



December 10, 2019

**Re: Advice to Government and the CER from Indigenous Members of the Line 3 IAMC**

Dear Minister O'Regan,

On behalf of the Indigenous Committee members of the Line 3 Indigenous Advisory and Monitoring Committee (IAMC), we would like to congratulate you on your appointment as Minister of Natural Resources. Since 2017, the Line 3 IAMC has been hard at work implementing our mandate and drawing on our shared experience to develop advice for the federal government and the Canada Energy Regulator (CER).

We are pleased to provide our Advice to the Government of Canada and the CER which was recently approved by a majority of Indigenous Committee members. We look forward to working with you on the advice, and would like to extend an invitation for you and your staff to meet the Committee in the new year.

The mandate of the IAMC is to integrate Indigenous perspectives into the monitoring and regulatory oversight of the Line 3 Replacement Program (L3RP), and provide recommendations to the federal government and regulator. The Committee brings together 16 Indigenous and two senior federal representatives to monitor the L3RP, and to provide advice to government and regulators. Committee members have a shared goal of safety and protection of environmental and Indigenous interests along the Line 3 corridor over the lifecycle of the project.

As per clause 15 of the Committee's Terms of Reference, advice supported by the majority of members may be put forward provided that all Committee members were provided with an opportunity to explain, in writing, why they could not support the advice. Further, when the Committee provides formal, written advice, the CER and federal government will consider the advice and will formally respond to that advice as follows:

- A. Agree with and adopt the advice; or,
- B. After engaging with the Committee, adopt the advice with modifications, or reject it, in which case the Regulator or the Government will provide a written explanation as to why the advice was modified or rejected, and whether or how the interests or concerns underlying the advice have been or will be addressed.

The Indigenous Committee members expect the responses to be clear and to address each recommendation individually. Furthermore, we expect the Government and CER to take a distinctions-based approach that recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their

own histories, interests, priorities, and circumstances. Where the recommendations fall outside of NRCan's mandate, we expect that NRCan, as the department responding on behalf of the Government of Canada, will take the necessary measures to ensure a whole-of-government approach.

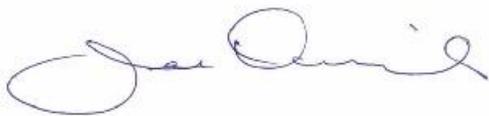
Of the 55 recommendations made in this report, 12 are directed to the Government of Canada (and in some cases, suggest collaboration with the CER). We expect that NRCan will pay particular attention to responding directly to those recommendations.

This report summarizes the findings of the Indigenous Committee members from the first two-year term of the Line 3 IAMC. The recommendations to the federal government and the CER are the opinions of the Indigenous Committee members, based on the Committee's programs, the personal experiences and perspectives of the Indigenous Committee members, and the input and engagement of impacted Indigenous Nations.

The Terms of Reference are clear that the Committee is not used by the government to undertake consultation. It states that the Committee will *'not replace or diminish any right of individual Indigenous Nations to be consulted and accommodated in respect of L3RP'* nor would it *'be used as a forum for the Government to replace or substitute any direct engagement or consultation owed to, or desired by, Indigenous Nations.'* The Indigenous Committee members encourage the federal government to consult directly with Indigenous Nations on the recommendations and advice in this report, as part of their response.

The Indigenous Committee members look forward to a timely and thorough response, and to continued engagement with the Minister and the federal government on these issues. Please do not hesitate to direct any inquiries on the report or on scheduling follow-up meetings with the IAMC to the Committee's Secretariat at [nrcan.line3committee-comitecanalisation2.rncan@canada.ca](mailto:nrcan.line3committee-comitecanalisation2.rncan@canada.ca).

Kind regards,



Joe Daniels  
Indigenous Co-Chair



Gary LaPlante  
Advice to Government and CER  
Subcommittee Chair



December 10, 2019

**Re: Advice to Government and the CER from Indigenous Members of the Line 3 IAMC**

Dear Mr. Watson,

On behalf of the Indigenous Committee members of the Line 3 Indigenous Advisory and Monitoring Committee (IAMC), we are pleased to share the Advice to the Government of Canada and the Canada Energy Regulator (CER), as approved by the majority of the Indigenous Committee members.

The mandate of the IAMC is to integrate Indigenous perspectives into the monitoring and regulatory oversight of the Line 3 Replacement Program (L3RP), and provide recommendations to the federal government and regulator. The Committee brings together 16 Indigenous and two senior federal representatives to monitor the L3RP, and to provide advice to government and regulators. Committee members have a shared goal of safety and protection of environmental and Indigenous interests along the Line 3 corridor over the lifecycle of the project.

As per clause 15 of the Committee's Terms of Reference, advice supported by the majority of members may be put forward provided that all Committee members were provided with an opportunity to explain, in writing, why they could not support the advice. Further, when the Committee provides formal, written advice, the CER and federal government will consider the advice and will formally respond to that advice as follows:

- A. Agree with and adopt the advice; or,
- B. After engaging with the Committee, adopt the advice with modifications, or reject it, in which case the Regulator or the Government will provide a written explanation as to why the advice was modified or rejected, and whether or how the interests or concerns underlying the advice have been or will be addressed.

The Indigenous Committee members expect the responses to be clear and to address each recommendation individually. Furthermore, we expect the Government and CER to take a distinctions-based approach that recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, interests, priorities, and circumstances.

Of the 55 recommendations made in this report, 50 are directed to the Canada Energy Regulator (and in some cases, suggest collaboration with the Government of Canada). They are summarized as follows:

- Emergency preparedness and response – 13 recommendations
- Heritage resources and chance find protocols – 10 recommendations
- Access to private lands – 4 recommendations
- Economic benefit and inclusion – 4 recommendations
- Communications and engagement – 14 recommendations
- Bill C-69 and policy – 5 recommendations

This report summarizes the findings of the Indigenous Committee members from the first two-year term of the Line 3 IAMC. The recommendations to the federal government and the CER are the opinions of the Indigenous Committee members, based on the Committee's programs, the personal experiences and perspectives of the Indigenous Committee members, and the input and engagement of impacted Indigenous Nations.

