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# ONSHORE PIPELINE REGULATION (OPR) REVIEW – DISCUSSION PAPER COMMENTS

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SUBMITTED BY KIKINO  
METIS SETTLEMENT





The Onshore Pipeline Regulation (OPR) was developed under the National Energy Board (NEB) in 1999; it provides the rules that companies with authorizations to build and operate these pipelines must follow. The Canada Energy Regulator (CER) is conducting a comprehensive review of the OPR to make it consistent with the Canada Energy Regulator Act of 2019, which includes new considerations for pipeline projects, including impacts to Indigenous rights under s. 35 of the *Constitution Act, 1982*; the interests and concerns of Indigenous peoples; Indigenous Traditional Knowledge; and health, social, and economic effects, including Gender-Based Analysis Plus. The review will address all areas of the OPR and may result in changes to other parts of the CER’s regulatory framework, including regulatory documents such as the CER’s Filing Manual.

This review of the OPR Discussion Paper is based upon engagement and input from Kikino Metis Settlement Council and members. For ease of use, the Settlement’s comments have been organized according to the sections and questions identified in the Discussion Paper. Where a question does not appear in this document, it is because no input was collected in relation to that question. Please note that this does *not* mean that Kikino Metis Settlement has no position on that matter, just that no input was collected during the limited engagement the Settlement was able to do for this report.



## Section 1: Lessons Learned

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

Community engagement identified several areas for improvement. These include:

- *Consultation*: the process of Crown consultation should begin earlier and be more fulsome in general. There should be more face-to-face interactions between the Proponent, the Crown, and Kikino Metis Settlement. Given the new process, the Crown should play a more active role in establishing a clear understanding of the process and expectations. Presentations from Proponents should be less technical in general, and Proponents should be encouraged to send decision makers along with technical specialists, rather than junior staff;
- *Monitoring*: there should be more active monitoring of pipelines during the construction phase. Proponents and the Crown should work more closely with Kikino and other Indigenous governments to build capacity for pipeline monitoring, particularly among Elders and youth, as this will integrate Indigenous knowledge more adequately into the monitoring system and ensure work is done in a way that respects Indigenous rights and culture. Proponents should work with Kikino and other Indigenous governments to monitor the effects of pipelines on plant species and water over the lifecycle of the project to determine environmental impacts in a proactive way that respects the environment and Indigenous rights and culture;



- *Ruptures and Leaks*: the Crown should work with Proponents and Indigenous governments to develop more robust communications and response plans in the case of ruptures and leaks. These plans should include the kinds of information that Indigenous governments identify they need to protect their Citizens and members, as well as clearly defined timelines for the dissemination of information and the possibility for site visits and inspections;
- *Reclamation*: there should be more active reclamation of pipeline Right-of-Ways (RoW), rather than simply letting areas re-naturalize. Pipelines should be removed from the ground rather than left indefinitely. Proponents and the Crown should work to re-naturalize areas more actively, based on Indigenous knowledge and practices, with species of value to Indigenous peoples;

## **Section II: Reconciliation with Indigenous Peoples**

### **How can OPR contribute to the advancement of reconciliation with Indigenous peoples?**

Beyond the issues identified above, which would all contribute to the advancement of reconciliation with Indigenous peoples, we offer the following suggestions:

- *UNDRIP*: The CER should examine whether the OPR and its related documents are consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This process would require consultation with Indigenous



governments and the development of a clear plan to make the CER and the OPR consistent with UNDRIP, including timetables for implementation;

- *Consultation:* The CER should make it clear how potentially-impacted Indigenous communities are selected, and what are the expectations vis-à-vis consultation for each. The Proponent should meet as early as possible with impacted Indigenous communities and provide adequate timelines and resources to determine potential impacts, not simply to Traditional Land Use but to Indigenous rights more broadly, including socio-economic, cultural, and health impacts;
- *Representation:* The CER Commission should consist of at least 50% Indigenous representatives. This will help to ensure that Indigenous input is understood by the CER and that Indigenous rights are respected by the process. In addition, membership in the Indigenous Advisory Committee should not simply be handled by nomination from the major, national Indigenous organizations. The Métis National Council, for instance, does not represent Kikino Metis Settlement and its members in any meaningful way. The Advisory Committee should be more democratically selected, have more accountability to Indigenous peoples, and should have greater authority and jurisdiction.
- *Triggers:* the CER should become more actively involved in pipeline projects in provinces, like Alberta, where the regulatory requirements are significantly less than those at the federal level. The duty to consult belongs to the Government of Canada. Just because Ottawa has downloaded that responsibility to the provinces doesn't mean it should wash its hands of the consequences. If the regulatory



regimes at the provincial level do not meet federal standards, this should trigger the automatic involvement of the CER;

## **Section III: Traditional Land Use and Resources**

**How can OPR contribute to the protection of traditional land and resource use, and sites of significance, during construction, operations, and maintenance?**

- *Heritage Sites:* The OPR and related documents need to pay special attention to Métis archaeological sites. At present, most Métis archaeological sites are not classified and documented in Alberta. As a result, the standard heritage assessment misses potential sites of significant to the Métis. There should be a separate and distinct assessment process for Métis archaeological and heritage sites;
- *Monitoring:* The OPR should require Métis monitors during all phases of the project to ensure that potential impacts to the Métis, which are not the same as those of First Nations, are properly considered and protected;
- *Reclamation:* The OPR should require that Proponents work closely with Indigenous governments during the reclamation of the land to ensure that plants and resources that support the exercise of Indigenous rights are reclaimed. Reclamation isn't simply an environmental issues; it must necessarily involve the



reclamation of the rights and cultural practices that were previously sustained by the land prior to the project;

## **Section IV: Indigenous Knowledge**

**How can Indigenous Knowledge be better incorporated into the OPR and the different project phases?**

The early engagement, Indigenous monitors, and 50% Indigenous representation on the CER Committee recommendations above cover much of this question.

