



Review of the Canadian Energy Regulator Onshore Pipeline Regulations and Filing Manual

Métis Nation
of Ontario 

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1 Introduction

The Métis Nation of Ontario (MNO) commissioned this review of the Onshore Pipeline Regulations (OPR) and Filing Manuals to assess how the proposed regulatory amendments may impact the rights, interests, and way-of-life for rights-bearing Métis communities in Ontario.

This document includes a detailed review of:

- **Topic Paper D:** Environmental Protection
- **Topic Paper I:** Rights and Interests of Indigenous Peoples, Socio-Economic Effects and Engagement
- **Topic Paper K:** Filing Manuals – Environmental and Socio-Economic Assessment; and
- **Topic Paper M:** Filing Manuals – Rights and Interests of Indigenous Peoples.

This document describes how regulatory changes proposed in these Topic Papers may interact with Métis Section 35 rights and interests and way-of-life, and suggests key considerations for future discussions with the Canadian Energy Regulator (CER) concerning phases of regulatory development of the OPR within the scope of the Onshore Pipeline Regulations and Filing Manuals review process.

1.1 Overview of the MNO, its Governance Structures, and Consultation Process

Since the late 1700s, distinct Métis communities emerged in various regions surrounding the Upper Great Lakes and along the waterways and fur trade routes of what is now known as Ontario. These Métis communities developed their own shared customs, traditions, and collective identities that are rooted in their special Indigenous relationship to the land, and a distinctive culture and way-of-life.

Over generations, these Métis communities participated in various collective actions, petitions, and advocacy for the recognition and respect of Métis rights. Among other things, this included participating (along with other Indigenous communities) in the processes leading to the inclusion of section 35 in the *Constitution Act, 1982*, which recognizes the Métis as one of the three “aboriginal peoples of Canada”.

In 1993, a distinct group of Métis in Ontario founded the MNO as a Métis-specific government to advance Métis self-determination and self-government. The *MNO Statement of Prime Purpose* sets out the mandate of the MNO, which includes (among other things) the following objectives:

- Establish democratic institutions based on the communities’ inherent right of self-government.
- Re-establish land and resource bases.

- Ensure that Métis can exercise their Aboriginal and treaty rights and freedoms and in so doing, act in a spirit of cooperation with other Aboriginal and non-Aboriginal people.¹

The MNO is the democratically-elected representative government of seven regional rights-bearing Métis communities in Ontario,² as well as MNO citizens who ancestrally connect to these communities, or to other communities from the Métis Nation in western Canada but who now live in Ontario and have voluntarily mandated the MNO to be their government.

The MNO – as a Métis government – is mandated to represent the collective rights, interests, and claims of the Métis communities and citizens it represents, which are protected under section 35 of the *Constitution Act, 1982*.³ This mandate and authorization is obtained through citizens voluntarily applying to the centralized MNO Registry, which is maintained in accordance with the MNO’s governance documents, as amended from time to time, and the Supreme Court of Canada’s guidance in *Powley*, among other requirements.⁴

Based on the foundational mandate in the *Statement of Prime Purpose* as well as the inherent right to self-government and self-determination of the Métis communities it represents, the MNO has built a strong province-wide government for its over 30,000 citizens. Specifically, the MNO has established governance structures at various levels to represent the Métis communities and citizens wherever they live throughout the province. These include governance structures at the following levels:

¹ MNO Statement of Prime Purpose, available at: <https://www.metisnation.org/about-the-mno/statement-of-prime-purpose/>.

² These historic Métis communities include the Sault Ste. Marie Historic Métis Community recognized by the Supreme Court of Canada in *R v Powley*, [2003] 2 SCR 207 (“*Powley*”) as well as the six other Métis communities jointly identified by the MNO and Ontario through a collaborative process to implement the *Powley* decision—i.e., the Rainy River / Lake of the Woods Historic Métis Community, Northern Lake Superior Historic Métis Community, Abitibi Inland Historic Métis Community, Mattawa / Ottawa River Historic Métis Community, Killarney Historic Métis Community, and Georgian Bay Historic Métis Community. These historic Métis communities continue today through contemporary, modern-day successor communities. For more information about these historic Métis communities, please see:

<https://www.metisnation.org/registry/citizenship/historic-metis-communities-in-ontario/>

³ 2023 Self-Government Agreement, a copy of which is available at: <https://www.metisnation.org/wp-content/uploads/2023/02/MNO-MGRSA-2.0-Feb-23-2023.pdf>; *Métis Nation of Ontario Secretariat Act, 2015*, SO 2015, c 39 at preamble.

⁴ See: *Powley* at paras 29-33.

- **Provincial** – The MNO Secretariat⁵ and Provisional Council of the MNO or “PCMNO”).
- **Regional** – Nine administrative regions,⁶ each with a Regional Councillor who sits on the PCMNO; regional Captains of the Hunt; and Regional Consultation Committees or “RCC”).
- **Local** – Approximately 30 Chartered Community Councils.

Notably, the RCCs – which are comprised of an elected PCMNO Regional Councillor, Captain of the Hunt (as an *ex officio* member), and representatives of each Community Council in a given region – are mandated through Regional Consultation Protocols to ensure the Métis communities and MNO citizens in a given region are effectively consulted and, where appropriate, accommodated on projects and developments occurring within their traditional territory that may affect their collectively-held rights, interests, claims, and way-of-life.⁷

Over the last 30+ years, the MNO has made significant strides in advancing recognition and respect for Métis rights. This includes, among other accomplishments, supporting Steve and Roddy Powley in the landmark *Powley* case all the way to the Supreme Court of Canada, where the highest court in the country recognized that modern-day Métis communities may possess Aboriginal rights protected by section 35 based on pre-effective control practices, customs, and traditions that are integral to their distinctive existence and relationship to the land that persist today. The Court concluded that “the Métis community in and around Sault Ste. Marie have an aboriginal right to hunt for food under s. 35(1).”⁸

Building on the total victory of the *Powley* decision, the MNO has reached a series of landmark agreements with Canada and Ontario advancing Reconciliation, recognition, and respect for Métis rights and self-government, including:

⁵ See: 2023 Self-Government Agreement at ss. 7.01-7.02, which confirms the MNO was required to incorporate the MNO Secretariat as its legal and administrative arm “to facilitation funding and intergovernmental relationships,” and that the MNO’s continued reliance on the MNO Secretariat until such time self-government is realized, “does not undermine or diminish the recognition of [its] self-government.”

⁶ Note: the MNO’s current administrative boundaries include representation of both the successor communities of the seven historic rights-bearing Métis communities in Ontario, as well as MNO citizens who ancestrally connect to, but live outside their home community.

⁷ See: MNO-Ontario Framework Agreement on Métis Harvesting (April 30, 2018), for areas in the province where Ontario accommodates Métis harvesting rights, a copy of which is available at: <https://www.metisnation.org/wp-content/uploads/2015/07/metis-harvesting-framework-agreement.pdf>

⁸ Powley, at para 53.

- MNO-Canada Consultation Agreement (July 31, 2015) setting out the above RCC model as the MNO’s preferred approach to consultation.⁹
- MNO-Canada Memorandum of Understanding on Advancing Reconciliation (February 3, 2017).
- Canada-Métis Nation Accord (April 13, 2017).
- MNO-Canada-Ontario Framework Agreement for Advancing Reconciliation (December 11, 2017).
- MNO-Canada Agreement on Advancing Reconciliation with the Northwestern Ontario Métis Community (December 11, 2017).
- MNO-Ontario Ministry of Natural Resources and Forestry Framework Agreement on Métis Harvesting (April 30, 2018).
- MNO-Canada Métis Government Recognition and Self-Government Agreement (June 27, 2019).
- MNO-Canada Interim Fiscal Financing Agreement (February 26, 2021).
- MNO-Canada Métis Self-Government Recognition and Implementation Agreement (February 23, 2023).

Notably, the 2023 Self-Government Agreement confirms Canada’s recognition that the MNO is an Indigenous Governing Body (a term which is also used in the *Impact Assessment Act*), based on its mandate as a Métis government representing rights-holding Métis communities in Ontario.¹⁰

1.2 The CER

As described on their website, the CER is a lifecycle regulator and is responsible for regulating Canada’s energy sector, including:

- Oversight during construction, operation and abandonment/decommissioning for energy facilities.
- Making decisions/orders relating to energy export, tolls, tariffs, etc.
- Advising on energy matters and reporting on energy activities.
- Regulating energy development and trade.

