

March 31, 2025

VIA EMAIL: [REDACTED]

Canada Energy Regulator  
205-517 10 Ave SW  
Calgary, AB T2R 0A8

[REDACTED]  
\* services provided by  
**Amy F. Lalji Law Corp**  
Direct Line: [REDACTED]  
Fax: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]  
Legal Assistant  
Direct Line: [REDACTED]  
E-mail: [REDACTED]

Dear Sirs/Mesdames:

**Re: Joint Submission on Phase 2 of the Onshore Pipeline Regulations, SOR/99-294 (“OPR”) and Filing Manuals Review**

We write on behalf of Driftpile Cree Nation, Louis Bull Tribe, Kanaka Bar Indian Band, Sucker Creek First Nation, Whitefish Lake First Nation, and Zagimē Anishinabēk (collectively, the “**Nations**”) in response to the Canada Energy Regulator’s (the “**CER**”) request for input on various topics related to the OPR and the Filing Manuals for the OPR and Filing Manuals Review.

We attach the following as appendices to this correspondence:

- Appendix A: the joint submission of the Nations (the “**Submissions**”); and
- Appendix B: a summary of the Submissions.

The Nations have prepared these submissions jointly for the CER’s consideration. While the Nations each have a unique history of engagement and consultation with the CER and companies regulated by the OPR, the limited funding received by each individual Nation necessitated that they collaborate in order to meaningfully and comprehensively address the relevant issues that arise throughout the 13 topic papers.

The Nations have prioritized addressing each question that they consider to be relevant to their inherent Indigenous rights—being their respective rights identified under the United Nations Declaration on the Rights of Indigenous Peoples, and Aboriginal and Treaty rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*. However, the CER should not interpret the Nations’ lack of response to any Discussion Question as the Nations taking no position regarding the issues raised in that respective question, but rather a reflection of the limited funding received relative to the expansive topics covered by the OPR and Filing Manuals Review.



WESTERN CANADA'S LAW FIRM

We thank you for your consideration of the attached submission.

Sincerely,

**MLT AIKINS LLP**

Per:



AL:cgr

**APPENDIX A**  
**SUBMISSIONS IN RESPONSE TO ONSHORE PIPELINE REGULATION AND**  
**FILING MANUALS REVIEW**

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
<b>II.</b>	<b>TOPIC PAPER B: DEACTIVATION AND END OF LIFECYCLE .....</b>	<b>4</b>
	SUBTOPIC 2: DECOMMISSIONING.....	4
	SUBTOPIC 3: MANAGEMENT SYSTEM .....	5
	SUBTOPIC 4: NOTIFICATION FOR DEACTIVATION.....	6
	SUBTOPIC 5: SURVEILLANCE AND MONITORING .....	7
<b>III.</b>	<b>TOPIC PAPER C: EMERGENCY MANAGEMENT .....</b>	<b>8</b>
	SUBTOPIC 2: PRIORITIES TO BE CONSIDERED WITHIN THE EM PROGRAM .....	8
	SUBTOPIC 3: CONSOLIDATION OF CURRENT REGULATORY FRAMEWORK.....	10
	SUBTOPIC 5: INVOLVEMENT OF INDIGENOUS PEOPLES IN EM .....	11
<b>IV.</b>	<b>TOPIC PAPER D: ENVIRONMENTAL PROTECTION.....</b>	<b>12</b>
	SUBTOPIC 1: CONTAMINATION MANAGEMENT AND REPORTING.....	12
	SUBTOPIC 2: SECTION 21 OF THE OPR: RECLAMATION, VEGETATION MANAGEMENT, AND RESTORATION .....	14
	SUBTOPIC 3: SECTION 21 OF THE OPR – PARTICIPATION IN DEVELOPMENT OF ENVIRONMENTAL MONITORING BY INDIGENOUS PEOPLES .....	16
	SUBTOPIC 4: ENVIRONMENTAL PROTECTION PLAN REQUIRED FOR CONSTRUCTION AND OPERATION AND MAINTENANCE ACTIVITIES .....	17
	SUBTOPIC 6: CLIMATE RESILIENCY .....	19
<b>V.</b>	<b>TOPIC PAPER F: MANAGEMENT SYSTEMS AND CONTRACTOR MANAGEMENT .....</b>	<b>20</b>
	SUBTOPIC 1: MANAGEMENT SYSTEM REQUIREMENTS .....	21
	SUBTOPIC 2: MANAGEMENT OF CONTRACTORS PROVIDING SERVICES AND/OR PRODUCTS ACROSS THE PIPELINE LIFECYCLE .....	23
<b>VI.</b>	<b>TOPIC PAPER I: RIGHTS AND INTERESTS OF INDIGENOUS PEOPLES, SOCIO- ECONOMIC EFFECTS, AND ENGAGEMENT .....</b>	<b>24</b>
	SUBTOPIC 1: PREVENTING AND ADDRESSING IMPACTS TO THE RIGHTS AND INTERESTS OF INDIGENOUS PEOPLES	25
	<i>A new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples</i>	27
	<i>Cultural competency training requirements for all those working in regulated companies.....</i>	29
	SUBTOPIC 2: MANAGING SOCIO-ECONOMIC EFFECTS .....	30
	SUBTOPIC 3: ENGAGING WITH POTENTIALLY AFFECTED PEOPLE AND COMMUNITIES .....	33
<b>VII.</b>	<b>TOPIC PAPER K: FILING MANUALS - ENVIRONMENTAL AND SOCIO-ECONOMIC ASSESSMENT .....</b>	<b>35</b>
	SUBTOPIC 1: RESTRUCTURING THE ESA SECTION.....	35
	SUBTOPIC 2: ENVIRONMENTAL AND SOCIO-ECONOMIC ASSESSMENT .....	38
	<i>Subtopic 2.1: Valued component identification and section for the ESA .....</i>	38
	<i>Subtopic 2.2: Socio-economic valued components .....</i>	40
	<i>Subtopic 2.3: Mitigation and enhancement measures.....</i>	41
	<i>Subtopic 2.4: Cumulative Effect.....</i>	43
	<i>Subtopic 2.5: Significance.....</i>	45
<b>VIII.</b>	<b>TOPIC PAPER M: FILING MANUALS – RIGHTS AND INTERESTS OF INDIGENOUS PEOPLE.....</b>	<b>45</b>
	SUBTOPIC 2: RIGHTS AND INTERESTS OF INDIGENOUS PEOPLES .....	46
	<i>Subtopic 2.2: Integrating the applicant’s assessment and Indigenous-led assessments and studies .....</i>	46

## I. INTRODUCTION

In January 2022, the Canada Energy Regulator (the “**CER**”) initiated a multi-year review of the Onshore Pipeline Regulations, SOR/99-294 (the “**OPR**”) and Filing Manuals. Phase 2 of the OPR review consists of 13 topic papers (“**Topic Paper**”) aimed at informing amendments to the OPR and Filing Manuals. Each Topic Paper contains various subtopics (“**Subtopic**”) covering the theme of the Topic Paper and includes a series of related discussion questions (“**Discussion Questions**”).

In response to the Phase 2 review, Driftpile Cree Nation, Louis Bull Tribe, Kanaka Bar Indian Band, Sucker Creek First Nation, Whitefish Lake First Nation, and Zagimē Anishinabēk (collectively, the “**Nations**”) have prepared these OPR submissions for the CER’s consideration.

The OPR is the primary avenue in which the CER oversees pipeline infrastructure under the *Canadian Energy Regulator Act*, SC 2019, c. 28, s. 10 (the “**Act**”). All companies are required by law to follow the OPR in designing, constructing, and operating a federally regulated pipeline, while the Filing Manuals provide direction to regulated companies on what should be included in their application to the CER when applying to develop a pipeline project and related infrastructure (“**Project**”).

The Nations each have a unique history of engagement and consultation with the CER and oil and gas companies, and in protecting and maintaining their inherent Indigenous rights, rights identified under the United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”) and Aboriginal and Treaty rights recognized and affirmed by Section 35 of the *Constitution Act, 1982* (together, “**Indigenous Rights**”) in the face of oil and gas development.

Both the OPR and the Filing Manuals have significant influence over Projects in Canada and as such must be amended in a way that more extensively incorporates and accommodates Indigenous Knowledge into the decision-making process or Projects. Of particular importance to the Nations is Indigenous involvement in shared decision making throughout the lifecycle of a Project. The OPR and Filing Manuals must be modernized to reflect the CER’s commitment to advance reconciliation with Indigenous Peoples and Canada’s commitment to implement UNDRIP and its obligations as set out in the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 (“**UNDA**”). In particular, measure 34 of the UNDA Action Plan (“**Action Plan**”) commits the CER to working with Indigenous Nations in consultation and collaboration to amend the OPR and Filing Manuals in a manner that incorporates Indigenous laws, policies, practice, protocol, and knowledge, and prevents and addresses impacts to Indigenous Rights and interests.<sup>1</sup>

The Nations’ response to specific Discussion Questions are set out in the sections below. Please note that the Nations’ submissions represent their respective views as distinct First Nations. As

---

<sup>1</sup> The United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan Measure 34, page 33.

such, these submissions reflect a distinctions-based approach to the CER's regulation of Projects within the OPR and Filing Manual. The CER should distinguish basis with respect to the unique Indigenous Rights of each Indigenous Nation represented.

## **II. TOPIC PAPER B: DEACTIVATION AND END OF LIFECYCLE**

Topic Paper B concerns the deactivation of Projects and other end-of-lifecycle considerations under the OPR. Specifically, the CER seeks input under five Subtopics concerning the definitions used in the OPR regarding the decommissioning and end-of-lifecycle regulatory process, issues a records retention, and monitoring-related matters during the end-of-lifecycle phase of a Project.

The CER has prepared Subtopic discussions concerning these matters and asked several related questions. In response, the Nations have prepared submissions under four of the CER's Subtopics in the sections below.

### **Subtopic 2: Decommissioning**

Subtopic 2 of the CER's Deactivation and End of Lifecycle Topic Paper addresses the decommissioning and abandonment of pipelines and the requirements of companies concerning related activities under the OPR. The CER has noted that it is considering changes to Section 45.1 of the OPR regarding application requirements for proposed decommissioning activities to ensure that companies have clarity on when decommissioning or abandonment may be appropriate, ensuring that decommissioning occurs safely and in an environmentally sound manner, and to account for related impacts to Indigenous Nations.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 2, the Nations provide the following:

- B2. Do you have feedback on how section 45.1 could be improved to address the comments received; for example, what elements should be included in a decommissioning plan?

Currently, Section 45.1 of the OPR establishes only that companies may apply to decommission a pipeline but does not set out any express requirements for them to do so. Further, the OPR provides only minimal guidance or process steps regarding the content of companies' applications for decommissioning under Section 45.1, requiring only that companies provide reasons for requesting decommissioning and the procedures that it proposes to do so. The Nations are concerned about the ability of the current provisions of the OPR concerning decommissioning to support the CER's mandate towards the implementation of UNDRIP.

A pipeline's presence within Indigenous territories inherently affects the ability of Indigenous Rights holders to steward and govern their lands and resources. Such impacts are likely to create long-lasting impacts to and infringements of Indigenous Rights throughout the decommissioning and abandonment phases of a Project's lifecycle.

The Nations submit that any decommissioning activities undertaken by a regulated company must account for these permanent impacts, including by directly engaging with, and implementing the requirements of, impacted Indigenous Nations throughout the decommissioning and abandonment lifecycle. Such engagement activities should be developed with the consent of impacted Indigenous Nations in order to adequately support the meaningful involvement of those Indigenous Nations in critical decision that may sustain a Project's impacts within their territories.

The Nations propose that in order to implement the CER's proposed options under this Subtopic, Section 45.1 must establish:

- Clear and appropriate requirements for when decommissioning of a pipeline must be considered by a company;
- Specific application requirements that address critical information needs concerning environmental concerns and the continuous impacts of a pipeline to Indigenous Nations, including considerations around cumulative effects, and which set out how considerations for impacts to Indigenous Nations will be considered and addressed;
- Process steps to support the ability of impacted Indigenous Nations to understand, comment, and provide input to the CER on proposed decommissioning plans; and
- An engagement plan to ensure that decommissioning activities align and comply with Indigenous legal and procedural requirements that may be shared by impacted Indigenous Nations.

### **Subtopic 3: Management system**

Subtopic 3 of the CER's Deactivation and End of Lifecycle Topic Paper identifies the CER's intention to collect additional feedback regarding the application of oversight and management systems to the decommissioning and abandonment of pipelines. The CER notes that such oversight and management is not required in the OPR and that its objectives stated under this Subtopic are to support appropriate oversight during the decommissioning and abandonment of pipelines through the application of management systems. The CER is considering including requirements that companies establish management systems for decommissioned and abandoned pipelines under Section 6.5 of the OPR.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 3, the Nations provide the following:

- B3. What is your feedback on requiring companies to establish, implement and maintain a management system for decommissioned and abandoned pipelines?

The Nations are strongly in favour of the CER adopting a full lifecycle approach for Projects, including the use of management systems in the decommissioning and

abandonment phases of a pipeline. In doing so, the CER should establish requirements in the OPR for companies to implement and maintain management systems for decommissioned and abandoned pipelines.

As noted in the Nations' response to Discussion Question B2, above, the presence of pipelines within the landscape creates sustained and long-term impacts to Indigenous Peoples, including cultural harm where traditional governance and cultural practices are being affected by the presence of industrial development. Notwithstanding any measures implemented by companies to address such impacts, they are often magnified by the cumulative impacts of development within the territories of Indigenous Nations.

In this regard, the requirement that management systems be implemented for decommissioned and abandoned pipelines would acknowledge the lasting impacts of a pipeline, even when inactive. The objective would be to support rights-based perspectives and regulatory certainty.

