March 25, 2025

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

Sent via email to: [redacted]

Re: Friends of Michel Society Comments for Canada Energy Regulator *Onshore Pipeline Regulations* Phase 2 Review

This submission is sent on behalf of the Friends of Michel Society ("FMS"). FMS is a representative group for descendants of Michel First Nation. Michel First Nation adhered to Treaty 6 in 1878 and held Reserve Lands located northwest of Edmonton, AB. Following signing of Treaty 6, Michel members were subject to enfranchisement efforts by the Government of Canada, culminating in 1958 when all but four members were stripped of their Indian Status under the *Indian Act* and Michel First Nation's remaining Reserve lands were sold by the Government of Canada.

FMS was established in 1991 to: 1) pursue the reinstatement of Michel First Nation and return of Indian Status to Michel descendants; 2) advocate for the recognition of Michel's Aboriginal and Treaty rights; 3) support and connect Michel descendants; and 4) revitalize and nurture Michel way of life.

Despite Canada's aggressive assimilation efforts, and the current lack of formal recognition of the Michel Band, Michel people continue to exercise their Aboriginal and Treaty rights as recognized under Treaty No. 6 and the *Alberta Natural Resources Act, 1930*, and protected under Section 35 of the *Constitution Act, 1982*.

FMS provides this submission as part of our ongoing participation in the Canada Energy Regulator's ("CER") *Onshore Pipeline Regulations* ("OPR") review. This submission pertains to Phase 2 of the OPR review including the 15 OPR Topic Papers (the "Topic Papers"), the content presented at the CER February 13, 2025, Heritage Resources Technical Workshop session (the "Workshop"), and the Filing Manual review papers.

FMS understands that the OPR is the primary guiding document for CER regulation pipeline projects under the *Canadian Energy Regulator Act* S.C. 2019, c. 28, s. 10 (*"CER Act")*. The OPR are also the regulations that proponents must follow when designing, building and operating federally regulated pipelines. The OPR was last updated in 1999.

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The Filing Manuals are more regularly updated guidance documents supporting the OPR, which reflect the changing requirements, conditions, regulations, industry practices, and feedback that proponents should follow in their applications for federally regulated pipelines or powerline projects.

FMS understands that the CER is conducting the OPR review to inform potential improvements to the OPR and the Filing Manuals, as well as other related guidance and CER processes. Pertaining to Indigenous Peoples, the review aims to incorporate "specific localized knowledge", Indigenous laws, policies, practices, and protocols with the goal of strengthening measures to prevent and address impacts to Indigenous rights and interests.

Upon review of the Topic Papers and associated questions, FMS founds that response comments held underlying points or themes. To reduce the duplication of efforts, FMS has compiled general comments that broadly apply to all Topic Papers and Filing Manuals and related questions.

1. ABORIGINAL & TREATY RIGHTS

The current iteration of the OPR does not require applicants to explicitly assess impacts on Aboriginal and Treaty rights. This creates a critical gap in regulatory oversight. The updated OPR must include clear provisions ensuring that Aboriginal and Treaty rights are actively recognized, protected, and meaningfully considered throughout the entire lifecycle of a project. Furthermore, all project impacts on rights must be specifically identified and directly and proportionately accommodated to uphold the obligations of the Crown and regulators.

FMS has observed that regulators, including the CER, fail to meaningfully acknowledge or address the full extent of industrial development impacts on Aboriginal and Treaty rights. This failure extends across all project phases, including construction, operation, maintenance, decommissioning, abandonment, and reclamation. Additionally, regulators often do not recognize that project effects can migrate beyond the immediate project footprint, impacting the ability of Indigenous Peoples to exercise their rights over the broader landscape of their territories.

Within the CER process, there is a continued reliance on Traditional Land and Resource Use ("TLRU") to consider impacts to Aboriginal and Treaty rights. FMS finds this to be too narrow. The TLRU framework requires Indigenous Nations to "prove" the exercise of their rights within narrowly defined areas, disregarding the broader scope of Aboriginal and Treaty rights that extend beyond these localized boundaries. Any disruption to the lands to which an Indigenous group holds rights should be recognized as an impact

requiring accommodation, rather than placing the burden on Indigenous groups to justify their concerns through narrowly defined criteria.

