



BC Métis
FEDERATION

BC Métis Federation Final Report: Canadian Energy Regulator

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Final Report Template for the Indigenous Advisory Committee (BCMF) of the Canada Energy Regulator (CER)

Executive Summary

This final report presents the activities, insights, and recommendations of the Indigenous Advisory Committee (IAC) member BC Métis Federation (BCMF) to the Canada Energy Regulator (CER) over the reporting period. The BCMF's work is grounded in the principles of reconciliation and aims to enhance the involvement of Métis peoples in CER-regulated projects while respecting their rights, knowledge, and perspectives.

Introduction

Purpose of the Report

The purpose of this report is to outline the BCMF's overview, provide strategic insights, and offer recommendations for improving Indigenous engagement within the CER's regulatory framework.

Background on the CER and BCMF

The Canada Energy Regulator (CER) oversees Canada's federal energy infrastructure throughout its lifecycle. The BCMF, established under the CER Act, plays a crucial advisory role in enhancing Indigenous participation and perspectives in regulatory processes.

Mandate of the BCMF

The BCMF's mandate is to advise the CER Board on building a renewed relationship with Métis peoples in BC, focusing on:

- » Enhancing involvement in CER-regulated infrastructure projects.
- » Integrating Métis perspectives and knowledge throughout the regulatory lifecycle.
- » Supporting the CER in advancing reconciliation and fulfilling obligations under the UN Declaration and TRC Calls to Action.

Overview of Engagement Activities

Early Planning and Engagement

The BCMF has been instrumental in promoting early engagement practices, ensuring that Métis communities are consulted from the initial stages of project planning.

Indigenous Engagement and Integration of Indigenous Knowledge

The BCMF has facilitated meaningful dialogues, allowing the CER to incorporate Métis knowledge into regulatory processes and decision-making.

Public Participation Opportunities

Increased opportunities for public participation have been developed, ensuring that Indigenous voices are heard alongside other stakeholders. The BCMF has worked to create platforms for Métis communities to share their concerns, values, and insights regarding energy projects, thereby fostering a more inclusive regulatory environment.

Key Insights & Recommendations

Strategic Advice for Reconciliation

The BCMF emphasizes the importance of ongoing, meaningful dialogue with Indigenous and specifically to Métis communities and members in BC.

Recommendations include:

- » Establishing Continuous Engagement Programs: Develop long-term engagement strategies that go beyond project-specific consultations to build trust and relationships over time.
- » Training and Capacity Building: Provide training for CER staff on Indigenous rights, cultures, and governance structures to ensure respectful and informed interactions.

Building Relationships

Strong relationships between the CER and Indigenous communities are essential for effective collaboration. The BCMF suggests:

- » Creating Joint Working Groups: Form partnerships with Indigenous leaders and organizations to collaboratively address regulatory challenges and opportunities.
- » Facilitating Cultural Exchanges: Organize events that allow CER staff and Indigenous representatives to share cultural knowledge and practices, enhancing mutual understanding.

Leveraging Indigenous Knowledge

Indigenous knowledge is invaluable for the safe and sustainable management of natural resources. The BCMF recommends:

- » Incorporating Traditional Ecological Knowledge (TEK): Develop frameworks to ensure TEK is considered in environmental assessments and regulatory decisions.
- » Recognizing Indigenous Governance Systems: Acknowledge and respect Indigenous governance structures in decision-making processes related to land and resource management.

Challenges & Opportunities

Challenges

- » Navigating Diverse Perspectives: The varied perspectives and interests within Indigenous communities can complicate engagement efforts and decision-making.
- » Capacity Limitations: Some Indigenous communities may lack the resources or capacity to engage fully in regulatory processes, limiting their participation.

Opportunities

- » Strengthening Reconciliation Efforts: The CER has a unique opportunity to lead by example in advancing reconciliation through its regulatory practices.
- » Enhancing Environmental Stewardship: By integrating Indigenous knowledge and practices, the CER can improve environmental outcomes and public trust in energy projects.

Conclusion

The BCMF's efforts to enhance Métis engagement within the CER's regulatory framework are critical for advancing reconciliation and improving regulatory outcomes. By implementing the recommendations outlined in this report, the CER can foster a collaborative relationship with Métis peoples, ensuring that their rights, knowledge, and perspectives are respected and integrated into all aspects of energy regulation.

Appendix 1: Topic Paper Questions

Damage Prevention

Are there industry best practices, standards or provincial requirements that could inform new OPR requirements regarding depth of cover monitoring or maintenance/ minimum earth cover?

