IAMC

Indigenous Advisory & Monitoring Committee | Line 3

Line 3 Indigenous Advisory and Monitoring Committee Onshore Pipeline Regulations and Filing Manual Workshop

2025-02-07

Notes Prepared by

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EVENT MANAGEMENT

Contents

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Background Information

Introduction to the Canada Energy Regulator

The Canada Energy Regulator (CER) regulates energy infrastructure in a way that prevents harm and ensures the safe, reliable, competitive and environmentally sustainable delivery of energy to Canada and the world. We recognize and respect the inherent and constitutionally protected rights of First Nations, Inuit and Métis. We provide energy information and analysis that informs and supports Canada's transition towards a net zero future.

The CER provides oversight for approximately 71,000 km of oil and gas pipelines and 1,500 km of electrical powerlines. We regulate more than 100 companies, whose operations range from infrastructure less than one kilometer in length, to pipelines that stretch across multiple provinces.

The Review of the Onshore Pipeline Regulations and Filing Manuals

In January 2022, the CER launched a multi-year process to review the *Onshore Pipeline Regulations* (OPR), as well as update the Environmental and Socio-economic Assessment (ESA) and Lands sections of the Filing Manuals.

- The OPR is the main regulation the CER uses to oversee pipeline projects under the CER Act. While there may be unique conditions or regulatory requirements that apply to specific projects and their related approvals, all companies **must** follow the OPR to design, build and operate a federally regulated pipeline. The OPR establishes the requirements to achieve safety, security and environmental protection outcomes. For additional details, see the overview of the OPR below. An update to the OPR is long

overdue (last substantial update was in 2013 with the addition of management system requirements. This review offers an opportunity to streamline and consolidate various regulatory requirements and/or practices that currently apply to or are demonstrated by one or more companies, which contributes to increased regulatory framework clarity and transparency. It will also enable regulatory requirements to remain current, reflect wise practices, and incorporate evolving or emerging areas of regulatory practice.

- The Filing Manual and Electricity Filing Manual (collectively referred to in this document as the Filing Manuals) outline what a company **should** include in their application to the CER when applying to build a pipeline or powerline project. The Filing Manuals are updated on an ongoing basis to reflect changing requirements, conditions, regulations, industry practices, and feedback received from regulated companies, Indigenous Peoples and other commenters. For example, recent major Filing Manuals updates have included revisions regarding Greenhouse Gas Emission and Climate Change (Guide A); Variances and Project Updates (Guide O); Review, Rescind, or Rehear decisions (Guide N), and Confidential Filing (section 1.5). A key focus of this review is the environmental and socio- economic information that should be included in applications to the CER.

The CER's objective is to deliver regulations and filing guidance that:

- support the highest level of safety, security and environmental protection;

- advance Reconciliation with Indigenous Peoples;

- provide clarity and transparency about regulatory requirements to companies and the public;

- encourage innovation; and

- provide predictable, timely and inclusive oversight of energy projects.

About the Review Process

This comprehensive review includes several different stages and there will be many opportunities to share your feedback with the CER. The review will address all areas of the OPR, as well as the ESA and Lands sections of the Filing Manuals. The review may also result in changes to other parts of the CER's regulatory framework including regulatory documents and other guidance, such as the Early Engagement Guide, if feedback and suggestions are better suited to these other tools.

Many of the topics in the ESA and Lands sections of the Filing Manuals are related to those in the OPR. The CER decided to combine the review of the OPR and Filing Manuals for several reasons, including respecting the advice of its Indigenous Advisory Committee to conduct joint engagement on these documents to streamline engagement efforts, reduce duplication, and mitigate or minimize the likelihood of consultation fatigue.

The review is also being guided by the CER's commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UN Declaration Act). In June 2023, the CER committed, through the UN Declaration Act Action Plan Measure 34, to work in

consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to "amend the Canadian Energy Regulator Onshore Pipeline Regulations and Filing Manuals applicable to the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure, in a manner that:

- incorporates specific localized knowledge held by Indigenous Peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge

- strengthens measures to prevent and address impacts to Indigenous rights and interests, including in relation to heritage resources and sites of Indigenous significance."

