



O'CHIESE FIRST NATION

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June 7, 2022

Dan Barghshoon

Onshore Pipeline Regulations Review Team
Canadian Energy Regulator
210-517 10 Ave SW
Calgary AB. T2R 0A8

Dear Mr. Barghshoon,

Re: O'Chiese First Nation Phase 1 Review of the Canadian Energy Regulator's *Onshore Pipeline Regulations*.

This submission is made on behalf of O'Chiese First Nation's Chief and Council. The Chief and Council of O'Chiese First Nation have the elected authority and responsibility to protect the Inherent and Treaty rights of the over 1,400 O'Chiese First Nation members. The Inherent and Treaty rights of O'Chiese First Nation are recognized by Treaty No. 6, protected by Section 35 of the *Constitution Act, 1982*, and guided by *Kaa-Ke-Chi-Ko-Moo-Nan*.

O'Chiese First Nation is bound by *Kaa-Ke-Chi-Ko-Moo-Nan*, O'Chiese First Nation's Great Binding Law ("Natural Laws"). As such, O'Chiese First Nation operates under its own distinct set of legal principles and laws that have been in place since time immemorial. Our Natural Laws are the foundation for O'Chiese First Nation Peoples and our Inherent and Treaty rights.

O'Chiese First Nation is participating in the Canadian Energy Regulator's ("CER") review process for its *Onshore Pipeline Regulations* ("OPR"). It was important for O'Chiese First Nation to participate in this process given the level of pipeline development that is present on lands to which the Nation holds Inherent and Treaty rights. Regulations over pipelines must include specific considerations to Inherent and Treaty rights. Further, pipelines should be operated in such a way that minimizes disturbance to lands and resources, cumulative effects, and violations to Inherent and Treaty rights and Natural Laws. Current Regulations (federal and provincial) for pipelines do not provide proper direction or parameters over pipeline companies to ensure this.

This submission is made as part of our participation in Phase 1 of this *OPR* review consultation process. O'Chiese First Nation has reviewed the *OPR* Discussion Paper provided by the CER and has identified issues, questions, and gaps that must be addressed by the CER within the *OPR* and prior to any finalization.

The table attached below provides details on O'Chiese First Nation's responses to questions posed in the *OPR* Discussion Paper. In addition to the provided response table, we have identified several overarching comments and concerns pertaining to the *OPR* for consideration in any upcoming amendments.

1. Inherent and Treaty Rights

The *OPR* currently does not include requirements and considerations related to Inherent and Treaty rights. This is problematic given that CER points to the *OPR* along with several guiding documents¹ as the locations for companies and Indigenous nations to seek direction pertaining to consultation and consideration of Indigenous nations and their rights and interests.² While the guiding identified alongside the *OPR* include some more details related to expectations of companies and the CER related to engagement, regulatory participation, and assessment of impacts to rights they do not replaced the need for requirements and standards to be explicitly laid out within the *OPR*.

The *OPR* has greater influence and enforceability than guiding documents do. Therefore, the *OPR* ought to contain specific requirements to ensure Inherent and Treaty rights are considered, prioritized, and protected, throughout the lifecycle of a project. The *OPR* must include reference to Inherent and Treaty rights, including how they consider and seek to protect Inherent and Treaty rights, including acknowledgement of lands taken up, and rejecting the site-specific requirement to prove an impact to rights.

Further, the CER's approach to considering Inherent and Treaty rights, as evidenced by some of the questions posed in the *OPR* Discussion Paper, remains focused on traditional land and resources use ("TLRU") sites and site-specific considerations. This is a narrow focus that does not allow for fulsome assessments of impacts to Inherent and Treaty rights, both directly from a project and cumulatively from all activities occurring. It also requires Nations to prove that they exercise their rights in a specific place or else the identified violations are ignored or determined to be negligible or out of scope. Any amendments to the *OPR* should include a shift away from this assessment focus and recognize that the full extent of Nations' rights.³

The *OPR* should also be the location where the CER considers and addresses cumulative impacts and violations to Inherent and Treaty rights. Currently projects are reviewed and subsequently regulated on a project-by-project basis, with little to no consideration to cumulative effects. As a regulatory Crown body, the CER may not have direct control over provincial land use planning and management, but their decisions and the activities they regulate have direct effects on lands and to Inherent and Treaty rights. As such, the CER needs to be aware of current conditions of lands and take steps to understand the broader context in which they approve or regulate projects.

¹ For example, the CER's Early Engagement Guide and the CER Filing Manual

² <https://www.cer-rec.gc.ca/en/consultation-engagement/crown-consultation/index.html>

³ For example, O'Chiese First Nation holds Inherent and Treaty rights to all unoccupied Crown lands throughout Alberta and Treaty 6 as well as any other lands to which the Nation holds a right of access.