The Terms of Reference are clear that the Committee is not used by the government to undertake consultation. It states that the Committee will *'not replace or diminish any right of individual Indigenous Nations to be consulted and accommodated in respect of L3RP'* nor would it *'be used as a forum for the Government to replace or substitute any direct engagement or consultation owed to, or desired by, Indigenous Nations.'* The Indigenous Committee members encourage the federal government to consult directly with Indigenous Nations on the recommendations and advice in this report, as part of their response.

The Indigenous Committee members look forward to a timely and thorough response, and to continued engagement with the CER on these issues. Please direct any inquiries on the report or on scheduling follow-up meetings with the IAMC to the Committee's Secretariat at [nrcan.line3committee-comitecanalisation2.rncan@canada.ca](mailto:nrcan.line3committee-comitecanalisation2.rncan@canada.ca).

Kind regards,



Joe Daniels  
Indigenous Co-Chair



Gary LaPlante  
Advice to Government and CER  
Subcommittee Chair

On December 3, 2019, the IAMC considered a motion seeking approval to submit the Advice to Government report. The motion received 13 votes in support, 4 abstentions, and 1 vote not in support. Accordingly, this report is submitted on behalf of a majority of the Line 3 IAMC Indigenous Committee members:

**In support (13)**

Richard Aisaican  
Joe Daniels  
Wendy Gervais  
Bill Kennedy  
Gary LaPlante

Kyra Northwest  
Mike Oka  
Kirk Poitras  
Marci Riel  
Neil Sasakamoose

Craig Soldier  
Mike Sutherland  
Preston Swan

**Abstentions (4)**

Coral deShield: This is advice from the Indigenous members of the committee to the CER and Federal Government, and as such I don't feel that it would be appropriate for me (as the NRCan rep) to express an opinion for or against it.

Jon Timlin: This is advice from the Indigenous members of the committee to the CER and Federal Government, and as such I don't feel that it would be appropriate for me (as the CER rep) to express an opinion for or against it.

Norine Saddleback: No vote received

Roberta Soo-Oyewaste: No vote received

**Not in support (1)**

Shannon Thomson: Noted that she could not support the advice. Her reasons are appended to the advice report in Appendix A.



# LINE 3 IAMC SUMMARY REPORT: ISSUES AND RECOMMENDATIONS

as discussed by Indigenous Committee members and  
potentially impacted Nations

December 2019

*2017-2019*

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# Overview

## PURPOSE

This report is the work of the Indigenous Committee members of the Line 3 Indigenous Advisory and Monitoring Committee (the “Line 3 IAMC” or the “Committee”) developed during the first membership term from October 2017 – October 2019. The report is put forward in the spirit of reconciliation, and provides a focal point for discussion with Indigenous leadership, the federal government, and the federal regulator. The recommendations in this report reflect the views of the Indigenous Committee members and may or may not reflect the views of Indigenous Peoples from potentially impacted Nations regarding the Line 3 corridor.

This report contains advice intended for the Minister of Natural Resources Canada (NRCan), as representative of the Crown, and for the CEO of the Canada Energy Regulator (CER) (formerly the National Energy Board or NEB), as federal regulator<sup>i</sup>. The recommendations in this report are from the Line 3 IAMC Indigenous members, and do not necessarily represent the views of all impacted First Nations and Metis governments and people. The Indigenous Committee members encourage the federal government to consult directly with Indigenous Nations on the advice as part of their response to the report.

## CONTEXT

### RELATIONSHIP AND RECONCILIATION

The recommendations in this report are put forward to the federal government and regulator within the context of Indigenous rights and interests in Canada, specifically:

- Section 35 of the *Constitution Act, 1982* (s.35) recognizing and affirming Aboriginal and Treaty Rights of the First Nations, Metis, and Inuit;
- the Treaty Relationship and Signatories affected by the L3RP;
- the United Nations Declaration on the Rights of Indigenous Peoples including all Principles and Articles; and,
- the Calls to Action of the Truth and Reconciliation Commission of Canada.
- The National Inquiry into Missing and Murdered Indigenous Women and Girls Final Report calls to action for “Industries, Institutions, Services and Partnerships”.

As recognized and affirmed in s.35, Indigenous people have a special constitutional relationship with the Crown as a result of existing Metis rights and Aboriginal and Treaty rights. This goes beyond the government’s Duty to Consult and influences every part of the relationship between the Crown and First Nations, Metis, and Inuit. Rooted in s.35, guided by the UN Declaration, and informed by the Truth and Reconciliation Commission’s Calls to Action, the Government of Canada has committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation relationship based on recognition of rights, respect, co-operation, and partnership (Department of Justice, *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples*<sup>1</sup>). The recommendations in this report are intended as steps for the federal government and regulator towards honoring that commitment and bringing about transformative change.

While many of the recommendations focus on the importance of increased inclusion of Indigenous Nations generally, the Indigenous Committee members wish to clearly communicate the importance of a distinctions-based approach in federal law, regulation, and policy. A distinctions-based approach recognizes First Nations, the Metis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-

bearing communities with their own histories, interests, priorities, and circumstances. Therefore, federal responses to this report must follow a distinctions-based approach that specifically references Metis and First Nations as appropriate. This is in keeping with the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* that “the Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.”<sup>1</sup>

Finally, while this report is directed towards the Minister of NRCan and the CEO of the CER, as parties to the Committee’s Terms of Reference, it is critical to emphasize that many of the recommendations will impact other federal departments and the Provinces. As affirmed by the Supreme Court of Canada, the Crown includes both the provincial and the federal governments, and the Provinces have the “Crown’s” obligations and rights within their areas of jurisdiction, and must therefore uphold the honour of the Crown.<sup>2</sup> Therefore, it is important that the federal government encourage the provinces to act on recommendations within their jurisdictions. Further, Indigenous Committee members encourage future tables like the IAMC to include provincial governments or regulators.

