

31 March 2025

[REDACTED]
Regulatory Policy, System Operations
Canada Energy Regulator
210 – 517 10 Ave SW
Calgary, AB T2R 0A8

RE: ECC Comments on Onshore Pipeline Regulations and Filing Manual Review, Phase 2

Dear Mr. [REDACTED]

Energy Connections Canada (ECC) represents the interests of energy transmission companies that transport a significant amount of Canada’s crude oil and natural gas to markets across North America and beyond. Our members are global leadersⁱ in the safe and responsible delivery of energy products that fuel life in Canada and around the world.

ECC appreciates the opportunity to comment on the Canada Energy Regulator’s (CER) Onshore Pipeline Regulations (OPR) and Filing Manuals (FM) Phase 2 Review.

ECC and its members are concerned that the proposed changes to the OPR and FM contained in the topic papers will add more obligations onto pipeline owners with questionable incremental benefit given the high standard of safety and environmental care that Canadian pipelines operate to under the current OPR. Moreover, the proposed changes do not take the opportunity to improve regulatory efficiency as requested of the CER by industry stakeholders in Phase 1 of the OPR and FM engagement.

The need for improvements to regulatory efficiency in Canada is made all the more pressing given our country’s challenge in building pipelines. Too many major pipeline projects have been cancelled due to regulatory risk.

Fortunately, the timing of the CER’s Phase 2 OPR and FM review presents an important opportunity for the CER to undertake needed regulatory reform to improve the investment climate in Canada. The need for that reform – and the need for Canada to ensure domestic energy security and to find new markets for its energy - is more important now than ever.

ECC has four recommendations of the Phase 2 engagement, which we will expand upon in this submission:

- 1) ECC recommends that the CER incorporate the comments provided by industry stakeholders in Phase 1 of this consultation. That input expressed industry’s concerns with the lack of predictability and timeliness within the CER’s processes, among additional concerns including overlap with other regulatory obligations (i.e. provincial/territorial) and duplication of existing codes and standards. Industry is seeking an OPR consistent with the CER’s legislated mandate to build *“a system that enables decisions to be made in a predictable and timely manner, providing certainty to investors and stakeholders...”*ⁱⁱ.

- 2) ECC requests that the CER provide quantitative substantiation for the objectives proposed in each topic paper. Data would help to define if there is a problem, what the magnitude of the problem is and would start a dialogue to explore options to achieve a desired result. Data would also enable stakeholders and the CER to measure the efficacy of any changes to the OPR and FM in the future.
- 3) ECC recognizes that a key driver of this update relates to incorporating Canada's commitment to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). However, as the CER has noted in its workshops and in its discussions, there remains a great degree of fluidity and lack of clarity in a number of the topics it has explored in its discussion papers. For example, there is lack of legal definition around Indigenous Laws. Additionally, truth and knowledge can vary widely across communities. Fortunately, the existing OPR and FM are already successful in facilitating relationship-building, engagement and the resolution of numerous benefits agreements between proponents and Indigenous communities.
- 4) A number of objectives proposed in the topic papers duplicate existing Management System Processes (OPR s.6.1 through to 6.5), guidelines, national codes and standards (e.g. CSA Z662 s.3 and s.10) or areas of provincial/territorial responsibility. We recommend that the CER review the topic papers to eliminate areas where the OPR duplicates existing obligations.

Canada's pipeline owners and operators design and execute responsibly. ECC members seek to continue to invest in Canada, but first require predictable and timely oversight during all phases of the pipeline lifecycle. The following describes ECC's concerns with the OPR Phase 2 review in greater detail.

1.0 'To Improve Our Regulatory Framework'

The CER sought stakeholder feedback on improvements to its processes during Phase 1 of its engagement. The CER's What We Heard report states, *"In January 2022, the Canada Energy Regulator (CER) launched a multi-year process to improve our regulatory framework for onshore pipelines."* (emphasis added)

In Phase 1, the CER received over 130 pages of comments and recommendations from industry, largely expressing industry's concerns with the CER's processes and raising other concerns such as the CER entering into areas of provincial/territorial jurisdiction, as well as being duplicative of other regulatory obligations.

