

June 24, 2022

Canada Energy Regulator

VIA ELECTRONIC EMAIL: opr-rpt@cer-rec.gc.ca

Re: Onshore Pipeline Regulations Discussion Paper – Kelly Lake Cree Nation's Responses

Please find attached Kelly Lake Cree Nation's responses to the Onshore Pipeline Regulations ("OPR") Review – Discussion Paper questions.

Kelly Lake Cree Nation is looking forward to reading the "What We Heard" report and continuing to foster a collaborative relationship with the Canada Energy Regulator on the review of the OPR.

Sincerely,

LANDMARK RESOURCE MANAGEMENT

[Redacted]

[Redacted]

Researcher & Project Coordinator

Appendix A

OPR Discussion Paper – Kelly Lake Cree Nation’s Responses

Discussion Paper Question	Kelly Lake Cree Nation Response
Lessons Learned	
1. What’s working well in relation to the OPR, and its implementation, and what could be improved?	<ul style="list-style-type: none">• Kelly Lake Cree Nation believes that unless they are legislated to do so, companies will not accommodate the rights and interests of Indigenous Peoples. In part, this is because Kelly Lake Cree Nation is a non-treaty First Nation and has struggled at times with adequate consultation with the Crown. Therefore, Kelly Lake Cree Nation would like to see the regulations set out in the OPR ensure that companies are accommodating Indigenous communities’ interests and rights.• Kelly Lake Cree Nation has experienced a lack of regular communication from the CER. During the times when there is communication, it can feel as though Kelly Lake Cree Nation is not listened to. In particular, the CER often mistakenly sends correspondence meant for Kelly Lake Cree Nation to other Indigenous groups who claim to represent the Nation.• Kelly Lake Cree Nation recommends the CER work with Indigenous communities to determine how to reconcile Nations for past damages and damages that were never accommodated.<ul style="list-style-type: none">○ For example, one option could be through funding - funding to purchase other lands for economic, cultural, or social sustainability purposes.
Reconciliation with Indigenous Peoples	

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>2. How can the OPR contribute to the advancement of Reconciliation with Indigenous Peoples?</p>	<ul style="list-style-type: none"> • Ensure that the CER and affiliated companies recognize the inherent rights and jurisdiction of Indigenous Nations. • Required cultural awareness training for all CER staff, related government employees, and proponents. Training programs should be specified to the Nations the employees are working with. • Ensure respect for the inherent rights, laws, policies, and practices of Indigenous peoples in all CER and proponent work. • It is important that the legislation on accommodation and reconciliation be clear and specific for both companies and the CER. The OPR and supporting guidance should clearly state or describe how the work will be conducted or what must be done. • The CER must acknowledge and discuss past impacts and infringements on the rights of Indigenous Peoples. These impacts and infringements have not been accommodated, and so the CER should work to rectify these past impacts. • Kelly Lake Cree Nation would like the CER to have discussions with Indigenous communities about the actions and impacts of the CER and pipeline companies from the past. • There should also be a recognition of unceded territory and non-status Indigenous communities like Kelly Lake Cree Nation, and what that means for those First Nations concerning the construction and operations of pipelines. • Ensuring proponents understand all territorial boundaries they are working within, as well as any related territorial overlaps, to ensure all relevant Nations are engaged adequately.

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>3. How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, operations, and maintenance activities?</p>	<ul style="list-style-type: none"> • Kelly Lake Cree Nation recognizes that operational plans will address the future of heritage resource management but that there is a need to evaluate and accommodate past impacts on Indigenous communities and their cultures. The CER should look at accommodations for past impacts on heritage and cultural resources. These accommodations should be discussed and agreed upon with Indigenous Nations. • Kelly Lake Cree Nation recommends the CER examine how in the past the impacts to Traditional Land Use were not assessed and so no mitigation existed. The CER should examine how to accommodate past infringements. These accommodations should be discussed and agreed upon with Indigenous Nations. • Mandate companies to work with the Indigenous communities impacted by the pipeline(s) to develop Chance Find Protocols. These Chance Find Protocols should be specific to each respective Nation. • Mandate companies to work with Indigenous communities to identify opportunities to provide funding or support for cultural practices. • Require that companies must minimize the number of access roads to their sites. Additionally, they should be mandated to reclaim any extraneous access roads on their existing pipelines as well as any extraneous access roads created during the construction of new pipelines.