## CAPACITY

**In addition to the specific recommendations throughout this report, the Indigenous Committee members recommend in the strongest terms that the federal government increase capacity support for Indigenous governments in Canada.**

The capacity challenges faced by First Nation and Metis governments are an overarching issue. Limited human resources and financial capacity underlie all areas of advice in this report, contributing to other challenges. It is futile to recommend the federal government open opportunities for Indigenous participation if the government is not also supporting the capacity of Nations to participate meaningfully in those opportunities. It is imperative that Indigenous governments be provided with a level of support that would allow full and meaningful participation during the lifecycle of major energy projects. As well, government and CER employees require increased training that will allow them to effectively collaborate with, and work more effectively with Indigenous Nations.

The following opportunities to increase capacity have been identified by Indigenous Committee members as necessary for the implementation of the recommendations in this report:

- **Access to adequate funding:** Funding must be easily accessible and sufficient to allow Nations to meaningfully participate in government programs. This must include funding for the life cycle of the project for impacted Indigenous Nations to review and comment on the proponent’s submissions to the CER.
- **Adequate time to prepare:** When given an opportunity to participate in or provide input to government and regulatory processes, Indigenous Nations must be provided sufficient time to acquire and gather their resources and organize schedules and staffing, to meaningfully participate in government programs and opportunities.
- **Technical Support:** Tools and training must be provided to increase understanding of regulatory timelines, technical terminology, project applications and filings, and navigating regulatory websites. Support must also include increasing access to technical resources, access to and administration of participant funding, and understanding and co-developing project conditions. This support must be provided throughout all project phases including early engagement, hearing processes, and project lifecycle.

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<sup>1</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

<sup>2</sup> *Grassy Narrows First Nation v Ontario (Natural Resources)*, [2014 SCC 48](#).

- **Project Monitoring:** Capacity support must be provided to increase Indigenous participation in monitoring, including environmental, archaeological, construction, traditional, and cultural monitoring.
- **Operations and Maintenance information:** Information and opportunities for learning must be provided; there is a steep learning curve for many Indigenous Nations in order to be involved in operations and maintenance activities - including commenting on draft conditions related to operations - without the knowledge of how these activities are undertaken in practice.
- **Emergency Management:** Capacity support is required to increase access to training, integration into emergency response systems, and additional protection of cultural and heritage resources.

Related to capacity support for Indigenous governments, the Indigenous Committee members have recommendations to increase the capacity of the federal government. Limited capacity of the federal government and regulator to collaborate and work effectively with Indigenous Nations is a further restriction in achieving the recommendations in this report. Government staff require clearer understandings of Section 35 and Treaty rights in all regards. Specifically, this must entail training for all staff on topics including Section 35 rights, the interpretation and history of Treaties, the Duty to Consult, protection of heritage resources, Indigenous monitoring programs, differences in regional contexts and histories, the distinctions between First Nations and Metis histories, and the consideration and application of Indigenous Knowledge.

Further, government staff require more opportunities to engage directly with Indigenous peoples. This must include access to key contacts within Indigenous Nations, hiring Indigenous staff, advisors, and community liaisons, and developing appropriate alternative dispute resolution mechanisms. The federal government and regulator require a better understanding of important Indigenous perspectives and worldviews including historical and cultural context, documents, and protocols.

## SUMMARY OF RECOMMENDATIONS

The central theme uniting the recommendations in this report is that the federal government and regulator must significantly increase Indigenous participation and involvement in project review, oversight, and benefits. Doing so in a meaningful way will require significant support by the government for increased capacity development among Indigenous Nations.

Providing additional and accessible funding is a necessary part of capacity support, but funding alone is not sufficient to achieve the goal of meaningful Indigenous inclusion in major projects. Achieving meaningful inclusion will require more transparency in the regulatory system, enforcement of the standards set for proponents, and more opportunities opened for benefit sharing with Indigenous Nations. The federal government must also increase support for Indigenous governance and shared decision-making with Indigenous Nations.

Recommendations are provided in the following areas:

- **Emergency preparedness and response:**
  - Improved communication with Indigenous Nations.
  - Increased Indigenous involvement in emergency response.
- **Protection of heritage resources**
  - Stronger regulatory protection for Indigenous heritage resources and sacred sites.
  - Increased involvement of Indigenous Nations in protection of heritage resources.
- **Access to private lands**
  - Additional opportunities for Elders and Knowledge Keepers to perform ceremonies, conduct traditional land use studies, and identify sites of interest along the right of way.

- Use of legislation and regulatory tools to support opportunities for access to the right of way.
- **Economic participation**
  - Increased capacity support for Indigenous Nations to participate in economic and business opportunities related to major projects.
  - Improved oversight of proponents' benchmarks and targets for inclusion of Indigenous employees, contractors, and businesses.
  - Consideration of Indigenous equity positions, revenue sharing, and partnerships in major projects.
- **Indigenous engagement**
  - Improved CER communication and notification with Indigenous Nations, including Metis Provincial Governments, Regions, and Locals, as appropriate.
  - Greater compliance verification of proponents' engagement claims.
- **Future direction**
  - Increased Indigenous oversight and shared decision-making.

In keeping with these recommendations, the federal government needs to move towards a model of shared decision-making with Indigenous nations and should consult with the Nations in regards to these recommendations as a next step.

# BACKGROUND

## LINE 3 INDIGENOUS ADVISORY AND MONITORING COMMITTEE

In November 2016, the Government of Canada announced approval of the Line 3 Replacement Program (L3RP). Construction on the project, which replaces 1070 km of 60-year old pipeline within Alberta, Saskatchewan, and Manitoba, started in the summer of 2017. Along with the approval of the L3RP, the federal government announced funding to support an Indigenous Advisory and Monitoring Committee (IAMC) for the L3RP. The establishment of the committee was a response to calls by Indigenous Nations for a greater role in the monitoring and oversight of pipeline projects.

The Line 3 IAMC was created as a partnership among Indigenous Nations potentially impacted by the project, Natural Resources Canada (representing the Crown), and the NEB (now the Canada Energy Regulator or CER). The Committee is made up of 16 members from Indigenous Nations, one member from Natural Resources Canada (NRCan), and one member from the CER.