For more information on the UN Declaration and APM 34, see the topic paper on the [Rights and Interests of Indigenous Peoples](), [Socio-economic Effects and Engagement]().

Phase Two Engagement

Phase Two engagement focuses on more specific issues in the OPR and Filing Manuals. This phase of engagement was launched in 2024 and will continue for approximately six months into 2025. It is structured around issue-specific workshops and topic papers. Each topic paper includes a background of the current regulatory (OPR/Filing Manuals) requirements, a summary of what the CER has heard to date, identifies potential objectives for improvement, proposes options to meet those objectives, and poses discussion questions to help seek participant input. The CER will review and consider all feedback received in Phase Two to help draft a Regulatory Proposal, which will summarize the key policy issues that the CER intends to address in the updated OPR. We will also use the information received during this phase of engagement to develop an update to the ESA and Lands sections of the Filing Manuals.

For more contextual information, please see this [background paper]().

Agenda

Day 3 – Friday February 7 9:00 am – 3:00 pm	
Breakfast: 8:00 – 9:00 am	
09:00 – 09:10	**13: Welcome & Opening Prayer** 10 min Emcee Whitney Punchak & Elder David Daniels
09:10 – 09:55	**14: Onshore Pipeline Regulations (OPR) and Filing Manual (FM) Context setting** 45 min Don Logan & Richard Aisaican
09:55 – 10:10	**15: Heritage Resource 101 Presentation** 15 min Sarah Ebbern
10:10 - 10:15	**Instructions for Facilitated Table Discussions** 5 min Emcee Whitney Punchak
Coffee Break 10:15 – 10:45 am	
10:45 - 11:20	**16: Facilitated Table Discussions** 35 min **Scenario Topic 1:** Emergency Management
11:20 – 11:55	**17: Facilitated Table Discussions** 35 min **Scenario Topic 2:** Indigenous Engagement
11:55 – 12:30	**18: Facilitated Table Discussions** 35 min **Scenario Topic 3:** Heritage Resource
Lunch 12:30 – 1:30 pm	
01:30 – 02:10	**19: Facilitated Table Discussions** 40 min **Scenario Topic 4:** Heritage Resource
02:10 – 02:50	**20: Facilitated Table Discussions** 40 min **Scenario Topic 5:** Indigenous – Led Assessments
02:50 – 03:00	**21: Thank you & Closing Prayer** 10 min Richard Aisaican & Elder Linda St. Cyr-Saric

Scenario 1: Emergency Management

Context and Key Considerations

In its advice to the CER (Topic Papers C & M), the Committee recommended that changes to the OPR and FM would be required to improve CER's oversight of Emergency Management

- o Improved notification and communication with Indigenous Nations.

- o Increased Indigenous involvement in emergency response.

In response to these recommendations, the CER is considering:

- o Amending the OPR to be clear that the CER requires sites of historic and cultural significance to be considered in a company's EM Program.

- o Create a new requirement for companies to involve Indigenous people in their EM program.

- o Provide clarity on how companies should communicate and engage with Indigenous peoples by consolidating the *Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management* and *Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-Reportable Incidents* into the OPR and/or guidance.

Scenario

A pipeline operated by a company leaks 700 barrels of crude oil near a highly valued sacred site shared by multiple First Nations. The spill threatens the ecosystem and cultural integrity of the area. The company notifies the closest community about the spill and agrees to let them deploy monitors to oversee cleanup efforts.Other First Nations, who also hold the site as culturally significant, are angered that they were not notified of the spill and as a result, specific sites of cultural significance only known to them, were impacted by the incident that could have otherwise been avoided. They send letters to the pipeline regulator demanding explanations and policy changes to ensure:

- All impacted Nations are notified in future incidents, not only those Nations in closest proximity to the incident.

- Indigenous communities are invited to participate in emergency responses.

- Companies are required to have Emergency Management programs in place are effective at protecting sites of Indigenous significance for all Nations impacted by the project.