2. Consultation

At present, the *OPR* does not have any requirements or regulations around proponent consultation with Indigenous nations. Given the violations that occur to O'Chiese First Nation's Inherent and Treaty rights due to direct and cumulative pipeline activities, it is critical that violations are accommodated, and further violations are prevented. The *OPR* needs to provide specific standards and instructions that lay out minimum requirements for how Nations should be consulted and otherwise involved in activities throughout a pipeline's lifecycle. These minimum requirements must include guidance around providing sufficient capacity to Nations, adequate time, and the involvement and oversight of the CER. Consultation activities led by the CER related to oversight and cumulative effects should also be developed and defined in the *OPR*.

It is important that the CER does not use involvement of Indigenous nations in programs such as monitoring programs to avoid accommodating violations to Inherent and Treaty rights. While monitoring and other Indigenous participation opportunities can be positive if done meaningfully, O'Chiese First Nation has also seen these programs be used as performative exercises to deflect away from considering and accommodating violations to Inherent and Treaty rights. We also have experience with Indigenous participation opportunities being seen as a 'check box exercise' with little-to-no real influence over how activities are carried out, or whether Inherent and Treaty rights are protected from further violations. The *OPR* needs to provide specific details on the purpose of Indigenous participation activities and the obligations and responsibilities of companies and the CER to consider and act upon information shared by Nations in these activities.

There should also be greater oversight by the CER over these inclusion activities. Company-led program provides greater space for companies to disregard or gloss over issues or impacts identified by Nations. In O'Chiese First Nation's experience, companies prioritize meeting minimum requirements and constructing and operating their pipelines to secure maximum revenues. As such, delays or additional steps that accompany addressing any issues or impacts identified by Indigenous monitors are not desirable. Involvement of the CER in these programs would add a higher level of accountability to companies to follow-through on addressing issues and impacts raised within Indigenous programs, such as monitoring programs.

3. Cumulative Effects

The CER should be reviewing, approving, and managing pipeline activities with an understanding of cumulative effects and considerations to infringement of Inherent and Treaty rights. At present this does not occur within the CER's regulatory process. This is evidenced by the lack of consideration to cumulative effects in the current version of the *OPR*.

Cumulative effects are the combined effects of development and human activities within a delineated geographic extent that occur over time (past, present, and future). Assessing cumulative effects involves analyzing how specific impacts caused by each development

activity or disturbance interact with each other and how they collectively create changes (positive or negative).^{4,5}

Pipelines throughout their lifecycles and beyond, creates deep long-term violations to Inherent and Treaty rights. These violations occur directly resulting from a pipeline project as well as cumulatively within the current level of violations already present on the lands. Pipelines disturb lands and resources and create conditions that are incompatible with O'Chiese First Nation's Inherent and Treaty rights in accordance with our Natural Laws. This results in the significant diminishment in the ability for O'Chiese First Nation members to meaningfully exercise their Inherent and Treaty rights.

As a regulatory Crown body, the CER may not have direct control over provincial land use planning and management that are meant to speak to infringement and consider cumulative effects, but their decisions and the activities they regulate have direct effects on lands and to Inherent and Treaty rights. As such, the CER needs to be aware of current conditions of lands and take steps to understand the broader context in which they approve or regulate projects. By not considering cumulative effects and thresholds for the taking up of lands within the *OPR* or elsewhere, the CER cannot properly consider Inherent and Treaty rights and the spirit and intent of promises made under Treaty 6.

4. Standards and Requirements

In its amendments to the *OPR*, O'Chiese First Nation encourages the CER to the set higher standards than what is described in the current version of the *OPR*. Regulations are considered as minimum requirements that must be fulfilled to be compliant with overarching legislation. The CER may provide other documents that encourage additional steps for companies to operate above minimum standards, but there is no incentive for companies to do so. Further, too-low standards encourage inertia rather than innovation. Higher standards and more well-defined requirements laid out in the *OPR*, including standards and requirements pertaining to Indigenous nations and Inherent and Treaty rights, will push for innovation that could support actions that align with government mandates such as action against climate change, reduction of environmental impacts, addressment of current cumulative effects, and protection of Inherent and Treaty rights.

The CER should be careful with its use of subjective language in any amendments to the *OPR*. Terms such as 'adequate' and 'meaningful' are often used describe requirements in many policies and regulations developed by government bodies. Issues with these subjective terms arise when they are not specifically defined and there are no parameters provided as to how they are assessed or measured. This can lead to conflicts and varying expectations between Indigenous nations, the Crown, and companies. Failure to define and identify parameters pertaining to subjective terms also add an unnecessary shroud of secretiveness over how regulations are applied, and related proponent actions are assessed.

⁴ Government of Canada. *Cumulative effects in Canada's boreal forests* (2021) <https://www.nrcan.gc.ca/our-natural-resources/forests/sustainable-forest-management/cumulative-effects-canadas-boreal-forests/23568>

⁵ Indigenous Centre for Cumulative Effects. *Cumulative Effects* (n.d.) <https://www.icce-caec.ca/cumulative-effects/>

It is our expectation that the comments provided will be explicitly considered and result in meaningful additions or amendments to the *OPR*. We will look to the CER to respond to our review and provide written details on how the information shared was included in revisions as well as any rationale for why information shared was excluded.