B4. What should the scope of the management system be for decommissioned and abandoned pipelines?

The scope of management systems concerning decommissioning and abandonment should include all relevant activities contemplated under the OPR under Section 6.5(1), inclusive of the considerations recommended under the Nations' response to Discussion Question D10, below, concerning management systems and protection plans during operations and maintenance phases.

Management systems developed for decommissioning and abandonment should include roles for oversight, monitoring, and active participation by impacted Indigenous Nations and must be developed on a consent-basis while supporting the implementation of Indigenous legal traditions and practices.

**Subtopic 4: Notification for deactivation**

Subtopic 4 of the CER's Deactivation and End of Lifecycle Topic Paper states the CER's considerations regarding changing the requirements under Section 44 of the OPR that applications be filed for deactivation and reactivation of pipeline infrastructure. The OPR notes that it has received feedback that these requirements be changed to only require notice from companies for deactivations of pipelines that will not be in service for a period of 12 months or more, primarily to support regulatory efficiency.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 4, the Nations provide the following:

B5. Are there risks associated with requiring companies to file a notification for deactivation activities instead of filing an application, and if so, how could they be mitigated?

The Nations note that any change to the requirements under the OPR that would reduce regulatory oversight and transparency concerning the activities of regulated companies creates significant risk that the long-term impacts and cumulative impacts of a Project to Indigenous Rights holders will remain unmanaged. Such reduced process requirements would limit opportunities for impacted Indigenous Nations, who bear the ongoing impacts of pipeline infrastructure, including harms to Indigenous culture and governance practices, to exercise their respective Indigenous Rights to control and steward their territories.

It is the Nations' view that mitigating these risks arising from a reduction in regulatory processes through the deactivation of pipeline infrastructure requires direct engagement with, and review by, impacted Indigenous Nations who must be given appropriate opportunities to provide relevant information and to meaningfully and jointly participate in decisions concerning proposed deactivation activities within their territories even when notice to the regulator is required under the OPR.

If the CER determines to remove requirements for regulated companies to file an application for deactivation activities under the OPR, which the Nations do not support, the Nations propose that a two-tiered process could be implemented to limit risks to Indigenous Nations. Under such a process, regulated companies should be required to notify Indigenous Nations of their intention to deactivate pipeline infrastructure. An application process should be required in circumstances where notified Indigenous Nations raise concerns, which should involve further processes steps that include direct engagement by the company with those Indigenous Nations.

### **Subtopic 5: Surveillance and monitoring**

Subtopic 5 of the CER's Deactivation and End of Lifecycle Topic Paper generally concerns the issue of monitoring activities required during the abandonment phase of a Project and the potential role of Indigenous Nations in developing indicators in this regard. The CER notes that Section 39 of the OPR requires the development of surveillance and monitoring programs for Projects but does not expressly identify abandonment within this scope. The CER has proposed to develop new requirements in Section 39 of the OPR that required the monitoring of decommissioned and abandoned pipelines and the involvement of Indigenous Nations in related planning and surveillance and monitoring activities.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 5, the Nations provide the following:

- B7. Do you have feedback regarding the applicability of section 39 of the OPR (surveillance and monitoring) to include provisions around monitoring of abandoned pipelines?

It is the Nations' view that the OPR should require surveillance and monitoring requirements for the whole lifecycle of a Project, which includes decommissioning and abandonment activities.

As discussed in the Nations' response to Discussion Question D1, above, the presence of a pipeline within the territories of impacted Indigenous Nations imparts ongoing long-term impacts and cumulative impacts to Indigenous-controlled lands, cultural practices, and expressions of Indigenous legal traditions.

Therefore, the activities undertaken by a company during decommissioning and abandonment should fall within the scope of Section 39 of the OPR.

**B8: Do you have feedback on how Indigenous Peoples can be involved in the monitoring of decommissioned and abandoned pipelines.**

In addition to the Nation's submissions under Discussion Question B7, above, the Nations submit that impacted Indigenous Nations must be involved in monitoring activities throughout all lifecycle phases of a Project. Accordingly, the CER's potential amendments to the OPR should include requirements for the regulated companies to engage all impacted Indigenous Nations in surveillance and monitoring planning for decommissioned and abandoned pipelines, including requirements that such planning include "boots on the ground" activities by Indigenous monitors. Finally, the OPR must empower Indigenous monitors to report and require enforcement on any relevant environmental protection and compliance issues that may arise.

Such activities would support the CER's appropriate recognition of the long-term impacts and cumulative impacts of Project development to Indigenous Peoples, including impacts to Indigenous cultural practices and the legal systems that govern access to and the uses of the territories of Indigenous Nations.

### **III. TOPIC PAPER C: EMERGENCY MANAGEMENT**

Topic Paper C concerning Emergency Management identifies several proposed amendments to the OPR concerning the CER's oversight of Project emergency management matters. The mitigation and avoidance of emergencies associated with Projects is a significant concern of impacted Indigenous Nations due to the risk of irreparable environmental harms within their territories. The CER has identified several factors that influence its oversight of emergency management matters, including with respect to preparation, corporation from companies, education for local authorities, and employee training.

The CER has prepared Subtopic discussions concerning these matters and asked several related questions. In response, the Nations have prepared submissions under three of the CER's Subtopics in the sections below.

#### **Subtopic 2: Priorities to be considered within the EM Program**

Subtopic 2 of the CER's Emergency Management Topic Paper concerns the requirement under Section 32 of the OPR that companies develop, implement, and maintain an emergency management program. The CER has set out its objectives for new requirements for Emergency Management Programs ("**EM Programs**") in the OPR and seeks input concerning the priorities

and content of EM Programs. The CER notes its intention to ensure requirements of EM Programs address clarity around sites of historic and cultural significance and other relevant impacts of emergencies on people. In this regard, the CER has proposed to include concerns for adverse effects to sites of historic and cultural significance within the scope of Subsection 32(1) of the OPR.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 2, the Nations provide the following:

C2. What is your feedback on replacing the term "safety of workers or the public" with "people" in subsection 32(1)?

Generally, the Nations support the CER's proposed change of language, only where there is assurance that the term "people" can be understood to apply to "Indigenous Peoples" as a distinct category. As the CER is aware, Indigenous Peoples have concerns for safety that are unique to the general public and workers. Cultural safety, while acknowledged elsewhere in the CER's regulatory regime and published best practices, is a significant concern that should be reflected and acknowledged within the scope of EM Programs in addition to other matters of personal safety.

Amendments to Subsection 32(1) of the OPR that would reflect a broader category of protection should distinguish the particular interests and concerns that are unique to Indigenous people. Accordingly, and at a minimum, the CER should consider replacing the term "safety of workers or the public" with "people and Indigenous Peoples" in Subsection 32(1).

C3. What is your feedback on including adverse effects on sites of historic and cultural significance in subsection 32(1)?

The Nations have significant concerns regarding the impacts of spills and emergencies throughout the lifecycle of a Project. These concerns arise from the fact that significant and irreparable harm may result from environmental contamination within Indigenous territories and from damage to sites of cultural significance.

The Nations generally support the inclusion of "sites of historic and cultural significance" within the scope of Section 32 of the OPR. However, the Nations are concerned that this scope is not appropriately defined to recognize the rights of Indigenous Nations to manage and steward their territories in accordance with their Indigenous Rights and to ensure adequate participation of impacted Indigenous Nations in developing and overseeing the respective EM Programs.

Generally, any process or program under the OPR that concerns the management of potential impacts to Indigenous Nations, but which does not adequately reflect their decision-making authority in such management, will not adequately implement UNDRIP. Accordingly, a regulated company's EM Program under Section 32 of the OPR must

establish adequate process steps to reflect the legal processes and practices of impacted Indigenous Nations, including with regard to “sites of historic and cultural significance”.

### **Subtopic 3: Consolidation of current regulatory framework**

Subtopic 3 of the CER’s Emergency Management Topic Paper describes the CER’s intentions to bring certain best practices and emergency management requirements published in CER letters, amending orders, and information advisories into the OPR. These publications include the CER’s “Industry Best Practices for Notification to Indigenous Nations and Communities regarding CER-reportable Incidents” (the “**Best Practices**”), and forthcoming best practices to be published concerning the involvement of Indigenous Nations in emergency management. By way of summary, the Best Practices establish the following practices for the notification of Indigenous Nations concerning reportable incidents:

- Companies should identify Indigenous Nations and Communities whose traditional territories or exercised Indigenous rights could be affected by a pipeline emergency or immediately reportable incident. They should maintain updated contact lists through regular engagement to ensure timely communication during emergencies.
- Based on this identification, companies must document a clear rationale for the geographic scope of their incident reporting practices, specifying which communities will be notified.
- Companies should collaborate with Indigenous Nations and Communities to determine which types of incidents are of concern and their preferred communication methods. Additionally, companies must provide their contact information while ensuring confidentiality in cases involving injuries or fatalities.
- Notifications to identified groups must occur as soon as practicable and within 24 hours after an reportable incident.
- If an incident occurs on infrastructure monitored by an Indigenous Advisory and Monitoring Committee (IAMC), the appropriate IAMC must be notified according to the established protocol.

The CER states that its objectives will be to consolidate within the OPR certain emergency management principles published outside of the OPR by establishing new regulatory requirements of regulated companies.

In response to the CER’s Discussion Questions concerning its objectives and proposed options under Subtopic 3, the Nations provide the following:

C4. What is your feedback on this proposal?

The Nations generally support the codification of best practices set out in the Best Practices and relevant orders and protocols cited by the CER, subject to the content of those materials satisfying the basic requirements for notice and engagement set out in the Nations' response to Discussion Question C8, below.

C6. What is your feedback on elements of the Best Practices that could be incorporated into the OPR versus related Guidance?

In addition to the Nation's response to Discussion Question C8, below, the Nations submit that early notification to, and direct engagement with, impacted Indigenous Nations following an emergency event must be the minimum requirement for regulated companies under the OPR. Whereas the Best Practices address these matters, the standards they identify are not sufficiently precise or adequate to support the CER's implementation of UNDRIP.

Specifically, the timeline for contacting impacted Indigenous Nations under the Best Practices is on an "as soon as practicable" basis and within a 24-hour period. This standard should be modified to match the requirement under the OPR that regulated companies must immediately report the designated reportable incidents to the CER. Notification to Indigenous Nations should occur under this same timeline.

**Subtopic 5: Involvement of Indigenous Peoples in EM**

Subtopic 5 of the CER's Emergency Management Topic Paper summarizes its findings from the CER's prior engagements concerning Indigenous involvement in emergency management planning and response. The CER notes that it has received input from the Indigenous Advisory and Monitoring Committee for Line 3 ("IAMC"), which supported the publication of the "Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-Reportable Incidents" to improve information sharing from companies to Indigenous Nations in response to reportable incidents.

The CER has proposed to update the OPR to ensure that companies appropriately involve Indigenous Nations in their EM Programs, and that it proposes to meet this objective by including a requirement that Indigenous Nations be involved in EM Programs.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 5, the Nations provide the following:

C8. What is your feedback on clarifying the CER's requirements within the OPR regarding the Involvement of Indigenous Peoples in a company's EM Program?

The Nations are supportive of the CER amending the OPR to include requirements for companies concerning their engagement with Indigenous Nations. As the CER is aware, Indigenous communities are particularly vulnerable to emergencies arising from Projects.

Indigenous Nations have significant rights-based interests in stewarding and ensuring the safety of their territories and community members in accordance with their Section 35 Rights and their Indigenous rights identified under UNDRIP.

Because of the significant risk of permanent environmental and cultural harm that may arise, Indigenous Nations must be notified in a timely manner of emergencies that may impact their territories. Equally, any risks to communities arising from emergencies must be communicated by companies to Indigenous Nations expediently.

As noted in the Nations' response to Discussion Question C3, above, EM Programs must identify and implement distinct processes for informing and engaging impacted Indigenous Nations. EM Programs should be co-developed through rights-based processes with the consent of impacted Indigenous Nations, which must include communication protocols and collaborative response management programs.

At a minimum, these measures must prioritize notice of emergencies to Indigenous Nations simultaneously with notice provided to the CER. Further, EM Programs must prioritize collaboration with Indigenous-led guardian or monitoring programs, as they may be in place, to support immediate response to emergencies.

The CER's proposed option to amend the OPR should directly address these issues in order to adequately implement the recommendations of the IAMC concerning Indigenous engagement in emergency management.

#### **IV. TOPIC PAPER D: ENVIRONMENTAL PROTECTION**

Topic Paper D concerns environmental protection measures under the OPR and sets out the CER's intention to add a new protection program regarding the prevention of impacts to the rights and interests of Indigenous Peoples and related management systems requirements for regulated companies.

Specifically, the CER is considering including management system requirements within the OPR that would generally require companies to establish processes to engage Indigenous Peoples and demonstrate how Indigenous Knowledge and relevant protocols and practices are incorporated in environmental protection programs, and to identify management system requirements that would identify Indigenous laws and policies and demonstrate how they are addressed in protection programs when made available.

The CER has prepared Subtopic discussions concerning these matters and asked several related questions. In response, the Nations have prepared submissions under five of the CER's Subtopics in the sections below.

##### **Subtopic 1: Contamination management and reporting**

Subtopic 1 of the CER's Environmental Protection Topic Paper concerns proposed modifications of the duty for companies to proactively manage contaminated sites under Section 48 of the OPR.

Under this Subtopic, the CER has proposed to include requirements for regulated companies to proactively confirm and report contamination during the lifecycle of its pipeline, including contamination that has migrated. Additionally, the CER has proposed to include requirements that companies manage contamination and related risks to protect human health, property, and the environment.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 1, the Nations provide the following:

D1. What is your feedback on the proposed requirements [set out in this Subtopic]?

