

Makwa Sahgaiehcan First Nation



March 13, 2025

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

Sent via email: [REDACTED]

RE: Makwa Sahgaiehcan First Nation Comments on the Crown Energy Regulator's Phase 2 Onshore Pipeline Review

This letter is sent on behalf of Makwa Sahgaiehcan First Nation ("MSFN") Chief and Council. The Chief and Council of the Nation have the elected authority and responsibility to act on behalf of the Nation and ensure the protection and maintenance of the Nation's rights. MSFN is a signatory of Treaty 6. MSFN holds Aboriginal and Treaty rights as set out by the spirit and intent of Treaty 6 and recognized and affirmed under Section 35 of the *Constitution Act*, 1982. MSFN also holds collective rights on all unoccupied Crown lands and other lands where there is a right of access throughout the Province of Saskatchewan as detailed in the *Natural Resource Transfer Agreement*, 1930 ("NRTA").

This submission is part of MSFN's ongoing participation in the Canadian Energy Regulator's ("CER") *Onshore Pipeline Regulations* ("OPR") review process.

MSFN has elected to participate in the review of the OPR to advocate for the meaningful protection of Aboriginal and Treaty rights, and for the Rights and Interests of Indigenous Peoples within CER-regulated projects.

In Phase 1 of OPR consultation, MSFN submitted a letter and table of comments in response to a series of discussion paper questions, focusing on the consideration of Aboriginal and Treaty Rights, cumulative effects, capacity limitations, and the need for more specific definitions and higher standards. We note that the comments and concerns raised in Phase 1 remain relevant in Phase 2 of the OPR Review and that this submission for Phase 2 builds off our Phase 1 submission.

MSFN has reviewed the 13 discussion papers (A-M), and the discussion questions posed within. In the review table attached below, MSFN has provided responding comments to the questions that the Nation identified as most relevant. Please note that the provided comments may not be an exhaustive list of MSFN's concerns regarding the OPR and pipelines in general, or that the questions that are not addressed in the comment table below are not of interest to MSFN.

MSFN comments provided in the attached review table relate to several key themes. These themes include:

1. Time and Capacity

Meaningful fulfillment of the duty to consult and accommodate requires the provision of adequate and consistent capacity funding. Without provision of capacity funding, it becomes extremely difficult and even more burdensome on Nations to participate in decision-making processes. In addition to capacity funding, adequate time to review requests and respond is also critical to support meaningful consultation. Sufficient time and capacity funding must be made available for every new consultation activity, both pre- and post-approval.

The OPR should include provisions mandating capacity funding to Indigenous nations from both the proponent and the regulator for any consultation request or related engagement activity. Timelines outlined in the OPR should also take into consideration capacity constraints and the context of Indigenous nations' participation in regulatory processes.

2. Enforcement, Monitoring & Follow-up

The OPR must place a stronger emphasis on enforcement, monitoring, and follow-up to ensure that conditions identified as part of a project's approval are meaningfully upheld. It is MSFN's perspective that there is an over-reliance the assumption that proponents will wholly adhere to regulations and conditions and the spirit and intent behind their creation, particularly those established in response to Indigenous concerns.

MSFN's experience has shown that once a project moves beyond the approval stage, Indigenous-identified concerns and conditions are frequently ignored or dismissed. Programs such as monitoring works become largely performative and without any real influence over how the proponent chooses to operate. Moreover, regulators tend to be fairly hands-off post-project approval, leaving the proponent to make certain construction and operation decisions without any real oversight. This lack of enforcement undermines the integrity of the regulatory framework and erodes trust in the consultation process.

To be effective, the OPR must include more stringent and consistent provisions that protect the rights and interests of Indigenous Peoples throughout the entire project lifecycle. Current regulations contain too much ambiguity, allowing for loopholes and regulatory workarounds that reduce corporate accountability. Without clear, enforceable requirements and rigorous oversight, Indigenous Peoples continue to face unaddressed project impacts despite having raised concerns at multiple stages.

3. Cumulative Effects & Impacts to Aboriginal and Treaty Rights

MSFN finds that the current OPR fails to explicitly consider or address cumulative effects, including cumulative effects to Aboriginal and Treaty rights.

Regulatory processes focus on one project at a time. Currently, a cumulative effects assessment is only required when a Valued Component is found to have a non-negligible residual effect in the project impact assessment. Further, there are no set thresholds or specific defined metrics that regulators must use to assess cumulative effects to Aboriginal and Treaty rights. As a result, the broader loss of access and land-based rights remains unrecognized and unaddressed within approved projects.

Each project approval results in a progressive loss of land access, yet regulatory frameworks do not measure whether Indigenous Peoples retain the ability to meaningfully hunt, fish, and trap post-development. This critical information gap must be addressed by incorporating cumulative effects considerations and ensuring that regulatory decisions are made with a full understanding of how lands taken up for development impact Treaty rights in a collective and ongoing manner.

4. Identification of Crown Lands Taken Up

MSFN members hold Aboriginal and Treaty Rights on unoccupied Crown land¹ throughout Saskatchewan and Treaty 6 and on any other land to which they have a right of access. When unoccupied Crown land is converted to occupied Crown land through the approval of an activity on those lands, the areas where MSFN may freely exercise their Aboriginal and Treaty rights are diminished. This is an impact that must be explicitly recognized, considered and accommodated.

