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Regulator

Régie de l'énergie
du Canada

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To: All Companies under Canada Energy Regulator Jurisdiction

Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-Reportable Incidents

In December 2019, the Indigenous Advisory and Monitoring Committee (**IAMC**) for Line 3 submitted the Line 3 IAMC Summary Report: Issues and Recommendations (**L3 IAMC Report**) to the Canada Energy Regulator (**CER**). The report also included supplementary advice provided by the Manitoba Métis Federation. The report identified specific areas the CER should focus on to improve its processes to be more transparent and more inclusive of Indigenous peoples. The report also advised how the CER can take concrete steps toward Reconciliation.

The best practices attached to this letter are a first step towards addressing the L3 IAMC Report and are intended to improve the flow of information from companies to Indigenous Nations and Communities who could be impacted by immediately reportable incidents. The CER is also conducting a review of the *Canadian Energy Regulator Onshore Pipeline Regulations (OPR)*, including engagement with Indigenous peoples and industry, wherein one or more of the best practices discussed in this letter may be incorporated explicitly into the regulatory framework depending on the outcome of that regulatory review.

Indigenous Nations and Communities should be notified about immediately reportable incidents (as outlined in Appendix A) to help them understand how pipeline construction and operation affects their communities. Such notifications can help keep members of Indigenous communities safe in their communities as well as when they are exercising their rights near CER-regulated pipelines.

Undertaking the best practices identified in Appendix A will require companies to build on the relationships they have with Indigenous Nations and Communities, first through engagement to ensure their contact lists are accurate and updated, second to ensure

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that companies understand the scope of traditional territories and activities that occur near their pipelines, and lastly to understand what types of immediately reportable incidents the Indigenous communities wish to be notified about.

The CER expects regulated companies to begin implementing these best practices as soon as practicable. As noted above, the CER is conducting a holistic review of the OPR and it is anticipated that best practices such as these may become more formalized, as part of the CER's mandate which includes building trust and confidence and striving toward Reconciliation with Indigenous peoples.

Background – What we heard

Feedback and advice consistent with the recommendations outlined in the L3 IAMC Report has been received from a number of CER-led forums in recent years. Specifically, engagements with the Trans Mountain Expansion (TMX) IAMC, Manitoba Métis Federation, CER Indigenous Advisory Committee, and Indigenous monitors during the construction of the Line 3 and TMX pipelines, have informed these best practices. Feedback received as part of the OPR Review has also been considered. Through these engagements we have heard a desire to see the development of best practices for companies to notify Indigenous Nations and Communities about CER-reportable incidents when they occur.

The Existing Regulatory Framework

The best practices in Appendix A are intended to complement the existing legal requirements relating to emergency response programs and plans contained in the OPR, as well as the requirements outlined in *CSA Z662 Oil and Gas Pipeline Systems*, which is incorporated by reference into the OPR. Appendix B provides greater detail regarding these requirements.

Many of the immediately reportable incidents listed below can trigger an emergency response on the part of the company and would require the company to notify potentially affected people, including Indigenous peoples residing, or undertaking traditional activities, near the affected pipeline. However, the CER also recognizes that many immediately reportable incidents may not necessarily rise to the level of a pipeline emergency wherein a company triggers its emergency response plans or assumes an Incident Command Structure. It is for these reasons that the CER is releasing the attached best practices.

We expect the participation of Indigenous Nations and Communities and their active knowledge of incidents will improve management of incidents and outcomes of emergency response. The CER believes these best practices present a step toward Reconciliation, as the CER, companies, and Indigenous peoples develop stronger relationships and a deeper understanding of each other.

If you have questions regarding these best practices, please contact the CER at 1-800-899-1265 or email info@cer-rec.gc.ca.

