

**Trans Mountain Pipeline ULC (Trans Mountain)
Onshore Pipeline Regulations and Filing Manuals Update
Phase 2 – Engagement Overview
Due Date: March 31, 2025**

I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of impacts to the rights and interests of Indigenous Peoples, socio-economic effects and engagement requirements. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- preventing and addressing impacts to the rights and interests of Indigenous Peoples;
- managing socio-economic effects; and,
- clarifying engagement requirements with potentially impacted people and communities over the lifecycle of pipeline infrastructure.

Background: Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement

While the CER's [Filing Manual](#) contains detailed guidance relating to socio-economic effects, impacts to the rights and interests of Indigenous Peoples, and engagement requirements, currently, the OPR does not include explicit requirements related to preventing and addressing impacts to the rights and interests of Indigenous Peoples, or the management of socio-economic effects. The OPR does include limited requirements related to communication and engagement¹ In the absence of certain requirements in the OPR, the CER has used other regulatory instruments, such as project-specific [conditions](#)² and guidance³, to address project-specific impacts and communicate its expectations to companies in these areas.

Recent conditions, which have been imposed by the Commission on several pipeline projects, were shaped by specific input from Indigenous Peoples and impacted parties, and have directed companies to incorporate the following elements into their respective projects:

- plans for the inclusion of Indigenous Peoples in construction and post-construction monitoring;
- reporting on economic opportunities for Indigenous Peoples (i.e., employment, contracting, procurement, and training);
- the specific consideration of Indigenous knowledge when developing plans for environmental protection and reclamation;
- the inclusion of Indigenous Peoples in emergency response exercises;
- capacity support for Indigenous Peoples to review condition filings;
- the monitoring of positive and adverse socio-economic effects during construction; and,
- reporting on economic opportunities for local and regional individuals and businesses (i.e., employment, contracting, procurement, and training).

The CER's Filing Manual is an example of a guidance document for all applications describing what information should be provided to the CER relating to socio-economic effects, impacts to the rights and interests of Indigenous Peoples, and engagement. Another example of recent guidance in this area is the

¹ The OPR requires that companies have a management system process for internal and external communication of information related to safety, security, and protection of the environment (ss. 6.5(1)(m)). The OPR also requires that companies develop a continuing education program for first responders and the public on emergency response measures (s.35).

² During the application phase of proposed projects, the Commission of the CER evaluates the effects on the rights and interests of Indigenous Peoples, the socio-economic effects, and the engagement activities conducted by the company, and this may result in project-specific conditions.

³ Information produced by the CER which is intended to provide clarity and guide the actions of those who must comply with our requirements and processes e.g., the CER's Filing Manuals.

CER [all company letter](#) regarding industry best practices for notifications to Indigenous Peoples regarding CER-reportable incidents.

The CER intends to be more transparent and consistent in its expectations and approach to regulating these matters over the lifecycle of regulated facilities. This would provide greater predictability and effectiveness, through new regulatory requirements related to preventing and addressing impacts to the rights and interests of Indigenous Peoples, managing socio-economic effects, and engagement requirements with potentially impacted people and communities. This paper is intended to support specific discussions on these matters. Because of their interconnectedness, these areas are referenced in other topic papers, and will also be considered when engaging on other matters within the OPR and Filing Manuals Review, such as emergency management and environmental protection. When considering new requirements in these areas, the CER is balancing the need for clear, transparent requirements that are understood by regulated companies, Indigenous Peoples, and impacted parties, with a recognition that being overly prescriptive in these rapidly evolving areas may not allow companies and communities flexibility to adapt to their specific context and circumstances

Management System and Protection Programs under the OPR

The management system and protection programs that are currently required in the OPR⁴ are a mix of prescriptive and performance-based requirements⁵. The CER anticipates that the majority of new requirements relating to the rights and interests of Indigenous Peoples, socio-economic effects and engagement will be performance-based requirements, to be responsive to the needs and preferences of those affected by pipeline activities. A performance-based approach will also provide the flexibility that companies need to be respectful of the distinct rights, interests, governance and knowledge systems of Indigenous Peoples.