The OPR should include requirements to explicitly identify the amount of currently unoccupied Crown land that the proposed project will convert to occupied. This should be considered within a regional context as well to understand current amounts of unoccupied Crown lands and related direct and cumulative impact on the exercise of Aboriginal and Treaty from a proposed Project.

5. Reporting of all incidents to Indigenous Peoples for safety

OPR discussion papers described conditions and severity criteria required to designate “incidents” that must be reported to the CER and/or disclosed to the public. It is MSFN’s view that any unexpected, irregular, unanticipated or undesired occurrences should be disclosed and reported.

MSFN also notes that there needs to be more strict oversight and response requirements to monitor for, and address any, incidents. In the time that it takes for proponents to notice, assess the severity, repair or rectify one of these occurrences, potentially harmful conditions may have already been created that could impact the soil, vegetation, air, water, or wildlife that could impact the health and safety of nearby communities or Indigenous peoples exercising their Aboriginal and Treaty rights in the vicinity.

MSFN provides these comments for the Phase 2 review of the OPR, with the expectation that they will be considered and result in meaningful additions to the updated regulations. If comments are excluded from consideration, MSFN requests that explicit reasoning behind that decision.

Sincerely,





¹ Also sometimes referred to as vacant public lands.

OPR & Filing Manual Topic Paper Questions Response Table

Questions	MSFN Responses
<p>A. OPR – Damage Prevention² B. OPR – Deactivation and End of Lifecycle</p>	
<p>B8. Do you have feedback on how Indigenous Peoples can be involved in the monitoring of decommissioned and abandoned pipelines?</p>	<p>Provide sufficient time and capacity to support Indigenous Peoples in participating in monitoring and decommissioning activities. Additionally, ensure that the knowledge and feedback received from Indigenous Peoples participating in these processes are meaningfully incorporated into monitoring and decommissioning activities and related decision-making.</p>
<p>C. OPR – Emergency Management</p>	
<p>C8. What is your feedback on clarifying the CER’s requirements within the OPR regarding the Involvement of Indigenous Peoples in a company’s EM Program?</p>	<p>MSFN generally supports the requirement for inclusion of Indigenous Peoples in emergency management programs.</p> <p>Emergency management programs need to not only consider notification and inclusion of Nations who have Reserve lands in the vicinity of the incident, but also Nations whose members may be exercising the Aboriginal and Treaty rights nearby.</p> <p>In addition, emergency management programs should include materials translated into each Nation’s language. Translation to be done in partnership with each Nation.</p> <p>MSFN also notes that sufficient time and capacity is required to support Nations participation in these emergency planning and response.</p>
<p>D. OPR – Environmental Protection</p>	
<p>D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties?</p>	<p>Restoration goals must consider that “restoration” to proponent and regulator standards does not actually return the land and environment to the state that they were prior to the project. Additionally, it must be noted that restoration activities also cause impacts to the rights and interests of Indigenous Peoples (e.g., increased traffic, vegetation management, presence of workers, machinery and vehicles, noise, emissions, etc.). With this in mind, MSFN generally supports consulting with potentially impacted parties on restoration goals.</p>
<p>D5. What does involvement by Indigenous Peoples in monitoring over the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices.</p>	<p>Indigenous Peoples must be compensated for their involvement in monitoring activities. Additionally, they should be permitted to conduct and report on monitoring activities from site visits throughout the project’s lifecycle, and their findings and observations must be meaningfully considered and addressed by the proponent and regulator. If their findings, observations, recommendations based on the monitoring activities they conduct are not taken seriously or enforced, their efforts and knowledge have been wasted and their inclusion in these activities is merely performative. This does not advance satisfy meaningful engagement or fulfil the Honour of the Crown.</p> <p>As part of the monitoring process, Indigenous Peoples must also be immediately notified of any changes in the project, any incidents or deviation from normal operations, unanticipated</p>

² MSFN elected not to respond to these questions as they were determined to be technical questions intended for proponents.

Questions	MSFN Responses
	occurrences, spills, etc. as soon as they occur, in order to maintain the safety of their community and conduct site visits and follow-up to monitor damage or impacts.
<p>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.</p>	<p>Participating by Indigenous Nations in monitoring and reporting requires the provision of sufficient time and capacity.</p> <p>Additionally, the OPR should include provisions that require the information, observations, recommendations, or other factors derived from these activities to be meaningfully considered and addressed. Otherwise, these efforts are wasted and incorporating Indigenous Peoples more into monitoring and reporting activities is merely performative. Proponents must be clear in all safety protocols and measures for Indigenous Peoples when conducting these activities.</p>
<p>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?</p>	<p>See responses to D4-6, as well as those under Section I.</p>
<p>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?</p>	<p>See responses under D4-6, as well as those under Section I.</p>
<p>E. OPR – Human and Organizational Factors</p>	
<p>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.</p>	<p>It is MSFN’s understanding from the context of this section that the proposed changes to the OPR related to HOF are directed at companies and proponents. While this is certainly needed, MSFN notes that it is not only proponents whose policies and procedures have paternalistic and euro-centric bias’; regulators and regulatory systems do as well.</p> <p>An example of this is the tendency for government process to attempt to treat Indigenous Peoples and cultures as homogeneous rather than recognizing that each Nation has its own distinct history, customs, traditions, governance structures, languages, etc. and that each Nation has its own interests and priorities. The expectation that there will be one-size-fits-all policies or generalizations that can be made about the “rights and interests of Indigenous Peoples” makes it very challenging to navigate the regulatory system.</p>