Discussion Questions

- How can the company identify which Nations to notify about potential impacts to heritage resources during an emergency? How can it ensure these Nations are included in the emergency management planning process?

- How should Nations be involved in spill response efforts?

- What opportunities and challenges do Indigenous communities face in participating in the company's emergency management program?

- What resources or capacity support do Nations need to effectively engage in emergency response activities?

Participant Answers

- There needs to be meaningful involvement with the First Nations from the very beginning to the very end of a project lifecycle. Participants also highlighted the importance of engagement at a community level and the importance of ceremony. When it comes to engagement sessions, Elders need to be included as well. Participants also shared that they believed it should be funded by external entities who want to engage in projects on their territory – meaning that the First Nations should not be asked to fund community engagement sessions. Organizations like Treaty organizations and Tribal councils should be involved throughout the lifecycle of a project. Nations trust these organizational entities, and including such organizations would provide further support to Nations.

- Nations and the Canada Energy Regulator (CER) are identifying Nations via a baseline geographical distance to their reserve and not thinking about the territory as a whole. Participants of the session stated that there is a need to know a Nation's territory as a whole because a Nation's territory often expand beyond its identified boundaries. There is also a need for mandatory traditional land use and Nations need to lead this initiative.

- There is a disconnect between provinces' *Heritage Resource Acts* and the CER. These *Acts* do not cover what types of areas are protected, and they do not cover non-tangible heritage or heritage that is no longer there.

- For example, ceremonial structures are not always set in one place and/or are only used when a Nation is engaging in ceremony.

- Funding was a concern for participants. Capacity funding should not only be for emergencies, but for ceremonies as well. Ceremonies are important practices that ensure the work will be done in a good way.

- The burden of proof cannot fall on First Nation communities. Nations do not have the capacity to meet this responsibility. There are many Nations that do not have a Lands Department or a Conservation Department, and if Nations do have these departments, that does not mean they have the capacity to do the work needed in relation to the burden of proof. Participants stated that there needs to be some form of mandatory funding available to Nations to meet the burden of proof. Such a funding mechanism would allow Nations to participate and share information.

- The CER needs to develop templates for compensation agreements for each right-of-way project that includes a budget allocation to assist with costs associated with responding to site incidents over the life cycle of the project.

- Participants highlighted a need for inclusive language, ensuring Indigenous representation and inclusion throughout a project life cycle.
  - Participants also stressed the inclusion of Métis people throughout a project, not only First Nations.

- Mediation between companies and Nations needs to occur. If there are incidents that happen when a Nation is working with a company or sub-contractor, the CER should act as a mediator.

- When an incident happens, the appropriate people need to be notified immediately. The appropriate people aren't only Chief and Council, but also others identified by the Nations. Emergency response plans need to be co-developed with First Nations. This would allow Nations to better understand emergency response plans and how to act. Indigenous-led command centres leading emergency response teams are also integral to emergency management.
  - The Huskey Spill in 2016 along the North Saskatchewan river was given as an example. Originally, impacted Nations were not directly notified of the spill. Leadership advocated for Nations' involvement. Eventually, Nations were able to conduct their own independent assessment of the spill, and they found hydrocarbons in areas they were not supposed to be. Indigenous Nations need to have the support and funding to do their own assessments.

- There are social impacts in First Nation communities due to colonization. There needs to be an understanding that Nations operate according to a different lifestyle. Nations need to be debriefed throughout the project lifecycle; this would prevent the spread of misinformation within the community and identify things that need improvement.

- Collaboration is key. This not only includes collaboration with a Nation, CER, and a company, but also community partnerships amongst Nations.

- The CER needs to have regulations in place that make it mandatory for companies to include all impacted Nations when it comes to a spill. In this practice, there also needs to be documentation proving that a company is cooperating and working with the affected Nation(s).

Scenario 2: Indigenous Engagement

Context and Key Considerations

In its advice to the CER (Topic Papers I & M), the Line 3 IAMC emphasized the important role the CER plays in setting clear expectations and high standards for proponents when engaging with Indigenous Nations. The committee recommends that the CER enhance its guidance for meaningful engagement throughout the lifecycle of the project, including ensuring that communities have time and resources to participate, and that the CER verify company's claims about the adequacy of engagement.