As described in the [Backgrounder](#) document, management systems provide a consistent framework for the design, development, and implementation of protection programs, as well as for the cyclical planning, implementation, review, and adjustment of operational activities. This is essential for a company to effectively address risks, manage its resources appropriately, and achieve desired outcomes.

The CER is considering the addition of new protection programs to meet regulatory objectives for preventing and addressing impacts to the rights and interests of Indigenous Peoples and the management of socio-economic effects (additional information below under sub-topics 1 and 2). These protection programs would be based on the same expectations the CER has set out for existing protection programs under the OPR. For example, a protection program to prevent and address impacts to the rights and interests of Indigenous Peoples would need to be integrated with a company's management system, which must be explicit, comprehensive, proactive, and applied to all company activities involving the design, construction, operation, or abandonment of a pipeline. The flexibility of protection programs and management system requirements will better allow companies to apply a distinctions-based approach to how they prevent and address impacts to the rights and interests of Indigenous Peoples, recognizing and respecting the differences across individual Nations and communities.

⁴ Emergency Management Program (s. 32), Integrity Management Program (s. 40), Safety Management Program (s. 47), Security Management Program (s. 47.1), Damage Prevention Program (s. 47.2), Environmental Protection Program (s. 48).

⁵ Prescriptive regulations must be followed exactly as drafted. Performance-based regulations set out a regulatory objective or requirement but enable the regulated party to determine how to achieve the objective. The current requirements are prescriptive in terms of "what" must be included in the management system and related reporting, but performance based in terms of "how" the company demonstrates compliance.

United Nations Declaration on the Rights of Indigenous Peoples Act and Action Plan Measure 34

The development of these new regulatory requirements will be guided by the CER's commitment to advancing Reconciliation with Indigenous Peoples and the implementation of the [UN Declaration on the Rights of Indigenous Peoples Act \(UNDA\)](#), including the supporting [Action Plan](#), most specifically Action Plan Measure 34 (APM 34).

On 21 June 2021, the UNDA received Royal Assent and came into force. This Act provides a roadmap for the Government of Canada and First Nations, Inuit and Métis to work together to implement the UN Declaration based on lasting Reconciliation, healing and cooperative relations. The CER is committed to advancing Reconciliation with Indigenous Peoples within its mandate and recognizes that the UN Declaration provides a framework for doing so. Reconciliation is one of the CER's four interconnected [strategic priorities](#); the CER is focused on enhancing Indigenous involvement in how the CER discharges its mandate, building renewed relationships with Indigenous partners, improving the cultural competency of the CER and its staff, and driving meaningful change in the CER's requirements and expectations of regulated industry.

Section 5 of the UNDA requires that the Government of Canada, in consultation and cooperation with Indigenous Peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. The Act is supported by the UNDA [Action Plan](#), which guides the implementation of the UN Declaration. The Action Plan was published on 21 June 2023, and includes 181 pieces of work, referred to as Action Plan Measures, that the Government has committed to achieve in consultation and cooperation with Indigenous Peoples. APM 34 was co-developed by the Indigenous Caucus of the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion Project (IAMC-TMX), Natural Resources Canada (NRCan), and the CER. APM 34 calls for First Nations, Métis and Inuit communities, governments, and organizations to work in consultation and cooperation to:

- (i) enhance the participation of Indigenous Peoples in; and
- (ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the CER.

APM 34 describes steps that the CER will take to put the UN Declaration into practice within the context of the CER's role in overseeing major energy projects. This initiative seeks to collaboratively develop the means by which Indigenous communities can play an enhanced role in the oversight of major energy projects and matters currently regulated by the CER. One of the four specific elements identified for achieving these objectives includes amending the CER's OPR and Filing Manuals in a manner that:

- (i) incorporates specific localized knowledge held by Indigenous Peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge; and
- (ii) strengthens measures to prevent and address impacts to rights and interests, including in relation to heritage resources and sites of Indigenous significance.

