



MIKISEW CREE FIRST NATION

[REDACTED]

March 31, 2025

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

Sent Via: [REDACTED]

Re: Phase 2 Review of Onshore Pipeline Regulation & Filing Manual

We write today on behalf of Mikisew Cree First Nation (MCFN) to provide feedback on the Canadian Energy Regulator (CER) Phase 2 Review of the Onshore Pipeline Regulations (OPR) and Environmental and Socio-Economic Assessment (ESA) and Lands portions of the Filing Manuals (FM). Thank you to the CER for undertaking this much needed review and update to the OPR and FM in collaboration with Indigenous Communities and with a continued commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples Act (UN Declaration Act or UNDA).

To preface this document, we want to explicitly state that nothing in this document or the CER Act and associated regulations shall alter, diminish, derogate, or abrogate Treaty No. 8, including the spirit and intent of Treaty Rights and the inherent right as understood by the Elders of Treaty No. 8 or Aboriginal Rights, as protected by section 35 of the Constitution Act, 1982. The protection and assertion of Treaty and Aboriginal Rights by MCFN is paramount, and we provide comments to the CER in the spirit of reconciliation and strengthening our Nation-to-Nation relationship with the Crown and to enhance our ability to maintain our own sovereignty, governance, safety, and transparency within MCFN Territory, Treaty 8. In addition, this document does not undermine the authority of MCFN to make bilateral agreements with government and industry as desired, with the expectation that these agreements, which will remain confidential, will meet or exceed regulatory requirements.

Background

MCFN is the largest First Nation in the oilsands region and has occupied an expansive Territory since time immemorial. In 1899, MCFN became signatories of Treaty 8, agreeing to share the land in the spirit of peace and friendship with the incoming settlers, in exchange for a variety of promises, including (but not limited to) the ability to hunt, trap, fish, and practice traditional activities. Mikisew members continue to practice their Treaty rights within MCFN Territory; however, the meaningful practice of these Rights

and way of life depends on the health and safety of their Territory and a sufficient quality and quantity of resources. MCFN members live in multiple areas throughout Alberta, within MCFN Territory and beyond, which demonstrates the expanse of Mikisew rights holders across numerous Treaty areas.

Surmounting cumulative effects from stressors such as hydroelectric dams, oil and gas operations, and climate change, among others, have heavily impacted our Territory and eroded our ability to practice Treaty Rights. Industrial development has historically been proposed, assessed, approved, and operated by the colonial government and industry, with impacted Indigenous communities being treated as an afterthought and left to suffer the consequences. Consequences of such being contamination, loss of habitat and species, and declining health and wellness in our communities.

In the era of Truth & Reconciliation and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), we are hopeful that the Crown will recognize and value our Nation-to-Nation relationship, including our unique governance systems which include decision-making authority based on Indigenous Knowledge (IK) and protocol. Further, a principle within UNDRIP is “free, prior and informed consent” (FPIC) which introduces a heightened standard to the duty to consult.¹ This means we can no longer be treated as an afterthought and our participation in western processes, such as the regulation of pipelines, requires space for our IK to be anchored in our own governance and customary laws. This space is where we can bridge our knowledge systems and find mutually beneficial ways to exist on the land.

The following sections will address the Topic Papers provided by the CER Dialogue Engagement of Phase 2 review of the OPR and FM. We have responded to some of the questions but also provided more generic feedback on the various topics from a Rights and culture-based lens. The goal is to establish updated regulations which are both protective of our Treaty rights and grounded in partnership and inclusion.

OPR Topic Papers

As the OPR is the mechanism that oversees CER regulated and operating pipelines in Canada, across Indigenous lands, it is critical that Indigenous governance and protocols be considered in the management systems. Indigenous governance and protocols which, at a minimum maintain operational integrity, but better yet, move toward operational excellence. Indigenous communities often find themselves the most negatively impacted by pipeline design, construction, operations, integrity failures, and/or abandonment and decommissioning. As such, there is a significant fear that adding pipelines to the landscape will increase contamination and/or the cumulative effects already experienced. To ease these fears and concerns from Indigenous communities, there must be a commitment to honoring localized knowledge. This commitment should include Indigenous laws, policies, practices, protocols, and knowledge; and strengthening measures to prevent and address impacts to Indigenous Rights and interests as outlined in

¹ Fasken. Indigenous Legal Matters Bulletin, March 3, 2025.
<https://www.fasken.com/en/knowledge/2025/03/the-federal-court-finds-that-fpic-is-not-a-veto>

UNDA.² For MCFN, the inclusion of Mikisew-specific laws, policies, practices, knowledge and protocols, such as the MCFN consultation protocols should be implemented.