Sincerely,



Consultation Director
O'Chiese First Nation

#	OPR Questions	Response Comments from O'Chiese First Nation
1.	<p>What's working well in relation to the OPR, and its implementation, and what could be improved?</p>	<p>At present, the OPR does not include any explicit considerations of Inherent and Treaty rights or violations to rights caused by pipeline activities. Indigenous nations in Canada have constitutionally protected rights, that require consultation and accommodation whenever a project has potential impacts to these rights. The OPR must explicitly outline how consultation with Indigenous nations is required, including provisions around adequate timelines for consultation, adequate capacity for Indigenous nations, and meaningful involvement of both the proponent and the Government of Canada and CER.</p> <p>Further, requirements around the inclusion of impacted Indigenous nations in risk management must be explicitly outlined. This includes how Indigenous nations will be involved in project and long-term monitoring, and the role of Indigenous nations in emergency response.</p>
2.	<p>How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?</p>	<p>Having participated in IAMC-related activities and company-led monitoring programs related to approved projects, O'Chiese First Nation is concerned about the adequacy of these programs. These programs can be bettered to ensure the inclusion of monitors from all impacted Indigenous nations, instead of a selection of a Treaty representative. They can also be improved by ensuring that jobs are easier for Indigenous nations to access and guaranteeing jobs for a certain amount of Nation members. Further, adequate training and wages are required to ensure meaningful involvement in the IAMC program. Job creation should also be long term, or developed to have monitors move into new positions, with chance for promotion or new job training.</p> <p>One of the largest factors to contribute to advancement of Reconciliation is improving the consultation process between Indigenous nations and proponents and the Crown. The OPR must explicitly outline how consultation with Indigenous nations is required, including provisions around adequate timelines for consultation, adequate capacity for Indigenous nations, and meaningful involvement of both the proponent and the Government of Canada and CER.</p> <p>As stated in the previous response, there must be explicit inclusion of considerations to Inherent and Treaty rights. First Nations in Canada have constitutionally protected rights, that require consultation and accommodation whenever a project has potential impacts to these rights.</p> <p>The OPR Discussion Paper describes reconciliation opportunities through Indigenous involvement in programs, such as monitoring. Indigenous involvement can support reconciliation if it is meaningful and not performative. Indigenous involvement in oversight and ongoing pipeline activities, should be set up to support ongoing information sharing, consideration to Nation's rights and interests, and prevention of additional impacts to rights before they occur. The OPR should include consistent minimum requirements pertaining to ongoing involvement of Indigenous nations both project specific and broadly pertaining to all pipeline activities. Further, the OPR and other related documents need to be clear about purpose and influence of activities that seek to include Indigenous nations and gather information from them.</p> <p>Monitoring programs <u>do not</u> directly and proportionately accommodate for violations to Inherent and Treaty rights identified during the regulatory process. As previously stated, monitoring and other involvement activities can be very</p>

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		<p>important and positive if they are done meaningfully; But O'Chiese First Nation has also seen that these activities be used by companies and the Crown to avoid directly and proportionately accommodating violations (direct and cumulative) to Inherent and Treaty.</p> <p>Further, considerations to cumulative effects must begin to be incorporated into the <i>OPR</i>. At present, cumulative effects have been allowed to continue, entirely unmitigated and unregulated. Projects are viewed on a project-by-project basis, which does not allow for cumulative effects to be understood and addressed. Indigenous nations are limited to identifying impacts from present actions, with no consideration to past or future potential impacts.</p> <p>If the CER is truly interested in pursuing reconciliation, there must be meaningful action to recognize and protect Inherent and Treaty rights and accommodate for any instances where rights are violated. A step towards achieving this is regulating projects with considerations to cumulative effects and infringement to Inherent and Treaty rights. The CER's current regulatory process, including review, approval, and oversight of pipeline projects does not explicitly consider cumulative effects, including current levels of violations to rights (such as disturbance levels and amount of lands taken up). With every new piece of land taken up and disturbed by pipeline and other development activities, O'Chiese First Nation members' ability to exercise their Inherent and Treaty rights are further diminished and the Crown is at risk for infringement.</p>
<p>3.</p>	<p>How can the <i>OPR</i> contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?</p>	<p>While the protection of heritage resources is very important to O'Chiese First Nation, it is often the case that government's interpretation of what constitutes a heritage resource or site is too narrow to consider and protect culturally critical resources and sites that relate to the Nation's history and Inherent and Treaty rights. Heritage resources and sites are often limited to areas with physical proof of use or prior occupation, such as grave sites. This can lead to the exclusion of resources, sites and landscapes of historical and cultural significance and importance to the Nation. The CER should consult with Indigenous nations to determine what resources, sites, and landscapes to be considered as a culturally critical sites or landscapes. These co-determined resources and sites or landscaped should be managed and protected to the same degree as currently recognized heritage resources.</p> <p>There is also a need for more meaningful consultation and oversight opportunities for Nations to support the identification of protocols or practices to address violations to particularly culturally sensitive areas or resources. This includes involvement of Nations in determining appropriate mitigation approaches in accordance with Natural Laws and heritage resource discovery contingency plans.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
<p>4.</p>	<p>How can the <i>OPR</i> contribute to the protection of traditional</p>	<p>Regulatory processes are quick to focus only on site-specific evidence or traditional land and resource use ("TLRU") as a means of touching on, but not fully considering, Inherent and Treaty rights. In doing so, there is a failure to recognize and</p>