## COMMITTEE MANDATE

The Committee's Terms of Reference (TOR) specify a mandate to provide Indigenous oversight to the project and provide advice to the CER and the federal government. While the Indigenous Committee members are appointed to represent the interests of Indigenous Nations, Indigenous Nations may opt-out of participation in the Committee. The Committee does not claim to speak on behalf of the Nations. **In no way will the Committee's activities replace, alter, or diminish the right of individual Indigenous Nations to be consulted and accommodated. The Committee does not replace consultation obligations of the Crown or diminish Enbridge's obligations to Indigenous Nations.**

The Committee has an important opportunity to provide advice to the CER, NRCan, and government as a whole on issues of concern related to the L3RP and Indigenous involvement in major projects. Where advice is for the federal government, the Indigenous Committee members expect that NRCan, as the federal government's representative on the Committee, will take responsibility for a whole-of-government response to the advice. The advice below represents the perspectives of the Indigenous Committee members, informed by the first two years of Committee programs and engagement. The Indigenous Committee members have worked to achieve consensus on the advice it provides but where consensus could not be reached, the alternate recommendations are provided alongside the advice supported by the majority.

The Committee's Terms of Reference, approved by the NRCan and the CER, stipulates that when the Committee provides formal, written advice, the CER and federal government commit to formally respond to that advice as follows:

- A. Agree with and adopt the advice; or,
- B. After engaging with the Committee, adopt the advice with modifications, or reject it, in which case the Regulator or the Government will provide a written explanation as to why the advice was modified or rejected, and whether or how the interests or concerns underlying the advice have been or will be addressed.

## ISSUE 1: EMERGENCY PREPAREDNESS AND RESPONSE

### 1) CONTEXT

One issue of significant importance that has arisen for the Committee is emergency preparation and response. The Terms of Reference Section 9.2 states that, among other things, the Committee will work to identify enhancements to Enbridge's emergency plans and procedures and advocate for Indigenous participation in emergency preparation and response.

Proponents are required to have an emergency management program, as laid out in sections 32-35 of the *National Energy Board Onshore Pipeline Regulations*.<sup>3</sup> Proponents are also required to publish emergency management program information on their website, as per the 2017 NEB Order MO-002-2017.<sup>4</sup>

When recommending the L3RP for approval, the NEB stated that as per requirements, Enbridge "has in place a comprehensive emergency preparedness and response program" that consists of an Emergency Response Plan, a response management system, training and spill response exercises, and spill response resources.<sup>5</sup> Further, they reminded Enbridge of the expectation to "ensure effective emergency management, including planning, training, communication and coordination with first responders, stakeholders and Aboriginal groups", and for Enbridge to continue emergency management discussions with these groups throughout operations.<sup>6</sup>

Relevant project conditions placed on Enbridge are **Conditions 9** and **Condition 35** of the *Section 52 Certificate*. Under **Condition 9**, Enbridge was required to file an Emergency Response Plan (ERP), which was filed confidentially as contractor-specific reports as [A83931](#) and [A92393](#). **Condition 35** outlines that Indigenous Peoples must be involved in emergency-related discussions with Enbridge through participation in emergency response exercises.

To learn more about this topic, the Committee held in-person workshops with the NEB - learning about the regulatory requirements for emergency notifications - and with Enbridge, to learn about their emergency management plans and Indigenous involvement. Further, several Committee members attended a practice emergency deployment exercise in Alberta.

### 2) EXPLAIN THE PROBLEM

The Committee has heard a substantial amount of concern expressed by potentially impacted Indigenous Nations surrounding notification in the case of an emergency, and the communication of emergency response plans that are in place. Nations also expressed significant concern about the adequacy of the plans to address potential risks to the land and waters. Nations are concerned that they do not know how they will be involved in the event of an emergency, beyond observer roles.

As required by Condition 9, Enbridge has filed their emergency response plan; however, these documents remain confidential "as release of the information included in the ERPs could compromise aspects of Enbridge's business and possibly the security of the facilities."<sup>7</sup> This is problematic because in order for Indigenous Nations to be meaningfully engaged in emergency-related discussions, Nations require access to

<sup>3</sup> <https://laws-lois.justice.gc.ca/eng/regulations/SOR-99-294/index.html>

<sup>4</sup> [Filing A81701](#), <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A81701>

<sup>5</sup> *Recommendation Report and Detailed Assessment*, [Filing A76575](#), <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A76575>

<sup>6</sup> *Recommendation Report and Detailed Assessment*, [Filing A76575](#), <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A76575>

<sup>7</sup> [Filing A92393](#), <https://apps.neb-one.gc.ca/REGDOCS/Item/View/3577512>

information regarding Enbridge's ERPs. In addition to the opportunity to review and comment on ERPs, the potentially impacted Nations must also be engaged in discussions around opportunities to be involved in emergency preparedness for the project.

As required by NEB Order MO-002-2017, Enbridge does publish online information about its emergency management program, including fact sheets as well as the Prairie Region “Integrated Contingency Plan” and “Field Emergency Response Plan.”<sup>8</sup> While this information is informative and helpful, it is not specific to Line 3 and the Indigenous Nations that may be impacted in the event of an emergency. The primary references to “Indigenous groups” are within lists of stakeholder groups to be notified, with the exception of a redacted list of Indigenous community lands within three miles of the corridor. This information is insufficient to replace the information filed confidentially in the ERPs.

Indigenous Committee members have argued that without adequate access to Enbridge’s ERPs to confirm which Indigenous Nations have been identified for notification, and a lack of clear, mandated roles within emergency response systems, Indigenous Nations will continue to be under-engaged and uninvolved in emergency discussions, preparation, and response.

### 3) RECOMMENDATIONS OF INDIGENOUS COMMITTEE MEMBERS

With these issues in mind, the following are recommendations from the Indigenous Committee members on the CER’s regulatory requirements for emergency preparation and response. The overarching theme of these recommendations is to support increased Indigenous participation in emergency management. The following recommendations may require changes to the CER’s *Filing Manual*, the *Onshore Pipeline Regulations (OPR)*, best-practice and guidance documents, and/or the way future project conditions are written.