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>4. How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous Peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?</p>	<ul style="list-style-type: none"> • Kelly Lake Cree Nation recommends the following mitigation strategies for protecting traditional land and resource use and sites of significance for Indigenous Peoples on a pipeline right-of-way: <ul style="list-style-type: none"> ○ Require companies to minimize access roads and rights-of-way in their projects. ○ Require companies to reclaim extraneous access roads after construction. ○ Require companies to work with Indigenous communities to plant culturally significant species when access roads and rights-of-way have been reclaimed. ○ Mandate companies to work with Indigenous communities to identify opportunities to provide funding or support for the preservation of cultural practices. ○ Mandate companies to work with the Indigenous communities impacted by the pipeline(s) to develop Chance Find Protocols. These Chance Find Protocols should be tailored to the needs and interests of each Indigenous community. • Kelly Lake Cree Nation recognizes that operational plans will address the future of heritage resource management but that there is a need to evaluate and accommodate for the past impacts on Indigenous Peoples and their cultures. The CER should look at accommodations for past impacts on heritage and cultural resources. These accommodations should be negotiated and agreed upon with Indigenous Nations on a site-specific basis. One size does not fit all. • Kelly Lake Cree Nation recommends the CER examine how in the past the impacts to Traditional Land Use were not assessed and so no mitigation existed. Identify previous deficiencies to prevent their recurrence. • Kelly Lake Cree Nation believes that the CER should require proponents to adjust the planned position of their pipeline(s) when sites of significance, sites of traditional land use, or sites of traditional resource harvest are located there.

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>5. How can the use of Indigenous knowledge be addressed in the OPR?</p>	<ul style="list-style-type: none"> • The CER must understand and emphasize to the companies regulated under the OPR that to access knowledge, meaningful engagement must be achieved. • Consultation should occur early and often. This includes during project design and planning, construction, operation, and the closure and reclamation phases. The use of Indigenous Knowledge (Sometimes known as IK or TEK) should be used under consultation as well. • The OPR must make clear that engagement should occur early and often with Indigenous communities for the use of Indigenous Knowledge. • Request Indigenous communities' preferences and protocols for Indigenous Knowledge use before seeking formal agreements or standardized approaches. • Sufficient capacity funding should be provided to Indigenous communities early in the pipeline development process and continue if project development changes or faces delays. • The OPR should recommend that capacity plans be developed by companies in case IK is not available for use. • Diligent record-keeping on the part of OPR-regulated companies is critical to documenting the use of IK. • IK collected must be understood and applied by proponents in engagement with Nations. This IK should have a direct impact on the planning, operation, and reclamation stages.
<p>6. How can the OPR address the participation of Indigenous peoples in pipeline oversight?</p>	<ul style="list-style-type: none"> • Indigenous involvement in pipeline oversight is required by UNDRIP/DRIPA. It should be mandated as such for all proponents. <ul style="list-style-type: none"> ○ Indigenous communities should be engaged in all OPR-regulated projects within their respective traditional territories of treaty lands. ○ Indigenous Peoples should be included in the inspection process throughout the inspection process. This includes supporting or conducting the inspections. Provide capacity funding and training opportunities for participation. ○ Members of the Indigenous Nations should be involved as cultural and environmental monitors. Steps should be taken to help facilitate proper training and learning opportunities to be offered for potential Indigenous employees instead of requiring prior accreditation and/or experience when hiring. Help eliminate the barriers to obtaining this employment. ○ Efforts should be made to train and place members of Indigenous communities in the management and supervisory roles within projects.