By continuing to advance this and other elements, the CER aims to strengthen its commitment to Reconciliation with Indigenous Peoples. The early work to advance APM 34 will include creating a shared vision, co-developing governance frameworks and planning next steps in the short- and long-terms. The entirety of APM 34 can be read ([here](#)).

The CER is proposing changes to the OPR and Filing Manuals to address these specific commitments in APM 34. Please see the Filing Manuals discussion paper for the CER's proposed changes to the ESA and Lands sections of the Filing Manuals.

Specific to the OPR, the CER is proposing a number of new regulatory requirements to address the specific commitments made in APM 34 which are discussed below under sub-topic 1 (Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples) and sub-topic 3 (Engaging with Potentially Affected Peoples and Communities).

One element of APM 34 that the CER is seeking specific feedback on relates to any new regulatory requirements and associated compliance for the incorporation of Indigenous laws, policies, practices, and protocols within new and existing management system protection programs. There are several options or approaches that could be possible for satisfying this commitment. These could potentially include:

- including specific program requirements within a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples;
- including a new management system process relating to the incorporation of Indigenous laws, policies, practices, and protocols that would apply to all OPR protection programs; and,
- developing guidance and best practices in a guidance document which accompanies the regulation.

The CER anticipates that this would be an area of regulation with potential complexity, and that there may be a range of views regarding the scope and approach of regulation in this area, as well as questions about verifying compliance to new requirements. The CER is seeking feedback on all of the proposals below, as well as specific feedback in areas relating to APM 34 commitments, in the questions included under each sub-topic below. The CER welcomes any feedback in response to the questions, and also encourages any additional commentary or questions that may not be covered by the included questions.

Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples

In the first phase of engagement on the OPR Review, the CER heard about the importance of meaningfully advancing Reconciliation with Indigenous Peoples through the CER's Regulatory Framework, using the United Nations Declaration on the Rights of Indigenous Peoples as a framework. Specific to the OPR, the CER heard that the amended regulation should explicitly direct companies to consider and address impacts to Indigenous and treaty rights related to their pipeline activities. The CER also heard that the involvement of potentially affected Indigenous Peoples and the incorporation of Indigenous knowledge in lifecycle oversight should be increased. The CER heard from companies that they should be allowed flexibility to pursue the most meaningful path forward with the Indigenous Peoples potentially affected by their operations.

Responsive to this feedback, the CER proposes to introduce new requirements to prevent and address impacts to the rights and interests of Indigenous Peoples over the lifecycle of pipeline infrastructure and provide clarity for regulated entities.

Objectives for Improvement

The objective of new requirements will be to help ensure that companies:

1. have systematic processes and procedures in place to identify, anticipate, manage and address potential impacts to the rights and interests of Indigenous Peoples across all of its activities involving the design, construction, operation or abandonment of a pipeline;
 - this includes avoiding impacts to heritage resources, traditional land and resource use, and sites of significance for Indigenous Peoples during construction, operation, maintenance activities, and abandonment.
2. can appropriately identify, incorporate, and address applicable Indigenous laws, policies, practices and protocols;
3. are considering and including Indigenous knowledge in their decision-making relating to their protection programs, and that there are procedures to prevent the unauthorized disclosure of confidential Indigenous knowledge; and,

4. have systems in place to ensure those working on behalf of the company are doing so in a culturally safe manner i.e., racism and sexual exploitation is prevented and addressed.

Proposed Options

The CER is considering the following options to meet the objectives outlined above:

- The addition of a new protection program (e.g., Protection Program to prevent and address impacts to the rights and interests of Indigenous Peoples). A new protection program would be based on the same expectations that the CER has set out for existing protection programs⁶ under the OPR. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples.
- The inclusion of a management system requirement (OPR, s. 6.5) for companies to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous knowledge, including protocols and practices, that is made available to a company and is applicable to its protection programs, is incorporated into these programs.
- The inclusion of a management system requirement to establish and implement a process to identify Indigenous laws and policies, and where these are made available to the company and are applicable to its protection programs, demonstrate how they are addressed in their protection programs.
- A new requirement to ensure that individuals working for or on behalf of a regulated company receive cultural competency training.
- Additional requirements, where necessary, to ensure that the CER's expectations are clear and regulatory objectives are met. For example:
 - a new reporting requirement in relation to damage to a site of historic or cultural significance, subject to confidentiality agreements signed by companies and Indigenous communities and any applicable provincial or territorial requirements (see Reporting Topic Paper for details);
 - a revision to current OPR requirements to ensure that sites of historic and cultural significance, both Indigenous and non-Indigenous, are considered in a company's Emergency Management Program (see Emergency Management Topic Paper for details);
 - an amendment that requires companies to establish restoration goals in consultation with potentially impacted Indigenous Peoples (see the Environmental Protection Topic Paper for details).