The Nations note that the CER's proposed options under this Subtopic 1 are primarily aimed at bringing contamination management under the OPR directly, which is currently managed under each respective company's Environmental Protection Programs. The Nations generally support the clarity and certainty that would be gained by establishing express requirements under the OPR concerning the management of contamination throughout the lifecycle of a project, including by assuring that Environmental Protection Programs will be more closely aligned with the OPR's requirements in this regard. The Nations submit that such alignment under the OPR will support consistency and transparency for impacted Indigenous Nations.

However, the Nations further note that such requirements under the OPR must establish a clear role for impacted Indigenous Nations to co-develop contamination management processes in accordance with a rights-based approach and in alignment with relevant Indigenous laws and governance objectives. Such co-development must be undertaken on a consent-basis and must meaningfully demonstrate how the inherent Indigenous Rights concerning matters of stewardship and territorial governance have been factored.

Additionally, the following minimum requirements should be addressed by the CER:

- that all reportable incidents must be immediately reported to impacted Indigenous Nations or concurrently with a company's reporting to the CER;
- that impacted Indigenous Nations should be directly involved in identifying the scope of a potential impacts to the environment, traditional lands, resources, and sites of significance arising from contamination;
- process steps to support impacted Indigenous Nations imposing site monitoring requirements and enforcing compliance and accountability measures;
- requirements that remediation measures be established for contaminated sites that reflect the significance of potential impacts to Indigenous Rights and the contribution to cumulative effects; and
- capacity support be made available for the long-term monitoring and remediation of contaminated sites by impacted Indigenous Nations.

## **Subtopic 2: Section 21 of the OPR: Reclamation, Vegetation Management, and Restoration**

Subtopic 2 of the CER's Environmental Protection Topic Paper establishes the CER's intention to further clarify its requirements concerning reclamation, vegetation management, and restoration activities under Section 21 of the OPR, which currently do not account for express environmental protection requirements or monitoring and reporting requirements. Under this Subtopic, the CER has proposed to require timely reclamation following disturbance to rights-of-ways and temporary work areas to standards that would prevent or minimize adverse effects to the environment, people, property, cultural sites, and sites of historical significance.

In this regard, the CER also proposes to define certain standards for reclamation activities. Further, the CER proposes that the OPR establish requirements that vegetation management be conducted in a manner that encourages revegetation in sensitive areas and supports restoration upon abandonment, and that site abandonment activities be established in consultation with Indigenous Peoples.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 2, the Nations provide the following:

D2. Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?

It is the Nations' understanding that the OPR must ensure that Projects are designed to minimize impacts on and interference with traditional lands, resources, and culturally significant sites. Where Indigenous Nations identify impacts arising from the development of Project rights-of-ways, priority must be given to altering Project routes and implementing other avoidance measures as primary solutions.

In circumstances where impacts are unavoidable, the OPR must require regulated companies to undertake reclamation, remediation, and vegetation management with specific requirements that are co-developed with, and consented to by, impacted Indigenous Nations to ensure compliance with Indigenous laws, protocols, and Indigenous Knowledge. Such environmental management process must meaningfully engage the inherent Indigenous rights of stewardship and lands governance. Additionally, impacted Indigenous Nations must be empowered and actively involved in the implementation, oversight, and enforcement of reclamation, remediation, and vegetation management programs.

- 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?

Projects regulated by the CER contribute to cumulative impacts to the Indigenous Rights of impacted Indigenous Peoples. The CER's proposed options set out under this Subtopic that would require restoration activities be measured based on a "pre-disturbance land use" model do not effectively contemplate how the cumulative impacts of development to Indigenous territories may have significantly altered the baseline conditions for the environment.

The Nations submit that the CER's proposed requirements in this regard lacks certainty of how such pre-disturbance conditions will be defined and how the cumulative effects of development will be contemplated.

Baseline conditions reported by companies in their applications to the CER may not adequately capture the full scope of pre-development conditions within Indigenous territories that have been subjected to significant development activities. Further, the Nations note that regulated companies generally do not adequately reflect the perspectives of impacted Indigenous Nations when characterizing the environmental conditions of a Project area. Because of these factors, impacted Indigenous Nations often have little assurance that restoration activities conducted by companies during the abandonment phase of a Project will adequately consider the full scope of impacts that may have occurred within the respective Indigenous territory.

Because of these concerns, the OPR must require that restoration planning activities to be undertaken by regulated companies during the Project abandonment phase must be consented-to by impacted Indigenous Nations prior to being implemented.

- D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties?

The Nations submit that the CER must ensure that any measures or requirements under the OPR concerning the establishment of "restoration goals", as described under this Subtopic, must be developed on a consent-basis with impacted Indigenous Nations.

As discussed in the Nations' responses under Topic Paper B, above, Indigenous Peoples experience the long-term impacts of pipeline infrastructure. To address and mitigate these long-term impacts, the Nations submit that the OPR should require alignment between a regulated company's proposed restoration goals and the rights-based values that are identified through engagement with impacted Indigenous Nations.

Further, to address new potential requirements for reclamation and vegetation management activities under Section 21 of the OPR, the regulations should clearly require

companies to work collaboratively with impacted Indigenous Nations to develop appropriate requirements for reclamation and revegetation activities on a consent-basis.

As discussed in the Nations' response to Discussion Question D2, above, the OPR should establish that prior approval of impacted Indigenous Nations must be secured to ensure compliance with Indigenous laws and protocols that may be in place when establishing and implementing restoration goals.

Finally, with respect to abandonment activities, it is imperative that the significant matter of a Project's long-lasting and generational impacts to Indigenous Peoples, be addressed through transparent and collaborative engagement with impacted Indigenous Nations. Such engagement may draw from respective community knowledge and understandings to identify culturally appropriate measures, standards, and processes that reflect Indigenous rights-based perspectives to be incorporated in restoration planning.

### **Subtopic 3: Section 21 of the OPR – Participation in development of environmental monitoring by Indigenous Peoples**

Subtopic 3 of the CER's Environmental Protection Topic Paper discusses the role of Indigenous post-construction monitoring programs. The CER has stated that the inclusion of Indigenous Peoples in monitoring programs adds value to the assessment of mitigation effectiveness implemented under a project's Environmental Protection Plan. The CER has stated that the objective of any amendments to the OPR in this regard will be to "help ensure companies include Indigenous Peoples in the development, implementation, and monitoring of reclamation activities."

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 3, the Nations provide the following:

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.

The inclusion of Project monitoring programs undertaken by impacted Indigenous Nations is a critical measure to ensure adequate transparency throughout the lifecycle of a Project. It is the Nations view that the OPR should require regulated companies to develop Indigenous monitoring processes on a consent-basis and which implement inclusive participation and best practices to ensure the appropriate engagement of Indigenous laws and legal systems in the oversight of Projects.

Best practices in this regard include, but are not limited to: maintaining clear communication concerning all relevant activities over all stages of a Project's lifecycle; actively facilitating participation in monitoring programs with Indigenous Nations, including by providing support for training community members to undertake certain monitoring activities; and providing support for Indigenous Nations to engage independent experts where desired. Further, the OPR must ensure Indigenous monitors have sufficient authority to protect significant sites, traditional use areas, and traditionally used resources

where they are identified. This authority must include the power to suspend work and mandate modifications to Project work plans as necessary.

To adequately implement these priorities over the lifecycle of a Project, regulated companies must provide up-to-date monitoring information directly to Indigenous Nations and facilitate their direct involvement in on-the-ground monitoring programs. Regulated companies must also provide capacity support to impacted Indigenous Nations to ensure their uptake in all relevant monitoring programs identified by each respective Indigenous Nation.

Adopting these requirements under the OPR would create certainty for impacted Indigenous Nations that Indigenous monitoring will be required for the lifecycle of every Project. Further, such adoption would provide an opportunity for the CER to identify clear standards and benchmarks for the content of the Indigenous engagement programs of companies within their environmental monitoring programs.

- D6. In the context of the CER's expectations of regulated companies, how could more independent monitoring and reporting by Indigenous Peoples be effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices.

As noted in the response to Discussion Question D5, above, any implementation of an Indigenous monitoring program must follow clear guidance under the OPR requiring companies to maintain transparent communication concerning its proposed activities at all phases of a Project's lifecycle and facilitate and support monitoring by Indigenous Nations.

Generally, these requirements should include bilateral engagement between each company and impacted Indigenous Nations in order to adopt specific communication practices, identify training and capacity needs, and to continually share information regarding the Project's permitting, construction, operations, and reclamation and abandonment.

#### **Subtopic 4: Environmental Protection Plan required for Construction and Operation and Maintenance Activities**

Subtopic 4 of the CER's Environmental Protection Topic Paper discusses the role of Environmental Protection Plans ("EPPs") in implementing Environmental Protection Programs. The CER states that EPPs are effective at identifying specifications for reclamation for new Projects. The CER is recommending changes in the OPR that would establish a requirement for companies to develop EPPs for operations and maintenance activities that are scalable to the scope of each activity.

These recommendations follow comments received by the CER concerning the need to develop requirements to ensure that Environmental Protection Programs and EPPs each adopt certain measures concerning a Project's impacts to the rights of Indigenous Peoples over the full lifecycle

of that Project. The CER also notes that “industry views environmental protection as being best managed through an Environmental Protection Program for the lifecycle of the project”.

In light of these recommendations, the CER now proposes that companies should be required to have an EPP in place for all work and activities for a Project, including those relating to construction, operations, and maintenance; that EPPs would only be required at the request of the CER or through specific condition requirements.

In response to the CER’s Discussion Questions concerning its objectives and proposed options under Subtopic 4, the Nations provide the following:

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?

The inclusion within the OPR of an express requirement to develop an EPP that is scalable to the proposed activities for a Project is essential to provide assurance to impacted Indigenous Nations that their specific concerns regarding Project impacts to their Indigenous Rights will be appropriately implemented within relevant EPP processes during each Project phase. However, the Nations note that Environmental Protection Programs and EPPs should expressly establish requirements that environmental standards be developed with impacted Indigenous Nations on a consent-basis.

The Nations note that the current Environmental Protection Plan Guidelines do not reference Indigenous Peoples. This highlights a significant need for improvement to align with reconciliation, consent-based standards, and UNDRIP. EPPs address the unique considerations of each pipeline, making it essential to involve Indigenous Nations in identifying potential impacts on traditional lands, resources, and sites of significance.

Early, comprehensive engagement and the transparent sharing of information with impacted Indigenous Nations is necessary to ensure EPPs align with these standards to ensure that impacted Indigenous Nations have clarity regarding how a company’s proposed management plans, environmental mitigation measures, and maintenance activities can be approached from a rights-based perspective and with consideration for Indigenous laws and practices. The appropriate integration of Indigenous Nations in the development of EPP’s and Environmental Protection Programs is long overdue.

The Nations submit that many Indigenous Nations perceive that the CER’s regulatory processes do not appropriately reflect the concerns of Indigenous Peoples regarding the scope of a Project’s environmental impacts, contributions to cumulative impacts, and how specific mitigation and management measures will be developed and implemented. A significant benefit of requiring such enhanced engagement by impacted Indigenous Nations directly within the OPR may be an improved level of engagement from impacted Indigenous Nations in the CER’s regulatory processes.

D10. Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests [of Indigenous Peoples], 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?

In addition to the Nations' comments regarding Topic Paper I on the Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement, below, it is the Nations' understanding that establishing specific requirements in the OPR regarding the content of regulated companies' Environmental Protection Programs (or management systems under Section 6.5 of the OPR) to improve co-development and engagement with impacted Indigenous Nations would support the CER's mandate to implement UNDRIP.

Environmental Protection Programs provide systemic guidance for activities performed by companies during the lifecycle of a Project and may identify key environmental management objectives or standards. Such systems have been historically developed by companies and may reflect best practices, regulatory requirements, or requirements established by the CER in conditions. At a minimum, the OPR should establish specific requirements of these systems to ensure their appropriate consideration for Indigenous Knowledge, Indigenous legal protocols, and a rights-based approach to remediation and mitigation of environmental impacts. Further, these requirements could establish standards for engagement processes to be incorporated within relevant EPPs concerning these topics.

By establishing express requirements for the content of Indigenous engagement practices within Environmental Protection Programs, regulated companies may implement more transparent practices for engagement with impacted Indigenous Nations on these matters.

In all cases, the inclusion of express requirements for Indigenous engagement and the integration of Indigenous Knowledge concerning the matters of environmental protection, remediation, and maintenance for relevant phases of a Project under Section 6.5 of the OPR would provide certainty to Indigenous Nations and reduce reliance on companies to develop Indigenous engagement practices within their EPPs in good faith or as expressly required in Project conditions.

It is the Nation's understanding that the outcome of such inclusion will be improved consistency of engagement requirements on a Project-by-Project basis, which in turn may improve Indigenous engagement, create stronger assurance for impacted Indigenous Nations, and support alignment with the CER's mandate under the Action Plan.

### **Subtopic 6: Climate Resiliency**

Subtopic 6 of the CER's Environmental Protection Topic Paper identifies the CER's mandate to ensure that energy infrastructure remains resilient to the effects of climate change. The CER states that its objective for improvement of the OPR will be to ensure that companies can anticipate, prepare for, and respond to the impacts of hazardous climate events, and that accordingly, the CER is considering adding a requirement for companies to incorporate climate resiliency in their evaluation of a Project's risks and planned mitigation measures.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 6, the Nations provide the following:

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 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?

It is the Nations' view that all Projects must be proposed with regard for the significant risk of impact from significant events that may arise due to climate change. Projects regulated by the CER are of a generational timeline, if not permanent, and as such will have long lasting impacts to Indigenous Nations.