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	<p>land and resource use, and sites of significance for Indigenous peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?</p>	<p>consider the full extent of O'Chiese First Nation's rights; O'Chiese First Nation has rights throughout Treaty 6 and the province of Alberta on all unoccupied Crown lands or lands that the Nation has a right of access.</p> <p>Moreover, the term TLRU and the use of TLRU as the primary indicator to assess violations to Inherent and Treaty rights is problematic. Firstly, the term TLRU reduces or camouflages the significance of O'Chiese First Nation's rights and the Crown constitutional imperative to protect these rights. Second, TLRU as an assessment indicator is too narrow and does not allow for a fulsome assessment of violations to Inherent and Treaty rights. It is O'Chiese First Nation's experience that TLRU is often weaponized against a Nation as it requires proof of use or else no impacts to rights are identified.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
<p>5.</p>	<p>How can the use of Indigenous knowledge be addressed in the OPR?</p>	<p>If the CER is seeking Indigenous Knowledge ("IK") and other information from Nations pertaining to their rights and interests, it must be done meaningfully and respectfully. This means 1) recognizing that all information provided relates to a Nation's Inherent and Treaty rights and treating it with the significance that entails; 2) ensuring that adequate capacity is provided to support the Nation in gathering and providing requested information; 3) treating all information gathered with equal consideration and validity as any western-science information presented; 4) adhering to any confidentiality measures required by the Nation; and, 5) incorporating all information provided into any actions or decisions related to review, planning, implementation, and oversight, and providing specific details to the Nation on how their information was incorporated (or any rationale as to why it was excluded).</p> <p>It has been O'Chiese First Nation's experience that IK and information provided by the Nation within regulatory processes is considered as less than western knowledge provided by companies. Often, it can appear that IK is collected as a 'check box' exercise and the information shared is rarely given appropriate weighting or meaningfully included in any decision making or actions then made by the regulator or company. It takes a great deal of effort and capacity for O'Chiese First Nation to gather and provide information. We undertake this effort because we have no other recourse in order to try and protect our Inherent and Treaty rights. When we see our information pertaining to our Inherent and Treaty rights not being taken as seriously as it should, it demonstrates to us a lack of regard for our Nation and a failure of the Crown to respect and protect our rights.</p> <p>We also note that often IK and other information gathering with a Nation is delegated to the company. This can lead to issues with the company not taking enough steps to engage with the Nation or the company downplaying/misrepresenting the information shared by the Nation. To counter this, the CER needs to set higher minimum requirements with companies pertaining to consultation and ongoing engagement with Indigenous nations and be very clear on expectations pertaining to gathering and considering information from the Nation. This needs to be explicitly detailed in the OPR and not left to any secondary guidance documents.</p>

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		<p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
<p>6.</p>	<p>How can the OPR address the participation of Indigenous peoples in pipeline oversight?</p>	<p>Currently, there are no explicit requirements around consultation with Indigenous nations, including consultation or engagement in oversight-related activities, identified in the OPR. There needs to be explicit requirements around consultation, and involvement of Indigenous nations outlined in the OPR.</p> <p>Further, it is important that the CER does not only select one Indigenous person or Nation to include in oversight and assume that they do, or can, speak for all Nations. This is a pan-Indigenous approach to engagement and inclusion that we have seen employed by the Crown and by companies in the past. While it may be more efficient from the Crown or companies' perspective, it is not appropriate and does not respect or acknowledge the duty to consult with each Nation who hold their own distinct, collective rights. There needs to be equal opportunities provided to all Nations to speak on their own behalf and actively participate in oversight activities regulated by the CER that directly violate their Inherent and Treaty rights.</p> <p>At the heart of any inclusion in oversight should be the objective of protecting Inherent and Treaty rights. Some opportunities for increased involvement of Nations in oversight activities could include more explicit requirements for involvement of Indigenous nations in works such as environmental protection planning, monitoring, and emergency response. To support increased participation in these types of works, there should be an increase in training provided to Indigenous nations, and formation of IAMC's on a greater number of projects, or overarching IAMC-style programs pertaining to larger pipeline systems regulated under the CER.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
<p>7.</p>	<p>How can the OPR support collaborative interaction between companies and those who live and work near pipelines?</p>	<p>This question highlights a common issue with how the Crown and companies determine whether to consult with Nations. Proximity to Reserves is a typical measure to determine impacts or rationale for consultation. However, this approach does not account for where the rights of O'Chiese First Nation exist and how our members exercise their rights.</p> <p>O'Chiese First Nation has rights on all unoccupied Crown lands and any other lands to which we have a right of access throughout Treaty 6 and the province of Alberta. Our members travel far from O'Chiese 203 lands to exercise their rights. Increasingly so given the amount of lands taken up and the intense decline in both the lands that are functionally compatible with our Natural Laws and abundance of healthy resources due to a high level of development activities. This needs to be better accounted for when considering engagement or collaborative interaction between companies and Nations.</p>