⁹ MNO-Canada Consultation Agreement, (July 2015), available online at: <https://www.Métisnation.org/wp-content/uploads/2010/10/mno-canada-consultation-agreement-july-2015.pdf>.

¹⁰ 2023 Self-Government Agreement, s. 8.19. While this recognition is for the purposes of An Act respecting First Nations, Inuit and Métis children, youth and families, that legislation has the same definition of “Indigenous Governing Body” as is found in the IAA.

Before the CER makes a decision or recommendation, they are meant to factor in economic, environmental, and social considerations. In accordance with the *Canadian Energy Regulator Act*, this must include upholding and progressing Reconciliation with Indigenous Peoples.

1.3 The Onshore Pipeline Regulations and Filing Manual(s)

The Onshore Pipeline Regulations (OPR) serve as the primary regulations guiding CER oversight of pipeline projects under the *Canadian Energy Regulator Act* (CER Act). All companies must comply with the OPR in the design, construction, and operation of any federally regulated pipeline.

The OPR was last updated in 2013. In January of 2022, the CER launched a multi-phase review process for the OPR to solicit feedback towards streamlining and consolidating regulatory requirements or practices that can contribute to regulatory framework clarity and transparency.

In addition to updates to the OPR itself, the CER is contemplating updates to Filing Manuals. The Filing Manuals are operational documents that define project application contents. These are typically updated on an ongoing basis to reflect changing requirements, industry practices, and, in some cases, feedback from Indigenous Peoples or other commentators.

There are several regional rights-bearing Métis communities that currently house CER-regulated pipeline infrastructure where Métis citizens have constitutionally protected rights and interests. Additionally, the MNO is active in many federal regulatory processes with the Impact Assessment Agency of Canada and the Canadian Nuclear Safety Commission, and has historical experience in scoping CER processes for Energy East and the Gazoduq Project. The MNO is keenly interested in providing feedback for the OPR and Filing Manuals to ensure future regulatory development processes are broad, inclusive, and properly address Métis Section 35 rights, interest, and way-of-life.

2 Unfulfilled Requests from the MNO

This section outlines outstanding items for consideration from the Phase 1 Discussion Paper Review, submitted by the MNO on August 5, 2022.

The CER has indicated that the Phase 2 review of the OPR and various portions of the Filing Manuals will include further consultation. However, several key requests made by the MNO in Phase 1 remain unfulfilled and must be carried forward through Phase 2 to ensure they are properly addressed.

2.1 Broader Representation

The MNO requested that Phase 2 include feedback from a broader representation of MNO citizens and provide the MNO with appropriate capacity funding and sufficient time to engage with technical and regulatory specialists.

This request stemmed from the highly technical nature of the OPR and Filing Manuals. However, the total grant amount provided for Phase 2 engagement was insufficient to allow the MNO to undertake collection of feedback from a broader representative sample of citizens. Therefore, this request remains unfulfilled.

2.2 Métis 101

The MNO also requested that the CER work towards a more fulsome understanding of the MNO's distinct histories, geographies, and cultures of its respective Regions.

The MNO proposed that this be fulfilled through provision of the "Métis 101" training that is facilitated by MNO citizens. It was noted that this training could be valuable for the CER but is just the first step to remedy their current knowledge gaps. Further, it was requested that the CER provide appropriate compensation for the preparation and delivery of this training. This was not completed as part of Phase 2 and there has been no communication from the CER on this request to date.

2.3 Relationship Agreement

The MNO requested that the CER collaborate with the MNO and its Community Councils to explore options, processes, and objectives to establish a Long-Term Relationship Agreement or Memorandum of Understanding regarding both the OPR and the broader lifecycle regulation activities of the Commission. To date, the CER has taken no action on this request. This must be initiated prior to conclusion of Phase 2 engagement to allow for meaningful progress before the finalization of the OPR updates.

3 The OPR and Filing Manuals

This section reviews the proposed amendments to the OPR and Filing Manual(s) to assess potential impacts on the rights and way-of-life of rights-bearing Métis communities in Ontario. The commentary relates to both the sub-topics and the discussion questions, where relevant.

3.1 Topic Paper D – Environmental Protection Topic Paper

This Topic Paper describes potential amendments to the OPR to improve the CER’s overall environmental oversight. It includes sixteen (16) discussion questions relating to seven (7) specific sub-topics.¹¹

Sub-Topic	Discussion Questions
Duty to Report and Manage Contamination	D1. What is your feedback on the proposed requirements above?
Section 21 of the OPR: Reclamation, Vegetation Management, and Restoration	<p>D2. Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?</p> <p>D3. The requirement proposed in the third bullet above states that the goals of restoration are to restore the land to a condition similar to the surrounding environment and consistent with the pre-disturbance land use. Are these appropriate goals for restoration? If not, what should be the goals for restoration?</p> <p>D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties?</p>
Section 21 of the OPR: Participation in Development of Environmental Monitoring by Indigenous Peoples	<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>D6. In the context of the CER’s expectations of regulated companies, how could more independent monitoring and reporting by Indigenous Peoples be</p>

¹¹ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

Sub-Topic	Discussion Questions
	<p>effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices.</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>Environmental Protection Plan Required for Construction and Operation and Maintenance Activities</p>	<p>D8. What are the costs or benefits of adding a requirement to develop an EP Plan that is scalable to the scope of the work for all construction, operations and maintenance activities?</p> <p>D9. Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?</p> <p>D10. Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests, Socio-Economic 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>Construction to Operations and Sale or Transfer of Assets Transition Plans</p>	<p>D11. What mechanisms are companies currently using to ensure that all the information gathered, commitments made, and input received during the hearing is transferred to operational personnel for the lifecycle of the project?</p> <p>D12. If a mechanism already exists, what are the benefits and costs of a requirement stating that a construction to operations transition plan is required?</p>
<p>Climate Resiliency</p>	<p>D13. While events such as floods and forest fires could be considered hazards under OPR paragraph 6.5(1)(c), due to the increasing frequency of climate related events and the potential impact on all Canadians, the CER is considering a requirement that</p>

Sub-Topic	Discussion Questions
	<p>companies assess these climate related risks on a continual basis, and that infrastructure be resilient to these risks. What are the benefits and costs of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks?</p> <p>D14. Are there other options that may achieve the objective in a more effective manner? If so, please explain.</p>
<p>Incorporation of ISO Environmental Standards</p>	<p>D15. Should the CER consider incorporating ISO 14001 and related ISO standards by reference into the OPR or any associated technical guidance? Please explain.</p> <p>D16. Are there any potential regulatory gaps in relation to the management system requirements contained in sections 6.1 - 6.6 of the OPR and its applicability to the Environmental Protection Program required by section 48? If so, should ISO 14001 be incorporated by reference in whole or in part into the OPR or associated technical guidance to address those gaps? If in part, which standards or parts of those standards should be incorporated?</p>

The CER is evaluating various options to achieve objectives related to preventing and addressing impacts on the rights and interests of Indigenous Peoples.¹² While many of the items related to this are within the Topic Paper M: Rights and Interests of Indigenous Peoples (see Section 3.4 for additional details on this Topic Paper), there is related content within this Topic Paper D.

For example, the CER is considering the addition of a new protection program which would be required to address impacts on the rights of Indigenous Peoples.¹³ Additionally, the CER is considering new management system requirements including the development, implementation,

¹² Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

¹³ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

and maintenance within companies' integrated management systems that could anticipate, prevent manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples.¹⁴

While these objectives are positive and could improve the integration of Indigenous knowledge into applicants' approaches to protecting the environment; there are broad and systemic issues which could obstruct the success of this approach including: a company's willingness; a company's lack of understanding of Indigenous rights, history, protocols or practices; and the chronic lack of capacity at the MNO for meaningful participation.

With these overarching issues in mind, below is a detailed consideration of the seven sub-topics and discussion questions, where applicable.

