

March 31, 2025

Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

Reference: Phase 2 Feedback for Onshore Pipeline Regulations (OPR) and Filing Manuals (FM) Update

Headquartered in Edmonton, Alberta, Stantec Consulting Ltd. (Stantec) is a global multi-disciplinary consultancy of over 32,000 employees in over 450 locations across six continents. Environmental assessment is a core practice area. We have more than four decades of experience preparing environmental and socio-economic assessments (ESAs) for National Energy Board (NEB) and Canada Energy Regulator (CER) regulated projects across the country. These include assessments in support of applications under section 183 (new pipelines of 40 km or more), section 214 (new infrastructure that does not fall under section 183), section 241 (abandonment of existing infrastructure) of the *Canadian Energy Regulator Act* (CERA) and section 45.1 (decommissioning of existing infrastructure) and section 50 (abandonment of existing infrastructure) of the Onshore Pipeline Regulations (OPR). Notably, our experience includes preparing the ESAs and participating in the proceedings for the first three section 183 applications filed under the *Canadian Energy Regulator Act*.

Please accept the following as Stantec's comments in response to the CER's call for public comment as indicated on the CER Dialogue webpage about the Onshore Pipeline Regulations and Filing Manual Updates (<https://www.cerdialogue.ca/opr>). Our comments are organized by key themes in both **Topic Paper K – Environmental and Socio-Economic Assessment** and **Topic Paper M – Rights and Interests of Indigenous Peoples**.

GENERAL COMMENTS

The proposed updates to the Environmental and Socio-Economic Assessment portion of the Filing Manual are of considerable relevance and interest to us. Our feedback is provided as assessment practitioners who have the primary responsibility to interpret ESA guidance in the Filing Manual and apply it to projects. The team contributing to this submission has expertise in the areas of environmental assessment methodology, regulation, Indigenous engagement, and assessment of effects on rights of Indigenous peoples and traditional land and resources use.

The scope of this regulatory review is substantive. Stantec recommends CER focus only on changing those items in the Filing Manual that will materially strengthen the regulatory review process, without overhauling or discarding the whole approach. Maintaining much of the existing structure and process will limit uncertainty about filing and review requirements for all participants. A wholesale overhaul will create uncertainty with respect to application requirements, which might result in extended review timelines and could potentially result in decisions by proponents to delay or not proceed with investments, at least until there is precedence established with the revised approach. We do not consider the existing ESA guidance, as described in the Filing Manual, to be particularly problematic and in need of a major overhaul, provided that practitioners develop their assessments thoughtfully and with appropriate flexibility to focus efforts on those valued components with greatest potential to be affected by the project under review.

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Guide A of the Filing Manual directs that the level of detail required for an ESA is to vary with the nature and scale of the project, the predicted effects of the project and the level of public interest in the project, including outcomes of Indigenous engagement. The direction to consider scale is presently reflected in a number of locations in the Filing Manual, such as initial scoping, identification of interactions, valued component selection, baseline studies, and assessment of effects. Any changes to guidance in the Filing Manual need to maintain flexibility for the varied scope and scale of projects that will have to consider the new guidance (i.e., small meter station projects to large pipeline projects), noting that the overwhelming majority of projects reviewed by the CER are not section 183 certificate applications. Most applications do not require an ESA to be filed; thus, precedent in the public domain is limited to the few larger projects that file an ESA with the CER, compounding the potential uncertainty as to what information CER requires across the range of projects it regulates. More detailed guidance in the Filing Manual on how to develop complete but concise applications and ESAs for small-scale projects would be welcome, including the acceptability of lumping and splitting valued components and the use of summary or tabular format ESAs or expanded Interaction Tables in lieu of the “long-form” ESAs that are typically used to support section 183 applications.