#	OPR Questions	Response Comments from O'Chiese First Nation
8.	<p>How could communication and engagement requirements in the OPR be improved?</p>	<p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p> <p>To improve communication and engagement with Indigenous nations through the OPR, there must be explicit requirements pertaining to communication and engagement identified and formally laid out within the regulations for everyone to follow. This cannot only be left to secondary guiding documents or manuals, which do not bear the same legitimacy or weight that regulations do.</p> <p>Further, the OPR must explicitly outline how consultation with Indigenous nations is required, including provisions around adequate timelines for consultation, adequate capacity for Indigenous nations, and meaningful involvement of both the proponent and the Government of Canada and CER. The CER must also be careful to define any vague or subjective terminology used within regulations. For example, the CER ought to have a definition and defined parameters for assessment for the term 'meaningful consultation'. The details should be developed in consultation with Indigenous nations and reflect current legal precedents and other legislation (e.g., UNDRIP).</p> <p>Consultation requirements must also be open to flexibility so that consultation can be tailored to each Indigenous nations needs. O'Chiese First Nation may have a different approach to how they would like to be engaged, and participate in consultation, than other Indigenous nations in an affected region.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p> <p>Greater proactive oversight over communication and engagement activities is also necessary to ensure improvement. More direction and involvement from the CER from the start would hopefully support a reduction in conflicts of expectations between Nations and companies or the Crown, who may have differing ideas on what 'sufficient' communication or engagement activities or efforts entails.</p>
9.	<p>How could the CER improve transparency through the OPR?</p>	<p>O'Chiese First Nation finds the current regulatory processes and activities are not as transparent as they ought to be. Particularly as it relates to how Inherent and Treaty rights are understood and violations to rights are considered. It is also not always clear as to how information shared by Indigenous nations about violations to Inherent and Treaty rights are considered, or not, or to what degree they were considered, within regulatory processes and related decision making.</p>

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		<p>The CER should seek to consult with Nations to understand what their expectations are for transparency related to OPR regulated activities and CER processes. Requirements and standards incorporated into the OPR should then be reflective of these expectations.</p> <p>In general, the CER can support an improvement transparency through an increase in reporting, freely available fulsome information, and better statistics gathering around Indigenous employment (i.e., which communities are being employed, where, for how long, how much training is provided etc.). A greater role by the CER in disseminating this information and in overseeing and reviewing what and how information is shared would also be beneficial. This should all be explicitly laid out within the OPR.</p> <p>Transparency can also be increased through ongoing consultation and long-term involvement of Indigenous nations in OPR regulated activities. This means Indigenous nations are consulted beyond the application or construction stages of a project and are consulted on/involved in activities such as monitoring and emergency management as the project enters operations and closure stages.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
<p>10. Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:</p> <ul style="list-style-type: none"> a. those people implementing the OPR; or b. those people who are impacted by the operational activities addressed in the OPR? 	<p>Influxes of workers near or in Indigenous communities is intrinsically linked to violence against Indigenous women. The CER can turn to the Missing and Murdered Indigenous Women (“MMIW”) report to see recommendations on how to prevent this violence. The CER should also be seeking to consult with Indigenous nations specifically on this matter related to the over OPR overall, but also related to specific projects and activities that the CER has regulatory oversight on.</p> <p>Decolonization of systems and structures should also be a priority. This can include the creation of accountability loops, and increased cultural, treaty rights and implicit bias training.</p> <p>Further, improving Indigenous nations access to jobs and promotions, and placing Indigenous peoples in more oversight positions can also help to decolonize structures.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>	
<p>11. How can the OPR support a predictable and timely regulatory system</p>	<p>O'Chiese First Nation finds that the objective implied through this question to be problematic. Often, we see timeliness and predictability prioritized above thorough and meaningful within regulatory legislation and regulations.</p>	