3.1.1 Sub-topic 1: Duty to Report and Manage Contamination

In October 2020, the CER published an updated Remediation Process Guide. This document specifies procedures when encountering contamination/suspected contamination. Right now, there is no requirement to report contamination unless it is caused by a "reportable incident".¹⁵ Such incidents are determined by the CER based on information provided by the company.¹⁶

As a result of Phase 1 engagement on the OPR, the CER found that, while managing contaminated sites might be covered under existing environmental protection programs, the OPR currently does not provide clear or explicit direction for doing so. Consequently, the reporting requirements for contamination should be clarified with guidelines and clearly defined processes.¹⁷

Proposed CER Amendments

Based on these findings, the CER has identified two objectives for updating the OPR:

1. A requirement to report contamination to the CER for the full lifecycle of the pipeline.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Canadian Energy Regulator, Remediation Process Guide, Section 6, Reporting Contamination to the CER, <https://www.cer-rec.gc.ca/en/safety-environment/environment/remediation/remediation-process-guide-2020/sections/sections-6-9.html#s6>

¹⁷ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

2. Management of contamination and any potential risks that protects human health, property, and the environment.

To meet these objectives, the CER proposes to add the below requirements to the OPR:

- Companies must confirm suspected contamination with analytical testing and report details of that testing to the regulator as soon as practicable.
- If contamination has migrated off the right-of-way or company owned/leased lands, the company must report this immediately.
- Throughout the lifecycle of the project, the company must manage contamination and potential risks to protect human health, property, and the environment.

MNO Perspective

Contamination of the environment, which could impact Métis rights and interests, is of high importance to the MNO. Indeed, in the Discussion Paper Review submitted by the MNO on August 5, 2022, the MNO specified the requirement to notify the MNO in the event of spills and repairs.¹⁸ Therefore, any required analytical testing and reporting details for projects proposed within MNO Regions must expand the reporting requirements to include the MNO alongside the regulator. These expanded reporting requirements for Indigenous groups must be outlined within the OPR to ensure company compliance.

In addition to this, the MNO requires additional engagement with the CER to understand the ways companies typically protect human health, property, and the environment to ensure these methods are inclusive of, and have alignment with, Métis rights and interests. This is important as western science and the MNO's knowledge may diverge in approach. To foster greater Reconciliation, these commercial methods for protecting human health, property, and the environment must be understood and integrated with MNO Indigenous knowledge to ensure they work in tandem.

3.1.2 Sub-topic 2: Section 21 of the OPR: Reclamation, Vegetation Management, and Restoration

As part of standard operations, the CER expects that companies complete reclamation and manage vegetation throughout the lifecycle of a facility in a staged approach. Currently, Section 21 of the OPR states:

¹⁸ Métis Nation of Ontario, Canada Energy Regulator Onshore Pipeline Regulations, Discussion Paper Review, August 5, 2022, Discussion Question 4 response

*"After a pipeline is constructed, the right-of-way and temporary work areas of the pipeline shall be restored to a condition similar to the surrounding environment and consistent with the current land use."*¹⁹

However, the CER acknowledges feedback from various sources stating that restoring land to conditions similar/consistent with current land use may not adequately address cumulative effects of the cultural and historical use of the land.²⁰

Proposed CER Amendments

Based on this feedback, the CER has identified two objectives for updating the OPR, including:

1. Ensuring the CER's expectations for reclamation, vegetation management, and restoration are clear.
2. For companies to incorporate environmental protection into relevant processes and procedures to monitor and patrol their rights-of-way.²¹

To meet these objectives, the CER proposes to build on requirements under Section 21 of the OPR to ensure:

- Reclamation is being undertaken in a timely manner after disturbance.
- Disturbance to vegetation is being minimized during operations and in a manner that supports safe operations but also encourages revegetation in sensitive areas.
- Right of way restoration to a similar condition to pre-disturbance land use during abandonment, where feasible, in consultation with Indigenous Peoples.²²

MNO Perspective

In relation to this sub-topic, the MNO requires additional information and more clarity around the CER's purported expectations for reclamation and how these will translate into practical amendments to the OPR Section 21. Currently, the level of detail provided in the topic paper does not clarify CER expectations in a comprehensive way.²³ Any amendments to Section 21 must align with the MNO's

¹⁹ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ See Discussion Question D2

own requirements for reclamation, vegetation management, and restoration that are based in sustainability and continued use. For example, within the Discussion Paper Review submitted by the MNO on August 5, 2022, it was noted that there were concerns with current revegetation practices implemented by pipeline and other linear corridor project operators. Particularly, vegetation management practices during operations which use chemicals to prevent tree regrowth. This practice may be aligned with “activities required to maintain safe operation”²⁴ but is incongruent with Métis rights and interests. Additionally, for operations revegetation and restoration during abandonment, the MNO requires specific attention to usage of native and/or culturally significant species to support a net gain of species used in the exercise of Métis rights and interests and to support continued biodiversity; this can be added as specific direction or recommendations to companies.

In response to Discussion Question D3, the MNO would like to see reclamation, vegetation management, and restoration with the ultimate goal of biodiversity net gain. This would allow for the environment to be improved beyond the “condition similar to the surrounding environment”²⁵ that is referenced currently, and allow the CER and companies to address potentially harmful historical conditions by creating new habitats and restoring old habitats. This biodiversity net gain can also be achieved through construction practices that prioritize old growth and species of importance to the MNO which will prevent the loss of existing habitats of importance.

3.1.3 Sub-topic 3: Section 21 of the OPR – Participation in the Development of Environmental Monitoring by Indigenous Peoples

It was noted in the Topic Paper that, through hearing processes for new projects, Indigenous Peoples have expressed interest in participating in the development of post-construction monitoring programs.²⁶ It was further noted that the inclusion of Indigenous Peoples in monitoring programs can add value to the assessment of the effectiveness of mitigation measures identified in an Environmental Protection Plan.²⁷

Through Phase 1, it was noted that when Indigenous Peoples are involved in the development of monitoring indicators, they are best positioned to carry out the monitoring activities because these indicators have the potential to hold cultural significance for Indigenous Peoples; and that

²⁴ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

Indigenous expertise on certain sites, plants used for harvesting, and other environmental components can improve effectiveness of monitoring.²⁸

Proposed CER Amendments

Based on this feedback, the CER has identified an objective for updating the OPR – new requirements to ensure companies include Indigenous Peoples in the development, implementation, and monitoring of reclamation activities.²⁹ However, the topic paper does not provide options to meet the objectives.

MNO Perspective

One of the main issues with fulfilling this objective is a chronic lack of capacity for the MNO to be involved in project lifecycles. Already, there is limited resources provided for involvement in application development, review, and hearing processes. Funding that is provided is generally tied to specific review and/or hearing milestones and, typically, no funding is provided for involvement in construction activities, project operation, or abandonment. Outside of large scale Indigenous Advisory and Monitoring Committees, there is typically no funding available for ongoing monitoring, and no capacity for participation in the development of these programs, among other issues.

Despite funding challenges, the MNO does have monitoring programs which are meant to understand and respond to climate change and its effects on Métis communities across the Province. This monitoring focuses on local knowledge held by Métis citizens and ensures integration of Métis voices. This includes an ongoing fish monitoring project, community-based water quality monitoring, and an upcoming solar panel project. Key features of these programs which make them successful include the fact that they are Métis-led, they focus on the protection of Métis rights and interests, and they include adequate community engagement from a Métis perspective. For Indigenous involvement in CER monitoring, a similar structure must be implemented for monitoring program success.

Including elements of the MNO's established monitoring programs should be explored in addition to the processes proposed in Subtopic 1 of the Rights and Interests Indigenous Peoples, Socio-

²⁸ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

²⁹ Ibid.

Economic Effects, and Engagement Topic Paper I³⁰ as the current proposed measures do not fully capture the favoured methods of monitoring typically implemented by the MNO.

3.1.4 Sub-topic 4: Environmental Protection Plan required for Construction and Operation and Maintenance Activities

It was noted within this sub-topic that companies typically submit an Environmental Protection Plan (EPP) when constructing a new pipeline. This Plan should reflect and align with the company's Environmental Protection Program.³¹ Currently, within the OPR, there are no explicit requirements for EPPs to be developed for operations and maintenance work.

Through Phase 1, the CER heard that there should be requirements for EPPs throughout the full project lifecycle as they could facilitate incorporating measures to anticipate, prevent, manage, and mitigate impacts to Indigenous rights and interests resulting from projects.³² The CER also heard that the protection of Indigenous and Treaty rights must be initiated in the planning and design phase and must be carried through to operations, maintenance and abandonment – not just the construction phase.

Further, Phase 1 included feedback from industry and Indigenous Peoples that there should be greater consistency between federal and provincial environmental standards and expectations; that companies require additional guidance on the contents of an environmental program; and that industry views environmental protection as being best managed through an EPP for the project lifecycle with EPPs being useful for specific activities such as construction.³³

Proposed CER Amendments

Based on this feedback, the CER wants more information from stakeholders on the requirement for activity-specific EPPs. The objective of any proposed changes would be to ensure companies have EPPs in place for all work and activities – including operational and maintenance activities. This could be achieved by requiring EPPs be developed and implemented for construction and

³⁰ The addition of new protection program for adverse impacts to rights, demonstrate how institutional knowledge is incorporated into the protection program, a new management system for laws and policies where available to the company, cultural competency training, reporting requirements for cultural sites, establish restoration goals with Indigenous Nations, and include cultural sites in EMP.