Additionally, it should be noted that accommodation and compensation for residual unmitigated effects should be a discussion at the front end of any proposed project, rather than a consideration after the approval and operation of the proposed work (i.e., pipeline).

For MCFN, the CER must provide time, space, and capacity for the bridging of Mikisew governance and protocols to western management systems and regulations. As these concepts come from completely different knowledge systems and ways of knowing, which are not compatible, but can be complementary in a parallel system. We require the ability to work with our Elders, knowledge holders, and leadership to *access, understand, and apply* our unique Mikisew knowledge to management system components important to us. Some components, such as the opportunity to obtain benefits, such as jobs, contracts, and/or education and training, may not require integration of our IK, but rather benefits locked in through legal arrangements or commitments.

Additionally, to help ease concerns regarding safety and integrity, we would recommend harmonization between Federal and Provincial or Territorial regulations for greater protection across the entire system. While the length of pipe itself may not be dangerous, the danger is often found at junctions, valves, and facilities which may not be regulated by the CER. MCFN would like to see effort by all jurisdictions responsible for regulating various pieces of the infrastructure to work collaboratively and inclusively with Indigenous communities.

Where possible, oversight bodies, such as Indigenous Advisory and Monitoring Committees (IAMC) should be considered. IAMCs are not to take capacity away from individual Indigenous communities or to replace their respective intellectual property and/or IK. Instead, their aim is to develop a place where harmonization between overlapping Indigenous Communities, Government, and Industry can be monitored and evaluated. Capacity limitations must be considered for many Indigenous communities, meaning significant, multi-year capacity funding opportunities must be provided to ensure consistent and meaningful engagement.

A. Damage Prevention

This paper proposes options to address issues related to depth of cover in agricultural areas.

While this section is targeted at agricultural areas, MCFN points out that damage prevention and depth of cover should be considered across all Treaty lands and traditional territories for the protection and optimization of Treaty Rights, including the ability for culturally significant species to use/reclaim a Right of Way (ROW). Mikisew members

² The United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan Measure 34, page 33

and land users expect the same level of safety for traditional resources they rely on, not only agricultural lands that end up in supermarkets or farmers markets which are regulated for higher standards. Regulations should consider Treaty-based depth of cover requirements in collaboration with Indigenous communities to determine this ideal coverage for priority species and uses, such as within woodland caribou habitat or the safe regrowth of medicinal plants.

In theory, pipelines (which are inert, from a western science and engineering perspective) are buried at safe depths and should have no interaction with the surface unless there is a terrain shift, such as ground slumping on a slope or a wash out. The topic paper does not address the impact a pipe's depth has on surface receptors, and more work is needed to understand how or if pipe depth may affect surface receptors from an IK perspective.

However, further issues may arise with the installation and construction method and clearing and maintenance of ROWs. Compaction from travel during installation and construction, including unconsolidated materials in trenching, can lead to issues down the road. Risks include geohazards and potential for future disruption due to reclamation/remediation concerns. Regulations should consider mitigation measures to avoid stripping methods and rather focus on methods which preserve the native seed bank, important for culturally appropriate restoration.

B. Deactivation and End-of-lifecycle

This paper proposes definitions associated with end of lifecycle activities, explores alternatives to applications for deactivations and reactivations, and proposes updates to record retention and surveillance and monitoring requirements, amongst others.

A positive step should entail editing the end of lifecycle definitions, with the inclusion of *In-service* and *Lifecycle* and amending *Decommission* and *Operate*. Ensuring clarity for proponents regarding the expectation of the pipeline lifecycle is important for consistency and setting out expectations. However, there is too much uncertainty around the end of lifecycle and how operators will decommission or abandon infrastructure.