In response, the CER is considering formalizing additional Indigenous engagement requirements in the regulation. The objective of new requirements will be to:

- drive consistency and clarify the requirements for communications and engagement with potentially affected people and communities across the lifecycle.

- help ensure appropriate information about a company's activities is provided to impacted communities.

- help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights and interests may be impacted, and how they can be addressed.

- allow for flexibility so that companies can be responsive to, and respectful of, the unique needs, interests, and engagement preferences of Indigenous Peoples, potentially affected people and communities.

Scenario

A company received CER approval for a 75 km pipeline project crossing the traditional territory of 18 First Nations. The original owner conducted strong early

engagement, addressing most concerns prior to the CER application, with approval requiring ongoing engagement with impacted Nations.

After the project was sold, the new owner's engagement practices shifted, prompting Nations to raise concerns with the CER about inadequate communication. The new company cited compliance through information bulletins, but the Nations argued this fell short of meaningful engagement. Recognizing the lack of clear engagement standards, the CER committed to exploring mechanisms, such as mandatory Indigenous engagement programs, to ensure consistent and meaningful practices across the industry.

Discussion Questions

- What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?

- Do you have any feedback on how the CER might verify and enforce a company's compliance with these potential new engagement requirements, and what relevant evidence should be provided?

- When Indigenous Nations lead engagements, what would that process look like, and what elements would it include?

Participant Answers

- Engagement practices cannot be general. When a new company takes over a project from another company, the new company needs to honour its commitments to all affected Nations. The new company cannot use previous engagement to carry on the work. The new company would have to re-engage and build relationships with the Nations. With a new company, different negotiations may be required, as circumstances may have changed. If there are new partners, there needs to be reassurance that former agreements remain the same. Moreover, if a company switches from Canadian ownership to international ownership, it changes how needs are to be met.

- When holding Indigenous engagements, there needs to be direct engagement with Indigenous peoples. The appropriate positions (such as Indigenous liaison) need to be held by an Indigenous person who has knowledge of the natural world and natural law. Sometimes, when an Indigenous person sees a liaison who is non-Indigenous, it can be triggering, particularly for Elders. This can lead to Indigenous engagement participants not wanting to share. The process for Indigenous-led engagement needs to be less formal and incorporate a trauma informed approach. Indigenous-led engagement should prioritize oral engagement/face-to-face engagement.

- In terms of the CER's objectives for improvement, one recommendation is for long-term mechanisms to be put into place. The word "program" is short-term. The CER should

consider a shift in terminology towards something like "Indigenous Engagement Actions" to address the need for long term mechanisms.

- Companies need to know the Nations they are working with, know their capacities, and know when there is no capacity within a Nation to take on the work. Moreover, a company cannot just assume a Nation is not interested in participating in a project because they do not have the current capacity.

- There is a need for process and requirements. Companies need to be held accountable if they do not meaningfully engage with Nations. Companies cannot simply inform the CER that they engaged with communities. There need to be consequences for a lack of meaningful engagement. If conditions are not met, the company should not be allowed to proceed with the project. If a Nation pulls consent for a project, the CER should pull consent as well.

- Communities need to be informed from the very beginning of a project to the very end. Nations need to know what company is taking on the project, what their policies are, what role the CER and the Nation have in the project, and what mitigation practices are included. Companies need to know to whom they are being held responsible and to whom they are reporting. The CER needs to regularly update its community lists. In the first meeting, when ownership takes place, there should be decision makers at the table, not only Indigenous "liaisons". In the first meeting, it is critical to identify a decision maker in terms to guide how the Nation(s) are going to move forward with the company. There needs to be a plan in place. It is important that relationship building takes place in the first meeting.

- Participants recommended that when the CER does inspections it not notify the company. Currently, when the CER does site inspections, they notify the company when their team will be on-site. When a company knows the CER is conducting inspections, they will prepare the site for inspections and remedy any existing site issues. This does not allow for an accurate view of the day-to-day site operations, and how that site has been maintained prior to the inspection. There is a need for surprise inspections to see what is actually occurring on project sites.