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	<p>that contributes to Canada's global competitiveness?</p>	<p>This focus serves to highlight the bias that exists in regulatory processes towards economic development at the expense of Inherent and Treaty rights and the environment.</p> <p>The CER must be careful to not value timeliness and predictability to such a degree that there is no room for adaptability to allow for fulsome assessments and addressing of impacts resulting from a project or project activity, including violations to Inherent and Treaty rights. The CER, and other regulators', roles should not be to 'cut red tape' but rather to conduct their regulatory process responsibly and thoroughly and set standards to push innovation and support the protection of rights and the environment.</p> <p>If the CER wants to reduce risk and increasing predictability, that can come from ensuring that Indigenous nations are consulted meaningfully, along every step of a project, and by ensuring that impacts to rights are identified and proper mitigation and accommodation measures are applied whenever impacts cannot be avoided.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
<p>12.</p>	<p>How can the <i>OPR</i> support innovation, and the development and use of new technologies or best practices?</p>	<p>Cumulative effects are a large concern to O'Chiese First Nation – O'Chiese First Nation has experienced a significant diminishment to our ability to exercise our Inherent and Treaty rights in accordance with our Natural Laws due to the ever-increasing disturbance and growing amount of lands being taken up by development and human activity.</p> <p>The current CER process does not properly or directly consider or address cumulative effects when it reviews project application or when it is overseeing a project through its lifecycle. Approvals and subsequent project decisions are made without a fulsome understanding of how the project and its activities contribute to current conditions and cumulative effects in its vicinity.</p> <p>New developments and innovations should not only be focused on the present or new projects, but should also seek to account for, and address, current levels of cumulative effects. This includes understanding infringement of rights from development and coming up with solutions that best benefit Indigenous nations and the protection of Inherent and Treaty rights. The <i>OPR</i> should develop standards that take into account cumulative effects, so that new technologies do not fall into the trap of addressing only immediate effects and neglecting the damage that has already been done to the land.</p> <p>It is also important that innovation, technology, and best practices advance to push us beyond the current status quo and comfort zones held by industry. For this to occur, the CER must develop regulatory standards and requirements that encourages companies and the Crown to seek better options, new solutions, creative technology, and revolutionary thought.</p>
<p>13.</p>	<p>What company-specific or industry-wide performance metrics</p>	<p>The CER ought to develop metrics pertaining to Inherent and Treaty rights, including metrics related to consultation, accommodation, protection of rights, ongoing engagement, socio-economic effects (positive and negative),</p>

#	OPR Questions	Response Comments from O'Chiese First Nation
	<p>could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?</p>	<p>biophysical effects, and partnerships. Metrics pertaining to Indigenous nations and their rights and interests should be both project specific and cumulative in nature.</p> <p>Metrics should be developed in consultation with Indigenous nations. Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p> <p>Reporting on performance of companies and industries using these metrics should occur consistently (annual at minimum) and be made public to support accountability, transparency, and compliance.</p>
<p>14.</p>	<p>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?</p>	<p>Data and digital innovation activities should seek to support Nations along with companies and the CER. O'Chiese First Nation continues to struggle to have the right equipment and receive fulsome data from the Crown and from companies to support participation in consultation. Often it can be greatly time consuming and a drain on our limited internal resources to track down all the information we require to allow for meaningful participation in consultation-related activities. This should not be the case; Nations should not have to carry any unnecessary burden related to consultation.</p> <p>The CER should take steps to ensure that data is freely accessible to Indigenous nations and that Indigenous nations are aware of where and how to access available data. In particular, geospatial data should be freely provided to Indigenous nations. In Alberta, geospatial data can be difficult and quite costly to access. Having free and easy access to government developed or housed geospatial data and related software would eliminate one of the burdens Nations face when participating in consultation-related activities.</p> <p>The storage and reuse of information is also of concern to O'Chiese First Nation. It is our experience that often proponents or the government will consult with O'Chiese First Nation once, and then store the information provided on that one specific activity or project and will seek to re-use it as a means to reduce requirements for future consultation. We find this approach to be inappropriate. Instead, the CER must ensure fulsome consultation on every new project or activity occurs meaningfully, and any information that is stored in a database, by government or a company, should only be done following explicitly consent from O'Chiese First Nation and using protocols co-developed with the Nation.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
<p>15.</p>	<p>How can the OPR be improved to address</p>	<p>The OPR should require Indigenous nations to be apprised of changes to pipeline use and status. There should be specific protocols outlined in the regulations to guide notification and consultation of Indigenous nations surrounding change in use or status. Before changes occur, consultation with Indigenous nations should occur, to identify and,</p>

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	changing pipeline use and pipeline status?	<p>prevent or accommodate for any violations to Inherent and Treaty rights that may arise with the proposed change. Particularly in the case of closure, Indigenous nations should be kept apprised, and be consulted on/involved in closure and reclamation processes.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
16.	<p>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?</p>	<p>The OPR must provide specific standards and instructions to support interpretation and implementation of management systems. As with all aspects of regulations, the more guess work the CER can eliminate by providing well-laid out definitions, actions, requirements and other parameters the better. Vague or subjective terms leave too much to chance and risk deficient implementation of important systems and processes.</p> <p>Additionally, the OPR should seek to consult with Indigenous nations on any management system requirements that directly pertain to Nation or their Inherent and Treaty rights</p> <p>O'Chiese First Nation has constitutionally protected rights, that require consultation and accommodation whenever a project has potential impacts to these rights. The OPR must explicitly outline how consultation with Indigenous nations is required, including provisions around adequate timelines for consultation, adequate capacity for Indigenous nations, and meaningful involvement of both the proponent and the Government of Canada and CER.</p>
17.	<p>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?</p>	<p>Information about human and organization factors should be explicitly defined in the OPR, especially as it pertains to risk management and emergency response.</p> <p>Factors specific to Indigenous nations should also be co-developed in consultation with Indigenous nations. Co-development will help Indigenous nations involved in different project aspects be better equipped to address and mitigate these factors.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
18.	<p>How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program,</p>	<p>The OPR must recognize potential safety risks to Indigenous nations exercising their rights in the vicinity of projects. At present company safety manuals as well as the Safety Management Program do not adequately consider safety risks related to the exercise of Inherent and Treaty rights. Considerations tend to focus on individuals directly at site or who are known to live in the vicinity. However, O'Chiese First Nation members often are required to travel far from their residences to access lands and resources and exercise their Inherent and Treaty rights in accordance with Natural Laws. This may put them at risk of being near to an incident without any considerations or related steps identified within an emergency response plan or other safety programs or guides.</p>