In its submissions, industry clearly stated the implications of the CER's existing, protracted and uncertain processes. These concerns remain given the scope of the proposed changes to the OPR and the FMs:

- *"Commercial customers on TC Energy systems are often unable to justify the long lead times associated with new linear infrastructure under federal jurisdiction when planning their own upstream developments. Currently, the timeline from initiation of commercial discussions to placing a new asset in service can span four to five years depending on the type of regulatory application and review process, with no certainty of implementation, especially for larger projects."*
- *"TC Energy plans construction of projects based on seasonality to minimize potential environmental impacts, balance multiple restricted-access periods, maximize construction conditions and address workforce allocation needs. Delayed construction starts result in substantial impacts, including missing construction windows, and increased construction costs from additional resources and measures to work under adverse environmental conditions (RAPs and suboptimal seasons/weather conditions), and can affect other projects given the finite availability of construction resources. TC Energy estimates that the lack of a timely review process could increase the commercial costs associated with an approved application by as much as 15%*

of CAPEX11 in the first year alone. Ultimately, TC Energy customers, who underpin and are dependent on construction of the project to transport their production, will face higher shipping charges, thereby reducing the relative competitiveness of TC Energy with companies in non-CER jurisdictions...”

- *“...The TMEP, also subject to a robust and extensive regulatory assessment and adjudication process, was approved by Governor in Council and undertaken in accordance with CPCN OC065, and subject to 156 conditions of increased complexity, and interconnectedness. These conditions impact a large number of construction spreads and areas, and in many cases are tied to other federal or provincial permitting processes. Many of these conditions are the result of commitments to undertake plans later in the development of the project and require either acceptance or approval of the CER. In Trans Mountain’s experience this is an extensive and time-consuming process, and effectively a re-adjudication of a commitment that was already considered in the regulatory proceeding. Further, given the dynamic nature of projects, and constant evaluation and re-evaluation of potential hazards and adjustments to protection measures, plans are then appropriately adjusted. However, these plans may impact other conditions, which are also required to be re-filed with the CER, and again, create delays in approval prior to being implemented. The result of this process is an adverse impact on Trans Mountain’s ability to construct projects on schedule and on budget which is particularly challenging to the creation of efficient regulation.”*

The concerns industry expressed in the Phase 1 engagement regarding process and timeliness are not reflected by the CER in its Phase 2 OPR and FM topic papers.

The topic papers open the door to more obligations on operators, more protracted and unpredictable approval processes and more onerous and impractical requirements for the construction and operations phase of the project lifecycle.

ECC asks the CER to act upon the concerns about timeliness, cost, regulatory risk and compliance sought and received by the CER from industry in Phase 1.

2.0 Need for Data to Substantiate Objectives

ECC recommends the CER provide stakeholders with data to substantiate the objectives proposed in its topic papers. Data would help to define if there is a problem, what the magnitude of the problem is and would start a dialogue to explore options to achieve a desired result. Data would also enable stakeholders and the CER to measure the efficacy of the recommended changes in the future. In short, how will the CER know if its proposed changes address the problem it was seeking to resolve?

For example, in its Topic Paper E on Human and Organizational Factors, the CER states as its objective:

“The objective of new requirements will be to help ensure that companies better understand and manage socio-technical hazards that can impact safety and environmental protection outcomes”

ECC presents the following questions:

- 1) What data does the CER have suggesting companies do not understand and cannot manage socio-technical hazards?
- 2) How widespread is this concern?
- 3) If there are instances where companies do not understand socio-technical hazards, could the CER provide further guidance or correct those instances via its existing compliance tools with individual operators, rather than proceeding to change a regulation that would affect all operators?

3.0 Existing OPR Is Clear And Has Facilitated Relationship-Building

ECC recognizes that a significant impetus of the OPR and FM review is to incorporate Canada's commitment to UNDRIP in the regulation of pipelines. It is recognized that relationship-building with Indigenous communities is a necessary step in ensuring that pipelines get built and that they maintain safe operations. ECC's membership believes this is good business, and a manner of doing business that has been ongoing for some time despite the absence of prescriptive regulations.

ECC also recognizes the ideas proposed in the OPR and FM's topic papers I, K and M, which opined on the creation of an Indigenous protection program, new management system requirement for identification of Indigenous Laws and policies, and a socio-economic protection program. These questions are well intentioned. However, as the CER has recognized, this space is evolving from both a legal and policy perspective. The CER should ask whether the OPR and the existing FMs, in their current form would enable the desired outcome. In ECC's view they do enable the desired outcome, as evidenced through recently constructed pipeline projects and responsible operation of pipeline systems.

For example, traditional land and resource use are a valued component (VC) that would be assessed as a part of a broader Environmental and Socio-Economic Assessment (ESA) as required by the FMs. A pipeline company would seek to understand the nature and spatial extent of the traditional land and resource use, potential impact and implementation of avoidance or mitigation measures as a result of proactive outreach, as required by the external engagement obligations of the existing OPR.

The requirements are currently there, which provide for the flexibility necessary to achieve outcomes that are preferred by both the pipeline and the Indigenous community.

