



June 30, 2022

To: Canada Energy Regulator
c/o Dan Barghshoon, Regulatory Policy
517 Tenth Ave. SW
Calgary, AB
T2R 0A8

Sent via email: opr-rpt@cer-rec.gc.ca

Re: **Nunavut Impact Review Board Feedback on the Canada Energy Regulator's Onshore Pipeline Regulations Review – Discussion Paper**

To Dan Barghshoon:

The Nunavut Impact Review Board (NIRB or Board) thanks the Canada Energy Regulator (CER) for the opportunity to provide feedback on the Onshore Pipeline Regulations Review – Discussion Paper (OPR Discussion Paper). Using Board and staff experiences, this submission includes suggested considerations in response to questions related to the following sections of the OPR Discussion Paper:

- Section 2: Reconciliation with Indigenous Peoples
- Section 3: Engagement and Inclusive Participation
- Section 5: Safety and Environmental Protection
- Section 6: Implementation Objectives

On behalf of the NIRB, please accept the attached submission for the CER's consideration. The NIRB focused its submission on areas under its jurisdiction as pertains to program topics and would be pleased to provide additional information and/or clarification regarding its processes or suggestions. Should you have any questions or wish to discuss any aspect of the submission, please contact the undersigned directly at [REDACTED] or [REDACTED]

[REDACTED]

[REDACTED]

Executive Director
Nunavut Impact Review Board

Attached: Nunavut Impact Review Board Submission to the Canada Energy Regulator on the Onshore Pipeline Regulations Review – Discussion Paper



Nunavut Impact Review Board Submission to the Canada Energy Regulator on the Onshore Pipeline Regulations Review – Discussion Paper

NIRB Mandate

Nunavut is unique amongst Canadian jurisdictions as there is a single comprehensive land claim agreement for the entire territory negotiated for the Inuit through the Tunngavik Federation of Nunavut, now known as Nunavut Tunngavik Incorporated (NTI): the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)*. The *Nunavut Agreement* applies to the Nunavut Settlement Area (NSA) and the Outer Land Fast Ice Zone (together called the designated area). The boundaries of the NSA differ from that of the territory of Nunavut and are described in Article 3 of the *Nunavut Agreement*. Nunavut includes several unpopulated islands in James Bay, Ungava Bay, and several in Hudson Bay that are not within Manitoba, Ontario, or Québec. There are areas within and outside of the NSA that Indigenous groups from different jurisdictions have traditionally used and continue to use and have equal access and rights to. If components of a proposed project are located within these areas in the NSA, the NIRB is required to recognize the appropriate transboundary group(s). Areas within Nunavut but outside of the NSA are considered transboundary.

An integrated regulatory system was established through the *Nunavut Agreement* and is administered by the Nunavut Planning Commission (Commission), the NIRB, and the Nunavut Water Board for land use planning, impact assessment, and water licensing, respectively, in the NSA. The NIRB is responsible for conducting impact assessments with screening, review, and monitoring functions within the designated area in accordance with Article 12 of the *Nunavut Agreement* and sections 86 to 114 of the *NuPPAA*. Pursuant to s. 5(2) of the *NuPPAA*, the NIRB has additional responsibilities to assess potential impacts of proposed projects wholly or partly outside the designated area in the event of potential cumulative effects within the designated area. Using available Traditional Knowledge, Inuit Qaujimajatuqangit, Inuit Qaujimaningit, Community Knowledge, and recognized scientific methods, the NIRB assesses the biophysical¹ and socio-economic impacts and effects of project proposals referred by the Commission. The NIRB is further authorized to carry out additional functions agreed to by a Designated Inuit Organization, the Government of Canada, the Government of Nunavut, or as may be set out in legislation.²

¹ While the terminology used in the *Nunavut Agreement* and *NuPPAA* is “ecosystemic impacts,” for ease of reference and translation purposes the NIRB generally uses the term “biophysical” when referencing effects on the biological and physical components of the environment

² See Article 12, Section 12.2.4 of the *Nunavut Agreement* and *NuPPAA* Section 22

