



Review of Onshore Pipeline Regulations and Filing Manuals Review
I.OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects, and
Engagement Topic Paper

Prepared for: Kelly Lake First Nation (KLFN)

Author: Veness Consultants Inc.

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Review of I. OPR – Rights and Interests of Indigenous Peoples, Socioeconomic effects and Engagement

Veness Consultants Inc. 21 Mount Brewster Circle SE, Calgary Alberta, T2Z 2M6

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BACKGROUND

This review outlines potential amendments specific to the questions posed in the Policy Document titled I. OPR Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper to improve the Canadian Energy Regulator's (CER) oversight of impacts to the rights and interests of Indigenous Peoples. If this is an outcome, then Indigenous Nations will want to ensure that the authority of Indigenous Peoples to make decisions on Onshore Pipeline Regulations includes the restoration and inclusion of Indigenous legal and regulatory systems as a start.

Suggestions to be considered in the review are:

1. how the OPR needs to prevent and address impacts to the rights and interests of Indigenous Peoples
2. How there can be improvement to managing socio economic effects from pipeline developments
3. Clarifying engagement requirements with Indigenous Peoples over the lifecycle of the pipeline projects

The Canadian Energy Regulator (CER) Filing Manual contains detailed guidance on **how** to address socioeconomic effects and impacts to the rights and interests of Indigenous Peoples however the Onshore Pipeline Regulations under its mandate, doesn't include explicit requirements related to preventing and addressing impacts to those rights or the management of socioeconomic impacts.

The absence of those explicit guidelines continues to cause harm to Indigenous Nations by depending on systems that limit appropriate communications and engagement at the very least and continues to deliberately marginalize the authority of indigenous Peoples to make decisions based on their own terms of references and worldviews. The result has been a set of enforcement and compliance measures that hold industry accountable to regulatory processes **rather than** the rights of Indigenous Peoples.

The CER has included inputs from prior engagement with Indigenous Peoples to shape conditions on several pipeline projects in the recent past. Those inputs have recommended

1. Including Indigenous Peoples in construction and post construction monitoring
2. Reporting on economic opportunities
3. Consideration of Indigenous Knowledge specific to environmental protection and reclamation
4. Including Indigenous Peoples in Emergency response exercises
5. Capacity support for Indigenous Peoples to respond to impacts and new filings
6. Monitoring of effects during construction
7. Reporting on economic opportunities

In reality these new conditions do nothing but maintain the bare minimum regulatory requirements. These conditions would be considered for any other stakeholder and continues to ignore the rights that are held by Indigenous Peoples which transcend the regulatory process. Indigenous Peoples are not products of regulation, they are decision makers with a constitutionally protected seat at the decision-making table.

The Filing Manual is an example of a guidance document for all applications that will be provided to the CER in relation to decision making with respect to socio-economic interests and impacts to the rights of Indigenous Peoples. There are a number of existing documents that offer clear guidance to the CER and industry on what should be included to the regulator in terms of information to assist in decision making. These core documents and the expectations on decision making, inclusion, economic benefits etc. are already prescribed through 440 recommendations made by the Royal Commission on Aboriginal Peoples (1996), Treaty documents and Section 35 of the Canadian Constitution. To require another interpretation of those foundational documents will only dilute and continue to marginalize the needs of Indigenous Peoples for Free, Prior and informed Consent on projects that impact them.

The CER by extension of its relationship to the Crown is still responsible to consider the *authority* of Indigenous Peoples. Without doing so, it continues to impose systems that relegate Indigenous Nations as participants in the regulatory system, rather than partners with shared responsibility to decision making through the entire lifecycle of a project or decision.

New protection programs are being considered by the CER to provide consistency in regulatory objectives and to help prevent impacts to the rights of Indigenous Peoples and better manage socio-economic effects. These programs are designed to be developed, implemented, tracked and reported on by industry partners. For many Indigenous Nations, this amounts to manufactured regulatory compliance as there is no deliberate room created for Indigenous Peoples to design those programs and include metrics of their own which would define program expectations, controls or compliance. Nor would they include how to address impacts to rights in an equitable way. Doing so would require the *inclusion* of Indigenous regulatory systems in parallel to existing systems, not in competition but as complementary. In effect there are no western regulatory processes that that could demonstrate enhanced processes because they would still fail to include Indigenous knowledge systems independently and distinctly.