Climate risk represents a real and significant factor that may substantially alter the baseline conditions of a Project over time or result in significant unforeseen events that may cause substantial environmental damage within the territories of Indigenous Nations. Such risks may substantially alter the magnitude and likelihood of impacts to Indigenous Rights of impacted Indigenous Nations, which are assessed by the CER when considering a Project.

Due to the significant risk that unforeseen climate events cause irreparable harm to the environment and to the rights of Indigenous peoples, and to ensure the sustainable development of future Projects, it is imperative that companies be required under the OPR to acknowledge this risk as a "potential hazard" under Section 6.5(1)(c), as well as establish and implement processes for managing the climate risks to a Project.

Additionally, in requiring such planning activities regarding the climate risks of Projects, the CER should ensure that adequate parameters are established to ensure the scope of such planning by companies is appropriate in respect of the proposed lifecycle of a Project. Such parameters should factor relevant best practices reflecting the particular circumstances of each Project, including its location relative to significant environmental features and with respect to Indigenous Nations.

## **V. TOPIC PAPER F: MANAGEMENT SYSTEMS AND CONTRACTOR MANAGEMENT**

Topic Paper F concerns management systems and contractor management regulated under the OPR and the CER's related oversight activities. The CER notes that it is seeking feedback on certain interactions between management systems and other relevant sections of the OPR, including Section 6.1 through 6.5, and regarding contractor management practices concerning the selection, acquisition, use, and monitoring of contracted services and products.

The CER has prepared Subtopic discussions concerning these matters and has asked several related questions. In response, the Nations have prepared submissions under two of the CER's Subtopics in the sections below.

### **Subtopic 1: Management System Requirements**

Subtopic 1 of the CER's Management System and Contractor Management Topic Paper sets out the CER's goal to obtain specific feedback on the functions of Section 6.1 through 6.6 of the OPR, which concern the processes and policies governing a company's management system requirements, and the specific protection program requirements under Section 55.

The CER states that it intends to establish new clear requirements regarding management systems, including with respect to their clarity, adequacy, and efficacy, among other considerations. Accordingly, the CER has proposed options to potentially amend Sections 6.1 through 6.5 of the OPR, including potentially requiring new management system components.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 1, the Nations provide the following:

- F3. Are there any management system components you wish to see added to the OPR? Please explain.

In addition to the Nations' submissions under Discussion Question B3, above, including regarding the need for the CER to develop a full lifecycle approach for Projects, the Nations note that Sections 6.1 through 6.5 of the OPR provide no specific requirements or guidance concerning the involvement of impacted Indigenous Nations in the planning or implementation of management systems.

As also noted in the Nations' submissions under Discussion Question B4, above, management systems must include roles for oversight and monitoring by impacted Indigenous Nations and must be developed on a consent-basis while supporting the implementation of Indigenous legal traditions and practices.

Express management system components that reflect the need of the CER to adopt a rights-based approach and to take meaningful steps to implement UNDRIP, in accordance with its mandate, should be adopted within Sections 6.1 through 6.5 of the OPR. These components should include an express standalone component that identifies clear requirements of the company to engage impacted Indigenous Nations to co-develop, implement, monitor, and enforce compliance with management systems.

Such additions under the OPR should, at a minimum, include comparable requirements of companies as currently set out under Sections 6.3(1) and 6.5(1) to develop policies concerning the co-development of management systems with impacted Indigenous Nations and establish respective management system processes.

F8. Are there any other additions, deletions, or other changes to the OPR's management system requirements in section 6.1 that would improve the OPR's ability to prevent harm?

In addition to the Nations' comments under Discussion Question F3, above, the Nations believe that management systems are foundational components of Project regulation. Accordingly, management systems must be adapted within the OPR to ensure appropriate consideration for each Project's ongoing impacts to Indigenous rights holders, including with respect to the rights of impacted Indigenous Nations to steward and control their territories.

To support the OPR in reflecting such rights, it is the Nations' view that the following management system requirements should be established under Section 6.1 of the OPR:

- a requirement that companies directly engage impacted Indigenous Nations to develop or co-develop management systems for Projects that duly reflect specific needs and concerns from a rights-based perspective;
- additional timelines or process steps as necessary to adequately facilitate engagement between companies and impacted Indigenous Nations for the co-development of management systems; and
- requirements that companies' management systems include processes to ensure the continued consent of impacted Indigenous Nations for throughout their implementation, which may include ongoing oversight, monitoring, and engagement activities.

These requirements are not exhaustive but should be understood as foundational to support transparency and adequate involvement of Indigenous Nations to support fulfillment of the CER's mandate towards implementing UNDRIP. Further, engagement between impacted Indigenous Nations.

F11. The CER has also heard that some feel a disconnect exists between the outcomes of early engagement in the Filing Manual and the design of management systems and protection programs in the OPR. If such a disconnect exists, what would you propose as a solution?

In following the Nations' submissions in Discussion Question F8, above, there are significant concerns among impacted Indigenous Nations that the regulated companies are not held accountable for incorporating the information they may collect during early engagement activities within their Projects.

Although companies have generally increased their reporting on early engagement and companies have been noted to make changes to Project design following their review of this information on a case-by-case basis, there is generally little transparency on how information shared by impacted Indigenous Nations during early engagement is reflected within systemic processes connected to a Project's implementation by the company. Further, because companies are not required to verify their application and use of

information provided by impacted Indigenous Nations, those Indigenous Nations may not be assured that the information they have provide has been properly implemented and appropriately considered by the respective company.

Although through a Project's assessment the CER may issue conditions that may reflect the concerns of impacted Indigenous Nations, often these conditions are weak in the view of the Nations and merely include reporting obligations relating to compliance with conditions. The Nations believe that stronger accountability is necessary within the design of management systems. Generally, such accountability should be required in the OPR through rights-based processes that support transparency and continued participation and engagement by impacted Indigenous Nations.

## **Subtopic 2: Management of Contractors Providing Services and/or Products Across the Pipeline Lifecycle**

Subtopic 2 of the CER's Management System and Contractor Management Topic Paper sets out the OPR's requirements concerning personnel oversight by regulated companies and the CER's intention to improve relevant contractor management measures.

The CER states that its objectives for improving the OPR in this regard include establishing new requirements to ensure companies understand contractor management requirements and to strengthen contractor management practices. To implement these goals, the CER proposes to add new requirements for contractor management processes within the OPR and to develop technical guidance in this regard.

In response to the CER's Discussion Questions concerning its objectives and proposed options under Subtopic 2, the Nations provide the following:

- F14. What guidance is needed to support contractor management provisions in the OPR? Please be as detailed as possible in terms of the nature and content of required guidance (e.g., specific topics, processes, procedures, or other practical tools that might be useful).

The CER holds proponents accountable for ensuring their contractors adhere to safety and environmental protection standards. However, contractors may lack familiarity with the project, territory, cultural sensitivity to and awareness of affected Indigenous Nations, increasing risks. Since they often do not engage in relationship-building with impacted Indigenous Nations, stricter requirements for expertise, training, and cultural sensitivity are necessary.

The OPR must mandate that contractor selection goes beyond technical skills, prioritizing those with strong safety records, environmental stewardship experience, and a demonstrated respect for Indigenous customs and protocols. Before beginning work, contractors must undergo training on the project's potential impacts on traditional lands, resources, and significant sites, with Indigenous Knowledge and participation guiding this process. They must also be trained in environmental stewardship and anti-discrimination, with clear responsibilities for this training being co-developed with impacted Indigenous

Nations based on the distinct impacted Indigenous Nations and not based on a pan-Indigenous perspective.

Proponents must conduct continuous monitoring and periodic audits of contractor compliance, working in partnership with Indigenous Nations. At the end of each contract period, companies must consult with affected Indigenous Nations to determine whether a contractor should be considered for future work. Additionally, the OPR must establish reporting mechanisms for Indigenous Nations to raise contractor-related concerns with both the company and the CER, ensuring accountability and timely responses.

Finally, the development of contractor protocols should be undertaken in consultation with impacted Indigenous Nations and must, at a minimum, include:

- a list of qualified candidates, prioritizing those selected by the impacted Indigenous Nation and those demonstrating appropriate Indigenous contracting and training practices as required;
- identifying contractors with proven strong safety programs and environmental stewardship experience; and
- implementing documentation measures for contractor screening and selection, protocols for monitoring compliance with guidelines, and other relevant evaluation criteria.

## **VI. TOPIC PAPER I: RIGHTS AND INTERESTS OF INDIGENOUS PEOPLES, SOCIO-ECONOMIC EFFECTS, AND ENGAGEMENT**

Topic Paper I concerns the rights and interests of Indigenous Peoples, socio-economic effects, and engagement. The CER states that it is contemplating potential amendments to the OPR to improve its oversight of impacts to the rights and interests of Indigenous Peoples, socio-economic effects, and engagement requirements.

The CER states that it intends to be more transparent and consistent in its expectations and approach to regulating these matters over the lifecycle of regulated facilities in order to provide greater predictability and effectiveness.

The CER anticipates that the majority of new requirements to be implemented in the OPR that relate to the rights and interests of Indigenous Peoples, socio-economic effects, and engagement will be performance-based requirements to be responsive to the needs and preferences of those affected by pipeline activities, and to provide the flexibility that companies need to be respectful of the distinct rights, interest, governance, and knowledge systems of Indigenous Peoples.

The CER is considering the addition of new protection programs to meet regulatory objectives for preventing and addressing impacts to the rights and interests of Indigenous Peoples and the management of socio-economic effects to be integrated with a company's management system, which must be explicit, comprehensive, proactive, and applied to all company activities involving the design, construction, operation, or abandonment of a pipeline.

These changes are meant to advance Action Plan Measure 34 (“**AP Measure 34**”) in the Action Plan of UNDA. AP Measure 34 calls for First Nations, Metis, and Inuit communities, governments, and organizations to work in consultation and cooperation to: enhance the participation of Indigenous Peoples in; and set the measures that could enable them to exercise federal regulatory authority in respect of, projects, and matters that are currently regulated by the CER. One element of AP Measure 34 that the CER is seeking specific feedback on relates to any new regulatory requirements and associated compliance for the incorporation of Indigenous laws, policies, practices, and protocols within new and existing management system protection programs.

The CER has prepared Subtopic discussions concerning these matters and has asked several related questions. In response, the Nations have prepared submissions under three of the CER’s Subtopics in the sections below.

### **Subtopic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples**

Subtopic 1 concerns proposed new requirements to prevent and address impacts to the rights and interests of Indigenous Peoples over the lifecycle of pipeline infrastructure and provide clarity for regulated entities.

The CER’s objectives of the new requirements to be developed in the OPR are to help ensure that companies establish systematic processes to manage impacts on Indigenous rights and interests, incorporate Indigenous laws and Knowledge while protecting confidentiality, and ensure culturally safe practices across all pipeline activities.

The CER is considering a number of options to meet its objectives, including by establishing new protection and management processes for Indigenous Rights, Indigenous Knowledge, and Indigenous laws; implementing cultural competency training; and introducing additional requirements, including reporting, emergency planning, and restoration goals in collaboration with Indigenous communities.

In response to the CER’s Discussion Questions concerning its objectives and proposed options under Subtopic 1, the Nations provide the following:

- II. What is your feedback on the CER’s objectives for improvement? Are these the right objectives, or are there others the CER should consider?

The Nations generally support the CER’s objectives under Subtopic 1 as they relate to ensuring companies are better equipped to address impacts to the rights and interests of Indigenous Peoples and to incorporate Indigenous Knowledge and Indigenous laws and legal traditions. However, the Nations submit that there are additional objectives that the CER should consider.

In implementing the CER’s objectives under Subtopic 1, the CER should ensure that companies have systematic processes and procedures in place to obtain the free, prior, and

informed consent of each potentially impacted Indigenous Nation. Article 32(2) of UNDRIP provides that:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>2</sup>

Canada's commitments pursuant to UNDA and the Action Plan towards implementing UNDRIP include commitments to meaningfully seek the free, prior, and informed consent of potentially impacted Indigenous Peoples.

As discussed in the Nations' submissions under Topic Paper D, the CER should implement in the OPR further requirements to increase the participation of Indigenous Nations in Project oversight, including by establishing consent-based models for companies in developing management systems and EPPs. Such requirements would support recognition and respect for Indigenous Nations' inherent jurisdiction and Indigenous legal orders and would support the CER's implementation of AP Measure 34. Such participation in Project oversight by Indigenous Nations will directly support stronger prevention measures for the potential impacts and cumulative impacts of Projects on the rights and interests of Indigenous Peoples over the lifecycle of pipeline infrastructure.

The cumulative impacts of resource development within Indigenous territories has resulted in profound and lasting effects on the ability of Indigenous Nations to exercise their Indigenous Rights. Resource development activities have created notable changes in the climate, lands, vegetation, and wildlife. Generally, these changes affect the Nations' respective access to food, medicines, and other traditional resources as well as the Nations' ability to exercise their Indigenous Rights to steward and control their territory, as they has for thousands of years and will continue to do so for future generations. The CER should revise its objectives to recognize and respect both the deep knowledge that Indigenous Nations have of their territories and their inherent jurisdiction within them.

These additional objectives are in keeping with the following articles in UNDRIP:

Article 18: The right to participate in decision-making regarding matters that could affect rights, as well as to maintain and develop Indigenous decision-making institutions.

Article 25: The right to maintain and strengthen the distinctive spiritual relationship with the traditionally owned or otherwise occupied and used lands,

---

<sup>2</sup> United Declaration on the Rights of Indigenous Peoples.

territories, waters and coastal seas and other resources of Indigenous peoples and to uphold their responsibilities to future generations in this regard; and

Article 26: The right to own, use, develop, and control the lands, territories, and resources possessed by reason of traditional ownership or other traditional occupation or use, as well as those which that have been otherwise acquired.<sup>3</sup>

The CER has stated in this Topic Paper, that the development of new regulatory requirements will be guided by the CER's commitment to advancing reconciliation with Indigenous Peoples and the implementation of UNDA and the Action Plan. The implementation of the additional objectives proposed in the Nations' response to Discussion Question I2 will contribute to such advancement and implementation.