Decommissioning needs to include community sign off, input, and oversight with the goal of restoring traditional territory to a state agreed upon by the most impacted communities. The goal should be to restore and enhance Treaty rights and include the community as much as possible. MCFN, alongside several other Nations are currently developing standards to formalize our expectations for healthy lands, air, and water. Once finalized, these Nation-based standards will inform our position to support any proposed work. Prior to being certified, decommissioning or other proposed work should be aligned with the desires of the Mikisew community and incorporate or follow traditional and cultural protocols identified by the community.

The trend toward abandoning is currently not agreed upon by MCFN members. While abandonment may have the least amount of disruption, there are several long-term effects, such as ground subsidence, formation of water conduits, and/or pipe exposure,

that need to be considered. Considerations for abandonment should include pipeline size and the product(s) transported within. If the trend to abandon is for infrastructure reuse, there needs to be transparency and upfront communication about these intentions.

There may be situations where abandonment is acceptable. As complete removal means pulling the pipeline out of the ground, generating significant disturbance and additional impact. However, with abandonment, there can be no awareness if there has been any minor leaks during the lifespan of the pipeline. Minor contamination will not be discovered or detected, leaving a legacy of contamination for future generations. As such, MCFN poses the following questions to the CER:

- What is the CER policy on abandonment and reclamation (i.e.: what is the definition of ‘clean’ and how can the CER guarantee that there is no legacy of contamination?)
- What is considered reclaimed and how/when does the CER provide a certificate of reclamation?
- Does the CER collect a security deposit from operators to hold until a pipeline is completely and successfully decommissioned?

In addition to some level assurance that decommissioned or abandoned pipelines will not leave a legacy of contamination or further future impacts, MCFN would expect to be a part of long-term surveillance and monitoring efforts. This would include on-going capacity funding to have monitors or guardians on the land with MCFN land users to actively monitor the health and wellbeing of the landscape and our Treaty rights and culture.

C. Emergency Management (EM)

This paper discusses the possible incorporation of Canadian Standards Association Group standard Z246.2, proposes opportunities to consolidate requirements currently in CER letters, Orders and Information Advisories, and identifies options to enhance the involvement of Indigenous peoples in EM, amongst other matters.

MCFN expects to be a part of long-term surveillance and monitoring efforts.

We agree that a standard should be required for all operators to meet or exceed regarding Emergency Management (EM). However, there needs to be a consideration that different and unique regions or communities may require additional protocols specific to their respective needs. MCFN would expect that EM requirements and plans would include a focus on keeping MCFN members safe and informed, meaning fulsome engagement and communication protocols must be established directly with MCFN on a case-by-case basis.

Subtopic 1: CSA Z246.2 — Incorporation by Reference

Incorporating CSA Z246.2 into the OPR can strengthen emergency management. However, the OPR should clarify that companies must demonstrate how they engage with Indigenous communities when applying the standard. The OPR should require companies to show how they've accounted for the protection of Indigenous lands, culturally significant sites, and traditional practices within their emergency management programs. Requirements should include:

- Reporting on Indigenous engagement efforts through meaningful collaboration.
- Include a requirement that companies support First Nations capacity to engage in emergency planning and response – recognizing the administrative and staffing challenges many communities face.

Subtopic 2: Priorities to be Considered within the EM Program

Changing “Safety of workers or the public” to “people” is more inclusive, but the term is still broad and could lead to Indigenous communities being overlooked/generalized. Specifying in the definition of “people” that this term includes “Indigenous communities whose lands, rights, and cultural practices may be uniquely affected by pipeline Emergencies” would be more robust.