In regard to the CERs mandate to enhance Indigenous Involvement in its regulatory processes, the CER points to UNDA as the legislative instrument that empowers and requires them to act (Action Plan Measure 34 - APM 34). The specific outcomes are to ensure UNDA provides enhanced participation of Indigenous Peoples and establish measure that would enable Nations to assert its jurisdictional authority in respect of projects regulated by the CER. It goes further to state that Indigenous Peoples oversight into major energy projects would include steps to

1. Include *incorporating* specific localized knowledge as well as Indigenous laws, policies, practices, protocols and knowledge in the regulatory process.
2. Strengthen measures that would address and prevent impacts to rights and interests specifically to heritage resources and places of Indigenous significance.

The objectives for improvement and proposed options are at most a recitation of what should already be considered and already in place. These represent minimum standards, not evolving regulatory practices that will positively change the experience and protection of Indigenous Peoples in the regulatory process. Companies already have the duty to *meaningfully* consult and accommodate the interests of Indigenous Peoples. The requirement shouldn't be for Indigenous Peoples to re-examine and educate regulatory agencies and industry on practices it should already be meaningfully considering.

These proposed new requirements or options fail to reflect the recognition of Indigenous Peoples as rightful authorities or new approaches to inclusion; they represent another interpretation of how to limit the rights of Indigenous Peoples by continuing to marginalize the authority of Indigenous Peoples as decision makers. The CER must consider restoring Indigenous regulatory and decision-making authority as per Section 35 and Treaty expectations as a start, as well as create space for Indigenous Peoples to determine for themselves how to include their own systemic protocols to address impacts to rights and socioeconomic effects.

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?

- The objectives outlined represent a constructive step forward. However, it is important to note that while they are relevant, they do not fully address the core issue. The CER is a third-party agency of the Crown and does not possess the authority, rights, privileges, or the necessary lived experiences to determine the design, implementation, tracking, reporting, or compliance regarding Indigenous regulatory systems.
- To initiate this process, the CER must acknowledge the existence of Indigenous regulatory frameworks, which are inherently unique in their application. An essential objective for improvement should be to recognize that Indigenous Peoples operate within their own regulatory processes. Following this recognition, the CER should explore methods to evaluate the outcomes of these Indigenous systems in parallel with Western systems, rather than viewing them solely as extensions of Western regulatory frameworks. This approach could facilitate a more respectful and accurate inclusion of Indigenous perspectives into regulatory practices.

I 2. What is your feedback on the following proposed options to meet the regulatory objectives?

- A new protection program to prevent and address impacts to the rights and interests of Indigenous People.
- Accountability to Indigenous jurisdiction must be established as a foundational step for this program. It is crucial for the program to clearly articulate the expectations Indigenous Peoples have regarding protection programs, ensuring that there is no ambiguity in administrative or

operational interpretation. Consideration should be given to how this program aligns with existing jurisprudence that it seeks to enhance.

- Furthermore, there is already established case law that outlines the requirement for the protection of Indigenous rights and interests. By adhering to these rulings, the program can demonstrate its commitment to respecting and implementing the guidance already provided by these legal precedents. This alignment would not only reinforce the program's credibility but also foster trust and collaboration with Indigenous communities.
- **A new management system process for the incorporation of Indigenous knowledge; What does it look like?**
 - There is significant skepticism amongst Indigenous Peoples towards the Crown which often stems from historical and ongoing marginalization. Placing any reliance on “things being different this time” will be an uphill battle for the CER. Trust has been broken too many times for this to be viewed as merely a system change.
 - Incorporation of Indigenous Knowledge is another form of assimilation. If the CER is interested in complementing their regulatory process with Indigenous Knowledge, they would first need to recognize that Indigenous Knowledge is a **governance system** (not a series of data points) that has its own way of accessing, understanding and applying that knowledge through distinct Indigenous jurisprudence which is inaccessible to non-indigenous colonial systems. A new management system is not required.
 - Let Indigenous Peoples use their own existing systems to parallel and complement the regulatory process instead, independently of the CER. There are no common Traditional Land Use standards that set thresholds to be measured and complied with. Each Indigenous Nation has its own methods of governance.

I 3. Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER.

- Meaningful engagement by companies during the capital development phase of their programs or projects would be seen as optimal for inclusion of Indigenous Peoples. Oversight activities during this phase of co-development cycle would be ideal and align with existing legislation and rulings. Full lifecycle co-management of a project would also create efficiencies in terms of time, energy and resources required prior to the regulatory process. Current regulatory processes cause delays, inefficiencies and intense resource demands on both industry and Indigenous peoples.
- Relegating Indigenous Peoples to participating in regulatory processes and operational outcomes is not an efficient way to protect rights and address socioeconomic effects, nor does it provide certainty for industry players that have to react to conditions that they could have easily addressed in the development phase when capital funds were more available.

