

Impact Assessment Agency of Canada  
Policy Dialogues Program

To whom it may concern,

The Mississaugas of Scugog Island First Nation (MSIFN) have reviewed the Canadian Energy Regulator’s (CER) Onshore Pipeline Regulations (OPR) Discussion Paper, dated January 12, 2022. MSIFN understands the CER’s objective for this review is to “deliver a regulation that supports the highest level of safety, security and environmental protection, advances Reconciliation with Indigenous peoples, addresses transparency and inclusive participation, provides for predictable and timely oversight and encourages innovation.” The CER’s OPR provides the rules that companies with authorizations to build and operate CER regulated pipelines must follow. Given the current OPR was issued in 1999 under a different regulator, the National Energy Board, the CER is conducting a comprehensive review of the OPR under the CER Act to update the regulations.

The comments in Table 1 pertain specifically to the questions contained within various sections of the OPR Discussion Paper.

In addition to this specific commentary related to the Section 2 discussion paper questions, MSIFN notes that climate change has disproportionately high negative effects on Indigenous Communities. The OPR must apply a climate lens to all decisions, with the very real possibility that projects will not proceed if they are inconsistent with Indigenous and western knowledge about climate change, including the Intergovernmental Panel on Climate Change (IPCC)’s Sixth Assessment report, which tells us that drastic reductions in Greenhouse Gas emissions are critical as soon as 2025 and 2030. The need for immediate climate action is relevant to all MSIFN’s commentary below.

*Table 1. Responses to OPR Discussion Paper Questions*

Question/Text	Response
<i>Section 2. Reconciliation with Indigenous Peoples</i>	
<p><i>1. What’s working well in relation to the OPR, and its implementation, and what could be improved?</i></p>	<ul style="list-style-type: none"> <li>• MSIFN’s Consultation Department is engaged in OPR related projects in the territory, but are somewhat early in these processes. With this in mind, it is beneficial that communication related to projects – both new projects and operations and maintenance projects – is clear and early when it occurs.</li> <li>• For processes in relation to the OPR to continue, we understand that information will be provided in a timely fashion, including follow-up, and that capacity funding is provided for reviews and project engagement – both new projects and operations and maintenance projects.</li> <li>• It seems that OPR implementation could be improved with increased frequency of CER inspections and audits to confirm compliance across the pipeline lifecycle. By keeping</li> </ul>

Question/Text	Response
	<p>Indigenous communities informed of these activities, levels of trust and transparency would be increased.</p> <ul style="list-style-type: none"> <li>• When there is non-compliance, there must be strict mandates to show no leniency towards companies that are not following established rules.</li> </ul>
<p><i>2. How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?</i></p>	<ul style="list-style-type: none"> <li>• Companies and the Crown must move towards a consent-based approach, consistent with the UN Declaration on the Rights of Indigenous Peoples and the <i>United Nations Declaration on the Rights of Indigenous Peoples Act (2021)</i>. MSIFN Chief and Council must be able to provide or withhold consent for projects, rather than being approached with a pre-determined outcome.</li> <li>• Consent is required for both new projects and operations and maintenance projects, because impacts on rights and interests are impacts regardless of the stage of the pipeline lifecycle.</li> <li>• The existence of the Indigenous Monitoring Program is beneficial, and this program should continue, while increasing the amount of funding available. Specifically, funding and administrative supports (e.g., Insurance, WSIB, and personal protective equipment (PPE)) must be made available to Indigenous Communities to facilitate the availability of monitors.</li> <li>• Impact assessment must be completed in a collaborative manner, with Indigenous Communities involved from the very outset, versus the focus being on review of extensive documentation that comes with a heavy administrative burden.</li> <li>• The rights of Indigenous Peoples cannot be infringed on by new projects or operations and maintenance projects. For example, access to territory lands and waters must not be restricted or policed as a result of projects. For example, companies cannot demand documentation and/or legal documents to control the number of Indigenous Peoples accessing and moving within their territories.</li> </ul>
<p><i>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?</i></p>	<ul style="list-style-type: none"> <li>• There must be provision for the avoidance of all culturally significant sites identified by Indigenous Communities. This must occur regardless of how the site is identified in western policy systems. For example, in Ontario a “non-significant” or “unevaluated” wetland” may have notable cultural significance that warrants protection).</li> <li>• Information provided by Indigenous Communities, including oral histories and Indigenous Knowledge, must be equally considered alongside other evidence, and captured in heritage studies and while determining a pipeline right-of-way.</li> <li>• Capacity funding must be provided to Indigenous Nations to conduct studies independent of considerations at all levels of</li> </ul>