Including “adverse effects on sites of historical and cultural significance” is an important improvement. However, the document should clarify that companies must collaborate with Indigenous communities to identify these locations, ensuring that Indigenous definitions of cultural significance and adverse effects are respected. Additionally acknowledging the capacity limitations of First Nations administrative bodies. Meaningful collaboration requires time and resources, which many Nations may not have readily available due to existing consultation workloads/conflicting priorities. Addressing the automatic application of standard industry consultation windows regarding Indigenous communities. Requirements for timelines and consultation processes developed in collaboration with each Nation through pre-engagement, respecting their unique governance structures, decision-making processes, and cultural priorities. A one-size-fits-all timeline does not account for the diversity among Nations, or the workload/staffing limitations.

Subtopic 3: Liaison Activities and the Continuing Education Program

Ensuring Indigenous communities are treated as rightsholders - not just impacted groups - in emergency planning and response. This includes including IK, addressing communication barriers supporting capacity building, and establishing long-term, trust-based relationships to ensure information is shared in a way that's accessible, timely, and culturally respectful.

Subtopic 4: Involvement of Indigenous Peoples in EM

It would be appropriate for companies to engage Indigenous Nations early and consistently in the development of emergency management plans. Recognizing and respecting the unique governance structures, decision-making processes, and capacity limitations of each Nation can support more meaningful participation. Additionally, maintaining transparent records of engagement efforts could help ensure accountability and demonstrate that collaboration was approached with integrity and in good faith. Timelines for consultation should be discussed collaboratively to reflect the realities and capacities of each Nation, rather than relying solely on industry-standard timeframes.

D. Environmental Protection

This paper proposes options to: strengthen requirements for reporting and management of contamination; clarify the CER's requirements for reclamation, vegetation management and restoration; enhance the participation of Indigenous Peoples in environmental monitoring; and, help ensure companies avoid gaps in transferring environmental information between the construction and operations phase of a pipeline, amongst other matters.

Each of the subtopics presented in this topic paper will be improved by including Indigenous communities as early as possible in planning and providing sufficient capacity funding for the engagement of community members. CER regulations can define western standards or expectations for each subtopic, but there must always be space for impacted Indigenous communities to define their unique requirements based on IK.

To enhance the participation of Indigenous communities, in which communities can be proactive about risk management and response, providing real-time data regarding the status of all regulated infrastructure (including operator, product, lifecycle status, regulatory compliance, incidents, etc), would enable informed decision-making. Participation in or the evaluation of Environmental Protection Plans (EPP) requires an understanding of accumulated state of environment. We would recommend the CER create a comprehensive dashboard that compiles information across jurisdictions (i.e.: CER, AER, and BCER) regarding pipelines already in operation. Ensuring access to reliable, up-to-date information assists in preparing for or responding to potential contamination events and goes beyond the duty to simply report and manage pre-existing contamination events. MCFN further calls for the development of a federal liability fund that is transparent, publicly reported upon, and has a clearly defined management framework.

MCFN agrees that there must be a commitment to report and manage contamination. If incidents go unreported, this may lead to significant adverse effects to both MCFN members and the environment upon which we rely, leading to not only harm but potential death. Both government and industry must notify all potentially impacted communities immediately in a transparent and culturally respectful manner.

If a contamination event occurs, MCFN would expect the following:

- Immediate communication and reporting to the MCFN through previously agreed upon channels. As soon as a call is received, a parallel process to inform MCFN and impacted communities occurs while the other stream is underway. Ideally, the reporting should be made to the MCFN immediately upon confirmation of the contamination findings through analytical testing, depending on severity, MCFN representatives should be included in the full lifecycle of mitigation and remediation of contamination.
- Contamination confirmation through analytical testing, and identification of migration of contamination from ROW to receiving environment to understand risks to human health, property, and environment.
- Any contamination management, preparation of remedial action plan, remediation process, contamination closure upon MCFN lands and/or that may pose risks to MCFN should be completed in consultation with the MCFN, with all contamination documentations/reports extended to the MCFN.
- MCFN shall have the right to retain their own technicians and/or environmental consultant(s) to review all this information from the operator and to provide opinions/suggestions for the process to ensure an alignment with the MCFN policies and protocols.
- Adequate capacity funding will be provided to support MCFN throughout the duration.

Monitoring programs need to be clearly outlined with both the needs of government, industry, and community outlined, agreed upon, and respected. Appropriate capacity must be provided to communities and there must be an ethical space created where cultural safety is defined, knowledge systems bridged, and relationships built.