Scenario 3: Heritage Resources

Context and Key Considerations

Métis representatives on the Committee have advised the CER (Topic Papers D, I, & M) about distinct intersections between Métis Rights and Interests and the lifecycle of CER-regulated infrastructure. They highlighted that current government and industry consultation models may jeopardize the Métis right to self-governance. Additionally, perceptions of environmental performance, particularly regarding contamination, directly affect traditional harvesters. For Métis harvesters and the Nation to trust that the environment is being properly managed by all levels of government and industry, the oversight system must be strengthened, as current weaknesses in the chain of oversight undermine the effectiveness of the regulatory process.

The CER is considering new requirements for companies to:

- Implement systematic processes to identify, manage, and address potential impacts on Indigenous rights and interests, including heritage resources, traditional land use, and significant sites during all stages of pipeline activities.

- Incorporate applicable Indigenous laws, policies, practices, and protocols.

- Integrate Indigenous knowledge into decision-making and protect confidential knowledge from unauthorized disclosure.

- Ensure culturally safe work environments by preventing and addressing racism and sexual exploitation.

Scenario

Years ago, a Métis resource harvesting site was impacted by a pipeline leak, and it was believed that contamination still persisted. Due to climate change, development, and other factors, Métis harvesters faced increasing challenges accessing suitable harvesting sites. As a result, they raised concerns with their government about the

ongoing impact of the contamination on prime harvesting areas. In response, the Métis Nation met with the responsible company, which claimed to have completed

remediation to appropriate standards over a year prior and had informed the nearby Métis local organization. However, the Métis Nation, representing many citizens affected by the contamination, was neither notified nor involved during or after the remediation process. This lack of engagement undermined the Nation's established engagement and communication protocols for industry activities on their land, which are intended to protect harvesting rights.

To ensure the site was fully restored and culturally appropriate, the Métis Nation deployed its own technicians and knowledge keepers, who verified the restoration and promptly informed harvesters. The Métis Nation then raised concerns with the CER, pointing out that the company's failure to communicate and engage with the community during the remediation process led harvesters to avoid the area, fearing ongoing contamination. The Métis Nation called for companies to implement management systems that recognize and integrate Métis Nation laws, policies, practices, and protocols, including communication and monitoring procedures, to uphold Métis rights.

Discussion Questions

- What is your feedback on the following proposed options to meet the regulatory objectives?

    o requiring companies to have a new management system process for the incorporation of Indigenous knowledge into their programs (i.e environmental protection program)

    o requiring companies to have a new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols; and

    o requiring cultural competency training for all those working for regulated companies.

- What does involvement by Indigenous Peoples in monitoring over the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices.

- How could more independent monitoring and reporting by Indigenous Peoples be effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices.

Participant Answers

- Indigenous involvement in monitoring must include pre-construction monitoring, a review of the selected area before project impact, a review of the area during construction and post-construction, and it must build on existing capacity. Indigenous involvement also

means including community members who are knowledgeable on certain aspects of the work (Traditional Knowledge keepers, plant expert, historians, etc.). Having these people involved in the project can make a Nation feel supported and heard. Meaningful, hands-on involvement effectively communicates best practices.

- In the event of a spill, remediation can take years. In this case, multiple factors need to be considered, such as impacts to human health, response times, and how Nations and people are notified of a spill and are kept up to date with notifications relating to the spill.

- There is a need for cultural competency when doing a project like a pipeline. A new management system process that incorporates Indigenous knowledge into the project is needed. Elders and knowledge holders should be integral to associated programs, such as environmental protection programs.

- To better support Indigenous monitors, of a chain of command must be established, along with a clear timeline for engagement, the development of collaborative studies, a CER portal for Indigenous monitors, and frameworks to support Indigenous monitors.

- *The Heritage Resource Act* and other similar Acts cannot be solely relied on to determine a site's significance to a Nation or peoples.