- » Our partners/members suggest continuing to work with stakeholders, First Nations, and Métis communities and groups throughout the process, from beginning to end of projects to ensure that all aspects of land and values are evaluated within the process.
- » To continue to host frequent meetings (webinars, in person community sessions etc) about awareness, issues, and areas of improvement to seek community reaction and response.

A4. For regulated companies, would adding a depth of cover monitoring or maintenance/ minimum earth cover requirement in the OPR align with current business practices, or substantially change corporate operations?

- » Yes this would be recommended to ensure up to date practices are taking place and monitored.

A5. How can the OPR improve the connection between the company surveillance and monitoring program and the DPR-O requirements and overarching Damage Prevention Program to ensure that depth of cover is adequately managed by pipeline companies?

- » Suggestions are to continue the monitoring, and to post/regulate prevention activities, to broaden awareness.

Deviation & End of Life Cycle

Do you have feedback on how section 45.1 could be improved to address the comments received; for example, what elements should be included in a decommissioning plan?

- » Understanding ground coverage prior to site activation.
- » Knowing the importance of flora and fauna to Indigenous community; old growth, mycelium and soils are required for certain species of flora and fauna to survive; decommissioning a site/area does not guarantee regeneration.

Emergency Management

C1. What is your feedback on incorporating CSA Z246.2 by reference in the OPR?

- » By incorporating external standards, CSA Z246.2 helps maintain uniformity across various regulatory practices, ensuring that operators and stakeholders adhere to consistent safety and operational standards.
- » It provides clear guidance on which standards are to be followed by regulated entities, leading to fewer misunderstandings and compliance issues.
- » This supports compliance and simplifies the process. It makes it easier for organizations to comply with regulations because they can reference established, accepted industry standards rather than trying to formulate new rules from scratch.
- » By relying on established standards, regulatory bodies can focus their efforts on monitoring and enforcement rather than continuously drafting new regulations.
- » Enhanced Safety and Environmental Protection.
- » Sounds as though implementing CSA Z246.2 CER facilitates the adoption of best practices in safety and environmental management among operators, which is crucial in industries like energy production and distribution.
- » By ensuring adherence to high safety standards, the risk of accidents and environmental incidents can be minimized, leading to better protection for workers, communities, and ecosystems.

C2. What is your feedback on replacing the term “safety of workers or the public” with “people” in subsection 32(1)?

- » We suggest, safety of all people (inclusive of workers, the public).

C3. What is your feedback on including adverse effects on sites of historic and cultural significance in subsection 32(1)?

- » Communication and approvals need to be authorized by impacted Indigenous communities. Prior to any work being completed on cultural land, waterways and sites.
 - Reparation to sites post work, requires meaningful work to ensure that all flora and fauna are restored and have the ability for regenerative natural growth.

Environmental Protection

D1. What is your feedback on the proposed requirements above?

- » Supportive to enhance all environmental protection plans, restorative plans, and prohibitive plans to ensure that all land and community is safe of man-made disaster.

D2. Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?

- » Yes, however, community discussion about use of land and space is required, as well as how the land benefits the people of the lands, how land has been used in the past, present and how to preserve for future generations use.

D3. The requirement proposed in the third bullet above states that the goals of restoration are to restore the land to a condition similar to the surrounding environment and consistent with the pre-disturbed land use. Are these appropriate goals for restoration? If not, what should be the goals for restoration?

- » Albeit the goals are conscience to the desire to restore the land to pre use state, this is next to impossible in some areas where natural habitats for flora and fauna were disturbed/destroyed for use of the CER.

D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties?

- » Communication with Indigenous communities at all levels of the project.
- » Include stakeholders during each phase of projects, debriefs, goals for restoration and how it supports cultural practices on the land of impact.

D5. What does involvement by Indigenous Peoples in monitoring the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices.

- » There should be a requirement for companies who do business on the lands of Indigenous peoples to come to the community and provide updates – in person – to Métis community members. Without this being a requirement, it is unlikely companies will provide this service.

D6. In the context of the CER's expectations of regulated companies, how could more independent monitoring and reporting by Indigenous Peoples be effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices.

- » Companies who do business on the lands of Indigenous peoples come to the community and provide updates – in person – including to Métis community members. Without this being a requirement, it is unlikely companies will provide this service.

D7. Would the proposed processes in Subtopic 1 of the Rights and Interests, Socio-Economic Effects, and Engagement Topic Paper help ensure that Indigenous Peoples are included in the development and implementation of environmental monitoring activities, or are additional requirements or guidance required specific to monitoring?