Discussion Questions

- i) 1. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?

Response:

Trans Mountain offers the following feedback to each of the CER's objectives for improvement, below:

Objective 1:

In order to identify potential impacts to the interests of Indigenous Peoples, a relationship must exist between the pipeline operator/company and the Indigenous communities that may be affected by the construction or operation of pipelines or associated facilities. Relationships are built in part through proactive engagement by the company and development of an understanding of the potentially unique interest of each community including any traditional land use practices or other sites of Indigenous

⁶ Emergency Management Program (s. 32), Integrity Management Program (s. 40), Safety Management Program (s. 47), Security Management Program (s. 47.1), Damage Prevention Program (s. 47.2), Environmental Protection Program (s. 48).

significance that may intersect with the pipeline's location or operation. This understanding of Indigenous communities' needs is of particular importance to pipelines due to their linear nature which may traverse multiple geographies and the asserted traditional territories of multiple and overlapping Indigenous groups. A company cannot assume the interest of Indigenous Peoples in any pro forma manner nor assume that the Indigenous interests of multiple Indigenous communities will be the same.

The purpose of the OPR, on the other hand, is to relay requirements for companies to manage the unique physical hazards associated with pipelines through specific program requirements (such as integrity management (section 40), safety management (section 47), damage prevention (section 47.1)), management system governance requirements (sections 6.1 and 6.5), and references to technical standards for the safe construction and operation of pipelines (such as *CSA Z662 Oil and Gas Pipeline Systems* in section 4). APM 34 does not state any intention to change the purpose or focus of the OPR. It is through engagement and relationship building with Indigenous communities, companies can better understand and address potential impacts to Indigenous peoples. The imposition of processes and procedures through the OPR is not only contrary to the intent of the OPR but implies a one-size-fits-all set of procedures that may not be appropriate for, nor take into consideration of, the needs of a given community or their relationship to the pipeline. The focus for the CER and for pipelines should be encouraging and cultivating meaningful relationships with Indigenous communities, which cannot be legislated through regulation.

Objective 2:

Trans Mountain understands the importance of understanding and applying where feasible Indigenous laws, policies, practices and protocols to construction and operation activities. APM 34 would seem to be referring to a commitment that the input process to determine the OPR amendments incorporates such local Indigenous knowledge, not that the verbatim phrase is inserted in the OPR or becomes a management system program within the OPR.

For a company to understand Indigenous laws, policies, practices and protocols requires a relationship to be established with the Indigenous community. Indigenous laws will vary across communities and may only exist and be shared orally. As such, requiring a company to have a process to identify, incorporate and address Indigenous laws similar to sections 6.5(g) and (h) of the OPR (requiring documentation of legal requirements and an assessment of compliance to those requirements) may imply a Eurocentric approach to gathering Indigenous laws, policies and practices, which in Trans Mountain's view, is not appropriate.

The focus for the CER and for pipelines should be to encourage and cultivate meaningful relationships with Indigenous communities to understand the Indigenous laws, policies and protocols in relation to the lands for which the pipeline resides, and for a given activity, assess and work on how Indigenous communities and the company can work together to respect them.