2. CUMULATIVE EFFECTS

FMS finds the current OPR to lack a comprehensive approach to assessing how proposed pipeline projects interact with existing environmental and land conditions shaped by past, present, and future developments (i.e., cumulative effects). This gap in assessment results in incomplete evaluations of project impacts, particularly regarding Aboriginal and Treaty rights. Updates to the OPR should require a distinct and thorough assessment of cumulative effects for each proposed project.

The *Yahey (Blueberry River First Nations) v. British Columbia* (2021 BCSC 1287) decision reaffirmed that a provincial government's power to take up lands is not unlimited—it cannot do so to the extent that it prevents the meaningful exercise of Aboriginal and Treaty rights. However, without explicitly considering cumulative effects, Aboriginal rights and related thresholds to assess potential infringements, proponents and regulators cannot fully assess, mitigate, or offset the true scope of project impacts on Indigenous communities.

Currently, impacts to Aboriginal and Treaty rights and the biophysical environment are assessed on a project-by-project basis, rather than through a broader cumulative lens. Cumulative effects are only considered if a residual effect is identified and deemed non-negligible, which fails to capture the compounding impacts of multiple projects over time.

Moreover, FMS has found that when concerns about project impacts that are considered to be either cumulative or off-footprint, they are frequently dismissed as 'out of scope' if not classified as a direct project effect. When this occurs, little to no follow-up takes place to understand or address these concerns. Additionally, failing to recognize impacts that extend beyond a project's immediate footprint prevents a full and accurate assessment of potential impacts to Aboriginal and Treaty rights.

3. BARRIERS TO PARTICIPATION

Indigenous groups do not receive core consultation capacity funding. Any capacity funding that is provided is project-specific and granted at the discretion of proponents and regulators, rather than as a consistent, guaranteed resource. This leaves Indigenous groups without dedicated resources to support their ongoing ability to operate and be

prepared to meaningfully participate in consultation-related activities such as reviewing extensive project documents, conducting research, participating in monitoring efforts, attending meetings and site visits, leading community studies, and preparing reports.

When Indigenous groups are expected to participate in consultation without adequate funding, it places an additional financial burden on communities that are often already under-resourced. This forces Indigenous groups into a difficult position: either absorb the financial cost of engagement or risk having their lack of participation interpreted as implied consent. This systemic issue creates a significant barrier to meaningful consultation, undermining the principles of free, prior, and informed consent.

Additionally, the strict timelines set out in the OPR fail to account for the resource constraints Indigenous groups face. Without sufficient funding and personnel to manage multiple consultation requests, it becomes nearly impossible to meaningfully review and respond within the restrictive deadlines imposed by regulators. As with capacity funding, when an Indigenous group cannot respond within the required timeframe, their silence is wrongly assumed to indicate consent. To ensure fair and effective consultation, both capacity funding and regulatory timelines must be reformed to reflect the realities and constraints Indigenous communities face.

4. ENFORCEMENT, MONITORING, FOLLOW-UP

Updates to the OPR must ensure that stronger requirements for enforcement, monitoring and follow-up in post-approval stages are imposed to ensure that conditions identified in the application and approval phases are upheld. Additionally, there should be requirements for Indigenous consultation in each of these post-approval activities, including providing sufficient capacity to Indigenous groups to meaningfully participate in them.

FMS has observed a disconnect between the conditions that are set in the application process, including their intent, and how they are (or are not) implemented in practice. Specifically, Indigenous-identified concerns are often ignored or disregarded.

As regulators tend to distance themselves from projects following their approval, proponents are given significant discretion over their projects with very little oversight. This lack of enforcement weakens the effectiveness of the regulatory system and its processes.