NIRB reviews consist of three (3) phases: Scoping and Guidelines Issuance, Draft Impact Statement submission and review, and Final Impact Statement and Public Hearing. On the basis of its Review process, the Board is required to determine if the project should be allowed to proceed, and if so, whether terms and conditions are required to mitigate, manage, or monitor the anticipated impacts. Pursuant to Section 12.8.2 of the *Nunavut Agreement*, the NIRB may on its own account or upon application by a Designated Inuit Organization, or the proponent, reconsider the terms and conditions contained in a NIRB certificate. NIRB reconsideration assessments are similar to Review assessments, however, are scalable based on the significance of the change being requested, and concerns of community members surrounding the proposed changes.

There are multiple parties to the NIRB's respective processes, including proponents, the public, Regulatory Authorities, and Authorizing Agencies. Authorizing Agencies are any government agency, Designated Inuit Organization, or any other body that has direct responsibility for permitting, licensing, or otherwise exercising authority over project authorizations. The Board relies on the contributions of regulatory stakeholders to provide expertise and an understanding of their jurisdictional basis, including any licensing or permitting that may be informed by the NIRB's assessment.

The Board functions in respect of the following:

- *The input of all parties*, including stakeholders, government and Inuit organizations, the public, industry, Board members, and staff.
- *The integrity of the Environmental Impact Assessment Process.*
- *Cooperation and coordination* with external stakeholders to facilitate efficient and timely impact assessments.
- *Transparency and accountability.* The Board and staff are accountable to the people of Nunavut, government, external stakeholders, and industry.
- *Accuracy and consistency* in our predictions, recommendations, and decisions, as well as our general communications.
- *Flexibility in our operations and procedures* to meet changing environmental conditions without compromising integrity.
- *Inuit Qaujimagatuqangit and the use of Inuktitut and Inuinnaqtun.*
- *Our Board members and staff*, their knowledge, skills, and ability as well as their continued professionalism and dedication to the NIRB and its mandate.
- *Respect for all participants in the NIRB's processes.*
- *Sustainable development* which benefits Nunavummiut.
- *Objectivity*, which leads to fair and objective decision making, free of conflicts of interest.

The Canada Energy Regulator's (CER) Onshore Pipeline Regulations (OPR) provides the rules that companies with authorizations to build and operate these pipelines must follow. The OPR was issued under the *National Energy Board Act* and has been in place since 1999. The CER is now conducting a comprehensive review of the OPR under the *CER Act* to update the regulations. 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. Pursuant to the OPR Discussion Paper, 'pipeline' means the entire facility regulated by the CER, including all branches, storage or loading facilities, pumps, compressors, and any connected works. The full definition of a 'pipeline' in the *Canadian Energy Regulator Act* is:

Pipeline means a line — including all branches, extensions, tanks, reservoirs, storage or loading facilities, pumps, racks, compressors, interstation communication systems, real or personal property, or immovable or movable, and any connected works — that connects at least two provinces or extends beyond the limits of a province, Sable Island or an area referred to in paragraph (c) of the definition designated area in section 368 and that is used or is to be used for the transmission of oil, gas or any other commodity. It does not however include a sewer or water pipeline that is used or is to be used solely for municipal purposes. (pipeline)

Pursuant to the *Nunavut Planning and Project Assessment Act (NuPPAA)*, the NIRB is responsible for assessing potential impacts to projects. A project is defined as:

the carrying out, including the construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources.

It does not include (a) the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account in particular the factors set out in paragraphs 90(a) to (i); (b) the undertaking or carrying out of a work or activity that is part of a class of works or activities prescribed by regulation; or (c) the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activities.

The NIRB is further responsible for assessing potential impacts of industrial activities pursuant to the *Nunavut Agreement*. The NIRB defines industrial activities as:

Activities whose aim is the manufacture, assembly or processing of goods or commodities or the exploitation of natural resources.