The CER should require each operator to create EPPs that are responsive to regional needs (including both the physical landscape and Rights and protocols of Indigenous communities). They should outline requirements or protocols for working in specific areas, through collaboration and engagement with Indigenous communities. The EPP should also include Indigenous indicators, thresholds triggers for further environmental work that will be required, and mitigation plans depending on the scope of the project and the impacts to Indigenous values like old growth, traplines, water, wetlands, and/or traditional use areas.

E. Human and Organizational Factors

This paper describes options to help ensure companies understand and improve workplace systems and strengthen organizational learning.

Updates to OPR to add requirements to a proponent's management system may be a start, but discrepancies remain between what a corporate office mandates and what happens on the ground. It is difficult for large operators to guarantee that all divisions of their staff, particularly field staff, will abide by or follow policies and procedures set out by the

professionals who work off site. This disconnect is further amplified by the inclusion of contractors and subcontractors, who may have different organizational requirements or workplace culture.

Indigenous communities are often at the front line of encountering these disconnects, by experiencing the negative socio-economic impacts of temporary work camps and/or transient workers. Regardless of the workplace policies the operators tout, such as Drug and Alcohol, Harassment, and/or Cultural Awareness, Indigenous communities often see an increase of racism, violence, and sexualized crime against women, availability of drugs and alcohol, and motor vehicle incidents (such as collisions and animal hits). Government and industry need to respond and resolve these issues and agree to work with Indigenous communities to support and find creative ways to address in culturally appropriate and safe ways.

F. Management System and Contractor Management

This paper proposes improvements to existing management system requirements and identifies options to clarify CER requirements related to the management of contractors providing services and/or products across the pipeline lifecycle.

MCFN is largely in agreement with the proposed options in both Subtopic 1 and 2 regarding Management System Requirements and Management of Contractors Providing Services and/or Products Across the Pipeline Lifecycle, respectively. MCFN would add that the CER include a regulation that where and when possible, the most impacted Indigenous communities receive first right of refusal regarding contracting opportunities. All too often our communities are promised jobs and opportunities as socio-economic benefits of project approvals, only to find our people overlooked or excluded from opportunities.

G. Pipeline Integrity

This paper explores the possibility of expanding the scope of the OPR to apply to emerging commodities such as hydrogen and carbon dioxide, and proposes improvements to the CER's oversight of the use of new technologies, storage facilities, and pipeline materials, amongst other matters.

Expanding the scope to emerging commodities, could be considered on a case-by-case basis, but further engagement and consultation would have to take place to understand the full scope of consideration.

Carbon dioxide (CO₂) may become problematic if there is any humidity or moisture in the pipeline because of corrosion. A CO₂ corrosion incident is not a spill but a release; it can be very dangerous because there is no smell and can lead to fatalities. At a minimum, there must be Emergency Shut Down (ESD) valves every 500 feet (152m) for incident response purposes. It is imperative that there are strong regulations around pipeline integrity and emergency response, to not lose all the CO₂ should there be a release.

Hydrogen is highly explosive, making it dangerous to transport. While transporting it by pipeline may be ideal (compared to by road or rail) the enhanced risk of explosion is not ideal for the peaceful enjoyment of Treaty rights. If there is any cross-contamination with other piped products, the hydrogen can become corrosive, and it is also highly sensitive to temperature.

Does the CER intend to allow for the conversion of oil and gas pipelines to Hydrogen and/or CO2 pipelines? CO2 pipelines should not be made with metal but rather lined with PVC or other buffer material to avoid corrosion. With the potential of piping emerging commodities, will the CER also regulate salt caverns, or any facilities associated with CO2 or Hydrogen transport and storage?

As the safety and security, which includes emotional and spiritual health, of our community is a priority, MCFN would like to see a further focus on pipeline integrity. This document made no mention of reviewing standards regarding shut-down valve placement, inspections, and monitoring, etc.

H. Reporting Harm

This paper seeks to update the definition of an incident and to clarify the CER's expectations for matters relating to near-misses, potential harm to the environment, cyber events and impacts to historic or cultural sites of significance to Indigenous Peoples.

