



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT  
[REDACTED]

April 14, 2025

Attn: [REDACTED]

VIA EMAIL [REDACTED]

Canada Energy Regulator  
210-517 10 Ave SW  
Calgary AB T2R 0A8

Dear Canada Energy Regulator:

**Re: ECN Comment on Phase 2 Review of the OPR and Filing Manuals Update**

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## Introduction and Opening Comment

I write on behalf of Ermineskin Cree Nation (“Ermineskin”) regarding the review of the Onshore Pipeline Regulations (OPR) and updates to the Filing Manuals underway by the CER.

At the core of our submissions is the view that the CER must meaningfully integrate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into its regulations, policies, and procedures. To Ermineskin, this means advancing the application of free, prior, and informed consent for CER-regulated projects that impact Ermineskin’s traditional territory.

In addition, we see enormous potential for the CER to upgrade and improve its processes through the OPR and Filing Manuals. Primarily, this means:

- (1) Improving transparency and communications;
- (2) Expanding regulatory oversight, compliance, enforcement, and verification;
- (3) Growing the CER, and the CER’s staff, understanding of impacts to Aboriginal and Treaty rights; and
- (4) Respecting Indigenous knowledge and Indigenous perspectives in project assessments.

There is considerable overlap between the themes identified in the CER’s What We Heard Report, which described the following: (1) advance reconciliation and implement the UN Declaration; (2) increase Indigenous involvement and incorporate Indigenous knowledge in



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT

lifecycle oversight; (3) improve clarity and transparency; (4) enhance competitiveness; and (5) update guidance and improve how the OPR is implemented. As such, we see an excellent opportunity for the OPR and Filing Manuals to develop into critical pieces of a robust regulatory process that respects and properly accounts for Aboriginal and Treaty rights. We look forward to continuing work with the CER on this and other regulatory reform initiatives.

## **Free, prior, and informed consent is \*now\* Canadian law**

### ***Develop a framework to get to FPIC***

The Government of Canada and the courts have enshrined the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into Canadian law. This has been formalized by the federal government with the *United Nations Declaration on the Rights of Indigenous Peoples Act* (and ensuing Action Plan) and the inclusion of UNDRIP in the preambular statements in the CER Act. The courts have taken strides towards a meaningful interpretation of what all this means in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*<sup>1</sup> and *Kebaowek*.<sup>2</sup> Through these steps there is building momentum towards a Canadian legal and regulatory regime that truly integrates UNDRIP and the foundational concept of free, prior, and informed consent.

The first step, in our view, is getting to *free, prior, and informed*. Given the volume and technical nature of the information shared on CER-regulated activities, it is an uphill battle for our consultation department and leadership to get a sufficient understanding of the proposed activities, ensuing impacts, and mitigation measures. This is not an issue of capability but rather one of timing, funding, translation, and expertise.

To address this, we continue to advocate for a meaningful and expanded role for the nascent Crown Consultation Coordinator position. Critical pieces of this role can be:

1. situating themselves as a resource early on and throughout the regulatory approval process;
2. communicating regularly;
3. developing increased understanding of Aboriginal and Treaty rights impacts;

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<sup>1</sup> *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5.

<sup>2</sup> *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT  
[REDACTED]

4. understanding and sharing potential regional and cumulative impacts information;

*Ermineskin made similar submissions on the CER Rules of Practice and Procedure Review that should be considered alongside this submission.*<sup>3</sup>

Improved communication and transparency will support our community to be properly informed about CER-regulated activities and lay the groundwork for obtaining free, prior, and informed consent.

Conversely, CER staff must be trained to understand Indigenous perspectives on resource development, incorporate Indigenous knowledge alongside western science, appreciate impacts to Aboriginal and Treaty rights that are integral to our identity and continued existence, and the relationships between land, waters and resources to our people. Efforts at this must be prioritized because they are the critical connective tissue to properly assess and evaluate impacts on Indigenous peoples.

Getting to 'consent' is another matter entirely. All projects on the traditional territory of Ermineskin should require the consent of Ermineskin. That is fundamental to our understanding of ourselves as true holders and stewards of the lands over which we have used and occupied since time immemorial.