I2. What is your feedback on the following proposed options to meet the regulatory objectives?

*A new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples*

As stated in the Nations' response in Discussion Question D10, above, the Nations support the CER's proposal to create a new and distinct protection program to prevent and address impacts to the rights and interests of Indigenous Peoples. Doing so would support the CER's goals to implement UNDRIP under AP Measure 34.

Protection programs provide systemic guidance for activities performed by companies during the lifecycle of pipeline infrastructure and identify prescriptive operational management objectives and/or standards.

The creation of a new protection program to prevent and address the distinct impacts of Projects to the rights and interests of Indigenous Peoples will promote transparent practices on how a company will anticipate, prevent, manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples. Such a protection program must support full involvement of Indigenous Nations in the implementation and oversight of measures to be implemented under the program.

Further, a protection program aimed at preventing and addressing impacts to the rights and interests of Indigenous Peoples must include clear pathways for the shared development of measures between companies and impacted Indigenous Nations to anticipate, prevent, manage, and mitigate impacts to Indigenous Rights throughout the full lifecycle of each Project. This development must require the free, prior, and informed consent of each impacted Indigenous Nation, which consent must be supported by the sharing of all relevant information by the company and be adequately supported throughout the lifecycle of the Project.

---

<sup>3</sup>United Declaration on the Rights of Indigenous Peoples.

The Nations further recommend that, in accordance with the CER's work in developing further guidance or clarification on the contents of environmental programs (discussed under Subtopic 4 of Topic Paper D), the CER consider developing specific guidance and clarification on the contents of a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples. Any such guidance must be developed in consultation with Indigenous Peoples in order to reduce the CER's reliance on companies to develop protection programs concerning impacts to the rights and interests of Indigenous Peoples in good faith. This co-development would improve consistency across Projects and within the regulatory scheme, which in turn would increase impacted Indigenous Nations' trust in CER processes while supporting the CER's mandate to implement UNDRIP.

*A new management system process for the incorporation of Indigenous Knowledge*

The Nations support the CER's proposed option of including a management system requirement for companies to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous Knowledge, including all relevant protocols and practices, that is made available to a company and is applicable to its protection programs, is incorporated into these programs.

Accordingly, the OPR should be amended to require that management system processes include early engagement with impacted Indigenous Nations and establish clear, culturally appropriate and safe processes to direct such engagement in accordance with the respective Indigenous practices and laws. Such early engagement will ensure that Indigenous Knowledge is incorporated within management systems in a culturally appropriate and respectful way with due regard for the Indigenous legal systems that govern its use and application to the respective Project.

The Nations further note that any management system requirements concerning the incorporation of Indigenous Knowledge must include express requirements concerning the ownership and confidentiality of such Indigenous Knowledge.

*A new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols*

The Nations generally support the inclusion of a management system requirement within the OPR that would establish a process requirement for companies to identify Indigenous laws and policies, and where these are made available to the company and are applicable to its protection programs, demonstrate to the respective Indigenous Nations how they are addressed in their protection programs.

The Nations are of the view that Indigenous laws and policies of impacted Indigenous Nations will always be applicable to a regulated company's protection program and therefore must always be addressed. The OPR must support regulatory structures that recognize that Projects are situated within the jurisdictions of impacted Indigenous Nations. Accordingly, the OPR must create mechanisms that support regulated companies

in securing the free, prior, and informed consent of impacted Indigenous Nations through the development and implementation of protection programs. In this regard, supporting the meaningful involvement by impacted Indigenous Nations through the recognition of their discussion-making authorities is critical

The Nations further submit that the OPR should require more of companies than to merely demonstrate that they have identified Indigenous laws and policies. The CER should require regulated companies to provide specific details on they intend to adhere to the Indigenous laws and policies that have been shared by impacted Indigenous Nations. Indigenous Nations are sovereign nations; a demonstration of adherence to their laws and policies is necessary to ensure respect for Indigenous Nations' sovereignty and the principles of UNDRIP.

*Cultural competency training requirements for all those working in regulated companies*

The Nations are in favour of a new express requirement within the OPR to ensure that individuals working for or on behalf of a regulated company receive cultural competency training. Generally, requiring greater capacity and training in cultural competency is crucial to ensuring that workers in regulated companies have a higher baseline understanding of Indigenous perspectives and concerns about pipeline infrastructure.

Importantly, cultural competency training must be based on the distinct impacted Indigenous Nations and not based on a pan-Indigenous perspective. Indigenous perspectives and concerns are distinct and multifaceted with complexities specific to people, land, and place. Because of this, it is important that cultural competency training avoids a pan-Indigenous lens.

Specifying the training based on the location of the pipeline infrastructure and the impacted Indigenous Nations will support a deeper understanding of the unique Indigenous perspectives and concerns and will support collaborative management and shared decision-making.

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

The Nations submit that any protection program to prevent and address impacts to the rights and interests of Indigenous Peoples or management system process for the incorporation of Indigenous Knowledge must be co-developed with potentially impacted Indigenous Nations.

Further, the CER should require that regulated companies adopt transparency measures to ensure that their respective program and management system, as they are adopted and amended from time to time, are provided to impacted Indigenous Nations and respond to any comments and questions about the content and form. Adequate funding for Indigenous

Nations' participation in the development or review of such protection programs and management systems must be provided by regulated companies.

The overall success of such protection programs and management systems should be measured in part by the involvement of impacted Indigenous Nations in the implementation and oversight of such programs and systems. In this regard, the OPR should establish compliance requirements that require impacted Indigenous Nations' to be involved in implementation and oversight.

Finally, compliance must include rights of enforcement for impacted Indigenous Nations, the scope of which may be established within the OPR directly. Enforcement measures must be sufficiently strict to ensure that the company is adequately motivated to address and remedy any non-compliance.

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 they be addressed?

Please see the response to this question in the above Discussion Questions under Subtopic 1.

### **Subtopic 2: Managing Socio-Economic Effects**

Subtopic 2 concerns new requirements for the effective management of socio-economic effects over the lifecycle of pipeline infrastructure.

The CER's objective of the new requirements are to help ensure that companies have systematic processes and procedures in place to identify, anticipate, manage, and address potential socio-economic impacts across all of its activities involving the design, construction, operation, or abandonment of a pipeline.

The CER is considering a number of options to meet its objectives, including to introduce a new protection program and expand the Environmental Protection Program to manage socio-economic effects.

In response to the Discussion Questions concerning its objectives and proposed options under Subtopic 2, the Nations provide the following:

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?

The Nations generally support the objective of ensuring that companies have systematic processes and procedures in place to identify, anticipate, manage, and address potential

socio-economic impacts, including preventing and addressing impacts to human health, human occupancy, resource use, and infrastructure and services.

Given the findings in the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls,<sup>4</sup> the Nations submit that the OPR should include a specific reference to preventing and addressing impacts to Indigenous women, girls, and 2SLGBTQQIA+ people. Expert witnesses, institutional witnesses, and Knowledge Keepers told the National Inquiry into Missing and Murdered Indigenous Women and Girls (“**National Inquiry**”) that resource extraction projects can drive violence against Indigenous women in several ways, including issues related to transient workers, harassment and assault in the workplace, rotational shift work, substance abuse and addictions, and economic insecurity.<sup>5</sup>

The National Inquiry identified that oil and gas companies should do a more thorough job of considering the safety of Indigenous women and children when making decisions about resource extraction on or near Indigenous territories.<sup>6</sup>

The National Inquiry’s findings also demonstrated an urgent need to consider the safety of Indigenous women consistently in all stages of project planning, assessment, management, and monitoring of resource extraction projects.<sup>7</sup>

There is substantial evidence of a serious problem demonstrated in the correlation between resource extraction and violence against Indigenous women, girls, and 2SLGBTQQIA+ people. Work camps, or “man camps,” associated with the resource extraction industry are implicated in higher rates of violence against Indigenous women at the camps and in the neighbouring communities.<sup>8</sup>

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

The CER has asked whether a new protection program for the management of socio-economic effects, or an expansion of the existing EPPs to include the management of socio-economic effects would be appropriate to meet its regulatory objectives.

In addition to the Nations’ submissions in this regard under Topic Paper D, above, the Nations submit that the CER should include a requirement that companies specifically anticipate, prevent, manage, and mitigate impacts to Indigenous women, girls, and 2SLGBTQQIA+ people.

---

<sup>4</sup> The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a <online: [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)>.

<sup>5</sup> *Ibid* at PDF pg 589.

<sup>6</sup> *Ibid* at PDF pg 589.

<sup>7</sup> *Ibid* at PDF pg 597.

<sup>8</sup> *Ibid* at PDF pg 598.

The Nations further suggest that recommends that regulated companies be required to incorporate the following National Inquiry's Calls for Justice into its socio-economic effects protection program:

- 13.1 We call upon all resource-extraction and development industries to consider the safety and security of Indigenous women, girls, and 2SLGBTQQIA people, as well as their equitable benefit from development, at all stages of project planning, assessment, implementation, management, and monitoring.
- 13.2 We call upon all governments and bodies mandated to evaluate, approve, and/or monitor development projects to complete gender-based socio-economic impact assessments on all proposed projects as part of their decision making and ongoing monitoring of projects. Project proposals must include provisions and plans to mitigate risks and impacts identified in the impact assessments prior to being approved.
- 13.3 We call upon all parties involved in the negotiations of impact-benefit agreements related to resource-extraction and development projects to include provisions that address the impacts of projects on the safety and security of Indigenous women, girls, and 2SLGBTQQIA people. Provisions must also be included to ensure that Indigenous women and 2SLGBTQQIA people equitably benefit from the projects.
- 13.4 We call upon the federal, provincial, and territorial governments to fund further inquiries and studies in order to better understand the relationship between resource extraction and other development projects and violence against Indigenous women, girls, and 2SLGBTQQIA people. At a minimum, we support the call of Indigenous women and leaders for a public inquiry into the sexual violence and racism at hydroelectric projects in northern Manitoba.
- 13.5 We call upon resource-extraction and development industries and all governments and service providers to anticipate and recognize increased demand on social infrastructure because of development projects and resource extraction, and for mitigation measures to be identified as part of the planning and approval process. Social infrastructure must be expanded and service capacity built to meet the anticipated needs of the host communities in advance of the start of projects. This includes but is not limited to ensuring that policing, social services, and health services are adequately staffed and resourced.<sup>9</sup>

The Nations further suggest that the OPR further includes requirements of regulated companies to incorporate gender-based analyses in socio-economic impact assessments and protection programs. Indigenous organizations and women's groups have repeatedly

---

<sup>9</sup> The National Inquiry into Missing and Murdered Indigenous Women and Girls Calls for Justice at pg 26, <online: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.mmiwg-ffada.ca%2Fwp-content%2Fuploads%2F2019%2F06%2FCalls-Web-Version-EN.docx&wdOrigin=BROWSELINK>>.

called for socio-economic impact assessments of proposed resource extraction projects to include gender-based analyses,<sup>10</sup> because often decisions are made on a project-by-project basis with inadequate attention to the long-term cumulative social impacts, including the specific impacts on Indigenous women and girls.<sup>11</sup> The National Inquiry recommends that gender-based analysis should be conducted in the socioeconomic assessments and monitoring of reports for all proposed and operating extractive projects in or near Indigenous territories.<sup>12</sup>

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)?

Please see the response to this question in the Nations' response to Discussion Questions I3, above.

### **Subtopic 3: Engaging with Potentially Affected People and Communities**

Subtopic 3 concerns formalizing additional engagement requirements in the OPR. The CER's objectives of the new requirements will be to ensure consistent, clear, and flexible communication and engagement with impacted Indigenous Nations throughout a Project's lifecycle, as well as ensuring relevant information is provided, and potential impacts on the rights and interests of Indigenous Peoples are addressed.

The CER is considering incorporating express requirements for engagement related to these objectives, either through a stand-alone requirement or management system process.

In response to the Discussion Questions concerning its objectives and proposed options under Subtopic 3, the Nations provide the following:

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?

The Nations generally support the objectives for the new requirements set out in this Subtopic. However, the Nations additionally recommend that a specific objective be made directed at engagement with Indigenous Nations.

Unique and specific communication is required when engaging with sovereign Indigenous Nations as compared to other potentially affected public stakeholders. Further, engagement activities of regulated companies must reflect the specific requirements of each respective Indigenous Nation.

---

<sup>10</sup> *Ibid* at PDF pg 596.

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid* at PDF pg 597.

The CER's objective should be to help ensure that companies engage potentially impacted Indigenous Nations in a manner that recognizes and respects their sovereignty and is in keeping with the principles of UNDRIP.

I13. What is your feedback on the following proposed option to meet the regulatory objectives?

The CER has asked for feedback on whether explicit requirements should be established in the OPR for engagement related to its regulatory objectives, either through a stand-alone requirement or a management system process.

The Nations generally support the CER implementing explicit requirements for engagement related to the objectives. Any explicit requirements for engagement with impacted Indigenous Nations that the CER developments must align with the following articles of UNDRIP:

Article 25: The right to maintain and strengthen the distinctive spiritual relationship with the traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources of Indigenous peoples and to uphold their responsibilities to future generations in this regard;

Article 26: The right to own, use, develop, and control the lands, territories, and resources possessed by reason of traditional ownership or other traditional occupation or use, as well as those which that have been otherwise acquired.

Regulated companies should be encouraged to develop relationships with Indigenous Nations as they contemplate pipeline infrastructure. Engagement of this kind is necessary to understanding Indigenous Nations' perspectives and priorities for their territory of which they have inherent jurisdiction over.