1. This includes the following:
 - a. Land farms
 - b. Manufacturing plant (steel, metal or chemical)
 - c. Recycling Depot
 - d. Hazardous waste or chemical storage or use
 - e. Quarries – the initial development or the expansion of an existing quarry and the disestablishment thereof where the same was not included as part of the initial screening
 - f. Explosives storage
 - g. Tanneries
 - h. Meat and fish production facilities (establishment or change in operation)
 - i. Exploration, bulk sampling, mining and all associated mining activities

2. This excludes the following:
 - a. All institutional activities
 - b. The following commercial activities
 - c. Building supply centre
 - d. Animal hospital
 - e. Custom workshop
 - f. Construction equipment yard
 - g. Heavy equipment sales and rentals
 - h. Automotive commercial garage
 - i. Extraction from existing quarries
 - j. Home occupations – meaning any occupation, trade, profession, personal service, day care or craft carried on by an occupant of a residential building as a use secondary to the residential use of the building

Onshore pipelines located in the designated area would be the responsibility of the landowner and any applicable Regulating Authority. Any proposed onshore pipelines that would expand multiple jurisdictions would fall under the responsibility of the CER.

The NIRB's submission below will focus on providing information within its jurisdiction in response to specific questions raised under the following sections in the OPR Discussion Paper:

- Section 2: Reconciliation with Indigenous Peoples
- Section 3: Engagement and Inclusive Participation
- Section 5: Safety and Environmental Protection
- Section 6: Implementation Objectives

Section 2: Reconciliation with Indigenous Peoples

The NIRB notes that the CER is committed to advancing Reconciliation with Indigenous peoples in a manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples. As an institute of public government defined under a modern comprehensive land claims agreement, the NIRB has been actively incorporating Inuit values, perspectives, and voices

in its work since it was established in 1996. Many of the Board's practices and procedures align with the UN Declaration on the Rights of Indigenous Peoples. This includes, but is not limited to, overall consideration of Inuit Qaujimaqatugangit and Inuit Qaujimaningit (Inuit Traditional Knowledge) in the NIRB's processes and decision-making – including public engagement sessions at all stages, public input into scoping, guidelines development, NIRB decisions and monitoring, as well as community roundtables – and including advocating for a participant funding program and including groups receiving funding through the Northern Participant Funding Program into its project specific processes.

NIRB Best Practices for Incorporating Inuit Qaujimaningit and other types of Traditional Knowledge into the Decision-Making Process

Informed by relative legislation, the NIRB has developed best practices with respect to Inuit Qaujimaqatugangit and Inuit Qaujimaningit and other types of traditional knowledge informing the decision-making process, including the following:

- a. Project specific information is required to be available in plain language in all applicable languages.
- b. The NIRB focuses on consistency in both the type and method of communications. The NIRB has developed templates and internal procedures to ensure the same type and level of information is included within assessment materials and in NIRB-produced documents. The NIRB also places considerable attention on streamlining the terminology used in its translations. To improve consistency in translations, the NIRB strives to have documents translated by the same interpreters and translators with a focus on regional dialects of the specific audience. The NIRB's Interpreter/Translator works on communicating and streamlining terminology with English-Inuktitut translators across Nunavut.
- c. Project-specific Inuit Qaujimaningit and Traditional Knowledge as well as public comments shared with the Board are highlighted in each Board Memo and Screening Decision Report for screening projects and hearing decision reports for review and reconsideration projects. All relevant information shared is used to assess the potential project effects and effectiveness of proposed mitigation and monitoring measures. The reports discuss how Inuit Qaujimaningit provided was considered and contributed to the respective decision.
- d. The Board makes each decision and recommendation via consensus decision-making, and with respect for the Inuit tradition of oral communication.
- e. The Board has recently introduced plain language summaries of its review and reconsideration hearing decision reports.

Suggestions: The NIRB highlights the importance of early engagement with potentially affected communities and suggests that the CER continue work to make the OPR Guidelines easily accessible for the public, which could include developing a plain-language summary and holding additional public engagement and consultation. The NIRB further suggests informing participants

of any changes to the guidelines and providing reasons for suggested changes not being incorporated, if applicable.