- » This is extremely important to ensure that the process is continuously evolving to ensure that the communication, engagement and supports to and by Indigenous communities are paramount to the work being done to the land of cultural significance (all Indigenous lands).
- » Continue to work with Métis, First Nations and Inuit in BC to ensure that each voice is heard, and feedback is taken and implement when/where possible.
- » To better understand the importance of Flora and Fauna to Indigenous people, the medical significance of plants and herbs often only found in areas of impact by pipeline and land use.
- » Ensuring that this framework continues to be discussed, and not shelved after draft 1.

D8. What are the costs or benefits of adding a requirement to develop an EP Plan that is scalable to the scope of the work for all construction, operations and maintenance activities?

- » Beneficial to communities as each community need varies from each other.
- » Cultural significance of specific areas differ so, EP plans are extremely important.
 - Create an umbrella plan with the opportunity to scale up or down by project and community location.

D9. Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?

- » Plans should be scalable and ensure that community are aware prior to any construction takes place.
- » Workplans and site locations should be reviewed and authorized by all parties that have impact potential.

D10. Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests, SocioEconomic Effects and Engagement Topic Paper help ensure that EP Plans and the Environmental Protection Programs incorporate measures to prevent and address impacts to the Rights and Interests of Indigenous Peoples?

- » Yes, ensuring that communication is relayed prior to any project work/construction or approvals take place between the companies and the province, and the Indigenous communities.

D11. What mechanisms are companies currently using to ensure that all the information gathered, commitments made, and input received during the hearing is transferred to operational personnel for the lifecycle of the project?

» Specific to each organization/community/sector.

D12. If a mechanism already exists, what are the benefits and costs of a requirement stating that a construction to operations transition plan is required?

» There should be a requirement for companies who do business on the lands of Indigenous peoples to come to the community and provide updates – in person – to Métis community members. Without this being a requirement, it is unlikely companies will provide this service.

D13. While events such as floods and forest fires could be considered hazards under OPR paragraph 6.5(1)(c), due to the increasing frequency of climate related events and the potential impact on all Canadians, the CER is considering a requirement that companies assess these climate related risks on a continual basis, and that infrastructure be resilient to these risks. What are the benefits and costs of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks?

» Ever Changing environmental and weather changes are imminent in BC and globally; these fluctuating occurrences will change the scope of the environmental impact plans for companies wanting to do work in our province.

» Working with Métis and First Nations communities and leaders will provide historical data points to companies to better understand the flora and fauna and area that they intend to work on; this is important and natural burns for example take place, as well as man made to ensure that specific areas of vegetation have regrowth; (these are not man made fire disasters).

» Environmental assessment plans are required for future projects, and to be communicated to communities so that awareness is there in case of natural disaster.

D14. Are there other options that may achieve the objective in a more effective manner? If so, please explain.

» Continual conversation, communication, town halls, and press releases ensuring that all partners, communities and stakeholders are aware of situations.

Human & Organisational Factors

E8. What is your feedback on new requirements related to understanding the workplace system and improving the management of socio-technical hazards?

- » These factors make sense and the continual education around workplace systems to enhance workplace factors are imperative.

E10. The CER would like to better understand the concerns related to the possibility of inherent cultural bias within the HOF discipline and its implementation. Please describe and share examples of how the HOF principles and/or performance influencing factors may be impacted by cultural bias(es). Please also describe how Indigenous knowledge could inform the implementation of HOF within pipeline companies.

- » Ensuring that there is opportunity for BIPOC in each organization is important, ensuring that there is opportunity for everyone at every organization, based on skill, ability and merit.

Management Systems

F5. What is your feedback on a new potential requirement for companies to establish and maintain an up-to-date list of all the policies, processes and procedures referred to in sections 6.1 through 6.6?

- » Agreed - policies need to be available for companies and partners to review, amend and implement.

F7. Are there any opportunities to improve scalability of management system requirements? If yes, please identify the provision, explain the issue, and propose a solution.

- » Each program should have scalable opportunity, as each project is not the same; the impacts of this as a non-scalable management system would create potential redundancies therefor companies wont utilize.

F8. Are there any other additions, deletions, or other changes to the OPR's management system requirements in section 6.1 that would improve the OPR's ability to prevent harm?

- » No.