Questions	MSFN Responses
	<p>Additionally, in the identification of impacts to the rights and interests of Indigenous Peoples, proponents and regulators often do not acknowledge impacts that do not align with Western values or science. It has been MSFN’s experience that identified impacts to rights, including the legal conversion of unoccupied Crown lands to occupied and cumulative effects are diminished or ignored by both proponents and regulators.</p> <p>MSFN finds that Indigenous-led studies or Indigenous Knowledge are not treated with the same reverence or seriousness as Western studies or assessments. This indicates to MSFN that there is a bias towards Indigenous Knowledge and that it is not considered to be as valid as Western science.</p> <p>Other instances of cultural bias are also apparent in the way that proponents and regulators perceive Indigenous sovereignty, not recognizing First Nations as sovereign nations with governance structures and elected leadership.</p>
<p>F. OPR – Management Systems and Contractor Management³ G. OPR – Pipeline Integrity</p>	
<p>Summary Response to all G discussion questions.</p>	<p>MSFN is generally in support of the expansion of definitions under the OPR to include more types of pipelines that are not captured under the current regulations.</p> <p>MSFN does <u>not</u> support the narrowing or removal of definitions under the OPR that result in currently covered projects being excluded from the updated regulations.</p> <p>MSFN generally supports the inclusion of additional risk and safety assessments, especially where there is the proposed use of technology for which no standard is set out in the OPR or has not been independently reviewed and publicly released.</p> <p>MSFN does <u>not</u> support any removal or weakening of requirements for existing risk and/or safety assessments.</p> <p>MSFN generally supports the inclusion of longer review periods to allow all involved/affected parties to conduct a more fulsome review of all project information.</p> <p>MSFN does <u>not</u> support the shortening of review periods for project information.</p>
<p>H. OPR – Reporting Harm</p>	
<p>H3. What instructions or decision-making tools (e.g., risk matrix, checklist, decision tree) are most useful for regulated companies to make a timely assessment of whether an occurrence requires immediate notification to the CER?</p>	<p>Pipelines and oil facilities already create significant harm and damage to the biophysical environment and the people who live near them, as many Indigenous groups do, even when they run as anticipated with no unexpected or undesired occurrences. Any unexpected, irregular, unanticipated or undesired occurrences in any of these projects should be immediately reported to the CER and immediate notice should be sent to Nations with neighboring Reserve lands as well as to Nations whose members may be exercising their Aboriginal and Treaty rights nearby.</p> <p>In the time it takes for proponents to notice, assess, discuss, report, repair/rectify an irregular occurrence, potentially harmful chemicals or other hazards may already have entered into the</p>

³ MSFN elected not to respond to these questions as they were determined to be questions specific to contractors and proponent management systems.

Questions	MSFN Responses
	<p>environment, water system, air, etc. that could cause harm to nearby communities or people who rely on the land and resources around projects, such as nearby Indigenous communities. This is not an acceptable risk to take while determining whether an occurrence should be reported as an incident. Any failure to report such occurrences should result in penalties.</p> <p>MSFN notes that Indigenous Peoples are directly and disproportionately impacted by failures in pipelines or oil facilities. Even when these failures may not appear to impact a community directly, any negative effects to the land, water, air, and wildlife as a result of these occurrences cause harm and danger to the Indigenous Peoples who rely on them for survival. This includes not only sustenance-related survival, but also the survival of rights, values, language, culture, and practices.</p>
<p>H4. Describe industry best-practices that can improve how the CER approaches incident reporting in relation to adverse environmental effects or the potential for adverse environmental effects.</p>	<p>See response to H3.</p>
<p>H5. Describe occurrences, other than chemical releases, that may have adverse environmental effects for which the CER needs to be immediately notified.</p>	<p>See response to H3.</p>
<p>H6. There are occurrences that may result in an adverse environmental effect and may not be considered an incident as defined in the OPR. Depending on their severity, they could be submitted to the CER as a new notification type with an extended timeline and used to assess company performance or trend analysis. What occurrences do you think the CER needs to be notified of?</p>	<p>See response to H3.</p> <p>What is considered to be “small” or “insignificant” occurrences or failures is subjective.</p> <p>MSFN maintains that all irregular, unexpected, and/or undesired occurrences should be reported, documented, and used to assess company performance or trend analysis. These analyses should be mandatory to be submitted with project applications, and also provided to potentially impacted groups when consultation occurs.</p> <p>Further, incidents must be considered within larger contexts instead of just one-offs. If incidents are occurring more than once in the same project or by a specific company, it could indicate errors or shortcomings in operations, monitoring, compliance, equipment, design, or any number of potentially significant areas that could lead to much larger and catastrophic incidents in the future. As such, it is important to have a complete and fulsome record and dataset to monitor these occurrences for public and environmental safety.</p> <p>Only tracking occurrences that are significant enough to qualify as “incidents” does not provide a complete picture of risks and potential impacts to the groups who are most likely to be adversely impacted by proposed projects. In turn, without this information, it limits an Indigenous nation’s ability to assess the likelihood of operational failures when assessing potential project risks, especially when certain proponents experience more such failures than others.</p>