## **Section V: Indigenous Involvement in Oversight**

**How can OPR improve Indigenous participation in pipeline oversight (monitoring)?**

In addition to having more Indigenous monitors in all phases of the project, we recommend the following:

- *Community-Based Monitoring*: where possible, the Crown and Proponents should work with potentially affected communities to develop Community-Based Monitoring Programs in relation to the project. This will help to build trust in the information gathered and ensure that Indigenous concerns and knowledge are properly integrated into monitoring activities;



## **Section VI: Planning and Company Interaction**

**How can OPR support more collaborative interactions between companies and potentially affected Indigenous communities?**

The OPR should encourage early and face-to-face engagement between Proponents, the Crown, and Indigenous communities. This is crucial to build confidence and trust. In particular, the involvement of the Crown is key, as it is ultimately the Crown, not the Proponent, who holds the duty to consult and accommodate. In addition, Proponents, the Crown, and affected Indigenous communities should develop workplans at the onset of engagement to set expectations and provide for regular information sharing and trust building opportunities.

## **Section VII: Proactive Communication and Engagement**

**How can the communication and engagement requirements of the OPR be improved?**

This question has largely been answered in other sections. We would reiterate, however, that the CER must play a central role in the engagement and communications process itself. It is not enough to set guidelines and step back. It is the Crown's duty and the Crown needs to be actively involved, in this case via the CER;





## **Section VIII: Trust and Confidence**

**How can OPR improve transparency, trust, and confidence in the process?**

The recommendations made thus far largely answer this question.

## **Section IV: Gender Based Analysis Plus**

**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?**

Below please find suggestions re: how to promote equity:

- Half of the CER Commission for any given project should be comprised of Indigenous representatives, where Indigenous rights are potentially impacted. Please note that Indigenous representatives do not mean Indigenous persons. Rather, we mean persons nominated by Indigenous governments to serve;
- The OPR should actively seek to ensure that Métis governments and communities are consulted with the same rigor and thoroughness as First Nations governments. To this day, Métis governments consistently receive less thorough consultation and accommodation than do First Nations, which is a problem that must be fixed through regulation. On a related note, the OPR should provide additional supports



to Métis governments to support consultation, given that Métis governments receive far less funding than do First Nations governments and, because of the legacy of non-consultation, Métis governments and consultation departments generally have less operating capacity and experience;

- The CER and Proponents must recognize that the new legislation, and particularly the Gender-Based Assessment Plus requirements place an enormous burden on Indigenous governments to collect very complex information. As a result, the OPR must recognize this by providing additional funds and adequate time to collect this information, understanding that most Indigenous government do not have experience conducting such assessments;

## **Section X: Respect and Workplace Safety**

### **How can respect and safety be improved at CER-regulated sites?**

There needs to be a greater emphasis upon cultural sensitivity and awareness programs at work sites for the Métis. At present, most of the programs related to Indigenous peoples focus on First Nations. As a result, the CER should work with Métis governments to develop cultural awareness and sensitivity programs and guidelines for the Métis that could be implemented across the country;



## **Section XI: Contractor Management**

**How can the OPR better manage project contractors, who handle most of the work at sites?**

We have two main recommendations for this question:

- All contractors should have to implement Métis-specific cultural awareness and sensitivity training, which should be developed by the CER in collaboration with Métis governments, likely at the provincial level;
- The OPR should require that Proponents work with contractors to design, implement, and monitor Indigenous procurement and employment policies, including training and retention policies;

## **Section XII: Management of Contaminated Sites**

**How can the management of contaminated sites be improved?**

The Crown, Proponents, and Indigenous governments should collaborate to develop an integrated environmental monitoring plan for every project, including the management of contaminated sites.



## **Theme XIII: Emergency Management Program**

### **How could emergency management processes be improved?**

Proponents should be required to develop an emergency management plan for every project. This plan should be developed jointly with nearby Indigenous and non-Indigenous governments, so that emergency management protocols are synchronized. As well, the emergency management plan should be provided to all potentially impacted Indigenous governments, including a plain-language, community presentation;

## **Section XIV: Compliance Promotion**

### **How could CER improve compliance with regulations and conditions?**

Compliance reports should be provided by all potentially affected Indigenous communities on at least an annual basis. These compliance reports should be accompanied by the presentation and question-and-answer session with affected communities, led by the Crown and at which Proponent is present. In addition, the CER should maintain an easily accessible and searchable online database where Indigenous communities can access regular compliance reports for all CER-regulated projects.



## **Theme XV: Technical Guidance**

### **How do you want to be engaged in the development of technical guidance?**

Kikino Metis Settlement would like to be directly involved in the development of technical guidance. We recommend the establishment of a working committee comprised of representatives selected by Indigenous governments to support the technical guidance documents. Individual communities like Kikino should be provided with the opportunity and funding to provide input at all stages of the process, from scoping to finalization of technical guidance.