Question/Text	Response
	<p>western government. These include Indigenous Knowledge studies, land use studies, and Species of interest/Species at Risk Studies.</p> <ul style="list-style-type: none"> <li>• For new projects, proponents must map several potential alternative pipeline rights-of-ways with the input of Indigenous communities, compared against a “do-nothing” alternative that must be truly considered. The right-of-way must be decided with Indigenous Communities, taking the previously mentioned consent-based approach.</li> <li>• During construction, and during operations and maintenance projects, proponents must designate protection zones around culturally sensitive sites that do not limit Indigenous Peoples access to those sites. This is similar to the approach taken by municipalities when protecting Natural Heritage features (e.g., Tree Protection Zones).</li> </ul>
<p><i>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?</i></p>	<ul style="list-style-type: none"> <li>• Implementation of the OPR must include the CER ensuring that Indigenous Peoples’ access to their territory lands are not restricted. This is inclusive of construction and operations/maintenance activities.</li> <li>• The CER must ensure that Indigenous Peoples, and especially Indigenous Women have safe and proper access to resources on a pipeline right-of-way. This must be consistent with the MMWIG Calls for Justice - per “<i>Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls</i>”.</li> </ul>
<p><i>5. How can the use of Indigenous knowledge be addressed in the OPR?</i></p>	<ul style="list-style-type: none"> <li>• Before applying Indigenous Knowledge in OPR implementation, agreements must be in place with the applicable parties to safeguard sacred knowledge and its dissemination in reports/regulations.</li> <li>• The CER must focus on facilitating transparent conversations (e.g., with a focus on ethical space) about the lifecycle of pipelines between First Nations communities, proponents, and the government.</li> </ul>
<p><i>Section 3. Engagement and Inclusive Participation</i></p>	
<p><i>7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?</i></p>	<ul style="list-style-type: none"> <li>• The CER must ensure that there is clear and transparent communication with First Nations communities who live, work, and undertake constitutionally protected practices near operating and decommissioned pipelines and prospective new pipeline routes.</li> <li>• Indigenous Communities must be provided with meaningful opportunities to participate in planning for operations, maintenance activities and emergency response planning. Active participation must be possible for all Indigenous</li> </ul>

Question/Text	Response
	peoples, and should extend to the provision of Indigenous services for emergency response events.
<p>8. How could communication and engagement requirements in the OPR be improved?</p>	<ul style="list-style-type: none"> <li>• Companies must have a clear and transparent engagement program in place while engaging and involving Indigenous Communities on pipeline-related matters at all stages of the pipeline lifecycle. This program should outline the evolving responsibilities of all parties throughout the planning, construction, operations, maintenance, and decommissioning of pipelines.</li> <li>• Companies must be required to involve Indigenous Peoples in a company’s emergency response plan, in accordance with the engagement requirements outlined in the OPR.</li> <li>• Assessments of impacts should be conducted collaboratively, in accordance with the engagement requirements outlined in the OPR.</li> <li>• Pipeline companies should be required to file detailed progress reports with potentially impacted Indigenous communities, inclusive of scheduling changes, pipeline route changes, water crossing changes, wildlife encounters (including mortality events), and any changes and/or damages on pipeline infrastructure.</li> </ul>
<p>9. How could the CER improve transparency through the OPR?</p>	<ul style="list-style-type: none"> <li>• The CER must require Indigenous consent before any activity (i.e., all new pipeline approvals, inclusive of all associated and ancillary facilities regardless of approval processes through other agencies, such as pump stations, compressors, tank and storage facilities, electrical generation and transmission facilities, dock facilities, transload facilities, etc.) can proceed, in accordance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the <i>United Nations Declaration on the Rights of Indigenous Peoples Act (2021)</i>.</li> <li>• The CER must also require pipeline companies to file detailed progress reports with potentially impacted Indigenous communities inclusive of any pipeline changes as well as changes in community access to areas that are normally accessible.</li> </ul>
<i>Section 4. Global Competitiveness</i>	
<p>11. How can the OPR support a predictable and timely regulatory system that contributes to Canada’s global competitiveness?</p>	<ul style="list-style-type: none"> <li>• To maintain a predictable system, the CER must ensure that potentially impacted First Nations obtain information as early as possible, and are provided with adequate capacity supports.</li> <li>• The CER must ensure that First Nations have enough time and capacity funding during the planning and construction phase to conduct reviews and independent studies.</li> <li>• The CER must ensure responsive, inclusive, participatory, and representative decision-making at all levels.</li> </ul>