F9. "Quality assurance program" is used in two contexts in the current OPR, once in relation to the quality assurance program that must be implemented to evaluate the adequacy of the management system in its entirety and specifically for the programs identified in section 55 [see section 6.5(1)(w)] and again in section 15 whereby the company must develop a quality assurance program for the purpose of ensuring that the pipe and components to be used in the pipeline meet the specifications

discussed in section 14 of the OPR. Do you find this confusing? If so, what solution would you propose?

- » No, it makes sense as long as it is continuously shared the same way in all communication.

F15. What is your feedback regarding how the CER verifies compliance with contractor management requirements today and in the future (e.g., potential oversight activities, assessment criteria, performance measures for all programs described in OPR section 55)?

- » This is important to ensure that each contractor awarded with work is compliant.

Pipeline Integrity

- » N/A

Reporting Harm

H1. Describe challenges or limitations that regulated companies have experienced when interpreting or applying the current OPR definition of “incident”.

- » Incidents may differ in terms of reported or not due to severity; a unilateral use of the term ‘incident’ must be recognized the same across the board (WCB definition etc.).

Rights

I1. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?

- » UNDRIP and working with Indigenous peoples requires full time attention and respect; ensuring that.

I3. 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)?

- » Companies should be required to meet in person with Métis communities in order to learn from them firsthand, and implement standards based on the concerns and knowledge of community members.

I5. 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?

- » Companies should be required to meet in person with Métis communities in order to learn from them firsthand, and implement standards based on the concerns and knowledge of community members.

I6. 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?

Incorporating specific localized knowledge, Indigenous laws, policies, practices, protocols, and knowledge into the Onshore Pipeline Regulations (OPR) is crucial for enhancing the cultural sensitivity, ecological stewardship, and community engagement of projects affecting Indigenous lands and communities. Here are some recommendations, challenges, and proposals for the Canada Energy Regulator (CER) to consider in this important area:

- » Incorporation of Indigenous Knowledge & Laws Recommendations
 - Collaborative Frameworks: Develop collaborative frameworks with Indigenous communities for integrating their traditional ecological knowledge (TEK) into decision-making processes, particularly during the planning and environmental assessment phases of pipeline projects.

» Cultural Policy Guidelines

- Establish clear guidelines that recognize and incorporate Indigenous laws, protocols, and traditional practices into regulatory processes. This could include the use of Indigenous Knowledge Keepers in project assessments and consultations.
- Capacity Building: Provide training and resources for both Indigenous communities and CER personnel to improve understanding of Indigenous rights and practices, thereby ensuring informed participation by all stakeholders.
- Joint Regulatory Committees: Form joint regulatory committees, which include representatives from Indigenous nations, to oversee the implementation of localized knowledge and practices in pipeline regulations and compliance.
- Culturally Appropriate Engagement: Adapt engagement strategies to meet the specific cultural needs and protocols of Indigenous communities, allowing for meaningful participation in resource management and regulatory processes.

» Challenges Associated with Implementation and Compliance

- Lack of Clarity: Many Indigenous communities may have diverse governance systems and practices which could complicate regulatory compliance. A lack of clarity in the legal recognition of these practices can hinder effective incorporation.
- Resource Limitations: Both Indigenous communities and regulatory bodies may face resource constraints (financial, human, or technical) that impact their ability to engage effectively in the regulatory processes.
- Diverse Perspectives: There may be differing perspectives and priorities among Indigenous groups, making consensus-building challenging.
- Building Partnerships: Establish long-term partnerships with Indigenous communities, creating a shared platform where localized knowledge and Indigenous laws can be discussed, adapted, and integrated into the regulatory framework.
- Funding and Support Mechanisms: Develop funding mechanisms to support Indigenous capacity-building efforts in understanding and navigating regulatory processes. This might include workshops, training programs, and hiring legal experts and knowledge keepers.
- Monitoring and Evaluation Systems: Create adaptive monitoring and evaluation systems that align with Indigenous values and practices, allowing for continuous feedback and adjustments in compliance processes.
- Incorporation of Best Practices: Review and potentially integrate best practices from other jurisdictions (both national and international) that have successfully incorporated Indigenous laws and knowledge into regulatory frameworks.

- **Impact Assessments:** Ensure that Indigenous knowledge is explicitly included in Environmental and Social Impact Assessments (ESIAs), thereby giving it a formal place in decision-making processes.
- **Public Reporting and Transparency:** Enhance transparency by requiring public reporting on how Indigenous knowledge and practices are integrated into project assessments and decisions, fostering greater accountability.
- **Incorporating specific localized knowledge, Indigenous laws, and practices into the OPR is essential for fostering respectful relationships and ensuring the sustainability of projects on Indigenous lands.** The CER should actively seek to engage Indigenous communities in these processes, overcoming challenges through collaborative frameworks, funding, and adaptive strategies to ensure meaningful participation and compliance. By embracing diverse perspectives and practices, the CER can enhance the regulatory framework's effectiveness and legitimacy while promoting environmental stewardship and social justice.