- Information shared by the Nation(s) needs to be kept confidential, unless permission is given by participants.
    - For example, some Elders want their knowledge to be passed down and want to be identified as the knowledge holder, while other Elders and knowledge holders do not want their knowledge shared or to be identified as the knowledge holder.

Scenario 4: Heritage Resources

Context and Key Considerations

The Committee has advised the CER (Topic Paper M) to enhance guidance for proponents on Heritage Resource Discovery Contingency Plans, addressing Indigenous Nations' concerns about meaningful participation in heritage planning and ensuring ceremonies and site protection. The Committee stressed that all historic sites hold sacred significance for many Nations but are often not treated with the same respect as Western religious sites. Heritage resources reflect Indigenous land use—histories that colonialism has tried to erase—and require ceremonies rooted in spiritual traditions before, during, and after construction. Recommendations include notifying all affected Nations of discoveries, involving Elders and Knowledge Keepers, granting Indigenous monitors authority, and funding Nations to engage their experts. Where established best practices exceed provincial requirements, the Committee has recommended that proponents be required to adopt best practices.

In response to this feedback, the CER is analysing its expectations of applicants regarding heritage and cultural resources, which could include sites of Indigenous significance during construction and operation to support an assessment of a project's potential effects on the rights and interests of Indigenous Peoples.

Scenario

During a CER inspection, Indigenous monitors and Nation representatives, including an Elder, joined CER officers to address the Nations' concerns about the impact of construction on a site of cultural significance. The Elder observed a significant artifact laying at the top of a soil pile, which was later dismissed by the company archaeologist. The Nation was not allowed to handle artifacts directly and relied solely on the company's processes. Construction resumed before all artifacts were collected, resulting in the loss of the item that was deemed significant by the Elder.

The Nation raised several issues including limited access to artifacts and insufficient monitoring authority. They also pointed out inconsistent communication and unclear protocols for involving Nations. Furthermore, cultural insensitivity and the dismissive treatment of Indigenous knowledge were identified as concerns. The Nation recommended empowering Indigenous monitors to participate in artifact management and emphasized the importance of integrating of Indigenous Knowledge Keepers into heritage planning.

Discussion Questions

- How could the approach to determining the significance of archaeological or paleontological discoveries be improved or made more effective?

- In what ways should Elders and traditional knowledge keepers be actively involved in developing companies' heritage resources contingency plans?

- How can companies take a distinctions-based approach to incorporating Elders, traditional knowledge keepers, and their ceremonial practices into heritage resources contingency plans?

- What steps should be taken to ensure that Elders, traditional knowledge keepers, and/or archaeologists could conduct pre-construction site tours along the ROW to identify heritage resources that may have been overlooked in conventional scientific studies?

- What training requirements should be implemented for companies and their contractors to enhance their ability to protect heritage resources?

- How does the concept of "sites of Indigenous significance" differ from or align with the current terminology of heritage resources and traditional land and resource use?

Participant Answers

- For this scenario, some groups found it difficult to answer the CER's questions. Some participants did not agree with the wording of the questions or with what the questions were attempting to ask. Certain participant groups felt that some questions were not suitable to ask.
  - A participant gave an example to further illustrate this viewpoint: The participant touched on scenario 5 to do so, explaining that in this scenario, the CER worked in alignment with Treaties, which their group did not agree with.

- When working with Indigenous peoples, it is important to know which Indigenous group a company is working with and their social customs.

- Prior to the development of a site, the Nation(s) need to have a clear understanding of project infrastructure impacts.

- It is also recommended that Indigenous-led assessments are done early in the project lifecycle.

- Heritage sites are important to Nations and their citizens. The term "sites of Indigenous significance" was deemed too broad by some participant groups.
    - A participant shared a previous experience to illustrate: When a skull was found by a group of Indigenous men from their Nation, it was deemed as culturally significant to some people in the Nation, but the skull was deemed not culturally significant by the contracting company. The participant stated that the skull represents a cultural site, regardless of what was determined by the contracting company, and even if it was not found on a previously identified kill site or ceremonial site. In this example, the participant stated that they would employ the term "sacred site" as opposed to "site of Indigenous significance". The term "site of Indigenous significance" would not be used in instances like this, as it is too broad.
    - There needs to be an established protocol rooted in an Indigenous ontology when a chance find has been located on-site.