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	<ul style="list-style-type: none"> <li>• The CER must encourage proponents to look towards innovative yet technically feasible project approaches and technologies that will result in the dramatic reduction of greenhouse gases, as climate change has disproportionate negative impacts on Indigenous Communities.</li> </ul>
<p><i>12. How can the OPR support innovation, and the development and use of new technologies or best practices?</i></p>	<ul style="list-style-type: none"> <li>• The OPR must continue in a fashion that aligns with the UN Sustainable Development Goals, including the following: <ul style="list-style-type: none"> <li>○ <i>Develop quality, reliable, sustainable, and resilient infrastructure, to support economic development – especially in rural areas.</i></li> <li>○ <i>Increase the access of small-scale industrial and other enterprises, in particular Indigenous businesses.</i></li> <li>○ <i>Increase the number of research and development workers (especially Indigenous) in industrial/technological sectors to bolster innovation.</i></li> <li>○ <i>Significantly increase transportation (e.g., all season roads) and access to information and communications technology in First Nations communities.</i></li> <li>○ <i>Promote sustainable industrialization and greater adoption of clean and environmentally sound technologies and/or industrial processes.</i></li> <li>○ <i>Integrate climate change and sustainability measures into pipeline national policies, strategies, and planning.</i></li> </ul> </li> </ul>
<p><i>13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?</i></p>	<p><b>The CER should consider the following metrics, which come from the <a href="#">Sustainability Accounting Standards Board (2018)</a>:</b></p> <ul style="list-style-type: none"> <li>• <i>Number of (1) reportable pipeline incidents, (2) Corrective Action Orders (CAO), and (3) Notices of Probable Violation (NOPV).</i></li> <li>• <i>Percentage of distribution pipeline that is (1) cast and/or wrought iron and (2) unprotected steel.</i></li> <li>• <i>Percentage of gas (1) transmission and (2) distribution pipelines inspected.</i></li> <li>• <i>Description of efforts to manage the integrity of gas delivery infrastructure, including risks related to safety and emissions.</i> <ul style="list-style-type: none"> <li>○ <i>The pipeline company should disclose the following:</i> <ul style="list-style-type: none"> <li>▪ <i>Pipeline replacement rates;</i></li> <li>▪ <i>Average response time for gas/oil emergencies;</i></li> <li>▪ <i>Leaks;</i></li> <li>▪ <i>Fugitive emissions;</i></li> <li>▪ <i>How the company integrates a culture of safety and emergency preparedness; and,</i></li> <li>▪ <i>Efforts designed to reduce emissions and/or improve the safety of its delivery infrastructure.</i></li> </ul> </li> </ul> </li> </ul>