Questions	MSFN Responses
	<p>A complete and accurate record of a proponent’s incidents would help to validate and substantiate Indigenous nations’ concerns about project impacts, as project information packages so often try to instill a false sense of security in emphasizing the rarity of malfunctions or incidents, leading to concerns about safety being dismissed.</p>
<p>H7. What do the terms “loss of operational view or operational control of a pipeline” mean to you?</p>	<p>MSFN understands that this means that a proponent is no longer able to monitor or operate their pipeline, whether this is through regulatory means (e.g., a license is suspended or revoked, etc.), if they are physically unable to monitor or control their pipeline (e.g., computer/equipment malfunction, cyber-attack, etc.), or other circumstances (e.g., a company dissolves while their pipeline is still operational).</p>
<p>H8. How should notification and reporting be treated in relation to such events?</p>	<p>The CER should be immediately notified of any such events, and nearby communities should also be immediately notified by the CER if any nearby pipeline has had any instance of loss of operational view or control. In addition to notification, CER should advise the potentially affected communities of how long the loss of view/control was or is anticipated to last, and what steps the CER and/or proponent are taking to ensure public health and safety as well as to control any environmental impacts.</p>
<p>I. OPR – Rights of Indigenous Peoples, Socio-Economic Effects and Engagement</p>	
<p>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?</p>	<p>While MSFN generally supports the objectives of ensuring that companies have systematic processes and procedures to address impacts to the rights and interests of Indigenous Peoples, the companies themselves do not have the authority or ability to identify these impacts on their behalf. Indigenous Peoples are not a monolith; each Indigenous nation has its own culture, customs, traditions, values, interests, etc. which can all be impacted in different ways depending on the project, and as such, impacts across groups are not predictable or uniform.</p> <p>The best way to achieve these objectives are to increase requirements for proponents to engage with Indigenous Peoples at all project phases, implement measures to ensure compliance, increase accountability to Indigenous Peoples, and ensure that the CER’s regulations require that project impacts identified by Indigenous Peoples are meaningfully acknowledged and mitigated.</p> <p>Additionally, if the CER wishes to better recognize and address impacts to Indigenous Peoples, it must expand the scope of how impacts are assessed. Currently, impacts are assessed on a project-by-project basis and do not consider cumulative effects. Without acknowledging and accounting for the impacts that cumulative effects have on Indigenous Peoples, there will always be significant gaps in the assessment and mitigation of these impacts.</p>
<p>I2. What is your feedback on the following proposed options to meet the regulatory objectives?</p> <ul style="list-style-type: none"> • a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples; 	<p>Similar to MSFN’s response to question I1, while we generally support the idea of a protection program to prevent and address impacts to the rights and interests of Indigenous Peoples, only Indigenous peoples themselves are qualified to identify these impacts on their own behalf, and blanket statements or policies regarding specific impacts cannot be made for all Indigenous</p>

Questions	MSFN Responses
<ul style="list-style-type: none"> • a new management system process for the incorporation of Indigenous knowledge; • a new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols; • cultural competency training requirements for all those working for regulated companies; • additional requirements where necessary. 	<p>Peoples, as they are not all the same, and each project is different. The same can be said for Indigenous laws, policies, practices, and protocols.</p> <p>Any protection program must include provisions for the meaningful consideration and mitigation of cumulative effects to Aboriginal and Treaty rights and interests.</p> <p>MSFN generally supports the addition of provisions to protect and incorporate Indigenous Knowledge, but also notes that there must also be provisions to ensure that Indigenous Knowledge is not treated as less valuable or less legitimate as Western science. In MSFN's experience, Western science is generally taken as absolute in the regulatory system, and Indigenous Knowledge is discarded if it conflicts or does not align. Part of the meaningful protection of Indigenous Knowledge involves understanding and appreciating its value and legitimacy in practical, tangible ways.</p> <p>MSFN generally supports requiring cultural competency training for those working in regulated companies and their contractors as well as for all CER staff members. Training should be very careful not to support pan-Indigenous perceptions. Aside from the general cultural competency training, individuals must educate themselves of the cultures and customs of the Indigenous Peoples on whose land they are working, and those in charge must ensure that the staff they oversee are adhering to this training and respecting the land and peoples in the surrounding areas. Anti-racism training should also be a mandatory course for all regulated companies and their contractors as well as for all CER staff members.</p>
<p>13. 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)?</p>	<p>There is no way to implement any of these objectives successfully or ensure compliance without the involvement of Indigenous Peoples. Proponents and the CER cannot accurately identify impacts to Indigenous Peoples, nor can they verify compliance and effectiveness of measures without the explicit involvement of the impacted Indigenous Peoples themselves. This degree of Indigenous participation will require extensive time and capacity to ensure that Indigenous Peoples can meaningfully engage in these steps.</p>
<p>14. Are there any potential challenges associated with these proposals? What are they? How can they be addressed?</p>	<p>MSFN sees the potential challenge of proponents and regulators taking the necessary steps to properly engage with Indigenous Peoples, as they are time consuming and costly. In MSFN's experience, proponents and regulators strive to push projects through as quickly and cost-effectively as possible, often to our detriment. Additionally, MSFN foresees the meaningful incorporation of Indigenous Knowledge, cultures, values, laws, etc. as being challenging, as they often contradict or go against industry interests. Without taking the necessary steps to meaningfully engage with Indigenous Peoples, these changes will merely be performative.</p>
<p>15. 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?</p>	<p>Clear and specific language regarding requirements would help our understanding of these expectations. Too often, policies regarding Indigenous rights and interests use unclear, ambiguous, non-committal language that leaves too much up to interpretation. Proponents and regulators normally err on the interpretations that best serve their interests, and the lack of clarity and specificity leaves Indigenous Peoples with very little recourse to hold proponents and regulators accountable when they determine their rights on interests have been impacted. As such, there is</p>