Discussion Paper Question	Kelly Lake Cree Nation Response
Engagement and Inclusive Participation	
<p>7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?</p>	<ul style="list-style-type: none"> • There should be specific consultation and engagement processes designed for each specific First Nation. • A communication protocol should be developed by the CER that mandates how they and companies communicate with Indigenous communities. <ul style="list-style-type: none"> ○ The communication protocol should be developed with Indigenous Nations so that it is mutually agreeable, proactive, regular, understandable, and transparent.
<p>8. How could communication and engagement requirements in the OPR be improved?</p>	<ul style="list-style-type: none"> • Kelly Lake Cree Nation suggests that the CER should set a mandate that proponents negotiate a set minimum number of meetings a year with each First Nation. Additional meetings should be negotiated as needed. This way Nations are not left wanting more communication but are not overwhelmed with too many meetings. <ul style="list-style-type: none"> ○ These meetings would allow for discussion of annual plans, operational activities, growth plans, upcoming maintenance, community concerns, etc. • Kelly Lake Cree Nation would like to emphasize that engagement and consultation are different. <ul style="list-style-type: none"> ○ The CER should seek and promote meaningful engagement throughout the lifecycle of a project. • Community-wide meetings should also be required on a basis negotiated and agreed upon between proponents and the respective First Nation.
<p>9. How could the CER improve transparency through the OPR?</p>	<ul style="list-style-type: none"> • Transparency can be achieved through consistent information sharing and meetings between the companies, CER, and First Nations more broadly. • Mandating Engagement over consultation when appropriate. • Kelly Lake Cree Nation believes it would be valuable to have advanced notice and reminders of all inspections, reports, and project updates.

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>10. Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:</p> <ol style="list-style-type: none"> a. those people implementing the OPR; or b. those people who are impacted by the operational activities addressed in the OPR? 	<ul style="list-style-type: none"> • It is important that to understand how pipeline projects may affect different demographics within the Indigenous community, the CER must seek dialogue with Indigenous communities through engagement. • The CER should examine both the short-term and long-term impacts when applying a GBA+ lens. • The CER should also take into consideration the demographic changes throughout the lifetime of a project – the effects of a project may impact an individual differently throughout his or her lifetime. • Lastly, intergenerational changes and impacts should also be examined as often projects and operational activities go beyond the lifespan of an individual. • Mandate increased proponent and CER employee training on gender-based issues and how their work impacts genders differently • Mandate increased proponent and CER employee training on accessibility issues and how their work impacts those with differing abilities in different ways • Increase accessibility and remove barriers to community meetings: <ul style="list-style-type: none"> ○ In-person and online attendance options, offering accessible online recordings for later viewing for those who cannot attend at the time, ability to email in concerns following meetings for all attendees ○ Accessible parking, paved access to entrances, etc. ○ Childcare during meetings ○ The ability to deliver larger print versions of documents if documents provided at any meeting are too small for some to read ○ Microphones and speaker setups for community meetings to ensure all can hear ○ Reaching out to communities to inquire about specific accessibility needs before meetings ○ Reduction of unnecessary jargon and technical terminology when communicating to a First Nation community at large. Defining technical terminology when it must be used.
Global Competitiveness	
<p>11. How can the OPR support a predictable and timely regulatory system that contributes to Canada’s global competitiveness?</p>	<ul style="list-style-type: none"> • Kelly Lake Cree Nation is supportive of Canada’s goal of becoming more competitive as it has many business partnerships working in the energy sector, however, it must not neglect the clear requirements laid out in UNDRIP/DRIPA in its attempts to do so. • All consultive and environmental requirements of a project should be met at the very beginning of the OPR process, this would include requiring companies to submit far more detailed and specific work plans.

Discussion Paper Question	Kelly Lake Cree Nation Response
12. How can the OPR support Innovation, and the development and use of new technologies or best practices?	<ul style="list-style-type: none"> Promote the upgrading of existing projects. Require proposed projects to use leading technologies and require industry-leading sustainability standards.
13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities	<ul style="list-style-type: none"> No response.
14. Are there opportunities within the OPR for data and digital innovation that could be sued by the CER and by companies regulated by the CER?	<ul style="list-style-type: none"> No response.
15. How can the OPR be improved to address the changing pipeline use and pipeline status?	<ul style="list-style-type: none"> The CER should be clear, responsive, and transparent in communication with First Nations to facilitate the most knowledge sharing possible.
Safety and Environmental Protection	
16. What further clarification, in either the OPR (e.g., structure or content), or in guidance, would support company interpretation and implementation of management system requirements?	<ul style="list-style-type: none"> Specific management systems should be designed that accommodate Indigenous interests and enable enhanced decision-making authority. Specific management systems should be designed to identify and accommodate cumulative effects on the Rights and Title of Indigenous Peoples. Guidance should be developed that considers and accommodates Cumulative Effects on the rights and interests of Indigenous Peoples.
17. How should information about human and organizational factors, including how they can be integrated into a company's management system, for both employees and contractors, be provided in the OPR, and/or described in related guidance?	<ul style="list-style-type: none"> There can be inherent cultural bias when implementing human and organizational factors in management systems. The CER should work with Indigenous communities to understand the cultural bias so that guidance on human and organizational factors for pipeline systems may be more inclusive.