#### **Notification and Communication:**

**1. The CER must provide additional direction and verification to ensure that proponents’ emergency contact lists include all the rights-bearing Nations, with accurate contacts, and that the proponent is providing adequate communication.**

Proponents are responsible for the emergency notification of potentially impacted First Nations and/or Metis Governments. As the federal regulator responsible for ensuring proponents adhere to their regulatory obligations, the CER must set explicit standards for proponents to follow to make sure the proponent is notifying all potentially impacted Nations and have up-to-date contact information. This will provide assurance that proponents will be able to fulfil their obligations to Indigenous Nations.

**2. Proximity to the line must not be the only factor in determining which Indigenous Nations are potentially impacted and therefore contacted and notified.**

Many Nations hunted, gathered, and traded over large traditional territories and were subject to colonial relocation. Because of this, sites of historical or cultural significance may be far from a First Nation’s home reserve or from where Metis live presently. This means that an emergency along a linear project like a pipeline may affect the historical sites and the practice of traditional activities of Indigenous Nations not currently considered in emergency plans.

Indigenous Nations not in proximity to the right of way may still require the same notification and communication as Nations near the line in the event of an emergency. The CER must ensure that their list and the proponent’s list includes all potentially impacted Nations regardless of proximity, and not

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<sup>8</sup> <https://www.enbridge.com/about-us/safety/emergency-management>

delegate that responsibility to the proponent to verify their own list. Canada must validate the list with the potentially impacted Nations and ensure the list is accurate. The Government of Canada should ensure that both the federal government and the proponent use this validated list.

- 3. The CER must require -- through the *Filing Manual*, future project conditions, or other method -- that proponents co-develop individual communications and engagement strategies with all potentially impacted Indigenous Nations or their delegates, including a notification plan related to incidents.**

The co-developed plans must be filed with and reviewed by the CER. In this way, the CER can verify that notification strategies are adequate and meaningfully co-developed. The engagement plans must include the option of capacity support for the Nation provided by the proponent.

- 4. The CER must specifically require, through project conditions or other method, that an Operational Indigenous Engagement Plan include communication and presentations on emergency response plans.**

Proponents must undertake activities to support improved understanding among Nations of emergency management and emergency response plans. This must go beyond the requirement of Enbridge under Condition 21/29 (Operational Consultation Plan for Aboriginal Groups) to include information relating to “safety, security and protection of the environment.”

- 5. The *Filing Manual* section 1.5, which notes that ERPs may be filed confidentially, must note that additional information on emergency response plans needs to be provided to Indigenous Nations.**

While Enbridge has detailed and thorough information on its emergency response program posted online (as per requirements), the contractor-specific ERPs required under Condition 9 are filed confidentially. When confidentiality and proprietary information necessitate that ERPs be filed confidentially, it is important for the CER to note for proponents that additional specific details may need to be provided to potentially impacted Indigenous Nations. This may include specific technical plans and location- or situation-specific information that may be required by Nations as part of their own emergency management and response planning.

- 6. The CER must provide information sessions to impacted Nations on the CER’s role in an emergency, what the regulatory requirements are, and how the CER directs proponents’ emergency response.**

In addition to the communication material the CER has developed on emergency management, the CER must meet with Indigenous Nations to provide information on the emergency preparedness and response system. This will help build trust in the system, as well as to increase the ability of Nations to be involved.

#### **Increased Indigenous Involvement in Emergency Response**

- 7. The CER must require that proponents’ emergency response plans indicate *how* the proponent intends to involve potentially impacted Indigenous Nations in the emergency response programs, beyond providing information on these programs.**

The plans must be filed with and reviewed by the CER. In this way, the CER can verify that plans include appropriate involvement by impacted Indigenous Nations and the necessary support by proponents to ensure Nations have the capacity to participate. The plans must provide clarity about the role and authority of Indigenous Nations in emergency response. An example of involvement could include specifying how Indigenous monitors will be involved and trained in emergency response procedures, or indicating how volunteer firefighters from Indigenous Nations will be incorporated into emergency response training and plans. In addition to involving technical people, there needs to be involvement of Elders, youth, and leadership of Indigenous Nations.

**8. The CER must require that the proponent include Indigenous Knowledge experts as Technical Specialists within their Incident Command System plan.**

There are currently no positions with expertise in Indigenous Knowledge specified in Enbridge's Incident Command System. In the future, the CER must require that proponents include Indigenous Knowledge experts within the Incident Command System, providing clarity on the role they will play and the authority they will have within the Incident Command System.

**9. The CER must require that the proponent support the capacity for increased Indigenous participation by providing or paying for training for emergency response planning and participation in Emergency Operations Centre (EOC), and Incident Command Systems.**

In order for Indigenous Nations to effectively participate in emergency response, they need advance training in Emergency Operations Centre and Incident Command Systems to understand how those systems function and what Indigenous participants can expect. Specified training may help Nations better understand how Indigenous Knowledge can be used in emergency response.

**10. The CER must ensure greater protection for Indigenous sites of significance by ensuring that Traditional Land Use studies, shared at the discretion of Nations, are incorporated into emergency response plans (e.g. in control point mapping) so the sites can be given proper protection during an emergency, while ensuring appropriate confidentiality.**

In the event of a spill, it is important that proponents know the location of cultural sites that could be impacted (shared at the discretion of the Nations, and appropriately protected for confidentiality). Plans must include measures to protect areas or conduct salvage, with oversight by Indigenous Nations and carried out by qualified experts.

**11. The CER must require of the proponent that plans be in place so that, in the event of an emergency, the appropriate emergency personnel engage with Traditional Land Users who can provide information on use sites, such as areas with medicinal plants.**

Plans must be developed with Indigenous Nations to facilitate work with Traditional Land Users in the event of a spill. The plan must include how Indigenous experts should be contacted, what support would be required, how they would provide information, and how the use of that information would be protected. Keeping the information up to date will require strong relationships with Nations.

**12. The CER must require that Indigenous sites of significance that could be impacted in a spill, or any other activity, are surveyed in advance to provide an assessment of baseline condition.**

Significant sites must be surveyed to provide an accurate record of the cultural and vegetative features so that, if impacted in the event of a spill, a determination can be made of measures needed to provide a return to baseline. Indigenous Nations are well positioned to lead on conducting these surveys, working with Indigenous and other experts as needed.