Questions	MSFN Responses
	little consistency across project types, proponents, and regulators, of if or how Indigenous Peoples can anticipate that their concerns will be acknowledged, addressed and/or mitigated.
<p>16. 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?</p>	<p>As the CER is a federal body and the OPR will apply across the country, it would be difficult to introduce specific knowledge, laws, policies, practices and protocols into the regulations, as these differ from group to group. This is not to say that these should be omitted from the OPR, but that they must be incorporated in such a way that ensures that each impacted group can identify and incorporate its own unique systems, values, and knowledge into a given project, without the language being vague enough to allow proponents or regulators to cut corners.</p>
<p>17. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?</p>	<p>MSFN notes that these objectives are quite vague, but it supports requiring proponents to identify, anticipate, manage and address socio-economic impacts from their projects, in all phases. Additionally, the CER should also enhance its own responsibilities and requirements to adequately identify, anticipate, manage, and address socio-economic impacts from projects they are regulating.</p>
<p>18. What is your feedback on the following proposed options to meet the regulatory objectives?</p> <ul style="list-style-type: none"> • 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. 	<p>Similar to MSFN's response to 17, these proposed options are vague and it is unclear what actual changes these entail. The discussion paper indicates that the addition of the "new" protection program would be based on the same expectations that the CER has set out for existing programs under the OPR. Please clarify what changes this would entail, and how it differs from existing protections.</p> <p>The discussion paper does not explain or allude to what "expansions" it proposes to make to the existing Environment Protection Program, therefore MSFN cannot provide specific feedback. MSFN does generally support the expansion of protection programs for managing socio-economic effects, so long as existing provisions in these programs are not being removed or diminished.</p> <p>It is MSFN's experience that the existing provisions related to socio-economic effects are not adequate in the meaningful identification, assessment, and management of socio-economic effects of developments, so unless the CER significantly increases requirements on itself and proponents related to these provisions, they will continue to fall short.</p>
<p>19. 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)?</p>	<p>Simply put, there must be greater accountability, monitoring, and oversight over proponents' assessment and management of socio-economic effects, and this must carry through to all project phases. MSFN notes an ongoing pattern of a general lack of oversight and an over-reliance on proponents to honestly and meaningfully report on activities, impacts, and incidents in the regulatory system, and this applies to socio-economic effects as well.</p>
<p>110. Are there any potential challenges associated with these proposals? What are they? How can they be addressed?</p>	<p>See reply to 19 above. MSFN foresees the perpetuation of the existing system that lacks accountability and relies on the honour of proponents to accurately and honestly represent the negative socio-economic impacts of the projects on surrounding communities, including</p>

Questions	MSFN Responses
	Indigenous communities. It has been MSFN's experience that proponents generally act in self-interest and will tend to diminish negative impacts of their projects whether through the omission or misrepresentation of facts. Unless these issues are explicitly addressed, the same problems already experienced by MSFN in the regulatory system will continue into the new OPR.
I11. What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to manage socio-economic effects?	Any guidance related to socio-economic effects must be clear, concise, and stringent, to ensure that proponents are not able to cut corners or find loopholes. Clearer and more consistent language gives impacted groups a more solid regulatory foundation to stand on and hold proponents and regulators to account.
I12. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?	MSFN generally supports these objectives for improvement.
I13. What is your feedback on the following proposed option to meet the regulatory objectives? <ul style="list-style-type: none"> • Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or a management system process. 	MSFN generally supports this proposed option but notes that without specific details regarding what these "explicit requirements" would be, we cannot comment on their effectiveness.
J. OPR - Safety	
	MSFN generally supports requirements for detailed and robust safety plans for all phases of a project's lifecycle, as well as requirements to make safety documents easily accessible, and easy to use and understand. MSFN supports the proposed requirement for companies to have Safety Management Programs to anticipate, prevent, manage, and mitigate dangerous conditions during all activities and phases of a project's lifecycle.
K. Filing Manuals – Environmental and Socio-Economic Assessment	
	See comments in response to Discussion Paper M. Filing Manuals – Rights and Interests of Indigenous Peoples for answers to K1-16.
K17. To what extent should environmental events and climate change be included in cumulative effects assessments?	Environmental events and climate change should be actively included in all cumulative effects assessments. Failure to do so ignores important context and misrepresents actual impacts occurring from development.
K18. How is the cumulative effects assessment relevant to positive effects as well as adverse effects?	All projects theoretically have the potential for positive or negative effects. Cumulative effects assessments consider these effects in a larger context.
K19. What factors are important in choosing the appropriate baseline for cumulative effects assessment?	For factors such as impacts to Aboriginal and Treaty rights, cumulative effects must be considered on a baseline that dates far enough back to capture the full scope of lands taken up, such as the introduction of NRTA rights or the signing of Treaty. The consideration of cumulative effects on the