³¹ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

³² Ibid.

³³ Ibid.

operations/maintenance activities. These plans would only need to be submitted to the CER through a condition requirement or by request, and would be scalable to the size and scope of the contemplated work.³⁴

MNO Perspective

From the MNO's perspective, EPPs must include values reflective of Métis rights and interests. This can and will set the stage at the design phase of projects for what is carried forward to construction, operations, and maintenance. Post-approval engagement with Métis will be scaled based on requirements and direction within the EPP (among other places) and including details within activity-specific EPPs can clarify the requirement for ongoing engagement.

Further, where there is interest expressed by the MNO in a specific activity and ongoing involvement, provision of that EPP to the MNO for review should be noted in the conditioned requirements. This is crucial as the MNO often does not have the necessary capacity to track and request EPPs from companies.

While the MNO cannot speak to the cost benefit of activity specific EPPs, where these EPPs include specific direction with regards to impacts to Métis rights and are included in conditions requiring provision to the MNO for review, this could reduce the capacity requirements for the MNO to identify and track these documents. While the measures proposed within Subtopics 1 and 3 of the Rights and Interests, Socio-Economic Effects and Engagement Topic Paper may bolster Indigenous involvement, pending identified actionable outcomes, additional engagement is required by the CER to ensure Métis rights and interests are properly understood and considered – particularly as a pan-Indigenous approach often results in minimization of Métis input.

3.1.5 Sub-topic 5: Construction to Operations and Sale or Transfer of Assets Transition Plans

It was noted within this sub-topic that, in certain circumstances, environmental information collected by companies during the application stage is not always transferred to the companies' operations personnel or to a new company when the company is sold.³⁵

³⁴ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

³⁵ Ibid.

Proposed CER Amendments

Through Phase 1, the CER heard that the OPR should include clear processes for information sharing between company design and implementation staff.³⁶ In response, the CER has identified the need for new requirements to avoid gaps in transferring environmental information between construction and operations phases as well as upon the sale or transfer of an asset.³⁷

MNO Perspective

The addition of new requirements to avoid gaps in transferring environmental information could be positive for the MNO. In application phases, often companies/proponents make many commitments to Indigenous groups in relation to their rights and the supporting environment. As these commitments are often linked to environmental information, the transfer of this information may result in the transfer and adequate tracking of these commitments.

It is recommended that the CER expand this requirement to ensure that commitments related to Indigenous rights and interests, and supporting data (where agreed to by the Indigenous group), must all be transferred from design to construction/operations or in the event of a sale or transfer.

3.1.6 Sub-topic 6: Climate Resiliency

Part of the CER's mandate is to focus on energy transmission that is resilient to the effects of climate change. As part of Phase 1, the CER heard that stakeholders wanted new projects to be built in a manner that addresses new risks from climate change. Stakeholders indicated that any safety measures or planning must be designed through a climate impact lens and require existing pipeline projects to review their own risks from a perspective of climate resilience and adapt operations to respond.³⁸

Phase 1 also noted that climate change has disproportionately negative impacts on Indigenous Peoples.³⁹ Indeed, the MNO experiences climate change more acutely due to our close relationship with the land and our citizens' reliance on natural resources.

³⁶ Ibid.

³⁷ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

³⁸ Ibid.

³⁹ Ibid.

Proposed CER Amendments

Based on this, the CER is contemplating a new requirement for companies to incorporate climate resiliency into their evaluation of risks and ongoing risk mitigation through the project lifecycle. This requirement would necessitate assessment of climate related risks continually through project lifecycle.⁴⁰

MNO Perspective

Due to MNO's susceptibility to climate change, any additional consideration and subsequent requirements by the CER is positive; however, this change currently only links to projects and their consideration of climate risks to project construction, operation, and maintenance and does not consider enhancement of consideration of climate risks during the application phase. This should also be bolstered through additional requirements in Filing Manuals to ensure climate change, and their interrelated impacts on Métis rights and interests are properly considered.

3.1.7 Sub-topic 7: Incorporation of ISO environmental standards

During Phase 1, the CER received suggestions to replace the EPP contained within Section 48 of the OPR with a requirement for an environmental management system as described in ISO 14001:16.⁴¹

As CSA Group standards are behind a paywall with access costing \$159.00 – the MNO faces undue barriers in reviewing this document to provide guidance on the discussion questions. The CER should provide free access to all documents referenced to allow for adequate consideration.

3.2 Topic Paper I – Rights and Interests of Indigenous Peoples, Socio-Economic Effects, and Engagement

This Topic Paper explores potential amendments to the OPR to enhance CER oversight of impacts to the rights and interests of Indigenous Peoples, socio-economic effects, and engagement requirements. It includes three (3) sub-topics and sixteen (16) Discussion Questions.⁴²

⁴⁰ Ibid.

⁴¹ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, D. OPR – Environmental Protection Topic Paper, <https://www.cerdialogue.ca/opr>

⁴² Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, <https://www.cerdialogue.ca/opr>

Sub-Topic	Discussion Questions
<p>Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples</p>	<p>11. 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>12. 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; • 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>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>14. Are there any potential challenges associated with these proposals? What are they? How can they be addressed?</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>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>

Sub-Topic	Discussion Questions
<p>Managing Socio-Economic Effects</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>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>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>110. Are there any potential challenges associated with these proposals? What are they? How can they be addressed?</p> <p>111. What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to manage socio-economic effects?</p>
<p>Engaging with Potentially Affected People and Communities</p>	<p>112. 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>113. What is your feedback on the following proposed option to meet the regulatory objectives?</p> <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. <p>114. 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>

Sub-Topic	Discussion Questions
	<p>I15. Are there any potential challenges associated with this proposal? What are they? How can they be addressed?</p> <p>I16. What kind of guidance would be helpful to enhance your understanding of CER expectations related to engagement?</p>

While it is noted that the CER’s Filing Manual does currently contain guidance relating to socio-economic effects, impacts to the rights and interests of Indigenous Peoples, and engagement requirements, it does not include specific requirements related to the prevention of impacts on the rights and interests of Indigenous Peoples, nor does it include obligations for addressing impacts, once they occur; including management requirements.⁴³ Instead, these important requirements are often addressed through other regulatory instruments such as project specific conditions or guidance – or not at all.

The CER has expressed a desire for greater balance of requirements for companies and potential impacts on the rights of Indigenous Peoples. To achieve this balance, the CER is considering the addition of a new protection program to prevent and address impacts on the rights of Indigenous Peoples, as well as for the mitigation of socio-economic effects.⁴⁴ This program would need to be integrated into a company’s management system and would allow companies to apply a distinctions-based approach to preventing and addressing impacts to the rights and interests of Indigenous Peoples.⁴⁵

While this change is positive, it raises the fundamental issue of identification of impacts on the rights and interests of Indigenous Peoples. Oftentimes, there is not only disagreement of *what* impact has occurred from a project, but if Indigenous rights were even considered. This is particularly salient for Métis who struggle consistently with regulator and company recognition of Métis rights and interests and face ongoing struggles with unsubstantiated distinctions regarding the rights held by Métis as compared to First Nations. Recently, the MNO has experienced instances where there are established

⁴³ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, <https://www.cerdialogue.ca/opr>

⁴⁴ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, <https://www.cerdialogue.ca/opr>

⁴⁵ Ibid.

rights present in a project area; the MNO has provided proof of contemporary exercise of those rights; the MNO prepared and provided written statements about those rights; and yet are afforded less involvement or less accommodation than First Nations under similar circumstances.

Therefore, prior to implementation of this management system, there must be open, ongoing, and meaningful dialogue between the MNO and the CER on Métis rights, what they are, and who represents them collectively. This dialogue must also consider how potential impacts will be categorized prior to discussion of prevention and approaches to addressing those impacts, in order for the system to be a success.

A further change the CER is proposing is related to the requirement for incorporating Indigenous laws, policies, practices, and protocols within new and existing management system protection programs.⁴⁶

This too will require open, ongoing, and meaningful dialogue with the MNO to identify available laws, policies, practices, and protocols relevant for CER management systems and protection programs, as well as to understand current information gaps and identify collaborative strategies for collection and sharing of this information, where appropriate.

With these overarching issues in mind, below is a detailed analysis of the three sub-topics and discussion questions, where applicable.