Consent can only come from trust. To get there, we must see several things, including:

1. full accounting and understanding of the CER-regulated activity, its impacts, and proposed mitigation measures;
2. robust and enforceable project conditions that avoid, mitigate, or accommodate the impacts to our Aboriginal and Treaty rights;
3. compliance verification, enforcement, and quality assurances measures that we can rely on;
4. reduced reliance on proponents to assess, evaluate, study, and report out on project information;
5. expanded participation of our people in the monitoring, assessment, and evaluation of projects throughout their lifecycle; and
6. where appropriate (as determined by us), space for Indigenous decision-making

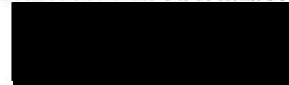
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<sup>3</sup> Ermineskin Cree Nation, Letter to [REDACTED] re: CER Rules of Practice and Procedure Review, Ermineskin Cree Nation (January 31, 2025).



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT



These six items begin to illustrate the foundation of a framework for us to provide consent.

Further, we wish to highlight the need for effective and transparent communication during emergencies. To re-build regulatory trust, the CER must be quick, transparent, inclusive, and effective in managing crises. Alberta First Nations have experienced far too much indecision, proponent trust, inaction, and incompetence during oil spills, leaks, contamination, and other catastrophes. Getting to a place where consent is possible means taking the long road to trust -- not just when it's easy and conceptual but when the stakes are highest.

## ***Decision-making must comply with UNDRIP***

To meaningfully integrate UNDRIP into the CER Act, decisions made by the Commission must be UNDRIP-compliant. The OPR and Filing Manuals must direct proponents to submit and gather the correct information for the Commission to make this assessment and provide a description of how the obligations were satisfied and a justification if they weren't.

The decision to enforce UNDRIP compliance as key criteria for decisions would be a substantial step forward to integrating UNDRIP into the CER Act.

Practically and technically, this would require proper training of CER staff and representatives and improved guidance for proponents on what they need to include in their applications and when UNDRIP will be triggered.

We have compiled a non-comprehensive list of applicable UNDRIP articles that should be considered when assessing project compliance with UNDRIP. Through using these as criteria or metrics you can take the application of UNDRIP out of the conceptual and into the practical. Please see the table:

<b>UNDRIP Article</b>	<b>Applicability</b>
<b>Article 5</b> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their	Projects that have an adverse impact on the political, legal, economic, social, and cultural institutions of our people will violate UNDRIP. For e.g. this could be triggered where projects impact



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT

<p>right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.</p>	<p>ceremonial sites or resources that are used by us as part of traditional political, legal, economic, social, and cultural institutions. These could be specific places, items, or landscapes.</p>
<p><b>Article 7(1)</b> Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.</p>	<p>Projects that have an adverse impact on the safety and well-being of our people, particularly LGBTQIA+ individuals, will violate this article. E.g. projects that elect to have work camps or create an influx of temporary workers adjacent to our community; or insufficient measures to address racism and violence towards our people working on CER-regulated projects.</p>
<p><b>Article 8(2)</b> States shall provide effective mechanisms for prevention of, and redress for: ... (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;</p>	<p>Taking up of lands for CER-regulated projects triggers this article. CER and proponents must make efforts to “provide effective mechanisms” for redress if they wish to have a UNDRIP-complaint project.</p>
<p><b>Article 12</b> (1) Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. (2) States shall seek to enable the access and/or repatriation of</p>	<p>Projects in Ermineskin’s traditional territory will always pose a risk to our religious and cultural sites and objects, including archaeological and heritage resources, grave sites, and other sites and objects of significance.</p>



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT



<p>ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.</p>	
<p><b>Article 13</b></p> <p>(1) Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.</p> <p>(2) States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.</p>	<p>Projects that permanently (or even temporarily) reduce access to harvesting areas, ceremonial sites, or other activities critical to Ermineskin culture and tradition are at risk of degrading the right to transmit our history to the next generation. History is place-based and cannot be reproduced in a classroom in the same way it can be on the land.</p>
<p><b>Article 18</b></p> <p>Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.</p>	<p>The CER must ask themselves how they advanced this article in assessing how they have complied with UNDRIP. Where possible, proponents and the CER should be looking for opportunities to create space for Indigenous decision-making by Indigenous institutions.</p>