Objective 3:

Incorporation of local Indigenous knowledge with respect to environmental protection is a well-established field of practice in recognizing the cultural, spiritual and social interconnections with the natural environment in territories crossed by a pipeline right-of-way or corridor and the exercise of Indigenous rights within the context of the natural environment. Traditional use aspects of certain environmental features or areas can be integrated into environmental alignment sheets (EASs) and mitigation tables and become areas of focus for Indigenous monitors during certain pipeline activities, as an example. To proceduralize this practice in the OPR would present challenges given the diversity of mechanisms in how companies might receive this information, and how they work with Indigenous communities to protect sensitive features. Careful consideration must be given to how such information is documented depending on the sensitivity of the information as determined by the community. For example, a company may describe a site of spiritual significance on an EAS where the Indigenous group has low sensitivity to sharing the information. Where the community has high sensitivity (the information is confidential), a

company may instead identify the presence of a location that requires protection from disturbance. In both cases the protection measure, say a defined buffer area of no disturbance, would be required under the protection plan.

The focus should continue to be relationship building and proactive engagement with the community to understand Indigenous knowledge of the community, to understand the interface with pipeline, and how the company must protect it. This cannot be accomplished through codification through the OPR.

Objective 4:

Trans Mountain is supportive of workplace initiatives to support cultural safety, safety based on other identity factors, and respectful worker conduct in the fullest. This important topic is not specific to pipeline companies, and applies to workforce matters in any construction, resource sector, or workplace context. Trans Mountain does not believe this objective should be introduced into the OPR, as it is covered in other regulation such as the *Canada Occupational Health and Safety Regulations* and *Canadian Human Rights Acts* and is likely to create confusion due to overlapping regulatory requirements. The OPR as a regulation should remain focused on hazards specific to pipelines such as ruptures, liquid and gas releases, fatalities and injuries, and for the response to incidents and emergency situations.

- i. 2) What is your feedback on the following proposed options to meet the regulatory objectives?
1. a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples;
 2. a new management system process for the incorporation of Indigenous knowledge;
 3. a new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols;
 4. cultural competency training requirements for all those working for regulated companies;
 5. additional requirements where necessary

Response:

Trans Mountain offers the following feedback to each of the CER's proposed options, below:

Proposed Option 1:

The purpose of the OPR is to relay requirements for companies to manage the unique physical hazards associated with pipelines through specific program requirements, management system governance requirements, and references to technical standards for the safe construction and operation of pipelines. Relationship building and proactive engagement with Indigenous communities are the means through which companies understand Indigenous communities' interface with the pipeline, potential adverse impacts, and how, within a relevant program area, controls can be put in place to protect communities from the potential adverse impact. By encouraging, and where appropriate, facilitating relationship building with pipelines and Indigenous communities, the CER can lean into the existing program requirements of the OPR to protect these interests. The imposition of an Indigenous protection program is not only contrary to the purpose of the OPR, if fails to consider the criticality of relationship building as a key component to developing protection measures – of which are already described in the OPR.

Proposed Option 2:

A management system process requiring the incorporation of Indigenous knowledge is contrary to the purpose of the OPR, which is to manage unique physical hazards associated with pipelines. Further, it would not address the criticality of relationship building and proactive outreach which is essential to the gathering of Indigenous knowledge, nor does it consider that such information may be only relayed orally - in a manner that is not suitable for the creation of a 'register'. Further, such 'register' of information may be inappropriate for the company to be the holder of. Instead, the CER should encourage relationship building for companies to understand sites of spiritual significance, traditional features and heritage

resources, and incorporate this information into plans to protect those features – for which the mechanisms already exist in the OPR.

Proposed Option 3:

Please see the response to Proposed Option 2, above.

Proposed Option 4:

The requirement to establish and implement a process for developing competency requirements and training programs for all individuals working with or on behalf of the company to enable them to perform their duties in a manner that is safe, ensures the safety and security of the pipeline and protects the environment is currently required under section 6.5(j) of the OPR. Deployment of training and demonstration of competency is evaluated for each individual depending on their role. Trans Mountain is of the view that the existing management system requirement within the OPR is sufficient to achieve the same goal and that the CER should consider leveraging the existing requirements of section 6.5(j) to deploy competency training for positions that interface with Indigenous communities.