**13. The CER must require that testing and monitoring of water, soil, and vegetation after a release include Traditional Land Users.**

Testing and monitoring after a spill must include Traditional Land Users, in particular, along with others within the local and impacted Indigenous Nations. Indigenous Nations must be involved in developing remediation and monitoring plans and assessing return to baseline condition.

## ISSUE 2: HERITAGE RESOURCES AND CHANCE FIND PROTOCOLS

### 1) CONTEXT

Heritage resources are cultural, historic, archaeological, and paleontological resources, and may include sacred sites, burial grounds, tipi rings, artifacts, medicine wheels, historical communities and battle sites, and other sites and items of cultural significance. To learn more about this topic, the subcommittee reviewed Enbridge's *Heritage Resource Discovery Contingency Plan* to examine potential gaps in the way Enbridge responds to chance finds and implements its protocols. Further, the subcommittee reviewed the CER's guidance in the *Filing Manual* and any specific project conditions on heritage resources.

Heritage resources are governed under provincial regulations. The CER, as federal regulator, also has requirements related to heritage resources. When proponents apply to the CER for project approval, they must provide an assessment of the potential impacts on heritage resources. The *Filing Manual* requires proponents to:

1. Describe any known heritage resources in the study area;
2. Determine the potential for any undiscovered heritage resources in the study area;
3. Describe what contingency plans and field measures would be undertaken if a heritage resource is discovered during construction; and
4. Provide copies of correspondence from provincial authorities responsible for heritage resources with comments on any heritage resource assessment and proposed mitigation measures.

Further, the NEB imposed conditions on Enbridge specific to heritage resources. **Condition 18** of Certificate OC-063 requires that Enbridge confirm it has provincial permits and will follow provincial conditions, including through the incorporation of provincial mitigation measures into its Environmental Protection Plan (EPP).

Where there is potential for discovery of heritage resources during a project, a heritage resources contingency plan must be submitted to the CER within the EPP. Enbridge's EPP contains a *Heritage Resource Discovery Contingency Plan*, which includes the following mitigation measures and steps for discovery before or during construction:

1. Avoid by amending the development footprint (fences, flagging, etc.),
2. Collection of artifacts, map, photographic documentation, complete Archaeological Site Inventory,
3. Qualified archaeologist or paleontologist to monitor the salvage of topsoil, grading and/or trenching operations,
4. Install geotextile and mat(s) to protect the site, or
5. Excavation to retrieve scientific information and establish an adequate record of the site.

<b>Discovery prior to construction:</b>
1. Carry out an assessment to determine the effects on the identified heritage resources.
2. Prepare and submit to the respective provincial Minister a report containing the assessment of the effects of the proposed operation or activity referred to above.
3. Enbridge will provide notification to affected Aboriginal groups following any significant archaeological or paleontological discoveries that warrant mitigation excavations.
4. Conduct all salvage, preservation or protective measures, or take any other action which the Minister considers necessary.

<b>If discovered during construction:</b>	<b>If human remains discovered during construction:</b>
1. Suspend work immediately;	1. Suspend work immediately;
2. Notify appropriate personnel;	2. Notify appropriate personnel, police, and

	regulatory authority;
3. Notify “affected Aboriginal groups following any significant archaeological or paleontological discoveries that warrant mitigation excavations”;	3. Notify “affected Aboriginal groups following any significant archaeological or paleontological discoveries that warrant mitigation excavations”;
4. The heritage resource specialist will develop an appropriate mitigation plan in consultation with Enbridge Environmental Inspection, Environment, Construction Management and the appropriate provincial authority;	4. Assign employees to stand watch to protect against disturbance or high public visibility;
Mitigation may include: a. Site avoidance b. Systematic data recovery c. Surveillance/monitoring.	5. Stake/flag to prevent disturbance;
	6. Cover any exposed bones;
	7. Store excavated fill at secure location for examination;
	8. Work stopped until archaeological and forensic studies complete and clearance has been granted.

## 2) EXPLAIN THE PROBLEM

The Indigenous Committee members and impacted Indigenous Nations have expressed dissatisfaction regarding the protection for Indigenous heritage resources during major project development. Specific incidents on the Line 3 Replacement Program have highlighted policy gaps and regulatory concerns regarding the protections in place for heritage resources. Nations have also expressed concern about their ability to be engaged and included in Heritage Resource Planning to allow for appropriate ceremonies and protection of the sites.

Through its programs and engagement events, the Committee has clearly heard the need to increase protection of Indigenous heritage resources and sacred sites. For many Indigenous Nations, all of their historic sites remain sacred and must be protected, but are not treated with the same reverence as Western religious sites. Further, heritage resources are valuable and important pieces of history that tell the story of Indigenous use of the land which colonialism has tried to erase. For many Nations, there are important ceremonies and protocols that must be carried out according to traditions and spiritual protocols before, during, and/or after construction.

Two incidents provide examples of the importance of appropriate inclusion in Heritage Resource Planning. The first occurred during construction on Line 3 in the summer of 2018, at which time there was a possible discovery of a heritage resource. The discovery was determined by experts brought in not to be a heritage resource, but the experience demonstrated how the existing policies excluded Indigenous Nations, as local Elders and community-based archeologists were not included in making that determination. Another example involved a Blackfoot tipi ring which was found in Saskatchewan and mapped and moved after consultation with a local First Nation, rather than consultation with the Blackfoot Confederacy about the proper way to mitigate one of their sites. These events demonstrate gaps in the proponent’s policy and approach, which shows limitations in the CER’s regulatory requirements. The lack of inclusion leads to diminished trust in the proponent and regulator among Indigenous Nations, and blocks the ability to ensure the proper protocols and ceremonies are enacted.

The provincial heritage/historical resources branches have copies of archeological reports for each project. The information is not readily shared, in order to ensure its protection, but the archeological sites are recorded in the respective branch’s database (which does not include Traditional Land Use information that is not archeological). Committee members have noted that the provincial heritage/historical resources

branches take an extremely long time to process information and requests for information, and are not forthcoming with Indigenous Nations about the archeological reports.

