

# **The Union of BC Indian Chiefs (UBCIC): Input for Onshore Pipeline Regulations Review**

**Submission to:**  
*Canada Energy Regulator*

**June 30, 2022**



**Prepared by:**

**The Union of B.C. Indian Chiefs**

*UBCIC is a First Nations political advocacy organization founded in 1969. With a mandate of advancing and protecting Indigenous Title and Rights, UBCIC works collectively amongst First Nations in B.C. and provides a cohesive voice in support of Indigenous communities in Canada and around the world.*

**401-312 Main St  
Vancouver, BC, V6A 2T2, Canada  
Ph: (604) 684-0231; Fax: (604) 684-5726**

## **INTRODUCTION:**

The Canada Energy Regulator (CER) oversees various pipeline activities that affect the rights of Indigenous peoples across the country, throughout the lifetime phases of a pipeline and upon its decommissioning or abandonment. Existing pipelines that fall under the *Onshore Pipeline Regulations* (OPR) were often constructed under coercive conditions in which the free, prior, and informed consent of affected Indigenous nations was not sought or was not received by the regulator. Canada's passage of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (DRIPA) has significant implications for activities regulated by the OPR due to the historic and ongoing disruption of Indigenous peoples' rights and practices by the construction and operation of pipelines through their territories. There are significant improvements that the CER can make to these regulations to prevent future rights violations, and there are historical and ongoing rights violations stemming from pipeline construction that must be resolved.

## **OBJECTIVES:**

### **How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?**

One of the CER's stated goals of the OPR review is to "advance Reconciliation with Indigenous peoples in a manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples" in part by improving the involvement of Indigenous peoples in pipeline decision-making and oversight. Article 28 of the *UN Declaration* recognizes and affirms the right of Indigenous peoples to redress, by means including restitution or just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Any process for "advancing reconciliation" that is consistent with the UN Declaration must necessarily include equitable restitution for the impacts on Indigenous peoples from activities that were regulated by CER and predecessor agencies.

The CER has also committed to advancing the Truth and Reconciliation Commission's (TRC) Calls to Action, specifically Calls to Action 43, 44, and 92. Several of the Calls to Justice made in the final report of the *National Inquiry into Missing and Murdered Indigenous Women and Girls* have also have direct implications for activities regulated under the OPR. At a minimum, and in addition to the Articles of the UN Declaration and TRC Calls to Action, the CER should seek to advance the following Calls to Justice as a basis for contributing to the advancement of reconciliation with Indigenous peoples:

- **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 Two-Spirit, lesbian, gay, bisexual, trans, queer, questioning, intersex, and asexual (2SLGBTQQIA) people. Provisions must also be included to ensure that Indigenous women and 2SLGBTQQIA people equitably benefit from the projects
- **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.

Above all else, activities regulated under the OPR ought not to take place without the ongoing free, prior, and informed consent of the Indigenous peoples whose territories are affected by the construction, operation, and maintenance of regulated pipelines.

**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?**

The most significant contribution that pipeline regulations can make to the protection of traditional land and resource use is adhering to the minimum standard of free, prior, and informed consent *before* undertaking regulated activities for the construction and operation of pipelines. Indigenous peoples have rights to make decisions regarding their lands, territories, and resources that are enshrined in international law and *DRIPA* that are not mere procedural steps to be taken by the regulator.

In light of the B.C. Supreme Court's decision in *Yahey v British Columbia* regarding the management of cumulative impacts from industrial development of Indigenous peoples' lands, greater consideration and improved assessment of cumulative impacts on Indigenous peoples rights must be taken in regulatory decisions concerning existing and new pipelines in order to ensure the protection of those rights.

First Nations leadership in British Columbia endorsed several [conservation objectives](#) in the context of addressing climate change and biodiversity loss, including strengthening accountability measures for companies conducting activities that disturb habitat and sites of traditionally harvested species and medicines, and prioritizing restoration/remediation on the basis of cultural revitalization and climate mitigation and adaptation outcomes.

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

The steps that CER has taken to involve Indigenous peoples in pipeline oversight in recent years, including the formation of Indigenous Advisory and Monitoring Committees for pipelines regulated by the CER, have only marginally included Indigenous peoples as the rightful holders

of the title to land crossed by regulated pipelines. For pipeline oversight activities, companies that are constructing or operating pipelines ought to support the participation of representatives of every Indigenous nation whose territory is crossed by an existing or proposed pipeline. To ensure fulsome participation of Title and Rights holders throughout all stages of pipeline activities, adequate resources must be directed to Title and Rights holders and/or their delegated representatives.

As well, emergency management programs, surveillance and monitoring programs, and environmental protection programs (as defined in sections 32, 39, and 48 of the OPR) must be co-developed with the Indigenous nations affected by construction, operation, and maintenance activities. Regulations concerning notification of incidents and the submission of incident reports made to the regulator, as defined in section 52 of the OPR, should be amended to require companies to also notify Indigenous Title and Rights holders on the pipeline right-of-way.

#### **CONCLUSION:**

While the scope of this review is limited to regulations concerning approved pipelines, the process by which pipelines regulated by the CER are approved, and the criteria for their approval, are also of great concern to Indigenous peoples. The climate change impacts from the products transported by regulated pipelines have the potential to significantly affect Indigenous Title and Rights, as well as the life and livelihoods of all Canadians, and should be one of the most important considerations in the regulator's decision-making at all stages of a pipeline's application, approval, construction, operation, and decommissioning processes, in addition to the minimum international standards outlined in the *United Nations Declaration on the Rights of Indigenous Peoples*.