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	for both employees and contractors?	<p>Further, as noted in Question 15, Indigenous nations must be apprised of safety risks in a timely and adequate way, including notification of any risks that may impact our ability to practice our Inherent and Treaty rights. Information about risks should be fulsome and adequate, and delivered in a timely manner in way in which ensures that all Nation members can access this information. The OPR should direct CER staff and proponents to consult with Nations to identify what they require as far as notification methods, content, timeliness, involvement etc. for incorporation into the Safety Management Program and other emergency and safety guides and activities.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
19.	How can respect and personal workplace safety be assured at CER regulated sites?	<p>Colonial systems and structures that Canadian society currently operates within are discriminatory and racist at their core. This seeps into all related programs or sub-structures, including workplaces. O'Chiese First Nation members are vulnerable to micro-aggressions, discrimination, and overt statements and actions of racism in western, or colonial-centric work environments. This needs to be specifically recognized and addressed if the CER is serious about its intent to assure and improve respect and personal workplace safety.</p> <p>Cultural awareness and anti-racism training ought to be mandatory for all employees and contractors working at a site. Reworking of structures and systems to support increased employment of Indigenous peoples and enforce their personal safety should also occur.</p> <p>The CER should also identify accountability loops and proper, safe, and accessible, processes for instances of racism and discrimination to be reported with meaningful investigation and consequences occurring after report is received.</p> <p>Additionally, improving Indigenous peoples access to jobs, training, and other employment and contracting opportunities could be beneficial in supporting changes to systems and structures and improving respect and personal safety at workplaces. As would creating more meaningful space for Indigenous nations and peoples to be in oversight positions.</p>
20.	How should the CER be more explicit about requirements for contractor management?	<p>Nations should receive notification on which contractors are operating under each regulated company. Notification should include information on each contractor's roles and responsibilities, timing, processes, and purpose. There must also be information provided that speaks to how the contractor's policies or processes align or diverge with the proponent's project plan documents, like emergency response plans or environmental protection plans.</p> <p>Further, it is also difficult to ascertain what a contractor's understanding, or required understanding, of Inherent and Treaty rights, how they must communicate/involve/consult with Indigenous nations, or how their roles interact with approval conditions on the project. This lack of clarity and understanding by a contractor can lead to unsafe and</p>

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		<p>uninformed interactions and instances of racism or harassment to Indigenous nations and their members by contractor employees. It can also lead to unforeseen or further amplified impacts to Inherent and Treaty rights.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
21.	<p>How should the OPR include more explicit requirements for process safety?</p>	<p>Requirements around process safety should also consider how accidents can directly impacts Inherent and Treaty rights.</p> <p>The OPR should also be very clear in any direction it provides related to process safety. This includes providing definitions around subjective terms and set parameters around these terms and how fulfilment of requirements for process safety are assessed.</p> <p>Indigenous nations should be involved in the development of process safety requirements, as it is Indigenous nations Inherent and Treaty rights that are primarily impacted when spills occur.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
22.	<p>How can the OPR drive further improvement to the environmental performance of regulated companies?</p>	<p>Programs and plans for environmental protection can be improved by not focusing only on biophysical impacts. Impacts to the environment must also be understood as it relates to social, economic, and cultural effects, especially as it pertains to impacts to Inherent and Treaty rights.</p> <p>Performance indicators related to the environment and Indigenous rights and culture should be co-developed in consultation with Indigenous nations. Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p> <p>Further, explicit requirements around the understanding and monitoring of cumulative effects is necessary and currently overlooked by regulatory processes, including processes laid out in the OPR.</p> <p>Minimum requirements around environmental protections must also be explicit, as they pertain to water, soil, air contamination, and wildlife and vegetation.</p>