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT

<p><b>Article 19</b> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.</p>	<p>The CER and proponents must be measured on their success in obtaining the free, prior, and informed consent of impacted Indigenous groups. In the context of CER approvals this is most likely triggered in the development of project conditions and the ensuing project plans (of various kinds).</p>
<p><b>Article 20</b></p> <p>(1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.</p> <p>(2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.</p>	<p>Engage freely in their traditional and economic activities is at play when CER-regulated activities threaten traditional economies, take up potential land for non-traditional uses, and fail to provide meaningful accommodation and revenue from the activities undertaken on Ermineskin lands.</p> <p>Accommodation measures must include financial compensation for the use of land at the expense of Ermineskin.</p>
<p><b>Article 25</b> Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.</p>	<p>Projects in Ermineskin's traditional territory will always pose a risk to our distinctive and spiritual relationship with our lands and waters.</p>
<p><b>Article 29</b></p> <p>(1) Indigenous peoples have the right to the conservation and protection</p>	<p>Conservation and protection of the environment for the purposes of preserving and protecting Indigenous</p>



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT



<p>of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.</p> <p>(2) States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.</p> <p>(3) States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.</p>	<p>relationships with lands and waters (and related Aboriginal and Treaty rights) must be a high priority in assessing CER-regulated activities.</p> <p>Further, if a project has the potential for storage or disposal of hazardous materials, special attention to this article is required.</p>
<p><b>Article 32</b></p> <p>(1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>(2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other</p>	<p>Plainly put, CER-regulated activities cannot and should not proceed without Ermineskin, and other Indigenous groups, providing consent. This is an issue of self-determination that the CER can measure itself against.</p>



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT



<p>resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</p> <p>(3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</p>	
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### ***Plan for the OPR and Filing Manuals to allow for decision-making and regulatory roles to be filled by Indigenous governing bodies***

Additionally, we also wish to work with the CER to identify a staged approach to carve-out roles and responsibilities enjoyed by the CER to be taken up by our people. We understand that engagement on the *Indigenous Ministerial Arrangements Regulations* (empowered by section 78 of the CER Act) is underway, and it is critical that Indigenous authority is integrated into the OPR and Filing Manuals.

### **Recommended Improvements**

We have compiled a categorized list of recommended improvements specific to each topic paper. Please see the table below:

<b>Topic</b>	<b>Recommended Improvement</b>
Topic Paper A: Damage Prevention	<ol style="list-style-type: none"> <li>1. Establish process to identify and list Indigenous sites of significance;</li> <li>2. If Indigenous sites of significance cannot be avoided entirely, commitment to jointly develop measures with impacted First Nation; and</li> <li>3. Expand and increase funding for Indigenous monitoring programs.</li> </ol>



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT

Topic Paper B: Deactivation and End of Lifecycle	<ol style="list-style-type: none"><li>1. Account for impacts to rights and interests of Indigenous groups in all decommissioning plans; and</li><li>2. Publish information on decommissioned and abandoned pipelines.</li></ol>
Topic Paper C: Emergency Management	<ol style="list-style-type: none"><li>1. Integrate Indigenous perspectives, knowledge, rights, and interests in emergency management planning;</li><li>2. Indigenous-specific risk metrics should be identified and evaluated when emergency planning;</li><li>3. Expand training for CER staff to assess and understand impacts to Aboriginal and Treaty rights and impacts to socio-economic interests for First Nations;</li><li>4. Develop regular training for Indigenous monitors and Indigenous groups adjacent to pipeline right of ways; and</li><li>5. Leverage existing business relationships to expand Indigenous involvement in emergency preparedness.</li></ol>
Topic Paper D: Environmental Protection	<ol style="list-style-type: none"><li>1. Require timely communication to impacted First Nations in the event of spill, contamination, or any other emergency that could impact people, plants, wildlife, or the environment generally;</li><li>2. Develop individualized response protocols with impacted First Nations;</li><li>3. Expand recognition and appreciation of impacts to plants and vegetation as they are often critical to ceremonial and spiritual practices of Cree nations, including Ermineskin; and</li><li>4. Pilot emergency management planning as an area for developing a consent-based model.</li></ol>
Topic Paper G: Pipeline Integrity	<ol style="list-style-type: none"><li>1. Transparently share information about new technologies in use.</li></ol>



# ERMINESKIN CREE NATION

CONSULTATION DEPARTMENT

## Concluding Remarks

Ermineskin appreciates the opportunity to provide feedback on the Phase 2 Review of the OPR and the updates to the Filing Manuals. We emphasize the importance of integrating UNDRIP into CER's regulatory framework and enhancing Indigenous participation throughout the decision-making process. Ermineskin is committed to continued collaboration with the CER to ensure that the regulatory processes respect and uphold Aboriginal and Treaty rights. For any follow-up or further discussion, please direct your inquiries to me [REDACTED]

Sincerely,

**ERMINESKIN CREE NATION**