Section 3: Engagement and Inclusive Participation

Specific questions considered:

7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?
8. How could communication and engagement requirements in the OPR be improved?
9. How could the CER improve transparency through the OPR?
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?

Since its inception, the NIRB has developed multiple best practices with respect to public engagement by analyzing both optimal outcomes and lessons learned, including the following:

- a. The NIRB's internal practices, guidelines, and policies reflect all relevant legislation, particularly the *Nunavut Agreement* and the *NuPPAA*.
- b. The NIRB emphasizes early and ongoing engagement of parties to ensure that the public's input is incorporated throughout the assessment process. Proponents are encouraged to engage all potentially affected communities, including transboundary Indigenous groups, First Nations, organizations, and communities, when developing project proposals as well as undertaking post assessment activities (e.g., sharing research and monitoring results).
- c. The NIRB has developed audience-specific technical guides to assist in the meaningful engagement of Inuit throughout the planning and assessment processes of a project.
- d. Through multiple methods, including the use of technology, past interest, and self determination through the online public registry, the NIRB distributes project specific notifications to a distribution list comprised of regulatory authorities, communities, organizations, and individuals.
- e. To ensure transparency, all NIRB produced documents intended for public use are available and accessible on the NIRB's public website and associated public registry. The NIRB's public registry is kept up-to-date and includes information provided by all parties, including the proponent, intervenors, and the public. Only very limited items marked as confidential information are not posted online by the NIRB (e.g., coordinates for sensitive archaeological sites).
- f. Parties are provided with multiple opportunities to share both *written* and *oral* feedback through various types of public consultation:

- Opportunity to provide written comments occurs at least once during the 45 days screening level assessment process – with additional consultation when warranted – and throughout each of the three (3) phases of review level assessments;
 - Emphasis on oral communication has resulted in the Board focusing on in-person engagement and consultation. During each of the three (3) phases of review level assessments, NIRB staff conducts in-person community consultations in all potentially affected communities within and outside of the NSA;
 - Parties are encouraged to speak to NIRB staff members via telephone and an Inuktitut interpreter is available in-house to interpret when needed. If calling a unilingual speaker, staff will ensure interpretation is available and used;
 - Community representatives of each potentially effected community are invited to attend and participate in a community roundtable at pre-hearing conferences and public/final hearings associated with NIRB reviews. Through a community roundtable, community members are provided the opportunities to share Inuit Qaujimaningit with the Board and to question the proponent and registered intervenors as well as to provide feedback to all parties, including the Board;
 - Board members use all evidence provided to them during screening and review level assessments to inform their decision-making;
 - Final/Public hearings are held in one (1) or more of the project-specific potentially impacted communities within the NSA; and
 - Since 2014, the NIRB has been conducting community update sessions associated with monitoring files with ongoing activities (i.e., active operations and/or amendments undergoing NIRB assessment).
- g. In the absence of legislated timelines for NIRB-led events (e.g., holding update meetings with regards to monitoring files), the Board strives to use minimum notification requirements as stipulated in the *NuPPAA*. Pursuant to the NIRB’s Rules of Procedure, notification must be made 25 days prior to public meetings and 60 days prior to public hearings.
- h. The NIRB utilizes multiple types of notification for upcoming meetings and hearings, including: posting advertisements of meetings on its public registry, in local newspapers, on local radio, and on local community Facebook pages; enlisting local community members to place flyers throughout the communities; posts to the NIRB’s Facebook page; and sending notification via email to the project specific distribution list.
- i. The NIRB attempts to hold meetings on days that would not overlap with other community activities, such as Bingo and sports nights, by consulting with local organizations when planning activities. The NIRB further holds afternoon open houses and evening sessions to accommodate community members with varying schedules and to reach a wider audience. Unless in extenuating circumstances and with permission of the community, the NIRB does not hold meetings on Sundays.