The CER must include requirements that regulated companies identify early and engage with potentially impacted Indigenous Nations. As with relationship building, early engagement is necessary to ensure that Indigenous Nations perspectives are adequately considered and addressed by the respective company.

Any such requirements should require regulated companies to develop procedures that commit them to not only considering the perspectives, comments, questions, and concerns of an impacted Indigenous Nation, but how those will be addressed and/or implements into them project planning. Engagement with impacted Indigenous Nations must not be treated as a "check box"; companies must meaningfully and thoroughly engage early with impacted Indigenous Nations.

To ensure that the new requirements meet to objective to drive consistency and clarify the requirements for communications and engagement, companies must commit to sharing all relevant information to impacted Indigenous Nations so that they have all the necessary information to provide their perspectives, comments, questions, and concerns.

Finally, engagement activities established by the CER must not be precluded by any capacity constraints of an impacted Indigenous Nation. The CER should require a company to develop procedures for engaging with Indigenous Nations that support a Nation's ability to meaningfully engage. This requires both that Indigenous Nations are provided with enough time to respond and consider any communication for a company and that Nations are supported financially where necessary to ensure they can adequately participate to the degree they wish to.

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)?

Please see the response to this question in the Nations' response to Discussion Question I3, above.

## **VII. TOPIC PAPER K: FILING MANUALS - ENVIRONMENTAL AND SOCIO-ECONOMIC ASSESSMENT**

Topic Paper "K. Filing Manuals – Environmental and Socio-Economic Assessment" states that the CER is contemplating possible changes to the Environmental and Socio-Economic Assessment ("ESA") requirements under the Filing Manual.

The CER has prepared two subtopic discussions concerning revisions to the ESA and asked several questions to assist in reaching these goals. In response, Nation has prepared the submissions set out in the sections that follow.

### **Subtopic 1: Restructuring the ESA Section**

The CER states that it has been focused on improving the assessment of Project effects on the rights and interests of Indigenous Peoples in recent application assessments and is considering restructuring the ESA section of the Filing Manual to consolidate general guidance. In doing so, the CER is seeking to improve the overall layout and structure by, generally, enhancing clarity in the ESA section of the Filing Manual and gathering detailed insights on how proposed projects may impact the rights and interests of Indigenous Peoples.

To meet the above objectives, the CER is considering restructuring the ESA sections of the Filing Manual by creating a separate "Rights and Interests of Indigenous Peoples" section and consolidating common guidance into a dedicated sub-section for clarity and relevance.

In response to the Discussion Questions concerning its objectives and proposed options under Subtopic 1, the Nations provide the following:

K1. Does the proposed split of the current ESA section improve clarity?

The Nations are concerned that the CER's proposed splitting of the ESA requirements would not improve clarity and may create confusion and repetitive work for both the regulated company and the impacted Indigenous Nations considering the ESA materials.

As described in further detail below, the Nations submit that while there are valued components ("VCs") that are specific to considerations of the rights and interests of Indigenous Peoples which could be removed from a general ESA section, the VCs currently considered under the ESA section would equally need to be considered under any new "Rights and Interests of Indigenous Peoples" section. Such duplication would require applicants to addressing similar issues – albeit with a specific Indigenous lens under the "Rights and Interests of Indigenous Peoples" section – that would require Indigenous Nations to review and consider both sections to ensure consistency across sections.

Further, the Nations are concerned that the splitting of the current ESA to include a new "Rights and Interests of Indigenous Peoples" section may cause regulated companies to modify their treatment of certain VCs under the "Rights and Interests of Indigenous Peoples" section resulting in their increased reliance on their subjective assessment of relevant impacts to Indigenous Peoples, rather than providing robust rights-based analysis that should be directly informed by the methodologies employed within the ESA section.

K2. What overarching topics are important to highlight as applying throughout the applicant's ESA and "Rights and Interests of Indigenous Peoples" sections?

The Nations submits that there are several overarching topics that would apply to both the ESA and potential "Rights and Interests of Indigenous Peoples" sections. Both sections should cover the four distinct phases covered by the CER's current ESA responsibilities:

1. evaluating potential effects of constructing and operating proposed projects;
2. monitoring and enforcing terms and conditions before, during and after construction;
3. monitoring and regulating ongoing operations, including decommissioning; and
4. evaluating potential effects of abandonment.

The preceding overarching topics that would apply to both sections and include the following considerations, at a minimum:

- **The potential effects of the pipeline infrastructure:** Assessments of the potential for pipeline infrastructure to cause significant adverse effects or contribute to cumulative effects should be included in both sections, including with respect to

changes to the environment, health, social, and economic conditions must be considered equally as well as the cumulative effects of the pipeline infrastructure.

The cumulative impacts of industry have resulted in significant long-term impacts to Indigenous People's ways of life and their ability to exercise Indigenous Rights within their territory. The Nations' respective territories have increasingly becoming fragmented as a result of industry activity and the taking up of lands by the Crown. The respective Members of each of the Nations have continuously needed to travel farther away to exercise their Indigenous Rights and the quantity and quality of critical cultural resources like wildlife, fish, plants, and medicine are declining.

Similar circumstances were recognized in *Yahey v. British Columbia*, 2021 BCSC 1287, in which the Supreme Court of British Columbia determined that the Province of British Columbia had breached Treaty No. 8 by permitting industry to extensively develop in the area without completing an assessment of the cumulative impacts of such development. In this decision, the Court recognized that there is a tipping point, or threshold, where an Indigenous Nation will no longer be able to meaningfully exercise their rights due to the cumulative impacts within their territory.

Adequate processes and procedures for assessing and mitigating cumulative effects have yet to be developed.

- **Avoidance, mitigation, and accommodation:** Mitigation and accommodation measures that address the potential effects of the pipeline infrastructure should apply to both and ESA and any "Rights and Interests of Indigenous Peoples" section.

Generally, the primary objective of regulated companies must be to avoid impacts to potentially impacted Indigenous Nations. Where avoidance is not possible, mitigation and accommodation measures must be made with a view to substantially minimize, reduce, or offset the potential impacts to Indigenous Nations.

Mitigation and accommodation measures must be developed and implemented in collaboration, and on a consensus-basis, with the potentially impacted Indigenous Nations.

- **Meaningful participation:** In order to substantially address the concerns of potentially impacted Indigenous Nations, the regulated company must be required to facilitate meaningful participation of the potentially impacted Indigenous Nations.

Regulated companies must be required to establish clear lines of communication with potentially impacted Indigenous Nations and demonstrate such

communication throughout an application before the CER, inclusive of the ESA and any “Rights and Interests of Indigenous Peoples” section.

Meaningful participation of impacted Indigenous Nations requires early engagement. In order for the concerns of potentially impacted Indigenous Nations to be meaningfully addressed, potentially impacted Indigenous Nations must be engaged early to allow for flexibility of the development of the pipeline infrastructure planning.

- **Transparency:** Transparency of a company contemplating pipeline infrastructure when completing an application to the CER. In order for a potentially affected party to consider the impacts of the pipeline infrastructure and identify their concerns, the company must provide full and transparent disclosure of its process and determinations.

## **Subtopic 2: Environmental and Socio-economic Assessment**

### ***Subtopic 2.1: Valued component identification and section for the ESA***

As noted above, under this Topic Paper the CER is considering splitting the current ESA section into two distinct sections: i) an amended ESA section; and, ii) a new “Rights and Interests of Indigenous Peoples” section. In particular, the CER intends to clarify how Indigenous Knowledge and engagement with impacted Indigenous Nations will inform the selection of VCs and to help ensure that VCs can cover both broad and narrow concerns.

To meet these objectives, the CER is considering, generally, to provide filing guidance to ensure Indigenous Knowledge and engagement inform VC selection and clarify requirements for using narrow and broad VCs to address relevant concerns.

In response to the Discussion Questions concerning its objectives and proposed options under Subtopic 2.1, the Nations provide the following:

- 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?

VCs play a crucial role in assessing the impacts of pipeline infrastructure and identifying appropriate mitigation measures. To effectively consider and address the concerns of Indigenous Nations, Indigenous Knowledge and meaningful engagement with impacted Indigenous Nations must be explicitly incorporated into the selection of VCs.

The Nations submit that the Filing Manual must require that VCs be developed in collaboration with potentially impacted Indigenous Nations. This collaboration must include a requirement for regulated companies to engage with these Nations from the earliest stages of Project development.

The sharing of Indigenous Knowledge is a vital aspect of a regulated company's engagement with Indigenous Nations. Such engagement must be project-specific and ensure that Indigenous Nations retain full control and ownership of their Indigenous Knowledge at all times.

In alignment with UNDRIP, Indigenous Knowledge is held and controlled by Indigenous Nations and their Knowledge Keepers, who determine when and for what purpose it may be shared. Therefore, the Filing Manual must prohibit regulated companies from using any Indigenous Knowledge—both in general and during the VC selection process—without the express consent of the Indigenous Nation that provided it. Companies must not extract, interpret, or repurpose Indigenous Knowledge for their own benefit. Furthermore, companies must be barred from relying on Indigenous Knowledge that has not been duly authorized or that was previously shared in engagement meetings, filed evidence or Oral Indigenous Knowledge sessions for a Project for the purpose of informing subsequent applications for Projects unless explicit consent is granted by the Indigenous Nation that originally provided it to use it in this manner.

To support the meaningful participation of Indigenous Nations in the VC selection process, the Filing Manual must include provisions ensuring that capacity constraints do not prevent their involvement, particularly regarding the identification and collection of Indigenous Knowledge.

Currently, under the Filing Manual, regulated companies are required to identify VCs for which effects are predicted and to explain why and how those VCs were selected. The Nations submit that, as part of this process, companies must also be required to demonstrate how Indigenous Knowledge provided by impacted Indigenous Nations informed the selection of each VC.

In addition to integrating Indigenous Knowledge and engagement into the VC selection process, regulated companies must outline:

- how they determined which Indigenous Nations to engage with;
- the methods of engagement used;
- how Indigenous Knowledge influenced the selection of VCs; and
- the steps taken to ensure that Indigenous Nations had the opportunity to review and confirm the accuracy of how their Knowledge was applied.

These requirements will help ensure that Indigenous perspectives are meaningfully incorporated into environmental assessments and decision-making.

K5. What factors should guide the choice of VCs in terms of their breadth?

The Nations submit that Indigenous Knowledge that has been shared by impacted Indigenous Nations must be relied upon by regulated companies when establishing the

breadth of their VCs on each Project. This reliance requires regulated companies to undertake early engagement of impacted Indigenous Nations to ensure that those Indigenous Nations have adequate time to consider the pipeline infrastructure and provide necessary information and Indigenous Knowledge that may influence the company's assessment of the breadth each VCs.

Accordingly, regulated companies must also be required under the Filing Manual to demonstrate how they have considered and incorporated the Indigenous Knowledge from impacted Indigenous Nations.

### ***Subtopic 2.2: Socio-economic valued components***

The CER looks to clarify its guidance for assessing socio-economic effects, which requires consideration of what matters should remain in the ESA sections of applications and what should be moved into the proposed "Rights and Interests of Indigenous Peoples" section, while avoiding duplication.

The CER is proposing to focus the socio-economic VCs on health, social, and economic effects related to non-Indigenous peoples and communities, such that a company would consider the following socio-economic VCs within its application: employment and economy, human health, human occupancy and resource use, infrastructure and service, and navigation and navigation safety.

In response to the s Discussion Questions concerning its objectives and proposed options under Subtopic 2.2, the Nations provide the following:

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?

The Nations refer to their responses in Discussion Question K1, above.

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?

The Nations refer to their responses in Discussion Question K1, above.

K10. What VCs should stay in the ESA section versus which should move to the "Rights and Interests of Indigenous Peoples" section?

As stated in response to Discussion Question K1, above, it is the Nations' understanding that a new requirement to include a "Rights and Interests of Indigenous Peoples" section that is distinct from the ESA section would create uncertainty through the Project assessment process. It is the Nations' view that all VCs currently included in the ESA should be considered together and wholistically together with potential impacts to the rights and interests of Indigenous Peoples.

Such a wholistic approach reflect the interrelationships of all VC and supports a clear understanding of how all of the potential impacts of a Project may affect Indigenous Peoples. In this regard, all biophysical and socio-economic VCs are relevant to the rights and interests of Indigenous Peoples, and therefore should be contemplated together with potential impacts to the rights and interests of Indigenous Peoples.

### ***Subtopic 2.3: Mitigation and enhancement measures***

The CER intends to clarify its guidance related to requirements in the Filing Manual concerning mitigation and enhancement measures. To do so, the CER is considering modifying the ESA section of the Filing Manual to specify that applicants should, generally, include enhancement measures alongside mitigation, justify offset principles by demonstrating adherence to the mitigation hierarchy, and ensure site-specific protections remain in place post-construction, while documenting and monitoring socio-economic protection measures equivalent to an EPP and post-construction environmental monitoring and report (“PCEMR”):

In response to the Discussion Questions concerning its objectives and proposed options under Subtopic 2.3, the Nations provide the following:

**K13. What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?**

The Nations submit that the mitigation hierarchy is an important principle that applies to both biophysical VCs and socio-economic VCs, as well as rights and interests of Indigenous Peoples VCs – to the extent that these are created by revisions to the Filing Manual.

Any inclusion of requirements concerning offset measures in the Filing Manual must be established with an appropriate perspective on the role of offsets in reducing impacts to the rights of Indigenous Nations. Offsetting should only be considered when all other measures on the mitigation hierarchy (avoidance, minimization, and restoration) have been exhausted. It is the Nations’ view that the use of offsets should only be approved when no other effective or preferred approaches can reasonably be implemented to adequately reduce the cumulative impacts of Project development to Indigenous Rights.

