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Canada Energy Regulator

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

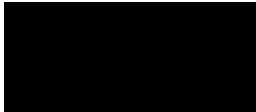
Re: Onshore Pipeline Regulations Discussion Paper – Peters First Nation Responses

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

Peters First Nation looks forward to reading the "What We Heard" report and continuing to collaborate with the Canada Energy Regulator on the review of the OPR.

Sincerely,

LANDMARK RESOURCE MANAGEMENT



Researcher & Project Coordinator

Appendix A

OPR Discussion Paper – Peters First Nation Responses

Discussion Paper Question	Peters First Nation Response
Lessons Learned	
<p>1. What's working well in relation to the OPR, and its implementation, and what could be improved?</p>	<ul style="list-style-type: none"> • Peters First Nation has experienced firsthand that unless they are legislated to do so, companies will not accommodate the rights and interests of Indigenous Peoples. Peters First Nation would like to see the regulations set out in the OPR ensure that companies are accommodating their rights and interests. • Peters First Nation recommends the CER work with Indigenous communities to determine how to reconcile past damages, damages that were never accommodated. <ul style="list-style-type: none"> ○ An example of this could be through funding - funding to purchase other lands for economic, cultural, or social sustainability purposes.
Reconciliation with Indigenous Peoples	
<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. • Ensure respect for the inherent rights, laws, policies, and practices of Indigenous peoples is propagated by the OPR. • It is important that the legislation on accommodation and reconciliation be prescriptive 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. • It is important the CER acknowledge and discuss past impacts and infringements on the rights of Indigenous Peoples. These impacts and infringements have not been accommodated, and so going forward, the CER should work to rectify and accommodate these past impacts. • Peters First Nation would like to see the CER have discussions with Indigenous Peoples about the actions of the CER and pipeline companies prior to Reconciliation. It is important to understand past wrongs to be able to work towards Reconciliation. • There should also be a recognition of unceded territory and what that means for those First Nations in relation to the construction and operations of pipelines, in particular in British Columbia.

Discussion Paper Question	Peters First Nation Response
<p>3. How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?</p>	<ul style="list-style-type: none"> • Peters First Nation recommends the following mitigation strategies for protecting heritage resources on a pipeline right-of-way: <ul style="list-style-type: none"> ○ Require companies to minimize site lines (access roads and right-of-ways) in their projects. ○ Require companies to reclaim extraneous access roads after construction. ○ Limit vehicle access along pipeline sections. ○ Mandate companies to develop Access Agreements with Indigenous communities granting them access to locked gates or restricted areas. ○ Mandate the avoidance of unnecessary clearcutting. ○ Require companies to work with Indigenous communities to plant culturally significant species when access roads and right of ways 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. • Peters First 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 culture. 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. • Peters First 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.

Discussion Paper Question	Peters First 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"> • Peters First 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 site lines (access roads and right-of-ways) in their projects. ○ Require companies to reclaim extraneous access roads after construction. ○ Limit vehicle access along pipeline sections. ○ Mandate companies to develop Access Agreements with Indigenous communities granting them access to locked gates or restricted areas. ○ Mandate the avoidance of unnecessary clearcutting. ○ Require companies to work with Indigenous communities to plant culturally significant species when access roads and right of ways 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. • Peters First 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 culture. 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. • Peters First 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.

Discussion Paper Question	Peters First 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 consultation must be achieved. • The OPR must make clear that engagement should occur early and often with Indigenous communities for the use of Indigenous Knowledge. • Sufficient capacity funding should be provided to Indigenous communities early in the pipeline development process. • Request Indigenous communities' preferences and protocols for Indigenous Knowledge use before seeking formal agreements or suggesting standard approaches. • The OPR should recommend that capacity plans be developed by companies in case Indigenous Knowledge is not available for use. • Diligent record-keeping on the part of OPR-regulated companies is critical to documenting the use of Indigenous Knowledge.
<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 crucial. <ul style="list-style-type: none"> ○ Indigenous communities should be engaged with on 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.
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 processes designed for each community, as each community's protocols and needs differ. <ul style="list-style-type: none"> ○ It is important to understand an Indigenous community's consultation preferences prior to seeking formal agreements. • 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.

Discussion Paper Question	Peters First Nation Response
<p>8. How could communication and engagement requirements in the OPR be improved?</p>	<ul style="list-style-type: none"> • Peters First Nation suggests that the CER hold a minimum of 6 meetings per year with Indigenous communities. This would ensure the fair and meaningful participation of Indigenous Nations in the development of pipeline projects. <ul style="list-style-type: none"> ○ These meetings would allow for discussion of annual plans, operational activities, growth plans, and upcoming maintenance. • Peters First 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.
<p>9. How could the CER improve transparency through the OPR?</p>	<ul style="list-style-type: none"> • Transparency can be achieved through a comprehensive understanding of operational activities that fall under the OPR. Peters First Nation suggests that the CER hold a minimum of 6 meetings per year with Indigenous communities so that an appropriate level of information can be shared which will ensure that all parties are fully informed. Peters First Nation also recommends that adequate time and funding be provided for Indigenous Nations to respond to projects.
<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 long-term impacts vs immediate 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.
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"> • Peters First Nation is very supportive of Canada's goal of becoming globally competitive.
Safety and Environmental Protection	
<p>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?</p>	<ul style="list-style-type: none"> • Specific management systems should be designed that accommodate Indigenous interests and enable enhanced decision-making authority. • Guidance should be developed that considers and accommodates Cumulative Effects on the rights and interests of Indigenous Peoples.

Discussion Paper Question	Peters First Nation Response
<p>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?</p>	<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.
<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. These include racial discrimination, impacts to community and to individual health, safety concerns related to land use (access to travel routes and access to areas necessary for exercising rights), 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, developed in consultation with Indigenous communities, would outline expectations regarding the safety of Indigenous People. <ul style="list-style-type: none"> ○ The Code of Conduct should be developed with Indigenous Nations so that it is mutually agreeable.
<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.
<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. It also creates space for cross-cultural innovation. The CER should work with Indigenous communities to integrate Indigenous Knowledge into process safety.
<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
<p>23. How can Environmental Protection Plans and Environmental Protection Programs be improved?</p>	<ul style="list-style-type: none"> • It is recommended Indigenous communities be provided Environmental Protection Plans for review and approval as they are developed and updated throughout the lifecycle of a project.

Discussion Paper Question	Peters First Nation Response
24. How can contaminated site management requirements be further clarified?	<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.
25. Are there any matters related to the Emergency Management Program that require clarification?	<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.
Implementation Objectives	
28. What are your recommendations for compliance promotion at the CER?	<ul style="list-style-type: none"> Peters First Nation recommends the CER look at compliance promotion objectives laid out in the EAO's Compliance and Enforcement guidance. This includes providing regular compliance activity updates to Indigenous communities, working with Indigenous communities to determine compliance priorities on each project, and determining a community's interest in collaborating on engagement and inspection activities. This would mean that capacity building and funding opportunities would need to be made available for participation in compliance activities.
29. How do you want to be engaged by the CER in the development of technical guidance?	<ul style="list-style-type: none"> Indigenous input in the technical details and the development of technical guidance should be understood as mandatory. Indigenous communities should be asked to collaboratively develop technical guidance and review new or updated guidance. Sufficient funding is required for this participation. Similarly, if technical advisory committees are formed to develop and review technical guidance, there should be Indigenous membership.