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23.	<p>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?</p>	<p>Additionally, Regulations are often meant to represent the minimum requirements, but companies are encouraged to take additional steps. The issue is that often the minimum requirements are all a company will want to fulfill, and they have no incentive or need to extend themselves beyond the minimum. This practice and the lack of strict, high, standards, negatively affects the environment and impacts Inherent and Treaty rights.</p> <p>As stated, inclusion of impacts to Inherent and Treaty rights is necessary. Environmental plans cannot be framed just as environmental or biophysical but should also explicitly consider and seek to mitigate or accommodate for impacts to Indigenous nations' rights and interests as they relate to lands and resources.</p> <p>Further, explicit requirements around the considerations to, and mitigation measures for cumulative effects should also be an explicit requirement with environment plans.</p> <p>Requirements around reclamation should be more stringent than they current are. At present, reclamation requirements have allowed for companies to abandon sites of oil and gas development, claiming bankruptcy in order to avoid having to clean up and reclaim abandoned sites. This is of large concern to O'Chiese First Nation, as sites that are not reclaimed cannot be used for the practice of Inherent and Treaty rights. The Nation does not want to see never-ending patches of un-reclaimed or deficiently reclaimed lands that do not support the exercise of Inherent and Treaty rights in accordance with Natural Laws.</p> <p>Therefore, companies should be required to have large amounts of capital set aside for meaningful and adequate restoration and reclamation. Indigenous nations must be involved in the development of restoration plans, as it is critical that sites are reclaimed in a manner that allows for the practice of Inherent and Treaty rights in the way that was done prior to disturbance of the area, and in the way Indigenous nations see fit.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
24.	<p>How can contaminated site management requirements be further clarified, in the OPR or in guidance?</p>	<p>Proponents must be required to set aside large amount of capital in order to deal with contaminated sites in a proactive way, that gives potential for the site to be restored to its former state.</p> <p>Further, there must be specific requirements laid out in the OPR for response to contaminated sites and related management and clean up works requires consultation with, and involvement of Indigenous nations. This will help to support communication and dialogue between Nations and proponent and allow Nation opportunity to assess the extent of impacts to Inherent and Treaty rights resulting from contamination.</p> <p>The provision of accommodation to Indigenous nations impacted by contaminated sites should also be explicit in the OPR, as contaminated sites are a direct impact to First Nations ability to practice their Inherent and Treaty rights.</p>

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25.	<p>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?</p>	<p>The Emergency Management Program must explicitly recognize Inherent and Treaty rights, and how emergencies present potential impacts to these rights. As previously stated, emergency response and safety plans do not adequately consider risks to Indigenous peoples exercising their rights in vicinity to a project site. Rather plans and subsequent actions tend to only focus on individuals at-site or known residences nearby. These narrow geographical considerations places O'Chiese First Nation members' exercising their rights far from their residences at risk.</p> <p>Indigenous nations should be involved in emergency management planning and execution, and there must be explicit regulations around consultation with Indigenous nations around the development of Emergency Management Programs. Indigenous nations who desire to participate in Emergency Management should be offered the proper capacity and training to be able to do so.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
26.	<p>How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?</p>	<p>Standards specifically related to Indigenous nations and Inherent and Treaty rights should be developed for inclusion in the Quality Assurance Program. Standards around rights should be developed through consultation with Indigenous nations and include requirements for periodic review. Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p> <p>Additionally, the Quality Assurance Program needs to have precise definitions for terms that are subjective in nature, such as the term 'adequate.' How these terms are understood and fulfillment of requirements using these terms are assessed should be explicitly laid out.</p>
27.	<p>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?</p>	<p>Reporting related to recommendations and issues from the Safety Advisory should be transparent and accessible. Further, notices on any recommendations or issues should to be sent out to impacted Indigenous nations on a consistent and as needed basis.</p> <p>The OPR should also increase Indigenous nation involvement in setting out safety standards, and participation in feedback around the Safety Advisory's recommendations and issues. All Indigenous nations should have equal opportunity to participate; as previously stated, it is not appropriate to appoint one Indigenous person or consult with one Indigenous nation and assume that they speak for all Indigenous nations.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>

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28.	<p>What are your recommendations for compliance promotion at the CER?</p>	<p>There needs to be higher standards and greater oversight surrounding compliance to standards by the CER and within the OPR. Penalties for non-compliance ought to be forceful or sufficiently punitive that they are push for active compliance by companies.</p> <p>Further, the CER needs to shift to a proactive approach in its oversight of compliance by companies. As previously noted, regulators tend to get involved only after a complaint is received. Instead, the CER should take a more active and ongoing approach to oversight in efforts to avoid any incidents of non-compliance or receipt of complaints.</p> <p>There should be active engagement with impacted nations, as well as adequate capacity, and training so that Indigenous nations are able to meet compliance requirements.</p> <p>Any requests or actions that require participation of Indigenous nations should be accompanied by provision of sufficient capacity to facilitate participation. Indigenous nations should not be required to carry the burden of costs for any projects or related activities that are imposed on them and will result in violations to Inherent and Treaty rights.</p>
29.	<p>How do you want to be engaged by the CER in the development of technical guidance?</p>	<p>Scope of consultation will need to be determined on a case-by-case basis and depending on the significance to O'Chiese First Nation's rights and interests.</p> <p>Generally, O'Chiese First Nation would like to continue to be updated via email to the O'Chiese First Nation Consultation Office. Information will be disseminated internally once received following our own processes.</p> <p>All request for consultation for the Nation must come with adequate capacity, adequate information and transparency, and adequate timelines for O'Chiese First Nation to be able to meaningfully engage with community members, and the proponent, in a way that best protects our Inherent and Treaty rights.</p>