Question/Text	Response
<p><i>15. How can the OPR be improved to address changing pipeline use and pipeline status?</i></p>	<ul style="list-style-type: none"> <li>• The CER must ensure that companies seeking to change the “type of product” being carried in said pipeline must inform potentially impacted Indigenous communities to maintain robust communications, transparency, collaboration, and inclusive engagement. This is especially important given that a change of product flow may lead to new development/construction, operations, and maintenance, pipeline companies should be required to communicate all related work.</li> <li>• Indigenous consent must be provided for any change to the “type of product” being carried in a pipeline.</li> <li>• The OPR must address the greenhouse gas implications of product changes. For example, it may be more acceptable for a product to be changed to a less greenhouse gas intensive one, versus one that would result in higher greenhouse gas emissions at any point in its life cycle.</li> </ul>
<p><i>Section 5. Safety and Environmental Protection</i></p>	
<p><i>18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?</i></p>	<ul style="list-style-type: none"> <li>• The CER should explicitly outline that the overarching CER Safety Management Program must be referred to in situations where company (1) construction, (2) maintenance, and (3) safety manuals do not meet federal expectations/requirements. This will facilitate the appropriate connection since companies will be able to refer to an existing and up-to-date Safety Management Program.</li> </ul>
<p><i>19. How can respect and personal workplace safety be assured at CER regulated sites?</i></p>	<ul style="list-style-type: none"> <li>• The CER must: <ul style="list-style-type: none"> <li>○ Ensure that pipeline company employees and hired third-party contractors better understand the meaning of ‘respect’ from an Indigenous perspective.</li> <li>○ Strongly encourage pipeline operators to meaningfully target Indigenous procurement from qualified Indigenous contractors and suppliers who will be better able to understand and respect Indigenous communities.</li> <li>○ Ensure that all necessary measures to prevent, investigate, punish, and compensate for violence against Indigenous peoples – especially Indigenous women, girls, and 2SLGBTQQIA people are in place at all CER regulated sites.</li> <li>○ Create an independent reporting mechanism to submit reports on personal workplace safety violations.</li> </ul> </li> </ul>
<p><i>21. How should the OPR include more explicit requirements for process safety?</i></p>	<ul style="list-style-type: none"> <li>• The OPR should require greater accountability. For example, on the event of unintended releases and/or other major accidents, pipeline companies have not always adequately addressed the accountability component of their mistakes due</li> </ul>

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	<p>to a lack of recorded information (e.g., signature sign off after completing a major inspection). As such, the OPR can include more explicit requirements to capture more accountability data, and ensure companies are routinely identifying and mitigating potential process hazards. For more transparency, these assessments can be routinely done alongside Indigenous monitors.</p> <ul style="list-style-type: none"> <li>• Review emergency management programs with Indigenous communities every 3 to 5 years to ensure the needs of Indigenous communities are met.</li> </ul>
<p><i>22. How can the OPR drive further improvement to the environmental performance of regulated companies?</i></p>	<ul style="list-style-type: none"> <li>• The OPR must ensure the following: <ul style="list-style-type: none"> <li>○ Projects meet Canada’s Enhanced Nationally Determined Contribution under the Paris Agreement and emerging evidence surrounding Climate Change, including the IPCC’s Sixth Assessment Report.</li> <li>○ Regulated companies must procure renewable sources of energy (solar, wind, biogas, green hydrogen) to power as much of their project as possible vs. on relying on fossil fuels for power pumps, compressors, and other equipment.</li> <li>○ Regulated companies must offset Scope 1 and Scope 2 emissions through federally approved mechanisms.</li> <li>○ Regulated companies must report on Scope 3 emission to help companies meet their sustainability procurement goals if any are in place.</li> <li>○ Capacity funding must be provided to Indigenous communities to review the environmental performance of built pipeline systems and it must be ensured that recommendations taken from the Indigenous environmental review are included in the revised Environmental Protection Plan to manage and/or update the project lifecycle of pipelines.</li> <li>○ Every company-led environmental assessment considers the constitutionally protected rights (e.g., impacts to hunting, plant harvesting, sacred sites, fishing, etc.) of Indigenous Peoples.</li> <li>○ Regulated companies must apply the precautionary principle when wide-ranging scientific knowledge on a pipeline matter is lacking.</li> <li>○ Throughout project processes, an evidence-based Adaptive Management Plan must be established, with capacity funding available for Indigenous communities to participate in Adaptive Management. Long-term monitoring is a critical aspect of effective adaptive</li> </ul> </li> </ul>

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	management, and must take place in collaboration with Indigenous Communities.
<p><i>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?</i></p>	<ul style="list-style-type: none"> <li>• The CER must ensure – through a timely review process – that a company's Environmental Protection Program is aligned with the Environmental Protection Plan for a specific individual pipeline. Environmental and social metrics can be used to review these connections.</li> <li>• The CER review process should significantly consider 'how' companies can advance reconciliation with Indigenous communities in their Environmental Protection Plans and Programs. For example, do companies adequately consider many varying forms of disruption, disturbance, and alterations to environmental features and relatives within the territories of potentially impacted Indigenous communities along the pipeline right of way? If yes, do they also seek input and Indigenous knowledge from the community to improve Environmental Protection Plans?</li> </ul>

MSIFN Consultation Office