Reporting and information sharing in a timely and culturally respectful manner is critical. Regulations should set the bare minimum, but there is an onus on government and industry to work with impacted Indigenous communities to develop protocols that meet or exceed the regulation and the needs of those communities. Consider co-designing communication guidelines with community or an IAMC at the outset, to build a foundation of positive relationship and respect.

This topic paper does not address monitoring and resolving harm experienced by Indigenous communities. Just as government and industry manage risk in terms of process and occupational safety; there needs to be a goal for zero harm and cultural safety for Indigenous communities and their territories. Harm to communities can include socio-economic impacts, such as missing and murdered Indigenous women and girls, racism, and increased addictions, and harm to territory can include the death and wounding of wildlife from traffic or operations and/or the removal of culturally significant species. Monitoring and reporting on these harms is important and needs to be developed in collaboration with communities.

I. Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement

This paper identifies options to prevent and address impacts to the rights and interests of Indigenous Peoples; to manage socio-economic effects; and, to clarify engagement requirements with potentially impacted people and communities over the lifecycle of pipeline infrastructure.

As outlined throughout this document, it is difficult, albeit impossible, to *incorporate* IK into western methods, concepts, and/or management systems while respecting it as a standalone knowledge system. Incorporation or integration leads to cultural confusion³ where IK will be lost, eroded, and/or disregarded, with no one upholding Rights and interests or ensuring protocol and culturally respectful usage. As such, it is imperative that IK be given the same space and weight as western knowledge.

IK needs to be operationalized by developing a framework that allows the project lifecycle to parallel IK with bridges built between the two systems to inform decision points, monitoring, evaluation, etc. IK cannot be shoved into a process as an afterthought and cannot be anecdotal, it needs to be anchored in traditional governance and customary law. Sufficient capacity needs to be provided to build these frameworks on a project-by-project basis.

This work to bridge the two knowledge systems need to be done early in the process, and may begin to develop during pre-engagement or while the community is assessing impacts to Rights due to the interconnected nature of , but it needs to be clear that the community must have the ability to assess impacts fully before outlining mitigations, conditions, and/or informing the OPR management systems. When these processes are rushed, blended, or missed, it leads to frustration and mistrust between community and government and industry.

With regard to *Managing Socio-Economic Effects*, the addition of a new protection program and the expansion of the EPP, MCFN would agree that these are positive steps, so long as respective impacted communities are included in the tailoring of any plans to be respectful and responsive to Indigenous protocols and regional environmental conditions, inclusive of capacity and space for communities to define this on their own terms. Approved conditions and/or mitigations cannot be changed without informed consent and benefits need to be guaranteed; include first right of refusal for jobs, contracting opportunities, other pre-determined accommodations.

³ https://static.aer.ca/prd/documents/about-us/VoiceOfUnderstanding_Report.pdf, pg 13

J. Safety

This paper proposes updates to process safety management processes; and safety plans for construction, operation and maintenance, and abandonment activities.

Safety plans and management systems for process safety should be available for communities to review upon request and should follow industry-best practices.

FM Topic Papers

As the CER process is still relatively new, now is the ideal time to make sure that new project applications are set up for success regarding creating greater understanding with potentially impacted communities and for providing them with the space to assess impacts to Rights according to their own oral systems and IK. Hence, updating the FMs to reflect and respond to the needs of the communities to provide their own impact to rights and culture assessments is critical. It is the *Duty of the Crown* to understand how the taking up of lands will impact Treaty and Aboriginal Rights and if this aspect is left to government and industry to assess in isolation, there will certainly be an infringement to Rights and interests, not to mention this type of paternalistic strategy is in direct opposition to the implementation of UNDRIP. The only entity with the ability to fully assess impacts, are the potentially impacted communities, who hold an innate understanding of the land and water built upon generations of oral history since time immemorial.