- An established chain of command for monitors is required. There also needs to be stricter penalties when proprietors, companies, or subcontractors, are not following the rules set for the project.
    - One participant group posed a series of questions in relation to the above statement: What happens if an Indigenous monitor does not agree with a proprietor or with the CER and how they are doing the work? Who would the Indigenous monitor report their concerns to in this scenario?
        - Questions like these highlight why it is important to have an established chain of command and to keep Indigenous monitors informed.

- The CER needs to enact stricter penalties should a breach occur on a heritage resource site.

- A designated procedure for contractors and sub-contractors must be in place in case an artifact is found. If a chance find is located on-site, it needs to be disclosed as soon as possible to relevant parties (Nations, CER). When an artifact is found, First Nation and Métis people need to be involved. When a project does breach onto a possible heritage site, Nations, their peoples, and their Elders need to be able to stop all work being done on-site. The participating groups stressed that having Elders voices present throughout the project lifecycle is crucial.
    - A participant group recommended having an archeological list on-site for contractors to help them better identify possible artifacts.
    - Who to notify (other than the Nation) when there is a chance find also needs to be communicated to Indigenous monitors. This relates back to establishing and communicating a chain of command and proper protocols to Indigenous monitors.

- Nations, including Indigenous advisors and Elders, need to be involved in a project right from the beginning, and not only when companies arrive on-site to begin the work.

- All monitors – whether they are hired by the contractors, by the CER, or are community-based – should be equipped with tools that would strengthen and improve their current skillset. All monitors engaging a project impacting Indigenous Nations should work through an Indigenous lens when it is appropriate, as some areas of work do not require an Indigenous lens when engaging in the work. Monitors also need to be trained in all relevant areas, such as archeology and environmental studies. Culturally-safe training needs to be made available to Indigenous monitors.

- Before anything is done, there needs to be a ceremony on site.

- At the end of a project, there needs to be community sign-off that documents that the Nation is satisfied with the work that has been done on a project.

Scenario 5: Indigenous-Led Assessments

Context and Key Considerations

The CER carries out its duties in alignment with treaties, Section 35 of the Constitution Act, 1982, Canada's United Nations Declaration on the Rights of Indigenous Peoples Act, and its commitment to reconciliation with Indigenous Peoples (Topic Paper M).

Recent work on Indigenous-led assessments across Canada includes:

- **Independent assessments** (e.g., Tsleil-Waututh – Trans Mountain Pipeline Expansion, Squamish Nation – Woodfibre LNG, Stk'emlupsemc Te Secwepemc Nation – KGHM Ajax Mine),

- **Co-developed assessments** with applicants (e.g., Ktunaxa Nation – BC Hydro Revelstoke, Keeyask Cree Nations – Manitoba Hydro Keeyask, Nunavik Inuit – Raglan Nickel Mine, Cheslatta First Nation – Rio Tinto Alcan Ne Too), and

- **Indigenous-led studies** as part of environmental assessments (e.g., Indigenous knowledge and Traditional Land Use studies).

The CER recognizes the value of Indigenous-led assessments, as Indigenous Peoples are best positioned to understand impacts on their rights and interests. However, the timing of these assessments may not always align with applicants' project schedules.

The CER aims to clarify how and when applicants should support Indigenous-led assessments and studies, and how to integrate their results into project assessments. This includes setting clearer expectations for studies like Indigenous knowledge and Traditional Land Use.

Scenario

Project Overview:

A company plans to construct a 300-kilometer pipeline crossing the traditional territories of three Indigenous communities. Each community has expressed

concerns about potential impacts on culturally significant sites, traditional land use, and local ecosystems.

Indigenous-Led Assessments:

- Community A has initiated an independent Indigenous-led assessment to examine potential impacts on sacred sites and traditional harvesting areas. However, they require additional funding and resources to complete the study within a feasible timeline.