Safety

J1. What is your feedback on the proposed approach?

- » Supportive - this is imperative to be successful in the work being done, and to ensure the general safety of 'people'.

Environmental

K4. To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?

The incorporation of Indigenous knowledge and engagement in the selection of Valued Components (VCs) is crucial for ensuring that the interests, rights, and traditional knowledge of Indigenous communities are respected and effectively integrated into environmental assessments and project planning processes.

- » Recognizing that Indigenous communities may have unique perspectives on what they value in their environment, VCs should expand beyond conventional ecological and socio-economic components to include Indigenous cultural values, practices, and traditional ecological knowledge (TEK).
- » Indigenous knowledge emphasizes a holistic view of the environment, encompassing interconnected social, cultural, and ecological systems. Integrating this perspective ensures that VCs reflect the complexity of relationships that Indigenous peoples have with their land and resources.
- » The incorporation of Indigenous knowledge is not just a matter of best practice; it is often mandated by legal frameworks, including treaties and the recognition of Indigenous rights under the law, which require meaningful engagement and respect for Indigenous governance systems.

- » Indigenous perspectives should be explicitly considered from the outset in identifying and selecting VCs. This includes recognizing which components of the environment are significant to Indigenous communities and how these relate to their cultural practices and traditional uses.
- » Indigenous knowledge systems should inform the selection process of VCs by incorporating TEK that highlights specific ecological relationships, species, or landscape features that may not be recognized by conventional scientific criteria.
- » The selection of VCs should incorporate frameworks for adaptive management that allow for ongoing input from Indigenous communities throughout the project lifecycle, ensuring that potential impacts are continuously monitored and addressed.
- » Applicants must transparently document their engagement processes with Indigenous communities. This includes timelines, methods of engagement (e.g., workshops, interviews, participatory mapping), and the consultations carried out with Indigenous Knowledge Keepers and community members.
- » Applicants should provide evidence of how feedback from Indigenous communities has directly influenced the selection of VCs. This may involve summarizing community inputs and showcasing how these have shaped proposed VCs or amendments to the assessment framework.
- » Engage Indigenous communities in the co-development of VCs. This denotes that VCs should be established in partnership with Indigenous communities to ensure they accurately reflect their values and viewpoints.
- » Applicants should explain how TEK contributed to the selection of VCs, potentially through the inclusion of TEK as part of the evidence base that informs assessments. Creating summaries of TEK relevant to specific VCs can illustrate Indigenous contributions.
- » Demonstrating that Indigenous Knowledge Holders were actively involved throughout the assessment process, including in identifying and defining the VCs, showcases a genuine commitment to incorporating Indigenous knowledge into the selection process.
- » Indigenous knowledge and engagement should be explicitly addressed in the selection of VCs to ensure that all relevant ecological, cultural, and social factors are considered during environmental assessments. Applicants should demonstrate a robust engagement process that documents how Indigenous voices informed VC selection, emphasizing co-development, inclusivity, and transparency. By doing so, the CER can foster meaningful relationships with Indigenous communities, uphold their rights, and promote sustainable and responsible project development.

Filing Manuals Review

M3. What other restructuring of the “Rights and Interests of Indigenous Peoples” section might improve clarity, readability, and better highlight important issues?

Restructuring the “Rights and Interests of Indigenous Peoples” section with clear organization, plain language, visual aids, practical examples, and an emphasis on impact assessments will greatly enhance its clarity and readability. By highlighting important issues and providing accessible information, the CER can foster better understanding and collaboration with Indigenous communities, ensuring that their rights and interests are respected and integrated into regulatory processes.

- » Create a separate section focused on the importance of involving Indigenous peoples in impact assessments, emphasizing how their perspectives can shape assessments and outcomes.
- » Create a summary of practices, work achieved for each project which allows readers to quickly recall important points and reinforces the key messages of the section.
- » Incorporate Feedback Mechanisms.
- » Encourage Ongoing Feedback.
- » Include guidance on how stakeholders can provide feedback on the “Rights and Interests of Indigenous Peoples” section, ensuring continuous improvement and responsiveness to community needs and concerns.
 - This inclusion demonstrates CER’s commitment to engagement and collaboration with Indigenous communities, promoting a dynamic and adaptable regulatory framework.