The absence of strong post-approval enforcement and monitoring renders consultation meaningless. If consultation is treated as nothing more than a checkbox exercise rather than a genuine effort to prevent, mitigate, and offset impacts, then it fails to fulfill its intended purpose. Indigenous Peoples must be recognized as subject matter experts regarding both the biophysical environment and the impacts to their rights and interests. Their insights must be respected and integrated into all phases of project development, not just in initial consultations but also in ongoing compliance and enforcement measures.

Related to enforcement and follow-up, the OPR should contain provisions that increase accountability and reporting requirements for incidents. It is FMS' view that Indigenous Peoples who may exercise their Aboriginal and Treaty rights on land near development should be immediately made aware of any irregular incidents, regardless of how "minor" or "insignificant" they are determined to be.

Indigenous Peoples must be made aware of any potential negative impacts to the lands and resources in order to make informed decisions on where to harvest, hold ceremonies, etc. Even "small" incidents or those that were under control relatively quickly can cause significant impacts to the quality of the lands and resources that render them unavailable or inappropriate for given uses.

It is FMS' opinion that all incidents of all magnitudes should be tracked and reported to the regulator, and that there should be different thresholds set for companies with more incidents. Further, there should be consequences and penalties for the harm caused to the environment and Indigenous Peoples due to incidents.

FMS would like to see the CER increase accountability for proponents regarding the damage to the biophysical environment as well as to Indigenous Peoples resulting from incidents in their operations. It is completely unacceptable for Indigenous groups to learn about incidents and impacts from the media or other external sources; companies and regulators need to report directly to Indigenous groups when any of these incidents occur.

While proponents and regulators may determine that incidents or their effects are "insignificant", there are determinations of cultural and environmental significance that these bodies are unqualified to make on behalf of Indigenous groups.

FMS notes that there must be greater consequences and penalties in place to encourage safer operations and more stringent adherence to operational and safety measures. Small financial penalties are not a severe enough consequence to deter large companies from engaging in negligent or irresponsible behaviours. Additionally,

given FMS' experience, if reporting on incidents is left entirely up to the proponent with no direct consequences for failing to do so, most incidents will go unreported. This is especially true when the regulations such as the OPR set thresholds and requirements for reporting incidents too low.

Regulators must take on a more active role in monitoring and follow-up activities in post-approval stages and ensure that there is greater Indigenous involvement (and adequate resources provided to support it) in all monitoring and follow-up activities.

5. INCORPORATION OF INDIGENOUS KNOWLEDGE

The updated OPR must include provisions that protect and meaningfully integrate Indigenous Knowledge in the assessment, monitoring, and enforcement of CER-regulated pipelines. The Topic Papers discuss the identification and rectification of cultural bias and solicit feedback on how Indigenous Knowledge could help to better inform the regulatory process. However, they fail to address the critical issue of ensuring that Indigenous Knowledge is given appropriate weight in the regulatory system, including the assessment of applications for projects regulated under the OPR.

FMS has observed that western, or euro-centric, scientific knowledge is consistently prioritized over Indigenous Knowledge, often diminishing or overriding its role in regulatory assessments. While western science has its place in these processes, it should not be regarded as absolute. Indigenous Peoples possess expertise and deep environmental knowledge that has been passed down and honoured for generations, which are vital to responsible decision-making. This knowledge must be treated not as supplementary or symbolic, but as essential and of equal, if not greater, value than western science.

To address this imbalance, the OPR must include clear provisions that:

- Ensure sufficient capacity for Indigenous groups to collect and prepare Indigenous Knowledge and assess impacts to Aboriginal and Treaty rights, and
- Require regulators to consider and apply Indigenous Knowledge on equal footing with—or greater than—western science in assessments and decision-making.

Without these commitments, Indigenous Knowledge risks remaining a procedural formality rather than a meaningful force in the regulatory system and environmental protection.

It is FMS' expectation that the comments provided will be wholly considered and integrated into the review of the OPR. We are available to further discuss any comments or concerns provided in this submission, or to answer any questions.

Sincerely,

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Friends of Michel Society