3.2.1 Sub-Topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples

In Phase 1, the CER was advised they should explicitly direct companies to consider and address impacts to Indigenous and treaty rights related to their pipeline activities.⁴⁷ The CER also heard that involvement of Indigenous Peoples and incorporation of Indigenous knowledge in lifecycle oversight should be increased.⁴⁸ This contrasted with feedback from companies who felt that they should be afforded flexibility to pursue their own path forward with Indigenous Peoples potentially affected by their operations.⁴⁹

⁴⁶ Ibid.

⁴⁷ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, <https://www.cerdialogue.ca/opr>

⁴⁸ Ibid.

⁴⁹ Ibid.

Proposed CER Amendments

In response to this feedback the CER is proposing:

- A new protection program requiring companies to develop, implement, and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples.
- A requirement for companies to demonstrate how Indigenous knowledge is incorporated into these programs.
- A requirement for companies to demonstrate how Indigenous laws and policies are addressed in protection programs.
- A requirement that individuals working for a regulated company receive cultural competency training.
- Additional requirements for reporting on damage of historic or cultural sites; consideration of these sites in Emergency Management; and a requirement for establishment of restoration goals in consultation with Indigenous Peoples.⁵⁰

MNO Perspective

As noted previously, while the objective of anticipating, preventing, managing and mitigating impacts to Métis rights and interests is a positive approach, there are gaps in the CER's understanding of what Métis rights are. Further, the assessment of Métis rights by proponents and their evaluation by the CER are currently limited in scope and effectiveness. If these objectives are implemented prior to increasing the CER's understanding and better defining Métis rights, any changes to the OPR aimed at ensuring the effectiveness of protection program and/or management systems will not adequately consider Métis rights.

Concerning the objective of cultural competency as a requirement, the MNO also sees value in this and has suggested the CER undertake Métis 101⁵¹ training to facilitate a greater understanding of our Nation and its rights and interests. This program can be rolled out more broadly to companies undertaking project applications and providing oversight of projects in Ontario, where applicable. It is important for the CER to understand that cultural competency is Nation specific and there is no

⁵⁰ Ibid.

⁵¹ Métis Nation of Ontario, Canada Energy Regulator Onshore Pipeline Regulations, Discussion Paper Review, August 5, 2022, MNO Collective Feedback, p. 14

pan-Indigenous cultural competency program that can ensure respectful understanding of all of Canada's Indigenous Peoples. Therefore, companies may be required to undertake multiple cultural competency courses per project. The CER must strongly consider this requirement and how it can enforce a broad and equitable program application.

3.2.2 Sub-Topic 2: Managing Socio-Economic Effects

Within Phase 1 of the OPR review, the CER heard that the OPR should incorporate requirements related to the management of socio-economic effects and regularly report on their efforts over the project lifecycle.⁵²

Proposed CER Amendments

In response to this feedback, the CER is contemplating the addition of a new protection program and expansion of existing Environmental Protection Programs as per OPR section 48.⁵³

MNO Perspective

As per the above comments, a greater understanding of Métis rights and interests, and indeed, Indigenous rights and interests, is required prior to the addition of a new protection program to ensure it meets the needs of participating Indigenous Nations. A common theme in MNO's previous feedback was a need for MNO citizen involvement in project lifecycle oversight and protection through environmental and cultural heritage monitoring.⁵⁴ Expansion of the existing EPP programs and the new protection program must ensure foundational MNO participation.

3.2.3 Sub-Topic 3: Engaging with Potentially Affected People and Communities

In Phase 1, the CER heard there was a need for meaningful engagement and communication. A need was also expressed for cultural awareness and sensitivity.⁵⁵ Indeed, this concept was identified by the MNO during the Phase 1 comments (see Section 2.2).

⁵² Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, <https://www.cerdialogue.ca/opr>

⁵³ Ibid.

⁵⁴ Métis Nation of Ontario, Canada Energy Regulator Onshore Pipeline Regulations, Discussion Paper Review, August 5, 2022, MNO Collective Feedback, p. 14

⁵⁵ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, <https://www.cerdialogue.ca/opr>

Proposed CER Amendments

To be responsive to this feedback, the CER is considering explicit requirements for engagement either through a stand-alone requirement or through the management system process.⁵⁶

MNO Perspective

To ensure the requirement of explicit feedback is clear, the MNO recommends that this requirement be stand-alone rather than through the management system process. Further, in order for the requirement of explicit feedback to be meaningful, the MNO must be directly engaged to formulate its wording and afforded the necessary capacity and time for several rounds of review, to ensure the wording is inclusive and satisfies the MNO's needs.

3.3 Topic Paper K – Filing Manuals – Environmental and Socio-Economic Assessment Topic Paper

This Topic Paper describes potential amendments to the “Environmental and Socio-Economic Assessment” section in the Filing Manuals (i.e., Section A.2 of the Filing Manual and Chapter 6 of the Electricity Filing Manual). It includes two (2) sub-topics and twenty-four (24) Discussion Questions.⁵⁷

Sub-Topic	Discussion Questions
Restructuring ESA Section	<p>K1. Does the proposed split of the current ESA section improve clarity?</p> <p>K2. What overarching topics are important to highlight as applying throughout the applicant's ESA and “Rights and Interests of Indigenous Peoples” sections?</p> <p>K3. What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?</p>
Environmental and Socio-Economic Assessment	<p>K4. To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?</p>

⁵⁶ Ibid.

⁵⁷ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

Sub-Topic	Discussion Questions
	<p>K5. What factors should guide the choice of VCs in terms of their breadth?</p> <p>K6. Can VCs be 'nested' to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the 'summing' of effects of individual VCs?</p> <p>K7. What other improvements or clarifications can be made to the discussion and selection of VCs?</p> <p>K8. Would having separate sections in the Filing Manual (e.g., one describing socio-economic VCs and another describing VCs focused on the rights and interests of Indigenous Peoples) improve clarity?</p> <p>K9. How would such a split impact the assessment of biophysical VCs, socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?</p> <p>K10. What VCs should stay in the ESA section versus which should move to the "Rights and Interests of Indigenous Peoples" section?</p> <p>K11. What other improvements can be made to the guidance for socio-economic VCs?</p> <p>K12. What considerations concerning enhancement measures should be included? Are there different considerations for enhancement measures for biophysical VCs versus socio-economic VCs?</p> <p>K13. What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?</p> <p>K14. What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?</p>

Sub-Topic	Discussion Questions
	<p>K15. How can information relevant to environmental and socio-economic protection measures best be documented to ensure site-specific information and relevant commitments are maintained and implemented during operations?</p> <p>K16. What other improvements can be made to the discussion and guidance for mitigation and enhancement measures?</p> <p>K17. To what extent should environmental events and climate change be included in cumulative effects assessments?</p> <p>K18. How is the cumulative effects assessment relevant to positive effects as well as adverse effects?</p> <p>K19. What factors are important in choosing the appropriate baseline for cumulative effects assessment?</p> <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>K21. What other improvements can be made to the discussion and guidance for cumulative effects?</p> <p>K22. Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?</p> <p>K23. What considerations should apply when making the significance determination for federal lands?</p> <p>K24. What other improvements can be made to the discussion and guidance for significance?</p>

3.3.1 Sub-Topic 1: Restructuring the ESA Section

The CER acknowledges that placing greater emphasis, robustness, and detail on the consideration of potential effects on the rights and interests of Indigenous Peoples is essential for Reconciliation.⁵⁸

The ESA section in the Filing Manuals has grown longer and more complex through regular updating, and the CER heard in Phase 1 that it can be difficult to navigate.⁵⁹ For example, general guidance (e.g., the need for incorporation of Indigenous knowledge, the need to provide evidence and rationales, etc.) is spread throughout the section, rather than consolidated in one place.⁶⁰

Proposed CER Amendments

To improve organization, the CER is considering splitting the current ESA section into two sections – one section for the amended ESA section and a second section for related to the rights and interests of Indigenous Peoples.⁶¹

The CER is also contemplating consolidating general and common guidance into sub-sections.⁶²

MNO Perspective

While splitting the ESA section could provide greater clarity, this may inhibit integration of Indigenous knowledge within project applications and limit consideration of Indigenous rights and interests by disconnecting them from aspects of the human and physical environment. Standardized approaches for incorporating Indigenous knowledge into environmental initiatives can sometimes involve arbitrarily “extracting” only “useful” aspects of Indigenous knowledge from its people and contexts to fit within a western framework.⁶³ This approach removes the Indigenous knowledge from the systems within which it is built and understood, ultimately separating Indigenous knowledge from the people and their way-of-life. In splitting the ESA section, this issue may be exacerbated. While the CER means to create a separate and distinct process for Indigenous rights and interests, they may, instead, create a disconnected process that does not link to, inform, or integrate with the

⁵⁸ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

⁵⁹ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ McGregor, Deborah, 2021, Indigenous Knowledge Systems in Environmental Governance in Canada, KULA: Knowledge Creation, Dissemination, and Preservation Studies 5 (1), doi:<https://doi.org/10.18357/kula.148>

broader context of the human and physical environments. For example, hunting cannot be adequately assessed without an understanding of the underlying species and how it is connected to the activity. Therefore, by splitting Indigenous rights and interests from the broader assessment of the physical and human environment, it could result in less shared knowledge and a loss of integrative concepts.