Consideration should be given to cultural awareness versus cultural competency. In Trans Mountain's view, cultural awareness is the foundational step to competency and is driven by corporate values of the organization, which are facilitated through a variety of means re-enforced by leaders every day:

- corporate training programs
- corporate communications – invitations extended for Indigenous speakers to meet with the organization and share their knowledge and experience
- employee volunteer opportunities at events that foster awareness
- corporate support for organizations and educational institutions in mentoring Indigenous students and new hires.

Benchmarks of competency are not clear, and in the context of cultural competency, it is difficult to specify which “culture” is being referenced given the variation of culture between Indigenous groups and regions across Canada. Further, cultural awareness within the workforce is part of wider workforce diversity and respectful workplace initiative that is not specific to pipelines, and therefore not suited for inclusion in the OPR specifically.

Proposed Option 5:

Not applicable.

- i.3) Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?

Response:

Companies should be evaluated against their policies, standards and procedures that they develop to comply with OPR requirements. Trans Mountain views the current suite of CER compliance tools as appropriate for compliance verification.

- i. 4) Are there any potential challenges associated with these proposals? What are they? How can they be addressed?

Response:

Trans Mountain sees the following challenges associated with these proposals as described in the responses to requests i.1) and i.2) and summarized below:

- Expansion of the OPR beyond its established purpose of containing requirements to manage the unique physical hazards associated with pipelines. Protection of the rights and interests of Indigenous peoples cannot be 'boxed' as a program or a management system process in the OPR
- Indigenous groups have a unique connection to the environment, and unique laws and knowledge – all of which are diverse in composition. Considerations must be made as to how that information is conveyed to a company, incorporated into protection measures and protected from unauthorized disclosure. Unique sets of 'rules' must be put in place to respect the interests of each community, and these rules are set through the process of relationship building – which is incompatible with a legislated requirement
- Given the wide variety of means of engaging with Indigenous communities and gathering information on community laws, traditional features and knowledge, measures must be taken in recording this information in a manner that respects the community and establishes appropriate protection measures. This uniqueness makes it very difficult for a regulator to audit a protection program or management system requirement, and to set thresholds for what constitutes a compliant outcome. Further, it may even be contrary to APM 34 for the regulator to decide whether a company is compliant in this regard.

For these reasons, the CER's focus should be on relationship building and proactive outreach with Indigenous communities, and how they can facilitate relationship building as a regulator where cultural barriers may exist.

- i. 5) What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to prevent and address impacts to the rights and interests of Indigenous Peoples?

Response:

In Trans Mountain's view, the size of the company, and/or the extent of recent projects undertaken within CER jurisdiction, affects the level of understanding between companies in relation to rights and interests of Indigenous Peoples. The CER may want to consider hosting industry sessions, or more targeted sessions with individual companies, through mechanisms such as information exchanges, to broaden this understanding. Further, Trans Mountain encourages the CER to work collaboratively with Indigenous communities and pipelines in developing guidance, and to ensure a common understanding of OPR definitions and CER expectations for compliance.

- i. 6) Do you have feedback on how specific localized knowledge, as well as Indigenous laws, policies, practices, protocols, and knowledge could be incorporated into the OPR? Are there other options or proposals that the CER should consider? Are there any particular challenges associated with implementing or verifying compliance to new requirements? How can these be addressed?

Response:

For reasons provided in the responses to requests i.1), i.2) and i.5), Trans Mountain does not believe that requirements for Indigenous knowledge, laws, policies, practices and protocols should be incorporated into the OPR.

Sub-topic 2: Managing Socio-Economic Effects

In the first phase of engagement on the OPR Review, the CER heard that the OPR should incorporate requirements related to the management of socio-economic effects and that companies should regularly report on their efforts to mitigate socio-economic effects over the lifecycle of pipeline infrastructure.

Responsive to this feedback, the CER proposes to introduce new requirements for the effective management of socio-economic effects over the lifecycle of pipeline infrastructure.

Objectives for Improvement

The objective of new requirements will be to help ensure that companies:

- have systematic processes and procedures in place to identify, anticipate, manage and address potential socio-economic impacts across all of its activities involving the design, construction, operation or abandonment of a pipeline;
 - this includes preventing and addressing impacts to human health, human occupancy and resource use, infrastructure and service, navigation and navigation safety.