ASSESSING EFFECTS ON INDIGENOUS RIGHTS AND INTERESTS

Stantec recognizes that interested Indigenous Peoples are best positioned to identify their preferred means of participation in the CER regulatory process. This extends to the manner in which project impacts on their rights and interests are assessed and mitigated. Stantec encourages acknowledgement by the CER in this regard, by including guidance in the Filing Manual that confirms the format and content of an application and the associated ESA may depart from what may appear as a prescribed approach in the Filing Manual. We believe the approach to the assessment of project impacts on the rights and interests of Indigenous Peoples should be informed by the contributions and views of participating Indigenous Peoples.

The CER is contemplating creating two discrete sets of requirements for application assessments, one of which is focused on Indigenous matters. Paper M's stated objective is to clarify guidance relating to the rights and interests of Indigenous Peoples, and specifically, to consider which valued components should be addressed in the ESA section, which valued components should be included in the proposed “Rights and Interests of Indigenous Peoples” section, and how to avoid duplication between the two.

Within the existing Filing Manual guidance, substantive duplication is present only within the information requirements for the Traditional Land and Resource Use (TLRU) element and the Rights of Indigenous Peoples factor for assessment that was introduced following the passing of Bill C-69 in 2019. When the Rights of Indigenous Peoples was added to *Table A-3: Filing Requirements for Socio-Economic Elements* of the Filing Manual, limited guidance was included about the relationship of this newly introduced assessment factor to the existing TLRU element. As such, many of the initial Rights of Indigenous Peoples assessments filed with the CER referred to and heavily relied on content found in the TLRU assessments because of the similar information requirements, resulting in considerable duplication between the two assessments. For instance, hunting is an activity typically assessed within the TLRU element. Hunting is also a right specified under several treaties and is protected under section 35 of the *Constitution Act, 1982* and therefore is also discussed in the Rights of Indigenous Peoples effects assessment. In our experience, this separation and duplication do not provide additional insights or materially different analytical outcomes. We support the development of a holistic chapter that assesses effects on the rights and interests of Indigenous peoples and that encompasses existing guidance in the Filing Manual for the existing TLRU element as well as the Rights of Indigenous Peoples factor. This will reduce duplication of identical content in applications and also reflect the interconnectedness of

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Indigenous land and resource use and rights of Indigenous peoples - effects on the exercise of rights are inextricably linked to effects on Indigenous land and resource use.

With the objective of reducing duplication, the CER has also proposed in Topic Paper K that socio-economic elements outside of the new Rights and Interests of Indigenous Peoples section focus only on non-Indigenous peoples and communities. We do not agree with this proposed approach as it does not reflect the reality that non-Indigenous and Indigenous people live and work in the same communities and rely on the same infrastructure and services; effects on non-Indigenous people and Indigenous People cannot be easily separated for elements like employment and economy, infrastructure and services, human health, navigation and navigation safety. We maintain that the existing guidance in the Filing Manual requiring consideration and discussion of Indigenous people and interests, as applicable, in socio-economic factors other than the Rights and Interests of Indigenous Peoples is appropriate and should stay¹. Further we recommend that Indigenous interests and knowledge be reflected, as appropriate and available, not only in the assessment of effects on socio-economic elements in the ESA section but also in the assessment of effects on biophysical elements in the ESA Section. For instance, incorporating Indigenous knowledge of species of cultural importance into the wildlife and wildlife habitat effects assessment may identify potential effects on wildlife species or features additional to those required by regulators. The assessment of effects on Rights and Interests of Indigenous Peoples would then refer to and rely on, as relevant, the assessment of effects on these other elements.

Stantec does not view Rights of Indigenous Peoples as a valued component in the conventional sense in which that term is used in environmental assessments – the rights of Indigenous Peoples are recognized and affirmed by section 35 of the *Constitution Act, 1982* and are not defined or delimited by environmental assessment. Further, we encourage the CER to adopt the term, “Indigenous Land and Resource Use” in place of “Traditional Land and Resource Use”, given the connotation of “traditional” as an activity relegated to the past and no longer practiced. We recommend that terms preferred by each Indigenous community, when shared with proponents and their consultants, be reflected in the applications.