This requires additional engagement with the MNO to identify how elements of the human and physical environment will continue to integrate with the rights and interests of Indigenous Peoples. As these elements are intricately linked, by hiving off Indigenous rights there is significant risk of duplicative efforts, application redundancies and opportunity for the linkages to be missed.

3.3.2 Sub-Topic 2: Environmental and Socio-Economic Assessment

The ESA section of the Filing Manuals provides guidelines for evaluating the potential impacts of projects on environmental and socio-economic valued components. This includes the applicant's proposed measures to mitigate adverse effects, enhance positive effects, consider both project and cumulative effects, and determine the significance of effects after considering mitigation efforts.⁶⁴

As indicated in Sub-Topic 1 above, the CER is contemplating the establishment of a new section dedicated to the "Rights and Interests of Indigenous Peoples," which is further elaborated upon in the Filing Manual – Rights and Interests of Indigenous Peoples Topic Paper.⁶⁵

There are a variety of subcomponents that require consideration for this potentially amended ESA section including valued component identification and selection for the ESA, socio-economic valued components, mitigation and enhancement measures, cumulative effects, and significance.

Valued Component Identification and Selection for the ESA

Valued Components (VCs) are aspects of the environment, health, social, and economic conditions that may be important. Currently, the CER's Filing Manuals rely on a VC-based approach to effects assessment. This approach is broadly applied. Applicants are required to identify VCs that are expected to be affected and provide explanations for their identification process. Each VC may have several indicators used to assess the potential impacts of a project on that specific VC.⁶⁶

⁶⁴ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

⁶⁵ Ibid.

⁶⁶ Ibid.

VC selection is critical and affects the outcomes of the applicant's ESA. Through various regulatory initiatives/hearings, the CER has heard that Indigenous knowledge systems should be brought together with western knowledge systems to better understand project impacts. The CER has also noted that the selection of VCs can be overly narrow, potentially overlooking the broader impacts on vulnerable populations or entities. Conversely, selecting VCs too broadly can result in missing specific impacts on particular subsets within a broader VC. For example, considering general effects on wildlife may fail to identify unique impacts on individual species of concern.⁶⁷

Proposed CER Amendments

Consequently, the CER wants to clarify the selection of VCs, to help ensure that Indigenous knowledge and engagement informs the selection of VCs and to help ensure that VCs can cover both broad concerns (such as overall community well-being) and narrow concerns (such as effects on a single species).⁶⁸

To achieve this, the CER is considering adding filing guidance to ensure applicants incorporate Indigenous knowledge and engagement results into their selection of VCs. This would require demonstration of how the VCs chosen reflect both what was heard, as well as probable project effects. This would also be achieved through ongoing discussion of narrow versus broad VCs to help ensure appropriate breadths are selected to cover of Indigenous issues and concerns.⁶⁹

MNO Perspective

Adding guidance and committing to further conversation on the scope and breadth of VCs is a positive approach by the CER.

This, coupled with a greater understanding of Métis rights and interests, can help the CER better scope the assessment of rights in a meaningful way. In particular, further discussion related to broad VCs versus specific VCs is of interest to the MNO. This is because Métis rights are also broad and specific in some instances. For example, Métis citizens have a right to our language and culture (i.e., broad), but also have specific land use rights such as hunting, fishing, and gathering. Project interactions with hunting, fishing, and gathering may be more demonstrable – but that does not mean the interactions with language and culture are less important or should not be assessed.

⁶⁷ Ibid.

⁶⁸ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

⁶⁹ Ibid.

Instead, the applicant should be required to work with the MNO on new and innovative ways to ensure proper consideration.

Additionally, the requirement that Indigenous knowledge and engagement be explicitly addressed in the selection of VCs is also positive. VCs typically selected for the human and physical environment all have interactions with Métis rights and interests. By integrating Métis knowledge into this process, it can ensure an assessment that is more inclusive and considerate of Métis issues. For example, fish and fish habitat may be selected as a VC with numerous potential indicators of change. However, Métis specific species of importance, habitat, preferences, avoidances, etc. can inform the selection of those indicators as well as the representative species identified for study.

Overall, the MNO looks forward to further engagement on the potential wording of the proposed filing guidance.

Socio-Economic Valued Components

Proposed CER Amendments

This aspect relates to socio-economic components that would not be separated into the newly proposed rights and interests section of the ESA. As this change will result in some elements being moved and others remaining, the CER wants to clarify its guidance to avoid duplication between the two sections. Proposed options for this change include renaming socio-economic elements to socio-economic valued components; and focusing those VCs on health, social and economic effects related to non-Indigenous Peoples and communities.⁷⁰

MNO Perspective

As above, the splitting of this will impair integration of Indigenous knowledge through project applications and limit consideration for Indigenous rights and interests by disconnecting them from aspects of the human and physical environment. The key phrase of “avoiding duplication” is what makes this problematic as there is significant overlap between aspects of socio-economic valued components and Métis rights and interests. Oftentimes, applications can have important details spanning multiple sections and the MNO finds relevant data throughout. In order for this to be successful, some data must be duplicated in both the socio-economic section and the Métis rights and interests section if they are to be assessed separately. Therefore, additional engagement is

⁷⁰ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

required to ensure the CER fully understands overlapping elements and how integration, in some cases, can benefit both the applicants and the MNO.

Mitigation and Enhancement Measures

Proposed CER Amendments

As the CER considers both adverse and positive effects when assessing proposed projects, both mitigation and enhancement measures are relevant to the CER in its decision making and ongoing management related to those projects. Therefore, the CER is considering modifying the ESA part of the Filing Manual to describe enhancement measures in addition to mitigation measures.⁷¹

Additionally, there has been feedback through hearings and Phase 1 that the mitigation hierarchy must be completed before companies rely on offsets as there can be a preference for avoidance, minimization, or restoration. There is also a need for offset principles to be followed. To achieve this, the CER is considering a requirement to demonstrate how applicants have followed the mitigation hierarchy and demonstrated justification for offset principles if proposing offsets.⁷²

Finally, the CER also heard concerns in Phase 1 about the lack of transparency for mitigation measures. To combat this issue, the CER proposes required documentation and monitoring of socio-economic protection measures equivalent to an EPP and ensuring protection measures are maintained and implemented post-construction.⁷³

MNO Perspective

Regarding the inclusion of enhancement measures, the MNO has no objection to companies reporting on enhancement measures. Indeed, in some instances, enhancement measures may be positive for Métis citizens as well; ensuring the MNO is informed can only improve the process. However, it should be noted that any enhancement measure that is proposed to address impacts to Métis rights and interests, but has not specifically endorsed by or vetted through the MNO, requires further discussion prior to determining the enhancement measure's effectiveness. This must be undertaken with the MNO by both the applicant and the CER.

⁷¹ Ibid.

⁷² Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

⁷³ Ibid.

The MNO is also supportive of the mitigation hierarchy being completed prior to offsetting and companies being required to adhere to offset principles. Having clear, transparent information from companies on the application of the mitigation hierarchy will allow MNO to evaluate a company's rationale in addressing impacts and could improve openness.

In relation to adherence to offset principles, the MNO often requests that proponents consider the offset principle of net gain rather than no net loss when evaluating offset options. This approach is being brought forward in various federal Impact Assessment Agency of Canada processes (e.g., Metal and Diamond Mining Effluent Regulations processes), most particularly in relation to fish habitat offset and compensation plans. Net gain is a principle that aims to leave the environment in a better state than before a project. As much of MNO's regions have extensive anthropogenic development, this approach will ensure sufficient biodiversity is maintained to allow for the continued exercise of Métis rights. The concept of net gain must be considered by the CER when identifying offset principle requirements for the OPR.