Prescription, especially at a time where the law is evolving, may stand in the way of good solutions to complex problems. It may also require the standing up of programs that are more relevant to certain phases of the pipeline (i.e., construction) but should not have to be maintained over the lifecycle of the pipeline regardless of need. This would result in increased costs to the pipeline and its customers for little benefit. This is not efficient regulation.

The OPR in its current form is an efficient regulatory tool to address the unique hazards associated with pipelines in a manner that protects the environment and the safety and security of Canadians, through the establishment of program requirements and governance of a management system and should continue in that form.

4.0 Overlap

A number of the topic paper objectives duplicate existing CER obligations in Management Systems Processes, guidelines, national codes and standards or areas of provincial/territorial jurisdiction. Consistent with the principle of efficient and reasonable regulation, ECC asks the CER to rescind the objectives contained in its topic papers that exist in other obligations. For example,

- Existing Management Systems Obligations:
 - Elements of topic paper D, F and I already exist in Management System Processes (OPR s.6.1 through 6.5, CSA Z662 s. 3, s.10)
- Existing Best Practices:
 - Elements of topic paper C pertaining to Emergency Management are already contained in existing *Industry Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management*
- Existing Guidance
 - Elements of topic paper D and H exist in the CER's *Event Reporting Guidelines*

- Existing national standards:
 - Elements of topic paper F exist in the Canada Labour Code
 - Elements of topic paper G and J exist in CSA Z662
 - Elements of topic paper G exist in the National Fire Code
- Existing provincial/territorial jurisdiction
 - Elements of topic paper H and M associated with sites of cultural and historical significance are areas of provincial/territorial jurisdiction
 - Elements of contractor management in topic paper F are areas of provincial/territorial labour and occupational health and safety jurisdiction

5.0 Conclusion: Eight Themes to Consider when Drafting Revised Topic Papers

ECC recommends that the CER revisit its topic papers via the lens of the following eight questions:

- 1) Can the CER substantiate the concerns it seeks to address in its topic papers via data? Does the data show material challenges requiring a change to a regulation? Can the data help surface alternative solutions? Without data, how will the CER know if the regulatory change it is proposing will achieve the outcome it intended?
- 2) Is amending the OPR the most efficient way to achieve the CER's objectives? Before changing the OPR, which affects all of industry, should the CER not first consider resolving its concerns via existing compliance tools with individual companies?
- 3) If not compliance, the CER should first consider its existing tools to affect the outcomes it is seeking, instead of changing its regulation? For example, perhaps the objective the CER is seeking already exists in the Management Systems Processes within the OPR? If not in the Management System Processes, can the objective reside in guidance?
- 4) Before amending the OPR, can the CER ensure that the content of its topic papers does not duplicate existing regulatory obligations, including its own guidance, national standards and legislation and/or areas of provincial/territorial jurisdiction?
- 5) If the CER opts to advance objectives via the OPR, can the CER ensure that those objectives and obligations are scalable to the size of the pipeline, the facility or the company and the location of operations (i.e., urban, previously disturbed areas vs less disturbed or remote areas)? Ensuring that the obligations are proportionate to size of the subject of the regulation aligns with the goal of regulatory efficiency.
- 6) Given the success of the existing OPR and the Filing Manual in facilitating relationship-building between pipelines and Indigenous communities, what is the value of prescriptive requirements via the OPR and FM – which will endure for some time - in an area that is both complex and evolving?
- 7) Can the CER ensure that the OPR's scope remains focused on the 'what' pipeline companies do and not the 'how'? ECC acknowledges that the purpose of the OPR is to regulate for safety, environmental impact and that it should promote effective consultation with affected parties. That's the 'what' However, many of the topic papers regulate 'how' companies should achieve those objectives. (e.g. Topic paper E). ECC invites the CER to re-focus the OPR to regulate for outcomes, but not how companies choose to achieve those outcomes.
- 8) Finally, what changes can be made to the OPR in order to actively improve regulatory efficiency, predictability and timeliness?

Canada's pipeline owners and operators want to continue to support our country's quality of life, to advance reconciliation with Indigenous Peoples and to find new markets for our energy products. However, it is also true that Canada's existing federal regulatory oversight is uncertain, protracted, and is deterring future projects.

ECC looks forward to working with the CER on what ECC hopes is a re-cast set of OPR topic papers. Topic papers need to reflect the input sought and received from industry in Phase 1 and need to be aligned with the CER's legislative obligation to ensure Canada remains globally competitive for responsible resource development.

Sincerely,



ⁱ Just recently, Trans Mountain Corporation was recognized by the American Society of Mechanical Engineers with the 2024 Global Pipeline Award, see [Trans Mountain - Trans Mountain Wins 2024 Global Pipeline Award](#)

ⁱⁱ [Canadian Energy Regulator Act](#)