### 3) RECOMMENDATIONS OF INDIGENOUS COMMITTEE MEMBERS

**The following recommendations are provided to the CER by the Indigenous Committee members.**

Although several recommendations reference specific language in Enbridge's *Heritage Resource Discovery Contingency Plan*, the CER sets the requirements in the *Filing Manual* and project conditions guiding this policy and then approves the policy when filed as part of the EPP. Therefore, the recommendations provided below should inform changes to the *Filing Manual* and future conditions.

**14. Notification of all potentially impacted Indigenous Nations must be required for all heritage resources identified prior to or during construction, with updates and findings disclosed to these Nations throughout the process.**

The policy states that notification will take place if a resource "warrants mitigation excavation." Though excavation is a critical event and special attention should be paid to notification prior to it, if any previously unknown artifacts or sites of significance are discovered before or during construction, the Indigenous Nation(s) connected to it must be properly notified.

**15. A decolonial approach must be employed to determine the significance of archaeological or paleontological discoveries.**

What constitutes an archeological, paleontological, or historical resource is set out in provincial statute, and how all resources are to be handled if encountered are subject to provincial legislation or regulation. Enbridge's policy states that notification of Indigenous Nations will occur if "significant" discoveries are made; however the decision of which artifacts and sites are "significant" must not be taken without consultation with the connected Nation(s). A decolonial approach entails including potentially impacted Indigenous Nations in shared decision-making on the determination of significance and protection of heritage resources.

**16. The federal government and CER must take an active role in determining the "affected Aboriginal groups," keeping in mind that the site may be a Metis Nation site or from a First Nation with reserve land far from the site.**

The policy states that Enbridge will notify "affected Aboriginal groups." Regulatory oversight must be focused on ensuring all Indigenous Nations potentially connected with the resource are provided adequate notification. The Crown must ensure the consultation and accommodation obligations are fulfilled appropriately. This includes determining the proper Nation to contact when there is a chance find regardless of how close or far that Nation is from the find, including in another province.

**17. The CER must require that the "heritage resource specialist" be a team that includes Elders and/or Knowledge Keepers from the impacted Nation(s).**

The Indigenous representatives that would be part of the heritage resource team need to be involved in the decisions around mitigation, including whether a site can be moved, or if it must be avoided. Indigenous participants need to have the authority and support to manage heritage resources from their own world view. Participation by Indigenous Peoples, including Elders, should be supported financially by the proponent.

**18. The CER must require that heritage resource plans specifically include 1) Metis identified Knowledge Keepers/specialists and 2) First Nation Elders to perform ceremonies as they see fit, to ensure the heritage resource is appropriately managed.**

**19. The CER must ensure that the impacted Nations' Knowledge Keepers and/or archeologists are provided the opportunity to conduct pre-construction tours of the right of way, to help identify heritage resources that Western science may miss.**

As a condition of the proponent's application, the proponent shall secure access for Indigenous monitors to access the land. The stipulation must include the ability for local Nations to complete pre-construction, construction, and post-construction monitoring. If any resources are identified during this monitoring, the First Nation and Metis monitors shall have the authority to manage the chance find from their world view.

**20. The CER must require proponents to provide better training for construction crews on what to look for in order to identify heritage sites and artifacts before site disturbance and once disturbance starts.**

Involving Indigenous monitors from potentially impacted Indigenous Nations in providing this training will help ensure that construction crews have the appropriate information in advance of going on-site.

**21. The CER must commit that if Indigenous Monitors identify a potential resource, an immediate stop work is ordered while an investigation is undertaken.**

Indigenous Committee members also noted several key considerations should be given as it pertains to Indigenous monitors, such as:

- a. Indigenous monitors shall meet with local Nations and communicate directly with each Nation, as opposed to solely posting reports online.
- b. Clear communication shall be made available about Indigenous monitors, their authority, and their independence from the proponent.
- c. Requirements shall be put in place that Indigenous monitors are qualified, trained, spiritual, connected with the land, world-view oriented, and independent.
- d. The CER shall provide access to a mediator if there are disputes between an Indigenous monitor and the proponent and/or CER.

**22. The federal government must provide appropriate financial resources for Indigenous Nations to engage their own professionals to participate in site visits and provide advice on heritage sites, for the lifecycle of a project.**

Nations require access to experts who report directly to the Nation, such as cultural monitors, anthropologists, and/or archeologists to accompany Elders. Elders know the cultural standard for ceremony but professional expertise is needed to indicate whether a heritage standard has been met.

**23. The CER must require that for federally regulated projects proponents follow best practices above and beyond provincial policies.**

Each province has different regulations protecting heritage resources, which means discoveries are often treated differently in different provinces. To address this, the CER must require consistency; through the *Filing Manual* and additional guidance, the CER shall require adherence to best practices above and beyond provincial requirements which meet the needs of potentially impact Nations. Best practices must include facilitated dialogue between Nations and private land owners to share information on the importance of the site when finds are on private land.

**24. The federal government must co-develop federal legislation or policy on heritage resources.**

Canada is one of the few large nations without federal heritage policy or legislation protecting archeological materials. A federal policy or law will ensure greater consistency and more completely address heritage resources, including sacred sites that do not have an archeological aspect. The federal government has jurisdiction over matters related to Indigenous Peoples and rights and this must extend to include heritage resources, with the policy co-developed with Indigenous Nations. It must include

funding and staff for enforcement, beyond the level provinces currently have.

## ISSUE 3: ACCESS TO PRIVATE LANDS

### 1) CONTEXT

As the Committee has built the Indigenous Monitoring program and engaged with Indigenous Nations over the last 18 months, Indigenous Committee members have made it clear that the issue of Indigenous access to cultural and historical sites on privately held lands is critically important. During regional information sharing sessions in Saskatchewan, Alberta, and Manitoba, the issue of access to private lands came up in large group discussions. Impacted Nations expressed their concerns over the current lack of access for Indigenous Nations. Further, the Advice to Government subcommittee have held in-person meetings where this subject has been raised with the CER and Enbridge.

