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Samson Cree Nation Comments on the Onshore Pipeline Regulations Review Discussion Paper

- 1) **What's working well in relation to the OPR, and its implementation, and what could be improved?**
 - a) Indigenous Nations rarely, if ever, received updates from companies on their management systems. The only updates we do receive are if there are spills or other incidents occurring. If things are going well on a project from a management system perspective, those updates should also be shared with Nations on a frequent basis. Especially if that information is from an Indigenous focused condition.
 - b) Management systems utilized by companies and the risk-based compliance verification approach used by the Canada Energy Regulator (CER) both need to start including Indigenous values and inputs into their systems. Most inputs are based on environment, location, activities, etc. Indigenous intervenors provide plenty of evidence and information through engagement with the company and the CER's hearing process, this information can be utilized to enhance both these approaches. A requirement is needed to include Indigenous values and inputs in both approaches utilized by companies and the regulator.
- 2) **How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?**
 - a) If the CER is going to implement the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission of Canada's Calls to Action, free prior and informed consent is required prior to project approval. Mechanisms will need to be developed between the Regulator and Indigenous Nations on how consent will be obtained for each Project. Some Nations already have existing mechanisms in place which need to be respected. This is an opportunity for the CER to begin new best practices in developing a process along with Indigenous Nations that attains their free prior and informed consent. This is important work that needs to be done
- 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?**
 - a) The OPR can contribute to the protection of heritage resources by implementing UNDRIP Article 11 and 12. The treatment of Indigenous Heritage Resources varies significantly across the different jurisdictions. Some Acts fail to reference Indigenous Peoples and some current legislative structures can create barriers on how Indigenous heritage resources are treated, respected, and accessed.
 - b) The CER can develop a strategy that assists Nations on creating or implementing their own Heritage Policies. These policies could inform the CER how heritage resources are recognized and respected, what constitutes as heritage resources, and the jurisdictional control of heritage resources. How heritage resources are treated are culturally specific based on the Nation itself, so each process will be specific to

each Nation. The development of this process could set a standard for future work. At the end of the day protection, preservation and management of Indigenous heritage resources is what is important to most Nations.

- c) If a company is expected to develop mitigation approaches and contingency plans, this work must be done alongside Indigenous Nations.
- d) Indigenous Nations could provide permitting similar to other jurisdictions that follow the requirements needed by the Regulator.

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?

- a) Traditional land use (TLU) studies need to be completed prior to an application being submitted by a company and this should be a requirement within the CER's Filing Manual. If a TLU is completed during project development and prior to an application being submitted, it creates greater certainty for avoidance of significant sites and greater understanding of what those sites are. It also gives more time to co-develop specific mitigation measures between the Nations and Proponent.
- b) Currently TLU and cultural sites are being incorporated into Environmental Protection Plans (EPP) and there is a need for specific protections in place for sites with Indigenous significance, especially if that area is tied to a practice of a right. A Traditional Land Use Protection Plan should be created and co-developed between Nations and Companies. Again, Nations could give permits or conditions for each site.
- c) Indigenous Peoples also need to be involved in all phases of the project beyond monitoring. While the CER may encourage companies to engage Nations, and include them in activities related to construction, operation, decommissioning/closure, and reclamation phases of a project, without explicit requirements within the Filings Manual companies have no real incentive to do so or do so properly.

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

- a) Many forms of Indigenous Knowledge is gathered during the CER's various process, some through TLU Studies and some filed as evidence. Although IK is gathered it isn't necessarily applied to Projects.
- b) Indigenous Knowledge needs to be acknowledged, promoted, protected, respected, and honoured as a valued and living knowledge system. Indigenous Knowledge needs to be respectfully included in decision-making processes involving its holders and their Nations.
- c) Work with Indigenous Nations and Knowledge Holders to understand the appropriate time, processes, capacity, cultural protocols, and oral practices to enable the respectful articulation of Indigenous Knowledge when it is shared.
- d) Understand capacity (human and financial) requirements for Indigenous Nations that wish to participate in Indigenous Knowledge sharing and application.
- e) Get out of the office and build relationships in communities and on the land; engage in cross-cultural awareness training and land-based learning.
- f) Explore and adopt, in whole or in part, successful approaches and lessons learned from Indigenous-based or other jurisdictional research. This could lead to identifying and sharing how Indigenous Knowledge enhances land and natural resource management and decision making. As new approaches are explored and pursued, the development of implementation tools such as frameworks, guidelines,

strategies, and objectives will be required to support the acknowledgement, promotion, protection, respect, and honouring of Indigenous Knowledge.

- 6) **How can the OPR address the participation of Indigenous peoples in pipeline oversight?**
 - a) There needs to be ongoing review and input by Indigenous Nations for compliance commitments, permitting, plans, monitoring and reporting for Projects. There should also be opportunities to inspect, examine, and review each compliance commitments, permitting, plans, monitoring and reports.
- 7) **How can the OPR support collaborative interaction between companies and those who live and work near pipelines?**
 - a) There needs to be a requirement that Emergency Response Planning is co-developed and approved by those who live and work near pipelines.
 - b) Training and capacity for the Incident Command System needs to be expanded to those who live and work near pipelines.
 - c) Those who live and work near pipelines need to be actively involved in the reclamation activities for a Project.
- 8) **How could communication and engagement requirements in the OPR be improved?**
 - a) Training programs on how to apply as and Intervenor and the Participant Funding Program would be a benefit for those wanting to be involved in the review of projects.
- 9) **What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?**
 - a) If there have been mitigations developed either as a commitment to Indigenous Nations or Landowners, the CER should work in collaboration with these groups on the performance metrics of the mitigations.
- 10) **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?**
 - a) Having a standardized system that is the same for all proponents.
- 11) **How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?**
 - a) Safety Management exercises should be done frequently so all employees and contractors have the skills for real life situations.
- 12) **How should the CER be more explicit about requirements for contractor management?**
 - a) Perhaps having performance indicators or a inventory of contractors that are in good standing with the regulator and those involved in the projects.
- 13) **How can the OPR drive further improvement to the environmental performance of regulated companies?**
 - a) More frequent environmental monitoring and compliance verifications. Environmental performance indicators should be co-developed with Indigenous Nations, landowners, and the proponents.
- 14) **How can contaminated site management requirements be further clarified, in the OPR or in guidance?**
 - a) There needs to be more stringent reporting requirements and actual people on the ground confirming the clean adequate clean-up of contaminated sites. These sites should also be continuously monitored for years after the clean-up.

15) What are your recommendations for compliance promotion at the CER?

- a) Compliance certificates from impacted Indigenous Nations and Land Owners can be given to those in compliance.

16) How do you want to be engaged by the CER in the development of technical guidance?

- a) Samson Cree Nation would like to be involved in any further initiatives and the co-development of technical guidance on the OPR.