Avoidance should always be the primary goal. Where pipeline infrastructure can be modified through changes to its scale, design, or location to prevent impacts to VCs, avoidance should be preferred. This is of critical importance in respect of impacts to Indigenous Nations’ ability to exercise their Indigenous Rights. Continuous industrial development has had profound impacts on the Nation’s ability to exercise their rights in a meaningful way; avoidance should be prioritized to circumvent further impacts wherever possible.

If avoidance is not possible, regulated companies must prioritize taking all reasonable and necessary measures to minimize impacts to Indigenous Rights. Minimization is important

to lessen the duration or intensity of the cumulative impacts of Project development to Indigenous Nations.

Finally, restoration of the impacts caused by Project development should be prioritized prior to offsets where avoidance or minimization are not effective at addressing cumulative effects to Indigenous Nation. Restoration can be an important measure that may support the continued exercise of Indigenous Rights in areas where a Project has resulted in impacts to Indigenous Nations. It is the Nations' understanding that restoration measures must aim to return an impacted area to an improved state beyond the baseline conditions.

K14. What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?

The Nations generally support the CER's proposal that regulated companies should document and monitor socio-economic protection measures – equivalent to an EPP and PCEMR. The Nations further submit that companies should be required under the Filing Manual to provide a plan similar to an EPP or PCEMR that identifies measures to monitor, manage, and report on the socio-economic protection and enhancement measures the company will implement.

As stated in the Nations' response to Discussion Question I2, above, protection programs provide important guidance for activities performed by regulated companies during the lifecycle of pipeline infrastructure and identify prescriptive operational management objectives and standards that are critical to support transparency.

Requiring a similar protection plan concerning socio-economic protection and enhancement measures will promote transparent practices by regulated companies.

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?

As described in the Nations' response to Discussion Question K14, above, establishing a requirement that regulated companies develop a socio-economic protection plan is an important step to ensuring site-specific information and relevant commitments of companies are maintained and implemented in a transparent manner.

In establishing such requirements, the CER must ensure that adequate engagement by impacted Indigenous Nations in the implementation and oversight of the measures within a socio-economic protection plan occurs. Further, as set out in the Nations' responses in Topic Paper I, above, wherever such engagement occurs relating to the oversight of pipeline infrastructure, impacted Indigenous Nations must be involved in all relevant decision-making on a free, prior, and informed consent standard and provided adequate capacity support throughout the lifespan of a project.

### *Subtopic 2.4: Cumulative Effect*

The CER intends to clarify filing guidance related to specific issues of importance in cumulative effect assessments. The CER is considering guidance that, generally, ensures cumulative effects assessments consider factors such as environmental events and climate change, justify appropriate baseline timeframes, and allow exemption if proposed offsets confidently achieve no net loss, accounting for risks and uncertainties.

In response to the Discussion Questions concerning its objectives and proposed options under Subtopic 2.4, the Nations provide the following:

K17. To what extent should environmental events and climate change be included in cumulative effects assessments?

The Nations are in support of the CER's proposal that environmental events and climate change be included in cumulative effects assessments. Indigenous Nations are having to grapple with the outcomes of increasingly frequent environmental events like wildfires and climate change are having on their ability to exercise their rights.

In order to adequately address the cumulative impacts of a Project to Indigenous Nations, a Project's cumulative effects assessment must be undertaken with an understanding and appreciation for the complete environmental circumstances in which the pipeline infrastructure is being proposed. Such consideration includes factors such as environmental events and climate change.

K18. How is the cumulative effects assessment relevant to positive effects as well as adverse effects?

It is the Nations' understanding that the framing of asserted positive effects of a Project is not an appropriate consideration for a cumulative effects assessment. The impacts to Indigenous Rights that are likely to result from a Project are permanent to the Indigenous Peoples who experience them.

By contemplating the projected positive effects of a Project the CER would be invited to weigh and evaluate through the lens of the colonial legal systems the experiences of Indigenous Peoples arising from the degradation of their lands and resources and erosion of their inherent Indigenous Rights to steward and manage their territories. Whereas, as discussed in the Nations' response to Discussion Question 13, the cumulative impacts of a Project to Indigenous Peoples could be offset in some regard, they can never be undone.

The Nations submit that such evaluation would be inherently fraught and could not be properly undertaken by the CER as a Crown representative.

K19. What factors are important in choosing the appropriate baseline for cumulative effects assessments?

Industrial development has significantly altered the baseline conditions for the meaningful exercise of rights by Indigenous Nations. For example, the Supreme Court of British Columbia in *Yahey v. British Columbia*, 2021 BCSC 1287 found that the Province of British Columbia had infringed Blueberry River First Nation's Treaty No. 8 rights by allowing the cumulative impacts of industrial development to meaningfully diminish their ability to exercise their treaty rights.

The CER should ensure that the Filing Manual establishes that the current landscape conditions in the areas of a Project are not an appropriate baseline against which the regulated company must consider cumulative effects to Indigenous Nations. The company must factor how current landscape conditions reflect an altered baseline arising from past development activities.

In supporting the identification of an appropriate altered baseline Indigenous Knowledge must be appropriately factored. Indigenous Nations have used their territories for thousands of years. The significant generational knowledge of Indigenous Nations carries critical information regarding changing environmental conditions over time and arising from development activities. The CER must ensure the Filing Manual establishes requirements that Indigenous Knowledge and Indigenous perspectives be integrated by regulated companies when identifying appropriate baseline settings for cumulative effects assessments. The establishment of baseline settings should be informed by Project-specific engagements and studies with respect to a proposed Project and should not be extrapolated to earlier information provided by Indigenous Nations for previous or unrelated Projects.

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?

As identified in response to Discussion Question K13, above, cumulative impacts are of a critical concern to Indigenous Nations, particularly within territories that have been subjected to significant incremental industrial development.

The Nations submit that the CER should ensure that a regulated company's confidence in its use of offsets to achieve "no net loss" should not relieve that company from requirements to include a cumulative effects assessment in its ESA. A cumulative effects assessment provides an essential lens through which the CER can gain a fulsome view of a Project's impacts to Indigenous Nations and should be understood to be an essential component of every application.

However, if the CER rejects this important position of the Nations and instead intends to create an avenue through which applicants do not have to include a cumulative effects assessment, the Nations submit that, notwithstanding its submissions in response to Discussion Question K18, above, the threshold for this exemption should not be "no net

loss”, but rather that a net positive impact has been achieved. Given the altered baseline from industrial development, environmental events, and climate change, no net loss is no longer an appropriate threshold, especially in circumstances where the CER is contemplating relieving a regulated company from having to include a cumulative effects assessment altogether.

### ***Subtopic 2.5: Significance***

The CER is considering updating the Filing Manuals to reflect its most recent approach to determining significance. To meet this objective, the CER is considering, generally, to introduce a templated sliding scale framework for VC significance determination and require applicants to assess potential significant adverse effects on federal lands under Section 82 of the *Impact Assessment Act*.

In response to the CER’s Discussion Questions concerning its objectives and proposed options under Subtopic 2.5, the Nations provide the following:

**K22. Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?**

The Nations submit that a framework similar to the significance tables used in the NEBC Recommendation Report is not appropriate, as drafted, for inclusion in the Filing Manual.

As drafted, the significance tables in the NEBC Recommendation Report do not adequately consider the potential impact on Indigenous Nations. As stated throughout the Nations’ submissions for this Topic Paper K, the potential impacts on the rights and interests of Indigenous Peoples cannot be determined without engagement of Indigenous Nations and the appropriate incorporation of their Indigenous Knowledge.

Any such significance framework must include transparent consideration of the impacts on the rights and interests of Indigenous Peoples as a discrete criterion. Such consideration of impacts should be strictly assessed through a rights-based approach and should evaluate both the direct and cumulative effects of a Project to Indigenous Nations. This type of evaluation would be more aligned with the CER’s mandate to implement UNDRIP.

## **VIII. TOPIC PAPER M: FILING MANUALS – RIGHTS AND INTERESTS OF INDIGENOUS PEOPLE**

Topic Paper M is related to Topic Paper K and concerns the restructuring of the ESA section in the Filing Manual. Topic Paper M specifically focuses on improving the assessment of Project effects on the rights and interests of Indigenous Peoples through revisions to the Filing Manuals.

The CER has prepared Subtopic discussions concerning the above and asked several related Discussion Questions. The Nations note that several Subtopics in this Topic Paper concern matters discussed in detail in Topic Papers relating to the CER’s proposed changes to other components

of the OPR. Because of this and due to the limited scope of the Nations' ability to comment on these matters, the Nations refer generally to the discussion on these related matters in the sections above.

The Nations have prepared submissions on the Discussion Questions under Topic Paper M relating to matters that have not been addressed up to this point.

## **Subtopic 2: Rights and interests of Indigenous Peoples**

### ***Subtopic 2.2: Integrating the applicant's assessment and Indigenous-led assessments and studies***

Subtopic 2.2 concerns Indigenous-led assessments and Indigenous-led studies. The CER's objective in any revisions is to be more explicit about how and when applicants are expected to support Indigenous-led assessments and studies and how to integrate the results of Indigenous-led assessments and studies into their own assessments.

To that end, the CER is contemplating clarifying expectations for applicants about Indigenous-led assessments and Indigenous-led studies that can form part of an assessment.

In response to the Discussion Questions concerning its objectives and proposed option under Subtopic 2.2, the Nations provide the following:

#### **M9. What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous Peoples (e.g., timing, funding, scoping, integration)?**

Historically, Indigenous Knowledge and Indigenous involvement has been controlled, stymied, or entirely excluded from statutory decision-making processes. Indigenous-led assessments and studies are tools through which Indigenous Nations assert jurisdiction over development occurring within their territory. These kinds of assessments and studies allow an Indigenous Nation to determine potential impacts of Projects evaluated according to their own customs, protocols, practices, concerns, and values.

Requiring the inclusion and incorporation of Indigenous-led assessments and studies into the applicant's assessment is in line with the CER's general commitments in the Act achieving reconciliation with Indigenous Nations through renewed nation-to-nation, government-to-government relationships based on recognition of rights, respect, cooperation, and partnership, as well as to the implementation of UNDRIP. In particular, it aligns with Action Plan measure 34.

Indigenous-led assessments and studies can be costly and timely, requiring Indigenous Nations to allocate finite resources to conduct them. The CER must ensure that capacity constraints of an Indigenous Nation do not create barriers to conducting Indigenous-led assessments and studies in keeping with the CER's commitments to reconciliation and the implementation of UNDRIP.

The Nations submit that early, comprehensive engagement and the transparent sharing of information is necessary for Indigenous Nations to conduct Indigenous-led assessments and studies. As previously stated in the Nations' response to Discussion Question I13 of Topic Paper I: Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement, companies should be encouraged to development relationships with Indigenous Nations as they contemplate pipeline infrastructure. This will support early and effective communication so that Indigenous Nations can engage in Indigenous-led assessments and studies early in the process.

The level of participation should be left to the Indigenous Nation to contemplate and determine. If improvements are going to be made to the incorporation of Indigenous Knowledge and Indigenous involvement into the regulatory process, the parameters of the level of involvement and the extent of the knowledge shared must be set by the Indigenous Nation so that any involvement or knowledge is not barred before it is even considered. Indigenous Nations are impacted in varying ways depending on their rights and interests in the area of the Project. Allowing each Indigenous Nation to determine its involvement and whether they wish to collaborate with other affected Nations, respects their inherent jurisdiction and is in keeping with the principles of UNDRIP.

Finally, any integration of Indigenous-led assessments and studies must occur with the collaboration and approval of Indigenous Nations. The applicants must work with Indigenous Nations to determine how their assessment or study is incorporated into the applicant's assessment. This includes an Indigenous Nation determining that they do not want their assessment or study incorporated into the regulatory process.

M10. What are the opportunities and challenges of Indigenous-led assessments and studies for applicants (e.g., timing, funding, scoping, integration)?

The Nations submit that for the reasons stated in response to Discussion M9, any challenges of Indigenous-led assessments and studies for applicants must not be a deterrent to their incorporation into the regulatory process and would not be in keeping with the CER's commitments to reconciliation and the principles of UNDRIP.

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"?

The Nations submit that there is no conflict with incorporating Indigenous-led assessments and studies and Canada's objective of "one project, one assessment". The objective of "one project, one assessment" is to reduce duplication, and increase efficiency and certainty. Unless and until regulatory processes are drafted to evaluate a Project according to Indigenous Nations customs, protocols, practices, concerns, and values, any Indigenous-led assessments or studies will not cause duplication.

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?

Indigenous-led assessments and studies, to the extent that they are completed, must be integrated with the applicant's assessment regardless of any timing challenges. The CER and applicants must support Indigenous Nations in meeting any timelines, but they should ensure that if these timelines are not met, they must not be treated as barriers to participating.

The Nations submit that to avoid timing issues, as well as ensuring that the assessments and studies are adequately incorporated with time for the Indigenous Nation to review and provide comments, Indigenous Nations must be engaged early. This requires engaging Indigenous Nations before submitting an application to the CER. The Nations submit that this can be supported by the development of a new management system process for the incorporation of Indigenous knowledge, as described above in the Nations' response to Discussion Question I2 of Topic Paper I: Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement

When companies engage with Indigenous Nations early, comprehensively and are transparent with the information it shares, Indigenous Nations are able to review the Project in a more effective way with a view to meeting any timing requirements.

Further, as discussed in Discussion Question M9, supporting Indigenous Nations with their capacity needs is critical for ensuring Indigenous Knowledge and Indigenous involvement in shared decision making are incorporated into the CER's process.