Proposed Options

The CER is considering the following options to meet the objectives outlined above:

- The addition of a new protection program (e.g., Protection Program for Socio-Economic Effects). A new protection program would be based on the same expectations that the CER has set out for existing protection programs under the OPR. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions with adverse impacts.
- The expansion of the existing Environment Protection Program (OPR, s. 48) (e.g., Environment and Socio-Economic Effects Protection Program).

Discussion Questions

i.7) What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?

Response:

Socio-economic impacts occur mostly during initial construction of the pipeline where there is an influx of workers, equipment, and an increase in demand for services (i.e., hotel accommodation, medical services), which may result in a positive and/or negative impact on the community and diverse population groups, and local economy. During deactivation, decommission, reactivation or abandonment activities, the impacts will vary depending on the extent of the disturbance and the size of the non-local workforce. During normal operational phases of the pipeline lifecycle, socio-economic impacts are minimal given the nature of maintenance activities (integrity digs, brushing activities, cathodic protection surveys, pipeline patrols). The normal operating activity is considered part of on-going economic activity associated with a region in the context of economic development.

For this reason, Trans Mountain is of the view that the requirement to have systematic processes and procedures in place to identify, anticipate, manage and address potential socio-economic impacts is most relevant during pipeline construction, followed by deactivation, decommission, reactivation or abandonment activities – all of which currently require socio-economic assessment pursuant to the CER *Filing Manual* in support of complete regulatory applications. These assessments are evaluated for adequacy through the CER assessment or adjudication process. Systematic socio-economic processes

and procedures are not generally required for operational activities given little to no impact as a result of routine operations.

Socio-economic impacts tied to presence of workforce and new construction are not specific to pipelines and are associated with a major capital development located in a region without sufficient labour and services to conduct the work locally. As the OPR is specific to the unique hazards of pipelines, these types of socio-economic matters should not be included in the OPR and are better suited to be managed through *Filing Manual* requirements and project-specific assessments and conditions where necessary.

Further, socio-economic risks associated with pipeline releases during operations are inherently addressed through existing OPR requirements related to damage prevention, integrity management, and emergency management.

i.8) What is your feedback on the following proposed options to meet the regulatory objectives?

1. a new protection program for the management of socio-economic effects;
2. expansion of the existing Environment Protection Program to include the management of socio-economic effects.

Response:

Trans Mountain offers the following feedback to each of the CER's proposed options, below:

Proposed Option 1:

Consideration of socio-economic effects is appropriately situated in the CER *Filing Manual* to support information needs and assessment of potential impacts for construction, deactivation, reactivation, decommission and abandonment projects, where the impacts may be material depending on the socio-economic context of the region. Otherwise, socio-economic effects associated with normal operations are generally immaterial and would be considered part of on-going economic activity of a region. For this reason, Trans Mountain does not support the creation of a new protection program in the OPR for the management of socio-economic effects over the *lifecycle* of the pipeline.

Proposed Option 2:

The Environmental Protection Program is focused on elements of the natural biophysical environment, per the definition of "environment" in the OPR. The use of the environment by Indigenous groups for cultural, social, and economic purposes could be layered into the Environmental Protection Program, as there may be unique mitigation or process related to understanding the nature of the environmental resource and protection of the environmental resource that stems from Indigenous knowledge, practices, laws etc. In these circumstances, the protection of the natural environmental element is the way in which to protect the potential for socio or cultural use impacts related to change in use or availability of the natural element.

i.9) Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?

Response:

Companies should be assessed against the socio-economic assessments completed as part of an application for a project, which as assessed by the CER through its adjudication process, and compliance may be required through conditions to an order. Additionally, the CER can use its suite of compliance verification tools.

How companies may design and implement mitigation strategies related to project-specific socio-economic effects will be flexible and fit for purpose, with an understanding of evolving best practice in industry, with the lens of managing social risk, and with the understanding that every project has a unique and dynamic socio-economic context. The OPR does not and should not impose methods with respect to socio-economic methods.

i.10) Are there any potential challenges associated with these proposals? What are they? How can they be addressed?