Key principles we recommend the CER consider in their update of the Filing Manual with respect to the rights and interests of Indigenous peoples are:

- Provide guidance that results in an accessible ESA that reduces duplication of identical content. In practice, this does not mean the omission of Indigenous knowledge from environmental and socio-economic valued component assessments since the inclusion of Indigenous knowledge within these assessments is unique to the relevant valued component and foundational to the existing conditions assessed for Indigenous rights and interests.
- Reflect the interconnectedness of Indigenous land and resource use and rights of Indigenous peoples -- effects on the exercise of rights are inextricably linked to effects on Indigenous land and resource use. This consolidation aligns with the intent of the objective of Topic Paper M and results in a holistic chapter that also reflects community-specific assessment.

¹ Table A-3 provides guidance to consider and/or discuss Indigenous interests in other socio-economic factors, as applicable (i.e., Human Occupancy and Resource Use, Social and Cultural Well-being, Human Health, Navigation and Navigation Safety, Employment and Economy). General direction is also provided that requires gender-based analysis plus (GBA Plus) to identify, as applicable, where effects may be experienced differently by specific subsets of the population, inclusive of Indigenous population.

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- Retain the incorporation of Indigenous knowledge and interests within relevant environmental and socio-economic VC assessments as these assessments also, in part, inform the assessment of effects on the rights of Indigenous peoples.

Stantec values the contributions and knowledge of the Indigenous Peoples engaged on the projects on which we have been fortunate to participate, and we look forward to further opportunities for greater collaboration. Stantec strives for meaningful representation of Indigenous concerns and issues in all aspects of the ESA, in consideration of Indigenous preferences and protocols, where those have been shared. Our recommendations reflect our experience preparing ESAs and feedback we have received from Indigenous Peoples over the years. These comments are intended to facilitate the respectful integration of Indigenous knowledge into the ESA and the development of an approach to the assessment of the rights and interests of Indigenous Peoples that is thorough, accessible, meaningful and above all responsive to input from participating Indigenous Peoples.

CUMULATIVE EFFECTS ASSESSMENT

Assessment of cumulative effects and the project's contribution to such effects is an important aspect of the environmental assessment and project review process. Stantec understands that the CER is contemplating whether the baseline against which cumulative effects are to be assessed should be something other than the present day, and also whether it should vary based on the particular valued component or species being assessed.

The proposed revisions to the Filing Manual represent an opportunity for the CER to clearly confirm the purpose of cumulative effects assessments filed with ESAs. We believe the focus should be on assessing and mitigating the project's potential contributions to cumulative effects, and not on regional assessment or land use planning (which are typically the purview of government). It is thus Stantec's view that a consistent contemporary baseline is most appropriate for cumulative effects assessment in ESAs. A contemporary baseline reflects the outcomes of past activities and projects, and what present-day limitations or opportunities have been created for specific valued components. The use of a contemporary baseline in ESAs could be supported further by including context on how current baseline conditions developed (i.e., the specific activities and developments that have altered the natural landscape).

Mandating cumulative effects assessment using historical baselines has the potential to complicate the effects assessment without providing material benefits for decision-making regarding whether the project is in the public interest and what mitigation is most appropriate. Further, by demonstrating the large degree of change that has already happened in an area, selection of a historical baseline would only serve to further dilute the effects of the project under review.

The CER is also contemplating requiring the inclusion of forest fires and climate change in cumulative effects assessment. We recommend that cumulative effects assessments for CER-regulated projects remain focused on reasonably foreseeable projects and activities with defined, publicly available spatial footprints, and for which potential effects, and timelines for such effects, can be identified and evaluated with a reasonable level of confidence. Projects, activities and landscape processes that do not meet the above criteria can still be considered in cumulative effects assessment, but proponents should not be mandated to formally assess them through analysis of theoretical scenarios.

It is not clear how expanding the scope of cumulative effects assessment would benefit the CER's project review process. As stated above, the focus should be on identifying, avoiding, minimizing and managing the project's contribution to cumulative effects, rather than burdening proponents with additional methodological steps and expectations.