- j. Pursuant to the principles of Inuit Qaujimajatuqangit, Elders are given priority when speaking during meetings and public hearings. The need for respect of process and of all participants is always stated at the beginning of a public meeting or hearing and exemplified by Board members and staff.
- k. The NIRB directly funds community representatives to attend public hearings and to participate in community roundtables. There is also a Northern Participant Funding Program in Nunavut, operated by Crown-Indigenous Relations and Northern Affairs Canada.
- l. To support independent and objective decision-making, the NIRB does not participate in processes to select community representatives for pre-hearing conferences and public hearings. Rather, the NIRB invites multiple community organizations and governments to select individuals to represent their respective communities. The NIRB strives to have representation of Elders, harvesters, women, and youth from each potentially affected community and contacts specific community organizations to facilitate this.
- m. When holding regular Board meetings not related to ongoing assessments (which are held in Nunavut communities and rotate throughout the three (3) regions) the NIRB typically holds open houses to share non-project specific and process-related information with the public.

Suggestions: The NIRB notes that while the CER expects that companies communicate and engage proactively with those potentially affected by company activities ... the OPR does not currently require a company to have an engagement program in place but in some recent pipeline authorizations, the Commission has added incremental engagement responsibilities as conditions. The NIRB suggests the CER consider requirements for companies to engage with potentially affected communities through all areas of designs, specifications, programs, manuals, procedures, measures or plans for design, construction, operation, and abandonment. The NIRB further suggests the CER consider requirements or guidance to companies to engage with potentially affected communities to solicit feedback to inform:

- management and monitoring criteria by communities;
- performance measures; and
- emergency notification.

The NIRB further suggests that annual reporting be made available to potentially affected communities, with opportunities for comments. The NIRB also suggests that the CER consider providing capacity building to women and fostering awareness to individuals and organizations of opportunities to inform further iterations of the OPR. This could be done through directly reaching out to specific groups/organizations to explain the specific opportunity for participation. Other methods of reaching a wider audience could include advertising on social media such as community Facebook pages, as well as through community radio, including call-in shows where CER representatives can answer questions from the public.

Specific Questions Considered:

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?
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?
18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?
19. How can respect and personal workplace safety be assured at CER regulated sites?
20. How should CER be more explicit about requirements for contractor management?
22. How can OPR drive further improvement to the environmental performance of regulated companies?
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?
24. How can contaminated site management requirements be further clarified, in the OPR or in guidance?
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?
26. How could the requirement for a quality Assurance Program be improved or clarified in the OPR?

Recognizing that the CER is the expert on pipelines and pipeline safety, the NIRB has reviewed the questions and materials in regard to construction/operations/monitoring of pipelines and has nothing further to add at this time. However, as noted previously in this submission, it is important the public be informed and involved throughout all phases of a project. It is also important that the public understand and participate in the various options for environmental protection and eventual reclamation of projects. This can assist proponents with achieving the goals outlined in the questions CER identified and to undertake a holistic approach to projects and also support the Indigenous Monitoring and Advisory Committees that have been established.

Suggestion: The NIRB highlights the importance of incorporating types of Indigenous Knowledge, as well as potentially affected communities in general, into the development of plans, programs, and other project materials to ensure that all knowledge and expectations are captured and communicated throughout a project's life. The NIRB further suggests informing parties of any changes to these plans, programs etc. and providing reasons for suggested changes not being

incorporated, if applicable. This continual engagement with those most impacted by a project contributes to relationship building, trust in process, and a more holistic approach to projects as information and lessons learned can be incorporated into project plans regularly throughout the life of a project.

Section 6: Implementation Objectives

Specific Questions Considered:

27. What are your recommendations for compliance promotion at the CER?
28. How do you want to be engaged by the CER in the development of technical guidance?

Public and Community engagement and access to all relative materials are important to provide opportunities to contribute to the respective processes. Further, plain language materials can also be used to support an understanding of expectations and processes for all interested parties.

Methods supporting regular communication and feedback, such as update meetings with the public, could further assist with keeping everyone informed of the status of the project and as well as the roles of parties in licencing.

The NIRB would like to be informed of further technical guidance developed.