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

- The biggest challenge remains the continued marginalization of Indigenous Peoples and their rights as jurisdictional authority on their own lands. Despite the many attempts to change previous systems, treating Indigenous Peoples as products of regulation rather than jurisdictional partners will repeat past inefficiencies and continue to frustrate and confirm for Indigenous Peoples what they already know: that these systems no matter how well meaning, will continue to erase them unless their authority is recognized and freely allowed to complement decision making in their own terms of reference.

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?

- Create a safe space to practice decision making in collaboration between regulators, industry partners and Indigenous Peoples under a process that has nothing at risk. Often Indigenous Peoples are engaged in the regulatory process while they are being asked to make recommendations on its effectiveness. Perhaps set aside some time, like moot court, to practice building effective systems that complement the decision-making process.
- Clear Communication. Develop clear and accessible communication materials that explain the new requirements and how they deliberately center Indigenous Peoples.
- Organize workshops and training sessions that provide detailed explanations of the regulators' expectations. These sessions should be interactive, allowing for questions and discussions, and could include case studies and examples specific to Indigenous Nations.
- Partner with Indigenous organizations to co-create guidance materials that reflect the perspectives and concerns of Indigenous Peoples. These organizations can help ensure that the content is culturally appropriate and relevant.
- Provide translations of guidance materials into Indigenous languages to ensure accessibility for all Nation members.

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?

- Incorporating Indigenous Knowledge, laws, polices, practices and protocols is an act of assimilation. Those systems need to remain independent of each other instead of in competition. Because western systems continue to impose, erase and relegate Indigenous systems to limited areas of influence; incorporation will only continue the tradition of colonial practices and assimilation.
- What is more appropriate is for regulatory agencies like the CER is to recognize that Indigenous regulatory protocols exist and have been making decisions on the land for generations. These systems are distinct and carry traditions that inform Indigenous Peoples with theories, methodologies, assessments and results that can only be accessed, understood and applied by Indigenous Peoples, not as parts of a system that were designed to erase them. Insisting on combining these systems will not lead to meaningful change, only repeatable, predictable outcomes that Indigenous Peoples know only too well.
- Restoring Indigenous knowledge systems, legal systems and regulatory protocols is not a function of the CER. It is the responsibility of the Indigenous Peoples who hold those traditions and have the rights and privileges to utilize them. If the CER truly wants to enhance how Indigenous Knowledge, legal practices and protocols will enhance regulatory processes, they will first start by supporting Indigenous Nations in restoring those systems and keeping them distinct.
- Indigenous regulatory systems have full lifecycle protocols that allow for land management, determination of impacts to rights and socioeconomic systems that will benefit them. These can only be accessed, understood and applied by Indigenous Peoples. Asking the CER what those systems look like so they can be incorporated, utilized and managed independently of the rightful owners of those systems is inappropriate. The CER would do better to uplift and create space for Indigenous legal systems, protocols and polices to be operated by and for Indigenous Peoples independently of the CERs processes; they need to remain distinct while their authority is recognized and upheld.

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?

- Protection programs are being considered by the CER to provide consistency in regulatory objectives and to help prevent impacts to the rights of Indigenous Peoples and the Management of socio-economic effects. These programs will be developed, implemented, tracked and reported on by industry partners.

This amounts to *manufactured* regulatory compliance as there is no deliberate room created for Indigenous Peoples to be centered in the design of those programs and include metrics of their own which would define program expectations, controls or compliance, nor would they include how to address impacts to rights in an equitable way. Doing so would require the inclusion of Indigenous regulatory systems in parallel to existing systems. Not in competition but as complementary.

I 8. What is your feedback on the following proposed options to meet the regulatory objectives? a new protection program for the management of socio-economic effects; expansion of the existing Environment Protection Program to include the management of socio-economic effects?

- The potential inclusion of socio-economic effects is a progressive step; however, it continues to overlook the essential role of Indigenous Nations as *equal partners* in the regulatory process. To effectively address socio-economic effects, the program must be founded on genuine collaboration with Indigenous Peoples.
- Failing to recognize Indigenous jurisdictional authority, will continue to inhibit the ability of Nations to engage meaningfully in these initiatives. Advancing this program would require embedding co-management frameworks that recognize Indigenous governance structures. This means moving beyond participation to establishing partnerships grounded in equity and respect. Co-management should involve shared responsibilities and decisions at every stage of the program—from planning and implementation to monitoring and evaluation.

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

- It will need to be imperative that the program provides financial resources and capacity-building opportunities for Indigenous Nations to exercise these co-management roles effectively. Investing in training, education, and knowledge-sharing initiatives would support Indigenous participation and ensure a more balanced and informed decision-making process.

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?