Comprehensive and early capacity must be provided to Indigenous communities, to develop a foundation of informed information sharing. Early engagement from industry is not enough to help communities develop a fulsome understanding, and these early and preliminary discussions alone should be the only mechanism to determine value components and potential impacts to rights. There needs to be adequate time with funding for Indigenous communities to retain independent technical expertise (ie: a First Nation Independent Technical Review or FNITR) as necessary to build greater understanding of the western process and technologies, to share and educate knowledge holders, and take time to access, understand, and apply IK in unique assessment methodologies, such as our own Mikisew Cree Culture and Rights Assessment (MCCRA). There needs to be an understanding and distinction between Indigenous led impact assessments and Traditional Land Use & Occupancy studies (TLUOS); while both are critical and inform each other, TLUOS provides a spatial grounding and understanding, which needs to be taken to the next step, which the IK assessment of impacts to that TLUOS through cultural assessment. Until these three key components (FNITR, TLUOS, and MCCRA) can be completed (or at least well underway) for a project application, there should be no possibility of a completeness determination for a holistic assessment of the project as a whole, because once the Commission deems the application complete and the Hearing Order is released, the timeline moves far too fast for Indigenous communities to keep up with both the process, undertake culturally relevant studies, and attempt to have their

concerns and/or assessments heard, understood, and/or considered by government and industry.

Both the CER and industry need to be clear and transparent about the process and recognize the capacity limitations that many Indigenous communities face.

K. Environmental and Socio-Economic Assessment (ESA)

This paper proposes a restructuring of the ESA section of the Filing Manuals, including updates to filing requirements related to environmental, health, social or economic aspects of the project that are of highest value to those who may be impacted by the project.

Restructuring the FM to split the ESA into an amended ESA and a new Rights & Interests section is a good idea, with the caveat that the later needs to be largely populated by potentially effected Indigenous communities. Adequate funding capacity must be offered early in the process to give Indigenous communities ample time to become informed and start internal scoping and engagement within the community. Becoming informed requires the provision of funding to hire technical experts who can decipher government and industry driven technical documents, procedures, and proposals, which Indigenous community staff members may not have the ability to review due to time constraints and competing priorities.

Employing a valued components (VCs) based approach is important for being able to identify various VCs which can be assessed through western methods of assessment by subject matter experts. While the Indigenous worldview does not divorce and silo VCs, VCs can be culturally appropriate⁴, identified and informed through early engagement and preliminary assessment of the project footprint and TLUO, and should be agreed upon by MCFN and the proponent⁵. While MCFN developed the MCCRA under CEAA guidelines, the foundation for Rights assessment is still applicable and should be reviewed and understood by government and industry. MCFN would be happy to work further with the CER to update the MCCRA to reflect the new CER Act and further develop updates to the OPR and FM.

Mitigation and enhancement measures should be designed with harm reduction in mind, respecting the rights of Indigenous people and the Territory that is going to be impacted. It is important to work closely with Indigenous communities to look at valued ecological components, such as water, to establish thresholds, limits, tailored protection plans, and conditions that are appropriate and mutually beneficial. It is difficult to establish mitigation and enhancements for socio-cultural or socio-economic VCs, as some of the more adverse impacts are difficult to mitigate and or resolve, such as the lived experience of MCFN members within MCFN Territory or the racism MCFN members experience with additional work camps or transient workers.

⁴ https://firelight.ca/assets/publications/reports/mcfn-303_mapp-report.pdf pg. 29

⁵ <https://open.alberta.ca/dataset/5da3a4f0-f982-4f8e-af9b-cb00c39fb165/resource/360a4892-0a07-4388-b7a2-7ce6c2908cc9/download/mcfn-wiyowtankitaskinofinal-for-pdfsept16.pdf> pg.23

Cumulative Effects assessments must be discussed in depth with affected Indigenous communities who have the only living record of baseline conditions since time immemorial. There needs to be a recognition and acknowledgement of *Baseline Conditions* (as defined by First Nations, pre-disturbance), *Accumulated State* (current conditions lived by Indigenous people on the land through the eyes of their IK – lived experience), and then space needs to be opened for Indigenous communities to develop and work toward an *Integrative State* (a restorative vision for Indigenous people to govern their territory and practice/assert their Rights on the land, along side responsible development). When oral history, lived experience, and a vision for the future, inclusive of both the relational and transactional activities, is honored and respected, then we will start to see progress toward reconciliation and positive Nation-to-Nation relationships.