Best regards,

Signed by

Gitane De Silva
Chief Executive Officer

Enclosures

c.c.: Line 3 Indigenous Advisory and Monitoring Committee
Trans Mountain Expansion Indigenous Advisory and Monitoring Committee
Manitoba Métis Federation



APPENDIX A

INDUSTRY BEST PRACTICES FOR NOTIFICATIONS TO INDIGENOUS NATIONS AND COMMUNITIES REGARDING CER-REPORTABLE INCIDENTS

1. To the extent they have not already done so in their Emergency Response Program, Manuals or Plans, companies should determine which Indigenous Nations and Communities and/or traditional territories lie along or are overlapped by the right of way (or other company property upon which CER-regulated pipelines and facilities are located), including areas where Indigenous peoples exercise Indigenous rights that could be affected by an immediately reportable incident. Once determined, up to date contact lists should be developed and maintained through regular contact to ensure timely communication in the event of an immediately reportable incident or a pipeline emergency.
2. Based on the determination above and any other relevant factors, companies should develop and document a clear rationale for the geographic scope upon which they base their incident reporting practices, including which communities would be notified.
3. Companies should work with the Indigenous Nations and Communities identified to determine the types of immediately reportable incidents that are of interest or concern and the communication preference of each group. In addition, Indigenous Nations and Communities should be provided with contact information for the company. For injuries and fatalities, the level of detail provided should respect confidentiality of impacted persons to maintain the integrity of any investigation.
4. Companies should contact the groups indicated as soon as practicable, but within 24 hours of the immediately reportable incident occurring.
5. Where the immediately reportable incident occurs on infrastructure that is the subject of an Indigenous Advisory and Monitoring Committee (**IAMC**), the appropriate IAMC should be notified in accordance with the established protocol.



APPENDIX B

EXISTING LEGAL REQUIREMENTS OF CER-REGULATED COMPANIES

The Onshore Pipeline Regulations (**OPR**) lay out the existing legal requirements for CER-regulated companies related to emergency response programs and plans. In addition, the requirements outlined in *CSA Z662 Oil and Gas Pipeline Systems (CSA Z662)* are incorporated into the OPR by reference.

Pursuant to the OPR, pipeline companies must immediately report the following incidents to the Regulator:

- An Incident that Harms People or the Environment:
 - a death;
 - a serious injury;
 - an unintended or uncontrolled LVP hydrocarbon release in excess of 1.5 m³ that leaves company property or occurs on or off the right of way;
 - an unintended or uncontrolled release of sour natural gas or hydrogen sulfide;
 - a significant adverse effect on the environment.
- A Rupture:
 - an instantaneous release that immediately impacts the operation of a pipeline segment such that the pressure of the segment cannot be maintained.
- A Toxic Plume:
 - band of service fluid or other contaminant (e.g., hydrogen sulfide or smoke) resulting from an incident that causes people, including employees, to take protective measures (e.g., muster, shelter-in-place or evacuation).

The OPR requires companies to develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect property, the environment or the safety of workers or the public. This includes conditions that could adversely affect the safety of Indigenous community members or the exercise of their Indigenous rights. In addition to the program, companies are required to maintain emergency response manuals and develop continuing education programs for police, fire departments, medical facilities, other appropriate organizations and agencies and the public residing adjacent to CER-regulated pipelines to inform them of the location of the pipeline, potential emergency situations involving the pipeline and the safety procedures to be followed in the case of an emergency. The CER expects that emergency response manuals and continuing education programs would include Indigenous communities (including their governments, relevant agencies or organizations) that may be impacted by pipeline emergencies, or whose exercise of Indigenous rights may be impacted by pipeline emergencies.



CSA Z662 defines a pipeline emergency as: an event involving a pipeline system, such as an uncontrolled release of service fluid, that endangers one or more of the following:

- a) life;
- b) the well-being and health of people;
- c) property; and
- d) the environment.

Clause 10.5.2.2 of CSA Z662 also provides that operating companies shall regularly consult and inform the public and agencies to be contacted during an emergency (e.g., police and fire departments), as appropriate, about the hazards associated with its pipelines. If community emergency response plans exist, appropriate methods to consult and inform the public can be determined in conjunction with the community agencies.

The CER expects Indigenous communities who may be impacted, or the exercise of whose Indigenous rights may be impacted, and their governments and agencies, would be included in consultation and information programs undertaken under Clause 10.5.2.2.

Additional information - References

[Canadian Energy Regulator Act](#)

[CER Onshore Pipeline Regulations](#)

[CSA Z662-19 Oil and Gas Pipeline Systems](#)

[Event Reporting Guidelines](#)