- The CER should organize in-depth workshops and seminars that explore the socio-economic requirements within the regulatory framework and how Indigenous Peoples can influence those frameworks through co-development and co-management.
- Comprehensive resource materials should be co-developed and distributed to impacted Nations. These materials should be made available in accessible formats and languages.
- The CER should consider partnerships with existing Indigenous organizations who are focused on developing and accurately reflecting the lived experiences and interests of Indigenous Nations through the effects of socioeconomic imbalances.

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? What are they?

- Like the other subtopics, the regulator is asking companies to do what they are already supposed to be doing. Simply asking companies to do the bare minimum is not enough. There is nothing fundamentally new in response to these new engagement and communication efforts. Guidance and case law has already explicitly stated how engagement should be completed and communication offered throughout the lifecycle of a project.
- The Royal Commission of Aboriginal Peoples, the Truth and Reconciliation Commission and UNDA already state clearly how to engage appropriately in a culturally sensitive way with Indigenous Peoples. Perhaps the CER could enforce compliance to those segments of existing legal and ethical guidelines which have already informed regulatory and legislative processes soundly.

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.
 - Venue is important to Indigenous Nations. Where engagement and communication happen is import for the cultural safety of Indigenous Peoples. Engagement should be done in person within and with the community as a whole early and often, so a nation feels and understands that their voices have been heard. Doing so in a corporate office or through email is ineffective. The CER should consider enforcing companies to multiple communication and decision points throughout the entire lifecycle of a project and not just in the regulatory or operational phase.
 - Action is demonstrated by active involvement in the engagement process. Working with Indigenous Peoples to understand how best they can access, understand and apply the information they need to decide on will be key to for an organization to demonstrate credibility, accountability and trust.
 - Language is also important to Indigenous Peoples. Communication and engagement are usually done in one or both official languages. These are still second languages for many Nations. It would be better if engagement and communication was conducted in the languages of the Nations that are being impacted.
 - Engagement information collected with and on behalf of Indigenous Nations is considered sensitive and confidential. The CER and companies should disclose how it will protect Indigenous data sovereignty and ensure that the information collected in engagement practices are owned, controlled, accessed and permitted only by the Nations they work with.

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)?

- Uphold Free, Prior, and Informed Consent (FPIC) as a minimum engagement and communication outcome. The principle of FPIC is at the core of any engagement process with Indigenous Nations. Engagement is not a regulatory administrative function; it is an *ongoing relational exercise* that demonstrates the honour of the Crown. Industry companies should not only seek consent prior to initiating projects but also maintain continuous dialogue throughout the project's lifecycle.

This ensures Indigenous Nations can make informed decisions, knowing all potential impacts and proposed mitigation measures.

- Insist on requirements for cultural competency training. Companies should be mandated to undergo cultural competency training to bridge understanding and respect for Indigenous traditions, values, and governance systems. There are many accrediting agencies that offer these certifications and will be consistently applied. This training should be developed and delivered in collaboration with *local* Indigenous organizations, ensuring authenticity and respect, negating the pan-Indigenous approach that is often utilized by resource companies.
- Develop communication protocols that are important and proper for every Indigenous Nation. Companies should be working with Indigenous Nations they impact to develop tailored communication protocols that reflect community preferences. This should include respecting linguistic and cultural needs, selecting appropriate communication channels, and ensuring information is shared in a timely, accessible, and understandable manner.
- Mandatory inclusion of Indigenous Perspectives should be included in all engagement outcomes with a plan on how to address expectations. At the very least that would require that Indigenous Peoples have a seat at the table in all project planning, implementation, and monitoring stages. This could involve forming joint committees where Indigenous representatives contribute directly to decision-making processes, ensuring outcomes reflect their needs and priorities.
- Regular reporting and monitoring on engagement would provide a record of engagement which includes all components of the project lifecycle. The CER should consider enforcing engagement that includes providing regular updates to both Indigenous Nations and regulators. Independent monitoring should be in place to assess compliance with engagement guidelines, and there should be mechanisms for Indigenous Peoples to report any breaches or concerns.

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

- Build capacity and support for engagement. Indigenous Nations should not bear the costs of engagement. There are significant draws on Indigenous resources, people and inputs. Cumulative project assessments and regulatory process needs to be robust and can only happen when people are not beyond their ability to respond meaningfully.

Resources should be provided to Indigenous Nations to participate effectively in engagement processes. This includes funding for legal advice, scientific assessments, and community consultations, ensuring our communities are equipped to advocate for their rights robustly.

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

- Establish clear guidelines and standards that are consistently applied, not administratively measured. There is an expectation that the CER will enforce clear and robust guidelines for how companies engage with Indigenous Nations. These standards should identify necessary steps, timelines, and channels of communication that companies must follow, ensuring transparency and accountability. Guidelines on how to do so in a culturally sensitive way have existed for decades.