Finally, the CER seeking greater transparency of mitigation measures through documentation in an EPP equivalent is also viewed as positive by the MNO. However, the issue of transparency may not only be related to reporting, but in the development of protection measures themselves. Many Indigenous groups, the MNO included, do not have input into company developed mitigation. Indeed, often, there is little opportunity for direct input into mitigation measures to address impacts to rights outside of financial agreements, where applicable. The MNO urges the CER to consider the full lifecycle of mitigation development and implementation, ensure transparency is carried throughout, and that involvement of Indigenous groups is enhanced.

Cumulative Effects

Proposed CER Amendments

The CER would like to clarify filing guidance related to cumulative effects assessments. To accomplish this, they are proposing that relevant environmental events, such as wildfires, be considered in cumulative effects assessments. This will ensure that all cumulative effects relevant to the sustainability of particular VCs are assessed.⁷⁴

⁷⁴ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

Additionally, the CER would like to require applicants to justify their baselines used in cumulative effects assessment as, in some cases, it may be prudent to include longer, historical baselines and discussions of past environmental states.⁷⁵

Finally, the CER would like to allow cumulative effects assessments for certain VCs to be excluded where the applicant can demonstrate that their offsets will achieve no net loss for that VC.⁷⁶

MNO Perspective

Cumulative effects are extremely important to the MNO as Métis citizens disproportionately experience the effects of climate change, particularly when exercising their land-based rights.

The MNO is supportive of environmental events being considered in cumulative effects assessments, particularly as weather events, pests, diseases, and abiotic damage events have been observed to be increasing over time. Indeed, understanding how these events act cumulatively with projects can be a crucial part of understanding impacts to Métis rights and interests. The MNO looks forward to future discussions with the CER to identify what environmental events will be required for inclusion to make sure any disturbances to Métis rights and interests are noted.

The MNO is also supportive of requiring applicants to justify their baseline. In many cases, the original construction and operation of historical projects throughout MNO Regions caused displacement of Métis citizens, resulting in limited exercising of rights in key locales today. The MNO should not continue to be penalized through current regulatory mechanisms for past wrongs where consultation did not occur. By using a historical baseline, this displacement can be acknowledged and discussions about the long-altered landscape in the spirit of Reconciliation can begin.

Regulatory processes with Indigenous nations can sometimes adopt a quasi-transactional nature, whereby there are impacts to rights identified and nations can negotiate compensation for those impacts. Where rights have been displaced over a significant timescale, there has been no ability to exercise those rights, thereby removing the opportunity for this negotiation. This has disadvantaged the MNO but could be remedied through consideration of historical baselines for cumulative effects, particularly to rights.

This concept is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which, at Article 28(1) states:

⁷⁵ Ibid.

⁷⁶ Ibid.

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
[emphasis added]

Finally, the MNO is not supportive of VCs being excluded from consideration of cumulative effects if the VC offsets can show no net loss. As noted above, the MNO prefers the biodiversity mechanism of net gain rather than no net loss. In addition to this, cumulative effects assessments, at their core, are meant to look at the combined effects from past, present, and reasonably foreseeable human activity. There are too many variables involved in a cumulative effects assessment that would have to be fulfilled to allow for omission from this requirement for VCs. This requires additional discussion prior to any implementation.

Significance

Proposed CER Amendments

Currently, the Filing Manual has a binary process for determining significance.⁷⁷ In recent hearings, a sliding scale was adopted, which employed a modified criteria and ratings. The CER is considering updating the Filing Manuals to reflect this modern approach for determining significance and including a templated framework similar to the sliding scale applied in the recent Northeastern British Columbia Recommendation Report.⁷⁸ The CER is also considering requiring applicants to apply the binary scale when the *Impact Assessment Act* Section 82 applies and the project crosses federal land.⁷⁹

Significance, for Indigenous rights and interests VCs, can be difficult to apply as there is often little consideration given to the experiential data that Indigenous groups typically provide. Further, the MNO currently has little involvement in the development of residual effects criteria which are often developed during application development by the proponent. Residual effects criteria such as magnitude or duration of impact can heavily influence the impact significance rating and are important for the MNO to have feedback on.

⁷⁷ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, K. Filing Manuals – Environmental and Socio-Economic Assessment, <https://www.cerdialogue.ca/opr>

⁷⁸ Ibid.

⁷⁹ Ibid.

That being said, exploring significance on a spectrum rather than a binary scale is more appropriate for the MNO as the approach can lend itself more to the experiential data and have room for interpretation. However, the MNO will require substantial engagement from the CER and future applicants on ratings used and their definitions for the significance determination to ensure key aspects related to rights are considered.

3.4 Topic Paper M – Filing Manuals – Rights and Interests of Indigenous Peoples

This Topic Paper describes the potential restructuring for the Filing Manual; specifically, changes to the ESA section (Section A.2 of the Filing Manual and Chapter 6 of the Electricity Filing Manual). It includes two (2) sub-topics and twenty-four (24) Discussion Questions.⁸⁰

Sub-Topic	Discussion Questions
Restructuring the Filing Manual	<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>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>M3. What other restructuring of the “Rights and Interests of Indigenous Peoples” section might improve clarity, readability, and better highlight important issues?</p>
Rights and Interests of Indigenous Peoples	<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 biophysical and socio-economic VCs) improve clarity?</p> <p>M5. How would such a split impact the assessment of biophysical and socio-economic VCs, and VCs</p>

⁸⁰ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals- Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

Sub-Topic	Discussion Questions
	<p>focused on the rights and interests of Indigenous Peoples?</p> <p>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?</p> <p>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> <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> <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>M10. What are the opportunities and challenges of Indigenous-led assessments and studies for applicants (e.g., timing, funding, scoping, integration)?</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>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>M13. What are the opportunities and challenges for Indigenous Peoples with the CER’s existing guidance?</p>

Sub-Topic	Discussion Questions
	<p>M14. What are the opportunities and challenges for applicants with the CER's existing guidance?</p> <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>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>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>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 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>M20. What are the opportunities and challenges for applicants of involving Indigenous Peoples in their inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?</p>

Sub-Topic	Discussion Questions
	<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>M22. How does the concept of “sites of Indigenous significance” compare with heritage resources and traditional land and resource use? Where might there be overlap (including with existing legislative responsibilities by jurisdictions)?</p> <p>M23. What are the opportunities and challenges for Indigenous Peoples of integrating the concept of “sites of Indigenous significance” into the applicant’s assessment?</p> <p>M24. What are the opportunities and challenges for applicants of integrating the concept of “sites of Indigenous significance” into their assessment?</p>

3.4.1 Sub-Topic 1: Restructuring the Filing Manual

As previously noted, the ESA section of the Filing Manual has grown long and more complex through regular updates. The CER has heard that it is difficult to navigate this document in some cases. In order to improve the Filing Manuals, the CER is considering splitting the current ESA section into two (noted above in Section 3.3.1) and consolidating general or common guidance.⁸¹

As noted above, while splitting the ESA section could improve clarity, this may inhibit integration of Indigenous knowledge within project applications and limit consideration of Indigenous rights and interests by disconnecting them from aspects of the human and physical environment.

As above, the splitting of this will impair integration of Indigenous knowledge through project applications and limit consideration for Indigenous rights and interests by disconnecting them from aspects of the human and physical environment. Additional engagement is required to ensure the

⁸¹ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals- Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

CER fully understands overlapping elements and how integration, in some cases, can benefit both the applicants and the MNO.

3.4.2 Sub-Topic 2: Rights and Interests of Indigenous Peoples

The preamble of the *CER Act* sets out the broad and underlying purposes of the legislation, including Canada's ongoing commitments to Reconciliation and implementation of UNDRIP. In supporting these commitments, the CER has identified Reconciliation as a strategic priority and has issued a Statement on Reconciliation.⁸²

Through Phase 1, the CER received feedback requesting additional guidance regarding the assessment of potential effects on the rights and interests of Indigenous Peoples. The updates to the Filing Manual can support this.⁸³ The below topics are the CER's proposed changes related to rights and interests.

Valued Components Focused on the Rights and Interests of Indigenous Peoples

Proposed CER Amendments

The CER is considering a new category of VCs that are focused on the rights and interests of Indigenous Peoples. This would result in modifications to the assessment part of the Filing Manual.⁸⁴

MNO Perspective

As discussed above, in Section 3.3.1, this is viewed as a positive change and presents the CER with an opportunity to understand Métis rights and interests and how projects can interact with them. By requiring Indigenous specific VCs, the applicant will be required to work with the MNO in new and innovative ways to ensure proper consideration.