Questions	MSFN Responses
	baseline of before and after a certain project’s approval would be a misrepresentation of the scale of impacts that have occurred over a long period of time.
<p>K20. To what extent should the use of offsets and the applicant’s confidence in achieving no net loss relieve an applicant from having to include a cumulative effects assessment in their ESA?</p>	<p>In MSFN’s experience, there has not been a project that has resulted in “no net loss”, especially when considering cumulative effects to Aboriginal and Treaty rights. Each and every project proposed near MSFN has resulted in a negative impact, which proponents and regulators do little to nothing to directly and proportionately accommodate for, including through offsetting.</p> <p>MSFN notes that offsetting must be equivalent and relevant to be meaningful.</p> <p>Additionally, it must be understood that any new disturbance, including reclamation or re-disturbance of areas that have already been impacted by human activity will create impacts to Aboriginal and Treaty rights. This must be explicitly considered and addressed in any off-setting plans.</p>
<p>K21. What other improvements can be made to the discussion and guidance for cumulative effects?</p>	<p>Large-scale changes to the regulatory system are required to move away from the strictly project-by-project approach to assessment. Cumulative effects should be included in every project assessment, from environmental to socio-economic impacts, as well as impacts to Aboriginal and Treaty rights.</p>
<p>L. Filing Manual - Lands</p>	
<p>L2. To what extent should Indigenous knowledge and engagement be explicitly addressed in routing and site selection?</p>	<p>Indigenous Knowledge and engagement should be explicitly addressed and considered in routing and site selection processes to avoid sacred sites, graves, or other locations that proponents may not be explicitly aware of when selecting a route or site. Identifying these sites and avoiding them from the beginning is more efficient than having to change sites or re-route later once plans are already in place.</p> <p>MSFN notes, however, that these specific site types are not the only places where a potential project could cause significant impacts. All development creates lasting impacts to the lands and resources, through all project phases. Any reduction or changes in lands available or suitable for the exercise of Aboriginal and Treaty rights is a negative impact, even if it is not affecting specific designated sites.</p> <p>Additionally, in order for Indigenous Peoples to meaningfully participate and engage in the routing and site selection process, the CER must ensure that sufficient time and capacity are being provided to Indigenous Peoples.</p>
<p>L7. What should be included in a description of the lands used by Indigenous Peoples or communities for traditional purposes that are proposed to be used for the project?</p>	<p>Proponents and/or regulators should have to identify how much unoccupied Crown land is being altered or taken up as the result of a proposed project, as these are the lands on which Indigenous Peoples exercise their Aboriginal and Treaty rights.</p>
<p>M. Filing Manual – Rights of Indigenous Peoples</p>	

Questions	MSFN Responses
<p>M1. Does the proposed split into two sections (i.e., an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section) improve clarity?</p>	<p>MSFN does not generally oppose the addition of a section specifically regarding the rights an interest of Indigenous Peoples. However, MSFN also notes that impacts to the rights and interests of Indigenous Peoples can and should be included in regular ESAs as well.</p> <p>MSFN does not necessarily agree that the proposed split would improve clarity overall. While it is important to recognize that Indigenous Peoples have distinct, constitutionally protected rights, it is also misleading to completely divide socio-economic concerns from the Rights and Interests of Indigenous Peoples. This is to say that all potential socio-economic concerns to the general public also apply to Indigenous Peoples, in addition to the concerns specifically related to the Rights and Interests of Indigenous Peoples.</p> <p>By creating two distinct sections, it may cause confusion as to how or whether general ESAs also apply to Indigenous Peoples. If the updated OPR are to contain this proposed split, they must clearly and carefully explain the overlap and ensure that regulators, proponents, and all interested parties understand that Indigenous Peoples are also part of the general population and have a vested interest in ESAs as well as assessments specifically related to the Rights and Interests of Indigenous Peoples.</p> <p>Additionally, MSFN would like to raise the concern that, if the CER decides to implement this proposed split, it introduces another risk for bias in the regulatory system. More specifically, MSFN is concerned that the assessments related specifically to the Rights and Interests of Indigenous Peoples could be taken less seriously by regulators and proponents than the general ESA in an application. It has been MSFN’s experience that concerns related to the Rights and Interests of Indigenous Peoples are constantly dismissed or ignored by proponents and regulators, especially those related to cumulative effects.</p>
<p>M2. What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights and Interests of Indigenous Peoples” sections?</p>	<p>MSFN notes that as every Indigenous group has its own distinct interests that may make it difficult or inappropriate to narrow down or reduce each of these into a small number of topics. Further, applicants are not qualified to determine what impacts to Indigenous Peoples there will be; this can only be determined by the impacted Indigenous Peoples themselves. However, MSFN encourages the inclusion of Cumulative Effects as a topic that should be considered in both the ESA and Rights and Interests of Indigenous Peoples sections.</p>
<p>M3. What other restructuring of the “Rights and Interests of Indigenous Peoples” section might improve clarity, readability, and better highlight important issues?</p>	<p>As mentioned previously, different issues may be important to different nations for various reasons, which can be impacted in unique ways by certain project types. These issues must be identified by individual Indigenous groups themselves.</p>
<p>M4. Would having separate sections in the Filing Manual (e.g., one describing VCs focused on the rights and interests of Indigenous Peoples and another describing</p>	<p>MSFN notes that while it is important that there are specific VCs focused on the rights and interests of Indigenous Peoples, it is also important to acknowledge that impacts to the rights and interests of Indigenous Peoples do not exist in a vacuum. Impacts to biophysical and socio-economic components also impact Indigenous Peoples, as well as their rights and interests. As such, MSFN</p>