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OFFSETS

Topic Paper K makes frequent reference to offsets, potentially suggesting their use is commonplace. Offsets on CER-regulated projects are actually uncommon and are typically restricted to specific circumstances where required by federal or provincial legislation or policy (e.g., to address impacts to fish and fish habitat for which a *Fisheries Act* authorization is required; when proposing projects that will impact critical habitat for woodland caribou; or, permanent disturbance to wetlands under the *Alberta Water Act*). Offsets have only once been proposed on a project-wide basis in a CER application²; this was under highly unique circumstances in the immediate aftermath of the Yahey decision in Treaty 8 in British Columbia.

Our position on offsets is they should not become an expectation when residual effects on a valued component are predicted (after considering the mitigation hierarchy). Even in circumstances where offsets are required by regulation, offset planning and implementation is challenging; there is typically substantial uncertainty regarding how offsets will be calculated, what constitutes an acceptable offset of the residual effect, and how implementation of offsets will be measured, monitored, and maintained (e.g., most Crown land-based offsetting options require the cooperation of provincial authorities, offsetting options on private land require the cooperation of the landowner). Avoiding undertaking a cumulative effects assessment - as suggested in Topic Paper K - is not by itself a reasonable justification for pursuing offsets. Further, determining that a project is in the public interest should not require all residual effects to be offset, regardless of whether such effects are deemed to be significant or not significant. Offsets should remain as an option available to proponents - a “toolbox” measure as they are described in the current Filing Manual - and their use should be voluntary or discretionary, to be considered on a case-by-case basis - unless they are mandated by legislation or policy.

DETERMINATION AND CHARACTERIZATION OF SIGNIFICANCE

The CER is recommending mandating a sliding scale for significance similar to the approach in recent CER Decision Reports for section 183 applications. It is not clear what benefit will be served by mandating a graduated approach to significance in ESAs. We therefore do not believe graduated significance should be included as a requirement in the Filing Manual without further clarification on how residual effects are to be mapped on CER’s significance scale. If it is to be included, clear guidance is needed to enable environmental assessment practitioners - who are typically trained in the binary determination of significance (i.e., significant vs not significant) - to implement CER’s intentions. Further, even if the CER mandates a sliding scale with criteria, allocation of an effect to a significance category will still be subjective, and thus the proponent may not arrive at the same evaluation of significance as the CER. In addition, the CER’s determination of significance is based on all evidence available when the record is closed, whereas at the time of filing, the proponent may only have access to a limited set of engagement records reflecting the initial perspectives of potentially affected parties.

As an alternate approach, the CER might consider entirely removing the Filing Manual requirement for proponents to determine significance in ESAs.

HERITAGE RESOURCES

Topic Paper M identifies heritage resources as cultural, historical, archaeological, and palaeontological resources and proposes these be included as a new category of valued components on the rights and

² NorthRiver Midstream’s NEBC Connector Project

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interests of Indigenous Peoples. Heritage resources across Canada are managed and protected through the application of heritage legislation specific to each province and territory. From a technical and scientific perspective, heritage resources encompass not only those resources intrinsically linked to the history and traditional land use of Indigenous Peoples, but also to resources linked to more recent Settler history and occupancy. Further, palaeontological resources (e.g., fossils and fossil locales) reflect natural history rather than cultural/human history. Consistent with our recommendations above, we recommend that heritage resources be maintained as a separate valued component, and Indigenous perspectives about heritage sites be included, as appropriate and available, in both the heritage resources valued component and in the assessment of the rights and interests of Indigenous Peoples. Where Indigenous interests are identified for heritage resources, the scope of the assessment, mitigation measures and monitoring can be determined through engagement with Indigenous Peoples by the proponents and CER. This reflects our current practice, but it is our opinion that guidance in this regard could be more clearly stated and emphasized in the Filing Manual.

CLOSURE

Stantec appreciates the opportunity to provide the CER with feedback on possible updates to the Filing Manual. Our comments are focused on specific aspects of the update and do not cover all of the CER's discussion questions. If you would like to discuss any of our comments or recommendations, or any other proposed option to amend the Filing Manual or OPR, please contact any of the undersigned.

Regards,

Stantec Consulting Ltd.

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