



Lheidli T'enneh

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Comments on the Onshore Pipeline Regulations Review Discussion Paper

1. What's working well in relation to the OPR, and its implementation, and what could be improved

One thing that we certainly think must be improved is the maintenance requirement obligation of the companies. The OPR allows a company to regularly conduct inspections and audits with a maximum interval of three years to ensure the achievements of policies and goals of safety and security of persons, pipelines and the protection of property and the environment. The policy also allows the audit to document all non-compliance issues and any corrective action taken or planned to be taken. However, there has been at least a reported case of maintenance deferral after an audit assessment has been conducted. The company may justify this action by saying that the maintenance action was “planned to take place”. This action should no longer be allowed. Scheduled maintenance should not be deferred for any reason. The risks associated with potential hazards of deferred maintenance far exceed the costs associated with following through with the maintenance work.

Generally speaking, the OPR has saddled an operating company with several responsibilities and obligations. However, certain things (like the joining program developed by a company) should not be left to “when required to do so”. For example, there should be an oversight over the joining program developed by the company to ensure that standards are followed. It is our opinion that the joining program developed by the company should be submitted to and reviewed by the regulator rather than only when required by the regulator.

2. How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?

a. One way the OPR can advance Reconciliation is by incorporating indigenous people's voices, values and needs in pipeline maintenance. For example, the regulation requires a company to establish, implement and maintain a management system. This management system should be established in consultation with the concerned First Nations. Many times, Nations have no idea about the company's activities involving the operation or abandonment of a pipeline. The OPR can mandate companies to work with First Nations in developing the vital parts of their management systems, especially those which involve activities carried out on the land housing the pipelines.

b. The indigenous peoples have lived on the land since time immemorial. Since no one knows the land more than the indigenous people, a provision should be made in the OPR to establish and implement a process for the pipeline company to obtain approval of safety and maintenance plans with the resident First Nations.

c. Section 25 of the OPR allows pressure testing of pipelines to be performed under the direct supervision of the company or an agent appointed by it. Reconciliation can be advanced when pressure testing performed on any pipeline crossing a Nation's territory happens with a representative of the Nation acting as an environmental monitor or otherwise, except it is reasonably impossible to have the Nation represented.

d. Another way Reconciliation can be advanced is in the deactivation, reactivation and decommissioning of a pipeline. OPR should mandate the company to inform First Nations of any proposal to deactivate, reactivate or decommission any pipeline

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?

In line with the UNDRIP Act, the OPR needs to reflect the values of the indigenous people. The protection of indigenous heritage resources can only be achieved when the regulation mandates pipeline companies to work with the indigenous peoples on whose territory they operate their pipelines. Each Nation knows and understands how best to keep and preserve its cultural resources and values. Hence, they should be given the ultimate say in deciding how those resources are treated.

Many Nations have Heritage Policy which guides their activities when dealing with heritage resources within their territory. This also informs their decision when handling chance found occurrences. Consequently, the OPR should mandate companies to cooperate with Nations in determining how their heritage resources are handled. Whatever contingencies or plans that the company may develop must be Nation led.

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?

In the spirit of true reconciliation and as a matter of principle, a section in the OPR should require a company to obtain prior informed consent before accessing their pipeline location for maintenance and operations activities on any traditional land. For example, there have been instances where a company has used herbicides against the wish of the Nation. Such a practice as this is not acceptable to the indigenous people

A clause in OPR should mandate companies to work together with Nations (and guidelines may be provided by CER) and reach mutually beneficial decisions on how the right of way is accessed during construction, operation, and maintenance activities. Although we anticipate that questions may arise as to what if the First Nation and the company do not agree? This situation

may arise due to mistrust. In such instances, the guideline may help resolve the issue. However, the Nation will make the ultimate decision,

5. How can the use of Indigenous knowledge be addressed in OPR?

The hiring of a qualified and experienced aboriginal person or band member as part of the maintenance team of the pipeline company is a very crucial way to address the use of indigenous knowledge

6. How can the OPR address the participation of Indigenous peoples in pipeline oversight?

The Indigenous monitoring program is a great way to address the participation of Indigenous people in pipeline oversight. This program should be expanded in scope, training rolled out in batches and included in the regulation. A workable system is for CER to train Indigenous members nominated by each project Nation. The trained member will then be empowered by the OPR to be included in the oversight capacity of the company. In other words, CER will train a nominated Indigenous person from the Nation and then, OPR empowers the trained member to work as an authorized person to perform oversight over the project.

7. How can OPR support collaborative interaction between companies and those who live and work near pipelines?

One way the OPR can be used to achieve collaborative interaction between companies and those who live and work near the pipeline is to ensure that the company share their emergency management program with the respective Nation. The input and perspective of the residents and First Nation should be sorted, and all issues resolved in good faith. A company should also be required to inform and share all reviews and updates made to the developed emergency procedure manual. A method will be for those documents (procedures, manual etc) to be jointly developed with the respective Nation.

8. How could communication and engagement requirements in the OPR be improved?

One way to improve the communication and engagement requirements in the OPR is by creating a change in the system such that indigenous people are no longer at the bottom of the ladder when it comes to consultation and engagement. For example, sections 33 and 34 of the OPR should be changed. Liaison and consultation with indigenous Nations should be included in the wording of these two sections. There was an incidence of a pipeline explosion on the reserve in the past. It was difficult getting members out of the reserve land when this incident happened because members were not familiar with the emergency plan. This is a major reason the safety and maintenance plans developed by a company must be understood and approved by the respective Nation.

9. How could the CER improve transparency through the OPR?

By improving their oversight function, especially in monitoring and evaluation. The various reporting procedures outlined in the OPR can be simplified to achieve this.

10. How can the OPR be improved to address changing pipeline use and pipeline status?

The OPR does not specify what factors are important for consideration as part of the procedures to be used for decommissioning pipelines. The OPR only requires companies to state the reasons and procedures for decommissioning. Improvements can be made to the OPR by introducing guidelines on factors to be considered when drafting procedures for decommissioning.