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biophysical and socio-economic VCs) improve clarity?	notes that isolating VCs determined to be Indigenous-specific may ignore the interconnectedness of these impacts with the rights and interests of Indigenous Peoples.
M5. How would such a split impact the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?	See response to M4 above.
M6. What VCs should be included in the “Rights and Interests of Indigenous Peoples” section and which should stay in or also be included in the ESA section?	Different Indigenous groups will have different VCs that best apply to their own group. It would be difficult to generalize VCs to apply to the diverse groups across the entire country. Each applicant should consult with all impacted Indigenous groups for each specific project to determine which VCs should be considered in their assessments, as well as to determine what the impacts to these VCs will be.
M7. What is the best way to document, monitor, manage, and report on protection and enhancement measures for VCs focused on the rights and interests of Indigenous Peoples?	<p>Indigenous Peoples themselves are best suited to identify, document, and monitor impacts to the VCs that impact them. Impacted Indigenous groups must be given sufficient capacity to be able to conduct these activities.</p> <p>Management, reporting, and protection and enhancement measures can also not be done without the involvement of the impacted Indigenous groups, but also requires the proponents to comply to conditions and be honest and forthcoming in their reporting and activities. In MSFN’s experiences, proponents are reluctant to co-operate with Indigenous groups and offer full transparency regarding the impacts of their activities.</p> <p>Perhaps most importantly, regulators must not only acknowledge and accept the concerns of Indigenous groups and integrate those concerns into the conditions for a project’s approval, but they must also enforce these requirements and hold proponents accountable for any lapses in upholding these conditions.</p> <p>It is MSFN’s experience that, in the current regulatory system, regulators side heavily with the interests of proponents, and prioritize speed and cost-effectiveness in project approvals. For example, regulators still fail to accept concerns surrounding cumulative effects, as they are not considered “project-specific”. They also do not properly acknowledge or consider Treaty promises.</p>
M8. How can information relevant to the rights and interests of Indigenous Peoples best be documented to ensure site-specific information and relevant commitments are maintained and implemented during construction and operations?	<p>MSFN reiterates that it is problematic to only seek out project-specific impacts, as the effects of all development in an area interact with each other to create significant impacts to the rights and interests of Indigenous peoples, as well as to the biophysical environment, that cannot be assessed in isolation. Failure to consider cumulative effects prevents the accurate and meaningful identification and mitigation of impacts to the rights and interests of Indigenous Peoples.</p> <p>Similar to the response to M7, proper documentation and ensuring commitments are being upheld relies on the honour and honesty of the proponent, enforcement and follow-up from the regulators, as well as monitoring and follow-up authority for impacted Indigenous peoples, accompanied with adequate capacity for conducting these activities.</p>

