indigenous nations. Consultation requirements should also reflect any needs that may be specific to the oil and gas producing First Nations.

Question 9: How could the CER improve transparency through the OPR?

The CER can improve transparency by clearly communicating how regulatory framework approaches consider Indigenous nations' rights to mineral resources and the right to full economic rents from the production of these resources. Transparency can also be improved by continuing consultation with First Nations throughout OPR regulated activities.

Question 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?

Section 4. Global Competitiveness

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

While global competitiveness is relevant, First Nations should not be forced to produce their natural resources if there are no economic rents accruing to the First Nation from the extraction of these resources. Resource extraction always has a cost, and the payment of economic rents to First Nations should be considered compensation for these otherwise unquantifiable costs. These economic rents cannot be sacrificed to a desire to be globally competitive.

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

The CER should facilitate the transition from a hydrocarbon economy to a hydrogen economy.

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

The CER should develop, with consultation input from First Nations, metrics related to consultation accommodation, protection of rights in relation to mineral resources and economic rents from the production of these resources, and ongoing engagement with First Nations through the lifecycle of an OPR related activity.

Question 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?

The CER should make data on any OPR related activity freely accessible to First Nations to support participation in any consultation or monitoring activity.

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

In its deliberations, the CER must consider the ability of the pipeline industry to enhance opportunities for the economic sustainability of rural, Indigenous communities. Culturally, the pipeline industry still does not fully recognize the unique role of First Nations and their individual members.

As part of its integration of the perspectives of Indigenous communities, the CER should seek input from Indigenous communities interested in involvement with natural resource projects. For interested Indigenous communities, the pipeline industry may present a means of self-sustainability and give Indigenous communities a say in the protection of the natural land, wildlife, and habitat surrounding natural resource projects.

Section 5. Safety and Environmental Protection

Question 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 OPR should consult with Indigenous nations on any management system requirements that may affect Indigenous rights that are constitutionally protected.

Question 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?

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

Indigenous nations must be made aware of any potential safety risks to Indigenous nations. Notification on information around risks should be detailed and provided as soon as possible by the CER to all affected First Nations.

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

To assure respect and personal workplace safety at CER regulated sites, anti-racism and cultural awareness training should be put in place for all employees and contractors accessing the CER regulated site. The regulated worksite structures should also support increased employment rates of individuals from Indigenous nations.

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

The CER should provide information to Indigenous nations on the timing, process, roles and responsibilities of contractors on any CER regulated sites. This will help Indigenous nations understand the requirements or contractor management and create an avenue for any concerns to be raised about how these requirements impact the development and utilization of First Nations human resources in oil, natural gas, and any other related activities.

Question 21: How can the OPR include more explicit requirements for process safety?

First Nations should be involved in the development of process safety requirements. This will ensure that any impacts to Indigenous economic rights are considered. All consultation with First Nations should be accompanied by adequate capacity for participation.

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

First Nations should be involved in any updates made to the environmental performance requirements of regulated companies. This will ensure that any impacts to Indigenous economic rights are considered. All consultation with First Nations should be accompanied by adequate capacity for participation

Question 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?

First Nations should be involved in the development of Environmental Protection Plans for individual pipelines and companies' pipeline systems, particularly where pipelines transit across First Nations' lands. Updates to environmental performance requirements of regulated companies, mentioned above, will help ensure cohesion between the two plans.

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

There needs to be notification sent out to First Nations as soon as possible regarding any potential contamination. The process following notification of potential contamination needs to include consultation with First Nations that are affected, this will allow there to be dialogue between First Nations and the company on how best to remedy the situation.

Question 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?

In the past, emergency management plans have sometimes treated Indigenous communities with less respect and consideration than non-Indigenous communities. This can be seen, for example, in setback requirements, emergency response standards, etc. This requires an attitudinal change on the part of industry and the CER.

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

The requirement for a Quality Assurance Program would be improved by including the specific required and recommended actions to be implemented into a company's quality assurance program, and their intended end results with respect to quality standards.

Question 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?

Section 6. Implementation Objectives

Question 28: What are your recommendations for compliance at the CER?

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