Response:

Please see the responses to requests to i.7) and i.8), above.

i.11) What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to manage socio-economic effects?

Response:

Please see the response to Paper K, response to request k.3).

Sub-topic 3: Engaging with Potentially Affected People and Communities

In the first phase of engagement on the OPR Review, the CER heard about the need for meaningful engagement and communication, and that the OPR should drive consistency and clarity of requirements. The CER also heard about the need for engagement to be conducted with cultural awareness and sensitivity, and that it should be respectful of the unique engagement preferences of communities. Responsive to this feedback, the CER is considering formalizing additional engagement requirements in the regulation.

Objectives for Improvement

The objective of new requirements will be to:

- drive consistency and clarify the requirements for communications and engagement with potentially affected people and communities⁷ across the lifecycle;
- help ensure appropriate information about a company's activities is provided to impacted communities;
- help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights and interests may be impacted, and how they can be addressed; and,
- allow for flexibility so that companies can be responsive to, and respectful of, the unique needs, interests, and engagement preferences of Indigenous Peoples, potentially affected people and communities.

Proposed Options

The CER is considering the following options to meet the objectives outlined above:

⁷ Indigenous Nations and communities, persons with an interest in lands affected by the infrastructure (including landowners, land users, nearby residents, owners of third-party infrastructure which is crossed by the pipeline), potentially affected persons (local residents, persons who reside in the emergency planning zone), government authorities (local, regional, provincial, and federal).

- Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or management system process.

Discussion Questions

- i.12) What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?

Response:

Companies should be communicating appropriately to those who are potentially impacted, and in a manner that is responsive and respectful of the unique needs, interests and engagement preferences of Indigenous communities via established and respectful relationships between the company and the Indigenous community. Trans Mountain does not believe this can be legislated through regulation.

Currently, the OPR requires management systems to establish and implement a process for internal and external communication of information relative to safety, security and protection of the environment (section 6.5(1)(m)), and to establish and implement a process for developing and implementing controls to prevent, manage and mitigate the identified hazards, potential hazards and risks and for communicating those controls to anyone who is exposed to those risks (section 6.5(1)(f)). Communications processes related to these OPR sections are appropriate in their current form and allow for the broad suite of communications that are necessary to address the diverse information needs of a range of impacted Indigenous communities.

- i.13) What is your feedback on the following proposed option to meet the regulatory objectives?

- Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or a management system process.

Response:

The imposition of explicit, or prescriptive requirements either through management system requirements (revision to section 6.5(1)(m) of the OPR), or through the development of a standalone engagement program, does not address the fundamental need for there to be a relationship between the company and the Indigenous community, which would be established through good faith outreach and understanding the needs of the community. Trans Mountain does not believe this can be legislated through regulation and does not support the proposed option.

- i.14) Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?

Response:

Trans Mountain encourages the CER to focus its efforts on educating pipeline companies who have experienced challenges in establishing relationships with Indigenous groups and facilitate relationship building where appropriate. Companies are required to have external communication plans required by section 6.5(1)(m) of the OPR, which would entail a standard, procedure or both. Compliance can be verified by evaluating how the company performs against its standards and procedures through the usual suite of CER compliance verification tools.

i.15) Are there any potential challenges associated with this proposal? What are they? How can they be addressed?

Response:

The imposition of additional requirements through the OPR to prescribe external communication requirements may incur unintended impacts given the need for the establishment of a relationship with the community over time, and in good faith. Should the approach to, or existence of these relationships be legislated through the OPR, the unique context of each relationship may be affected, and companies' ability to use a wide variety of communications to address the diverse needs of Indigenous communities may be lost.

i.16) What kind of guidance would be helpful to enhance your understanding of CER expectations related to engagement?

Response:

Please see the response to request i.14), above. Trans Mountain notes that the CER's [Management System and Protection Audit Protocols](#) relay expectations for a compliant management system generally, and an associated external communication process (section 6.5(1)(m) of the OPR).