**APPENDIX B**  
**SUMMARY OF SUBMISSIONS IN RESPONSE TO ONSHORE PIPELINE**  
**REGULATION AND FILING MANUALS REVIEW**

The following table presents an overview of the submissions of Driftpile Cree Nation, Louis Bull Tribe, Kanaka Bar Indian Band, Sucker Creek First Nation, Whitefish Lake First Nation, and Zagimē Anishinabēk (collectively, the “**Nations**”) in response to the Canada Energy Regulator’s (the “**CER**”) Phase 2 review of the Onshore Pipeline Regulations, SOR/99-294 (the “**OPR**”) and Filing Manuals.

Topic Paper	Subtopic	Summary of Submissions
<b>B. Deactivation and end of Lifecycle</b>	2. Decommissioning	<ul style="list-style-type: none"> <li>• Pipeline decommissioning impacts Indigenous rights and territories, potentially causing long-term infringements.</li> <li>• Section 45.1 of the OPR allows companies to apply for pipeline decommissioning but lacks clear requirements, detailed application guidelines, or alignment with UNDRIP.</li> <li>• Companies must engage with Indigenous Nations throughout the decommissioning process with their consent.</li> </ul>
	3. Management system	<ul style="list-style-type: none"> <li>• The CER should adopt a full lifecycle approach for projects, including requiring management systems during pipeline decommissioning and abandonment.</li> <li>• The OPR should mandate that companies implement and maintain these systems to address the long-term impacts pipelines have on Indigenous Peoples, including cultural harm and cumulative development effects.</li> </ul>
	4. Notification for deactivation	<ul style="list-style-type: none"> <li>• Deactivation activities must involve direct engagement with affected Indigenous Nations to ensure they have meaningful decision-making opportunities.</li> </ul>
	5. Surveillance and monitoring	<ul style="list-style-type: none"> <li>• Impacted Indigenous Nations must be involved in monitoring activities throughout all phases of a project's lifecycle.</li> <li>• The OPR should require regulated companies to engage Indigenous Nations in surveillance and monitoring planning for decommissioned and abandoned pipelines, including on-the-ground participation by Indigenous monitors.</li> <li>• Indigenous monitors must be empowered to report and enforce environmental protection and compliance issues.</li> </ul>

<b>C. Emergency Management</b>	2. Priorities to be consider within the EM program	<ul style="list-style-type: none"> <li>• Cultural safety is a significant concern that should be reflected and acknowledged within the scope of Environmental Management Programs.</li> <li>• The impacts of spills and emergencies can cause irreparable harm to Indigenous territories and culturally significant sites.</li> <li>• Any OPR process affecting Indigenous Nations must reflect their decision-making authority to align with UNDRIP, including clear procedural steps that incorporate the legal practices of impacted Indigenous Nations, particularly regarding culturally significant sites.</li> </ul>
	3. Consolidation of current regulatory framework	<ul style="list-style-type: none"> <li>• Early notification and direct engagement with impacted Indigenous Nations after an emergency must be a minimum requirement under the OPR.</li> <li>• While Best Practices address this, their standards are too vague to support the CER’s implementation of UNDRIP.</li> <li>• Currently, the notice best practices should align with the OPR’s requirement for immediate reporting of designated incidents to the CER–Indigenous Nations must be notified immediately.</li> </ul>
	5. Involvement of Indigenous Peoples in EM	<ul style="list-style-type: none"> <li>• The OPR should reflect requirements for companies to engage with Indigenous Nations on rights-basis in protecting their territories from project-related emergencies.</li> <li>• Emergency Management Programs should be co-developed with Indigenous Nations through rights-based processes, incorporating communication protocols and collaborative response management.</li> <li>• These programs must prioritize working with Indigenous-led guardian or monitoring programs to enhance emergency response.</li> </ul>
<b>D. Environmental Protection</b>	1. Contamination management and reporting	<ul style="list-style-type: none"> <li>• Contamination management should be brought under the OPR to enhance clarity, consistency, and transparency, ensuring Environmental Protection Programs align with OPR requirements.</li> <li>• The OPR must also establish a clear role for impacted Indigenous Nations in co-developing contamination management processes based on a rights-based approach.</li> </ul>

		<ul style="list-style-type: none"> <li>• This co-development must be consent-based and meaningfully incorporate Indigenous laws, governance objectives, and stewardship rights.</li> </ul>
	2. Section 21 of the OPR: reclamation, vegetation management, and restoration	<ul style="list-style-type: none"> <li>• The OPR must require regulated companies to undertake reclamation, remediation, and vegetation management and develop restoration goals with specific requirements that are co-developed with, and consented to by, impacted Indigenous Nations to ensure compliance with Indigenous laws, protocols, and Indigenous Knowledge.</li> <li>• CER-regulated projects contribute to cumulative impacts on Indigenous Rights, and the proposed “pre-disturbance land use” model for restoration does not fully account for how development has altered baseline environmental conditions.</li> <li>• To ensure meaningful restoration, the OPR must require that restoration planning during project abandonment be consented to by impacted Indigenous Nations before implementation.</li> </ul>
	3. Section 21 of the OPR: participation in development of environmental monitoring by Indigenous Peoples	<ul style="list-style-type: none"> <li>• Indigenous-led project monitoring programs are essential for transparency throughout a project’s lifecycle. The OPR should require development of these programs on a consent basis.</li> <li>• Best practices include clear communication, active facilitation of Indigenous participation, training support, and access to independent experts. Indigenous monitors must have the authority to protect significant sites, suspend work, and mandate modifications as needed.</li> <li>• Companies must provide real-time monitoring data, facilitate Indigenous involvement in on-the-ground programs, and offer capacity support.</li> </ul>
	4. Environmental Protection Plan required for construction and operation and maintenance activities	<ul style="list-style-type: none"> <li>• The OPR should establish specific requirements ensuring Environmental Protection Plans (“EPPs”) incorporate Indigenous Knowledge, legal protocols, and a rights-based approach to remediation and mitigation.</li> <li>• Setting engagement standards within EPPs would enhance transparency and consistency in Indigenous consultation.</li> </ul>

		<ul style="list-style-type: none"> <li>• Explicit OPR requirements for environmental protection, remediation, and maintenance would reduce reliance on companies to engage in good faith.</li> </ul>
	6. Climate resiliency	<ul style="list-style-type: none"> <li>• All projects must account for climate change risks, as CER-regulated projects have long-term, often permanent, impacts on Indigenous Nations.</li> <li>• The OPR should require companies to recognize climate risk as a "potential hazard" under Section 6.5(1)(c) and implement risk management processes.</li> <li>• The CER must establish clear parameters to ensure climate risk planning aligns with a project's lifecycle, best practices, environmental factors, and Indigenous considerations.</li> </ul>
<b>F. Management Systems and Contractor Management</b>	1. Management system requirements	<ul style="list-style-type: none"> <li>• Management systems must include roles for oversight and monitoring by Indigenous Nations to be developed on a consent basis.</li> <li>• The OPR should require companies to engage or co-develop management systems with impacted Indigenous Nations to reflect rights-based concerns.</li> <li>• Stronger accountability is necessary for the design of management systems through rights-based processes that support transparency.</li> </ul>
	2. Management of contractors providing services and/or products across the pipeline lifecycle	<ul style="list-style-type: none"> <li>• The OPR should require stricter contractor selection criteria, prioritizing safety, environmental stewardship, and respect for Indigenous protocols.</li> <li>• Contractors must undergo Indigenous-led training on project impacts, environmental stewardship, and anti-discrimination. Continuous monitoring, audits, and Indigenous consultation should determine contractor suitability for future work.</li> <li>• Reporting mechanisms must allow Indigenous Nations to raise concerns, and contractor protocols should be co-developed to ensure compliance with safety, environmental, and cultural standards.</li> </ul>
<b>I. Rights and Interests of Indigenous Peoples, Socio-</b>	1. Preventing and addressing impacts to the rights and interests of Indigenous Peoples	<ul style="list-style-type: none"> <li>• The inclusion of systematic processes should be developed to obtain free, prior, and informed consent from impacted Indigenous Nations.</li> </ul>

<b>economic effects, and Engagement</b>		<ul style="list-style-type: none"> <li>• The OPR should establish consent-based models for Indigenous participation in pipeline oversight, including in management systems and Environmental Protection Programs, to recognize Indigenous jurisdiction and legal orders.</li> <li>• Any development of a discrete protection program or management system under the OPR for impacts to Indigenous Peoples must support full involvement of Indigenous Nations in the implementation and oversight of measures to be implemented under the program.</li> <li>• The success of such programs and systems should be measured in part by the involvement of impacted Indigenous Nations in their implementation and oversight.</li> </ul>
	2. Managing socio-economic effects	<ul style="list-style-type: none"> <li>• The OPR should include specific requirements for companies to incorporate gender-based analyses in socio-economic impact assessments and protection programs to prevent and manage impacts to Indigenous women, girls and 2SLGBTQQA+ people.</li> </ul>
	3. Engaging with potentially affected people and communities	<ul style="list-style-type: none"> <li>• The OPR should require direct engagement and co-development of relevant measures with Indigenous Nations and require regulated companies to develop procedures that commit to reporting on how they will address direct engagement requirements in project planning.</li> <li>• Engagement with impacted Indigenous Nations must not be treated as a “check box”; companies must meaningfully and thoroughly engage early with impacted Indigenous Nations.</li> </ul>
<b>K. Filing Manuals – Environmental and Socio-economic Assessment</b>	1. Restructuring the ESA section	<ul style="list-style-type: none"> <li>• Splitting the Environmental and Socio-economic Assessment (“ESA”) into separate sections—one for general ESAs and another for the "Rights and Interests of Indigenous Peoples"—may lead to confusion and redundant efforts for Indigenous Nations.</li> <li>• Certain valued components (“VCs”) relevant to Indigenous rights, if moved to the new section, would still need to be addressed in the general ESA.</li> </ul>

	<ul style="list-style-type: none"> <li>• Such division might prompt companies to rely more on subjective assessments of impacts on Indigenous Peoples, rather than conducting comprehensive, rights-based analyses informed by established ESA methodologies.</li> <li>• At a minimum, any discrete section concerning impacts to Indigenous Peoples must address: potential effects of constructing and operating projects; monitoring and enforcing terms and conditions for the whole project lifecycle; monitoring and regulating ongoing operations, including decommissioning; and evaluating potential effects of abandonment.</li> </ul>
2.1. Valued component identification and section for the ESA	<ul style="list-style-type: none"> <li>• VCs in ESAs should be developed collaboratively with potentially impacted Indigenous Nations, integrating Indigenous Knowledge and ensuring meaningful engagement.</li> <li>• The Filing Manual should: mandate early and inclusive engagement; ensure consent and control over indigenous knowledge; ensure capacity support; and require transparent documentation.</li> </ul>
2.2. Socio-economic valued components	<ul style="list-style-type: none"> <li>• Any new requirements to include a “Rights and Interests of Indigenous Peoples” section that is distinct from the ESA section would create uncertainty through the Project assessment process.</li> <li>• All VCs currently included in the ESA should be considered together and wholistically together with potential impacts to the rights and interests of Indigenous Peoples.</li> <li>• A wholistic approach reflect the interrelationships of all VC and supports a clear understanding of how all of the potential impacts of a Project may affect Indigenous Peoples.</li> </ul>
2.3. Mitigation and enhancement measures	<ul style="list-style-type: none"> <li>• The mitigation hierarchy is an important principle that must be reflected in VCs for biophysical, socio-economic, and impacts to Indigenous Peoples.</li> <li>• Requirements concerning offset measures in the Filing Manual must be established with an appropriate perspective on the role of offsets in reducing impacts to the rights of Indigenous Nations, which must be co-developed with impacted Indigenous Nations.</li> </ul>

		<ul style="list-style-type: none"> <li>• The CER must ensure that adequate engagement by impacted Indigenous Nations in the implementation and oversight of the measures within a socio-economic protection plan occurs.</li> </ul>
	2.4. Cumulative effects	<ul style="list-style-type: none"> <li>• Industrial development has significantly altered the baseline conditions for the meaningful exercise of rights by Indigenous Nations—The Filing Manual should establish that current landscape conditions are not an appropriate baseline against which the regulated company must consider cumulative effects to Indigenous Nations.</li> <li>• A cumulative effects assessment should be required under the Filing Manual—The CER should ensure that a company’s confidence in its use of offsets to achieve “no net loss” should not relieve that company from requirements to include a cumulative effects assessment in its ESA.</li> <li>• Environmental events and climate change should be included in cumulative effects assessments.</li> <li>•</li> </ul>
	2.5. Significance	<ul style="list-style-type: none"> <li>• A framework similar to the significance tables used in the NEBC Recommendation Report is not appropriate, as drafted, for inclusion in the Filing Manual. the significance tables in the NEBC Recommendation Report do not adequately consider the potential impact on Indigenous Nations.</li> <li>• Any such significance framework must include transparent consideration of the impacts on the rights and interests of Indigenous Peoples as a discrete criterion.</li> <li>• Consideration of impacts should be strictly assessed through a rights-based approach and should evaluate both the direct and cumulative effects of a Project to Indigenous Nations.</li> </ul>
<b>M. Filing Manuals – Rights and Interests of Indigenous People</b>	2.2. Integrating the applicant’s assessment and Indigenous-led assessments and studies	<ul style="list-style-type: none"> <li>• Indigenous-led assessments are vital for evaluating project impacts on Indigenous rights and territories.</li> <li>• The CER must provide capacity to support integration of Indigenous-led assessments.</li> <li>• The filing manual must require companies to undertake early and transparent engagement with impacted Indigenous Nations to support this work.</li> </ul>

		<ul style="list-style-type: none"><li>• There is no conflict arising from incorporating Indigenous-led assessments and studies and Canada’s objective of “one project, one assessment”.</li><li>• Indigenous-led assessments and studies must be integrated with the applicant’s assessment regardless of any timing challenges. To avoid timing issues, Indigenous Nations must be engaged and adequately funded early.</li></ul>
--	--	--