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<p>M9. What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous Peoples (e.g., timing, funding, scoping, integration)?</p>	<p>Time and capacity serve as two of the largest constraints in the regulatory system in general, including for conducting Indigenous-led assessments and studies. Many First Nations and other Indigenous groups are inundated with requests for consultation on various projects with very restrictive timelines. If these timelines are missed, it is taken by the regulators as consent for the project to move ahead. Further, it is very resource-intensive for Indigenous groups to engage in the consultation process (e.g., staff salaries, project review, meetings, site visits) and they are not provided with sufficient capacity to participate in all the requests they receive.</p>
<p>M11. How can Indigenous-led assessments and studies be integrated with the applicant's assessment and still support the objective of "one project, one assessment"?</p>	<p>CER should consider that "one project, one assessment" may not always be the best principle to follow if it sacrifices the quality or quantity of the information gathered. Indigenous led-assessments and those incorporating Indigenous Knowledge should be considered at least on-par with the assessments conducted using Western science.</p> <p>Applicants' assessments rarely if ever meaningfully incorporate Indigenous Knowledge or address the full scope of impacts to Aboriginal and Treaty rights. The CER must be more diligent in its review of a projects impact assessment and rigid in its requirement for specific and meaningful inclusion of Indigenous information, including Indigenous-led assessment results.</p>
<p>M12. When the timing does not match, how can Indigenous-led assessments and studies be integrated with the applicant's assessment and still meet the CER's legislated time limits of 450 days for pipeline and power line certificate applications?</p>	<p>Similar to the response to M11, CER must consider that prioritizing the quality and quantity of information collected is better than rushing the application process or trying to push applications through as quickly as possible. There is no shortcut for properly collecting and analyzing information while keeping its integrity.</p> <p>One potential way to help speed up the process of conducting Indigenous-led studies and assessments would be to provide Indigenous groups with sufficient capacity to be able to employ the necessary supports to conduct studies more efficiently, such as hiring additional support staff or contractors, purchasing necessary equipment, etc. First Nations and other Indigenous groups constantly face a number of pressing issues and have limited time and resources to address them, so when no capacity funding is provided and timelines remain limited, they often cannot afford to prioritize responding to consultation requests or conducting time- and resource-intensive studies.</p>
<p>M13. What are the opportunities and challenges for Indigenous Peoples with the CER's existing guidance?</p>	<p>The main challenge with the CER's existing guidance is that the provisions within it are non-binding, and in MSFN's experience, are not followed by proponents or enforced by the CER.</p> <p>Additionally, despite provisions within guidance documents that mention cumulative effects, in practice, the only impacts that are actually considered and mitigated are those considered "project-specific". Unless these provisions are actually being executed, their presence in the guidance documents is merely performative.</p> <p>MSFN understands that, as part of the regulatory body, the Commission is responsible for making the final determination about the severity of effects on the rights of Indigenous Peoples. However, in MSFN's experience, regulators do not align with Indigenous Peoples' perspectives on the severity of impacts, especially when cumulative effects are not considered.</p>

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<p>M15. What additional guidance, if any, should the Filing Manuals provide to applicants to identify the potential effects of the project on the exercise and practice of the rights of Indigenous Peoples?</p>	<p>The only way for applicants to identify potential impacts on the rights of Indigenous Peoples is to meaningfully consult with each individual potentially affected Indigenous group. At minimum, guidance documents should encourage proponents to provide capacity to the Indigenous groups that they are consulting.</p>
<p>M16. Would a framework similar to the severity table used in the Commission’s NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?</p>	<p>While the Filing Manual should contain some kind of mechanism for assessing impacts to Indigenous Peoples, the table used in the Commission’s NEBC Recommendation Report is flawed in that it does not consider impacts from the perspectives of many Indigenous Peoples.</p> <p>For example, the temporal parameters consider that impacts will only be present for the duration of the project phases. This does not account for specific requirements or customs of given Indigenous groups. For example, some groups may never find lands suitable for the exercise of rights once it has been disturbed, making the identified “short-term” impacts actually long-term or permanent. Similar considerations could be made for the other criteria in the table, depending on the group being consulted.</p> <p>The Commission’s table also does not account for the fact that perceived conditions can be equally as impactful to the exercise of rights as real, measurable impacts. For example, if somebody perceives an area to be contaminated due to a nearby project, they will avoid the area to the same extent as if it is actually contaminated. Any conditions, whether real or perceived, that prevent or deter Indigenous Peoples from exercising their rights in a given area, are impacts to the rights and interests of Indigenous Peoples.</p>
<p>M17. Should applicants submit a draft determination of the severity of the project effects on the rights of Indigenous Peoples? This would be similar to the CER’s expectations that applicants submit draft determinations of the significance of valued components in the applicants’ ESA, which helps inform the Commission’s determinations about significance in the Commission’s ESA.</p>	<p>MSFN points out that this would be most effective and beneficial if the impacted Indigenous groups got the opportunity to review the draft determination and provide feedback on the draft determinations that were made regarding impacts to their rights and interests.</p> <p>Additionally, Indigenous groups should also be given the opportunity to submit a draft determination of the severity of project effects on their own rights and interests to be considered alongside the applicant’s.</p>
<p>M18. How should applicants integrate their assessment of the potential effects of a project on the rights of Indigenous Peoples with their VC-based assessments? For example, how should applicants demonstrate the overlaps and interconnections between the potential effects of a project on the rights of Indigenous Peoples and VC-based</p>	<p>Applicants should clearly demonstrate how biophysical and socio-economic impacts affect Indigenous land use, cultural practices, and socio-economic well-being. This requires meaningful engagement with Indigenous communities, the incorporation of Indigenous Knowledge, and a structured approach that cross-references rights-based concerns within each relevant VC assessment. Applicants should avoid treating Indigenous rights as a separate category and instead embed these considerations throughout the entire impact assessment process.</p>

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<p>assessments (i.e., the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples)?</p>	
<p>M19. What are the opportunities and challenges for Indigenous Peoples of being involved in the applicant's inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?</p>	<p>The challenges for Indigenous Peoples being involved in the applicant's inspection, monitoring, and follow-up plans and programs include a lack of capacity funding to support participation in these activities, a lack of enforcement authority, and restrictive timelines.</p>
<p>M21. How should applicants involve Indigenous Peoples in monitoring and managing the effects of the project on the rights and interests of Indigenous Peoples during construction and operation?</p>	<p>Applicants should provide capacity for Indigenous Peoples to participate in monitoring and managing activities.</p>