Significance should be defined with Indigenous Communities through their own Impact Assessment process, with a framework for significance developed collaboratively. Current EA regimes often leave significance determinations in the hands of decision makers outside of Indigenous communities, making it inconsistent with UNDRIP approaches and often inconsistent with the broader variety of indicators and culturally appropriate VCs. As referenced above, MCFN has undertaken a lot of work on the determination of significance⁶, under the old CEAA guidelines, and would be happy to update documents based on the new CER Act.

Justification for any infringement or environmental, health, social, cultural, or economic impacts must consider the cumulative effects and effectiveness of previously applied provincial and federal mitigations and accommodations (or lack thereof) as part of the justification for new project approvals. This is alleviated by a consent provision, in alignment with FPIC.

L. Lands

This paper provides an overview of proposed updates to filing guidance on land-related matters, such as infrastructure routing, site selection, land location and land rights, land acquisition processes (including notices and agreements), and land dispute compensation methodology.

This topic paper is largely related to land ownership, and may not be relevant to Indigenous communities, though it is important to note that the Lands section should be built upon a foundation of TLUO and further informed by culturally appropriate VCs, the development of thresholds and mitigations, and cultural assessment. TLUO is different from a cultural assessment, although they inform each other and are holistic in nature, they must be both understood for differing FM sections and/or components of a project application. Routing and site selection may be informed by the completion of a TLUOS, meaning these studies need to be undertaken early in the process to inform the project application before the proponent seeks a determination of completeness.

⁶ https://firelight.ca/assets/publications/reports/mcfn-303_mapp-report.pdf pg. 29

Compensation is a conversation that needs to be addressed in a much higher context than simply commenting on a topic paper. The energy industry draws billions of dollars out of Indigenous (Treaty and unceded) lands every year, with communities not seeing a fair percentage of the profit, considering they see 100% of the impacts. All pipelines involve the taking up of land and interruption, disturbance, and/or change of use and occupancy (ability to practice Rights). Fair compensation for the transport of resources from-through-to Treaty lands needs a Nation-to-Nation level discussion.

M. Rights and Interests of Indigenous Peoples

This paper proposes the creation of a new section, specific to the rights and interests of Indigenous Peoples. This section would include filing requirements related to the integration of the applicant's assessment and Indigenous-led assessments and studies; as well as guidance for assessing effects on the rights of Indigenous Peoples, and for monitoring and oversight by Indigenous Peoples, amongst other matters.

Currently, the CER FM does not provide enough time or space for Indigenous communities to effectively assess impacts on rights and interests before the proponent files the project application and ESA. Pre-engagement activities do not suffice as rights impact assessments and proponent led studies cannot assess impacts to rights, ONLY potentially impacted Indigenous communities can assess impacts to their own Rights and culture. When proponents led impacts to rights assessments, they often rely on “publicly available” documents, usually TUS or IK studies that have been submitted to the public registry for the assessment of other regulatory applications. This is inappropriate and a misuse of Intellectual Property. IK is contextual and shared for the express use of the agreed upon project and is not to be reproduced or repurposed unless consent has been granted by the knowledge holder.

Capacity funding needs to be made available for potentially impacted communities to begin their own process for assessing impacts, as soon as possible. Indigenous communities need to be given time to become informed of the project proposal and technical components, while also working internally with knowledge holders to scope out potential TLUOS and/or cultural assessments. It takes time to scope work with Elders and knowledge holders, as they are accessing oral history from time immemorial, then to understand and apply to the western concepts can be challenging.

There needs to be a deeper understanding and awareness of the difference between:

- Engagement
- Consultation
- Cultural Assessment,
- TUS
- Accommodation
- Mitigation
- Conditions

An IAMC may be assembled, consisting of potentially impacted communities with overlapping Territories, and government and industry personnel to create a framework to include each community's individual assessment in a meaningful way, the development

of guidance for monitoring and oversight as appropriate, and determination of significance. These things cannot be done in isolation.