- Community B prefers to co-develop an assessment with the company and has already established a collaborative framework. They aim to focus on minimizing disruptions to local water sources.

- Community C proposes conducting a Traditional Land Use study as part of the environmental assessment but indicates that their timelines may not align with the company's project schedule.

Regulatory Challenges:

Government of Canada is required to issue a decision on the project within 450 days of receiving a complete application. However, delays in integrating Indigenous-led studies could risk missing this deadline. The CER must determine how to balance the need for comprehensive Indigenous-led input with legislative timelines.

Discussion Questions

- What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous communities (e.g., timing, funding, scope, and integration)?

- How can the CER support fulsome integration of Indigenous-led assessments with the companies' information to meet regulatory processes and requirements?

- What funding mechanisms should be considered to support Indigenous-led environmental assessments? Who is best placed to support a funding mechanism? How could it potentially integrate with regulation, the CER and/or proponents?

- How can Indigenous-led assessments and studies be aligned with the applicant's assessment while supporting the goal of "one project, one assessment"?

- If the timing doesn't align, how can Indigenous-led assessments and studies still be integrated into the applicant's assessment and meet the CER's 450-day legislated time limit for pipeline and power line applications?

Participant Answers

- Funding and access are two challenges that have been present throughout each scenario.

- Timing has been identified as a challenge to Indigenous-led assessments. Some participants felt that things are done on short notice because there is a lack of clear communication between the Nations and companies. Appropriate recipients for project correspondence need to be established early in the project – both by the community and the company. All notices and correspondence cannot go to Chief and Council as Chief and Council have other duties they need to fulfil. Communication must be streamlined.
    - One participant shared that companies want Nations to respond in a certain amount of time, and they fail to understand that the countdown to the deadline does not begin until the Nation replies stating that they have received the notice/correspondence.
    - Participants shared that 450 days to complete a project is feasible for many Nations. Participants felt that making it seem that it is a Nations fault for any delays in a project is projecting false information. If Canada and companies did a better job at streamlining their own processes and communication, a project could get done in 450 days.

- Participants shared that direct outreach and education on processes for Nations could speed up Indigenous-led assessments.

- Indigenous laws and Indigenous ways of living must be recognized. One participant group shared that governments and industry need to begin following natural laws. Government and industry must start respecting Indigenous peoples' spiritual connection to air, water, land, and life. There needs to be an understanding that Indigenous peoples are fighting for the land. Traditional practices must be part of any project that impacts the land.
    - Assessments cannot reflect only one point in time. Assessments are to be holistic. Currently, available funding may impact a Nation's ability to develop a holistic assessment.
    - One critical piece of impact assessment is determining significance of impact. One big challenge is that when Canada or the CER doe impact assessment, it is rooted in a project focus that does not truly capture significance of impact to Indigenous Nations or peoples. There needs to be a larger understanding of a project's cumulative impacts, and how to properly assess those cumulative impacts.
        - A participant shared experiences to build on the above point. They shared that they have been in situations where Elders communicate that an area is one of the last spots where one can harvest traditional medicines within the territory. The medicine harvested from that area does many good things for their people. That site can never be impacted. When this concern

was raised with the CER, the Nations were told that site would not be disturbed by a project. Nevertheless, the CER does not understand how sacred the medicine is to the surrounding Nations. Even if you could find the medicine in other places, the participant shared that it likely has been contaminated, impacted, or polluted. Consideration of these factors (such as important sites for Nations) needs to be led by the Nation and not the CER or contractor.

- Another participant shared that in a previous project, the CER allowed a company to destroy a sacred site that is part of their creation story. The company caused irrepealable harm to the land. The participant shared that the Nation and Knowledge Keepers stating that the site is part of their creation story should have been enough to stop project development, but it was not. Nations need to be allowed to say no.

Appendix

CER Lifecycle Diagram

The Canada Energy Regulator oversees the entire lifecycle of energy development.

| Proposed Energy Project | Construction | Operation | End of Life |

Regulatory Framework Diagram

Regulatory Framework for Pipeline Oversight