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?</p>	<ul style="list-style-type: none"> • Safety manuals need to address the unique safety concerns faced by Indigenous Peoples including racial discrimination, impacts on individual and community health, safety concerns related to land use, and perceived safety concerns.
<p>19. How can respect and personal workplace safety be assured at CER regulated sites?</p>	<ul style="list-style-type: none"> • A standard or templated Code of Conduct should be developed by the CER for OPR-regulated companies. The Code of Conduct must be developed in consultation with Indigenous Nations. • There must be safe processes for employees and contractors to report safety and environmental concerns without fear of reprimand or discriminatory actions.
<p>20. How should the CER be more explicit about requirements for contractor management?</p>	<ul style="list-style-type: none"> • A standard Code of Conduct developed by the CER and Indigenous communities would ensure there is a standard approach to contractor management. • Requiring all contractors to have the same code of conduct as company employees and requiring them to take all cultural competency and safety training that would be required of company employees.
<p>21. How should the OPR include more explicit requirements for process safety?</p>	<ul style="list-style-type: none"> • Integrating Indigenous Knowledge into process safety management allows for a better understanding of the local context and past safety issues and incidents. • Requiring all contractors to have the same code of conduct as company employees and requiring them to take all cultural competency and safety training that would be required of company employees. • More regular safety audits. • Impromptu safety inspections on all sites.
<p>22. How can the OPR drive further improvement to the environmental performance of regulated companies?</p>	<ul style="list-style-type: none"> • Integrating Indigenous Knowledge into the environmental protection approaches ensures the rights and interests of Indigenous Peoples are being recognized in policy that regulates the environmental performance of CER-regulated companies. The CER should work with Indigenous communities to integrate Indigenous Knowledge into environmental • Some companies strive to only meet the bare minimum, more should be done to incentivize exceeding expectations on sustainability. If companies chose not to improve the minimum standards should be raised at regular intervals technology permitting. • Increase the expectations of environmental sustainability over time as technology allows. This means that newer projects need to be held to a higher sustainability standard than previous ones, and existing pipeline(s) need to be upgraded to improve environmental standards upon upgrading or at regular intervals.
<p>23. How can Environmental Protection Plans and Environmental Protection Programs be improved?</p>	<ul style="list-style-type: none"> • It is recommended Indigenous Nations be provided with Environmental Protection Plans for review and approval as they are developed and updated through the entire lifecycle of a project.

Discussion Paper Question	Kelly Lake Cree Nation Response
<p>24. How can contaminated site management requirements be further clarified?</p>	<ul style="list-style-type: none"> • The CER's Remediation Process Guide lays out "objectives and a process for demonstrating that contamination is being managed in a manner that protects the environment and human health." Indigenous health should also be considered for protection in the guidance, as Indigenous Peoples' health is sutured to their relationship with the land. • Increased regular and clear communication with First Nations when a contaminated site is identified until the issue has been resolved. • Swift yet accurate initial communication of the first detection of possible site contamination.
<p>25. Are there any matters related to the Emergency Management Program that require clarification?</p>	<ul style="list-style-type: none"> • Emergency Management Programs should be developed to avoid or lessen the effects on Indigenous communities as a result of the pipeline projects. OPR-regulated companies should also be mandated to hold community meetings to provide information on safety systems, spill management and emergency response plans and other management plans.
<p>Implementation Objectives</p>	
<p>28. What are your recommendations for compliance promotion at the CER?</p>	<ul style="list-style-type: none"> • No response.
<p>29. How do you want to be engaged by the CER in the development of technical guidance?</p>	<ul style="list-style-type: none"> • Indigenous input in the technical details and the development of technical guidance as being mandatory. Sufficient capacity funding is required for this participation.