While this is a positive addition, there is a requirement for additional ongoing engagement with respect to the categories of VCs to be used. It is recommended that the currently listed categories be provided as examples, but that the CER and applicants let Indigenous groups take the lead on VC identification for rights and interests as they are best placed to understand their rights and how

⁸² Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals- Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

⁸³ Ibid.

⁸⁴ Ibid.

they will interact with the project. This will foster greater collaboration and allow for greater involvement in scoping stages.

The CER has also asked the best to document, monitor, manage, and report on protection and enhancement measures for VCs focused on rights and interests. This too should be iterative and will require enhanced Indigenous involvement in the ongoing monitoring and management phases – particularly if sensitive rights and interests are identified for assessment. This will allow for a greater blending of Métis knowledge with the applicants’ western science approaches.

The MNO would also caution about the focus on site-specific information referenced in question M8. Indigenous knowledge is inherently ecosystem based and includes broad observational data based on lived experience. By using site-specific language, the applicant and CER may neglect valuable information that can inform construction and operations but may not necessarily be “site-specific”.

Integrating the Applicant’s Assessment and Indigenous-led Assessments and Studies

Proposed CER Amendments

In recent years, Indigenous-led assessments and studies have been completed across Canada. The CER acknowledges the benefit of these assessments as Indigenous Peoples are best placed to understand how their rights and interests may be affected by a project. However, in some cases, the timeline for these assessments may not align with applicants planned timing. Therefore, the CER would like to more explicitly direct applicants in supporting Indigenous-led studies and how to integrate the results of these studies into their assessments.⁸⁵

MNO Perspective

Overall, the MNO views Indigenous-led assessments as positive since they can increase internal capacity, allow for an assessment founded in a Métis worldview, and facilitate assertion of the Métis right to self-determination, autonomy, and self-government. However, at this time, the MNO does not have own-source funding to support execution of Indigenous-led assessments and would rely wholly on the CER and applicants to provide it. This can present challenges, as often regulatory process funding is limited and MNO is consistently underfunded.

⁸⁵ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals- Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

An additional challenge for executing Indigenous-led assessments is adherence to applicants' prescriptive timelines. For the MNO, an Indigenous-led assessment would be interdisciplinary and holistic – using methods of Métis knowledge blended with western science, and it would support sustainability through an inter- and multi-generational perspective. By nature, a Métis-led assessment would require comprehensive engagement with Métis citizens and political representatives. This means that adherence to strict timelines may require evaluation and flexibility from the proponent.

As for integration of Indigenous-led assessments into applicants' assessments, this will necessitate a cultural shift for applicants. They will have to view Indigenous-led assessments as necessary data to describe the existing conditions and impacts of their project. Similar to a wildlife baseline report, Indigenous-led assessments will have to be completed, reviewed and integrated early in the process; and collected alongside other relevant data. Once this becomes common place rather than the exception, then integration will become foundational.

Further, if applicants approach Indigenous groups early in application development, on the same timeline as baseline data collection (which can sometimes occur for 2 years prior to application filing), integration could occur at a pace that will allow for the continuation of the CER's legislated time limit of 450 days. Typically, when Indigenous information is collected as an afterthought, applicants struggle to collect this information in a timely fashion.

Clarifying the CER's Guidance for Assessing Effects on the Rights of Indigenous Peoples

Currently, the Filing Manual provides guidance for applicants when assessing project effects on the rights of Indigenous Peoples. This guidance is described in Table A-3 and Table 6-3 of the Filing Manual and Electricity Filing Manual, respectively.⁸⁶

Proposed CER Amendments

Recently, the CER Commission has evolved the approach for determining severity of effects on the rights of Indigenous Peoples to include a sliding scale to identify the degree to which the rights of Indigenous Peoples may be affected by a project, but this approach is not included in the Filing

⁸⁶ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals- Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

Manual. The CER wants to add this information to a new “Rights and Interests of Indigenous Peoples” section and include the templated framework for the sliding scale criteria of severity.⁸⁷

MNO Perspective

As above in relation to significance, the MNO will require substantial engagement from the CER and future applicants on ratings and their definitions used for any resultant severity determination to ensure key aspects of rights are considered.

One of the common topics for consideration when determining severity is the impact inequity that can be experienced by Indigenous Peoples. Further, consideration must be given to community cohesion, cumulative impacts, and governance. By nature, applications and projects conform to the colonial regulatory system and impact Métis decision making processes. Often, Métis are impacted by projects with little balance for these impacts in terms of benefits to the Métis community or positive project environmental enhancements. Further, projects are often not compatible with the MNO’s vision for the future, and while the Métis are resilient, Métis rights and interests may be violated by project construction, operation, and maintenance, which all contribute to severity of impacts.

As severity, significance, and impact inequity has yet to be defined for the MNO by the CER in a real and constructive way, ongoing engagement is required to ensure guidance provided in relation to severity is inclusive.

Additionally, any determination of severity that will be presented to the CER and the Commission must be provided to the MNO in advance by applicants to allow to evaluate whether the determination is sufficient.

Clarifying the CER’s Guidance for Monitoring and Oversight by Indigenous Peoples

Currently, the Filing Manuals provide guidance to applicants for their inspection, monitoring, and follow-up plans and programs. In instances where there are project elements of greater concern, applicants are asked for more in-depth monitoring programs for those elements. Also, through hearings, the Commission has required applicants to develop plans to allow Indigenous participation in construction monitoring and post-construction/operations monitoring.⁸⁸

⁸⁷ Ibid.

⁸⁸ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals- Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

Proposed CER Amendments

The CER is considering clarifying the expectations for applicants about monitoring and oversight that can form part of the assessment. For example, by adding a requirement for detailed plans outlining Indigenous participation in monitoring.⁸⁹

MNO Perspective

For the MNO, the largest concern for ongoing participation in construction/post-construction/operations monitoring is resources for sufficient ongoing capacity from the CER and applicants to support this work.

The MNO has dedicated lands and resources staff, but these staff members are typically allocated to existing projects and some are funded specifically by companies. The MNO cannot subsidize applicants' projects and provide staff to support monitoring programs. This must be wholly the responsibility of the applicant and overseen by the CER. Further, there must be clear direction to applicants on what the role of the Indigenous monitor is. Métis monitors must not be considered staff or employees of the applicant and must be free to report any issue or concern identified to the MNO. Further, there must be a mechanism in place to address identified issues and concerns, including reporting them to the CER for resolution when necessary. Monitoring must be meaningful and results based, to be of most value.

Clarifying the CER's Guidance for Sites of Indigenous Significance

Proposed CER Amendments

Currently, the Filing Manuals include VCs to be considered by the applicant, including heritage resources and traditional land/resource use. On recent projects, the CER has received feedback regarding the ability for applicants to properly identify and protect sites of Indigenous significance. To address this, the CER wants to clarify expectations within the Filing Manual about sites of Indigenous significance, heritage resources, and traditional land/resource use that can form part of the assessment.⁹⁰

The MNO would like additional engagement with the CER on sites of Indigenous significance. This is particularly relevant for the Métis, as designated heritage sites often do not include sites of

⁸⁹ Ibid.

⁹⁰ Canadian Energy Regulator, Onshore Pipeline Regulations and Filing Manual Review, M. Filing Manuals-Rights and Interests of Indigenous Peoples, <https://www.cerdialogue.ca/opr>

importance to the Métis due to limited criteria and timeframe considerations. Often, in relation to heritage resources, there is an absence of Métis history or acknowledgement of Métis historic landmarks. This is a chronic and persistent issue for Métis when dealing with heritage resources/sites both federally and provincially. Therefore, additional engagement on mapping out archaeological potential, Métis historic significance, and Métis traditional land use patterns should be completed to expand recognition for sites of Indigenous significance.

4 Conclusion

Overall, updating the OPR and Filing Manuals may be positive for the MNO and the CER. This will allow for greater clarity of concepts, more meaningful involvement of the MNO, and provide avenues for greater engagement and relationship building. However, it is largely dependent on active and continual collaborative engagement by the CER.

This enhanced engagement should be initiated by the CER as soon as is practical to ensure any changes to the OPR and Filing Manuals are inclusive of the needs of the rights-bearing Métis communities in Ontario, as noted throughout this document.

In order to ensure Reconciliation is at the forefront of updates to the OPR and Filing Manual, any amendments or guidance must be developed in partnership with the MNO. This co-development will ensure the CER and the Commission are adequately informed on the nature of the MNO's governance structure and sufficiently allow for ongoing and robust Métis involvement in CER legislative developments.