The *Canadian Energy Regulator Act* (“the CER Act”), which came into force August 28, 2019, includes additional powers for Inspection Officers to bring experts onto private lands. Subsection 103(1) of the CER Act provides for CER Inspection Officers to enter any place where the CER Act applies, such as lands (including private land) crossed by CER-regulated pipelines. In addition, Subsection 103(5) of the CER Act enables Inspection Officers to have other persons they believe necessary to help them perform their duties and functions accompany them on CER inspections. This may include Indigenous Monitors, staff in training, or others with specific expertise on matters relevant to inspection.

In order to construct and operate a pipeline on private tracts of land, proponents must either acquire the land through purchase or have easement agreements that allow them access and prescribe the terms of access. Currently, no regulations exist requiring proponents to secure access for external parties such as representatives of impacted Indigenous Nations. However, Section 333 of the CER Act now provides the ability for the CER to make rules that apply to the agreements between proponents and private landowners. The CER may create regulations or orders, with the approval of the Governor in Council, that govern the acquisition, lease, or taking of lands. Subsection 333(d) specifies that the CER can prescribe additional terms that must be included in a land acquisition or lease agreement.

Additional details and context related to the issue of private lands and heritage resources and chance finds are detailed in Issue 2.

### 2) EXPLAIN THE PROBLEM

The Committee has been the recipient of, or copied on, a number of written correspondences from the Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA) to Enbridge or NEB. These letters have expressed landowner concern over the access of Indigenous Monitors to the pipeline’s right of way, when it is situated on private land. The concerns raised question the legislation or authority that provides for entry of IAMC Monitors onto private properties. The introduction of the CER Act addresses this concern by enshrining in law the ability of the CER to bring Indigenous Monitors on the right of way. While this solves part of the concern, it does not address the full scope of the problem identified by Indigenous Committee members.

Concerns have been raised through the Monitoring program about Elders’ and Knowledge Keepers’ lack of legal access to privately held lands, which can inhibit the ability to perform ceremonies and ensure the appropriate protection of cultural and historical sites. Further, through Monitoring Program inspections, Monitors have stated that Enbridge’s mitigation measures for chance finds are not adequate, as Enbridge is unable to guarantee access to the right of way for community members, Knowledge Keepers, or Elders in the event of a chance find. Elders have emphasized the importance of adequate mitigation, which includes

allowing Elders access to the site to perform ceremonies. There are many sacred sites along the right of way.

### 3) RECOMMENDATIONS OF INDIGENOUS COMMITTEE MEMBERS

**25. CER Inspection Officers must use Section 103 of the CER Act to bring specialists from the impacted Nations on the right of way as needed.**

The CER Act allows Inspection Officers to bring any other person they believe is necessary to perform their duties. This must not be interpreted in a limited way or only applied by bringing IAMC Monitors to accompany Inspection Officers. Instead, this must be implemented by bringing representatives from all potentially impacted Nations.

**26. The CER must pursue regulations under Section 333 of the CER Act to require that access agreements include the ability for proponents to bring representatives of the impacted Nations on the right of way.**

The CER must use the authority granted in the CER Act to explore the creation of regulations regarding the agreements between proponents and landowners that would allow proponents to bring members of Indigenous Nations onto private lands if there is an identified cultural site or sites of significance on the land. The regulations must require that access to private land in the right of way be allowed as part of easement agreements for the purpose of studies, monitoring (pre-, during, and post-construction), ceremony, and identifying chance finds.

**27. The federal government must pursue co-development of federal access legislation.**

The federal government must work with Indigenous Nations to co-develop legislation that would allow proponents to bring members of Indigenous Nations onto private lands if there is a known cultural site on the land. Such legislation should encourage Provinces to participate. It would provide Indigenous Nations with clarity on whether sites are being adequately mitigated, build partnerships, and ensure that culturally and historically important sites are being protected.

**28. The federal government and the CER must facilitate dialogue and awareness between the government, CER, and Indigenous Nations on the issue of private land.**

The federal government and CER must facilitate dialogues with First Nations and the Metis Nation on perspectives and options on the issue of access to private land as it relates to Metis Rights, and Aboriginal and Treaty Rights. Examples include Section 35, reference to 'depth of a plow' in Treaties, the history of displacement, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

**29. The CER must require that proponent access agreements support Traditional Land Use and Traditional Ecological Knowledge Studies.**

Indigenous Committee members suggest the creation of an agreement between the landowner and proponent that mandates the proponent to support Traditional Land Use (TLU) and Traditional Ecological Knowledge (TEK) studies in areas where projects cross through private land.

## ISSUE 4: ECONOMIC BENEFIT AND INCLUSION

### 1) CONTEXT

Indigenous economic development is an integral component of reconciliation, yet despite the wealth created for private industry within traditional Indigenous territories, Indigenous communities continue to have lower socioeconomic outcomes than other Canadians. Nationally, Indigenous people are overrepresented in low paying jobs, have higher unemployment rates, and have lower educational attainment than their non-Indigenous counterparts. Whereas, according to the 2016 Census, the non-Indigenous employment rate was 60.5%, for Indigenous Peoples it was 52.1%. Across groups, the employment rate for First Nations living on reserves was the lowest at 36.3%. Similarly, while in 2015 the median income for non-Indigenous people was \$34,604, for Indigenous people it was \$25,526 and for First Nations living on reserves it was \$16,907<sup>9</sup>.

Indigenous Peoples should benefit from the wealth created by major projects within their traditional territories. Indigenous Committee members have made it clear that capacity funding and training are needed to support access to projects and be able to participate more fully in this wealth creation. More oversight is needed to ensure fair job competition, contract opportunities, and business development. Proponents are required in Table A-3 in the CER's *Filing Manual* to include plans to encourage Indigenous employment, procurement and contracting, as well as provide training to support Aboriginal employment, along with setting outcome targets.

Currently, to get agreement from potentially impacted Nations, proponents often sign confidential benefit arrangements such as Impact Benefit Agreements (IBAs) or Mutual Benefit Agreements (MBAs). These agreements are not regulated or consistent among projects or among Nations. Proponents are also required to provide a summary of the employment, training, and business commitments made to Indigenous Nations in benefit arrangements but concerns have been raised about the fulfilment of such commitments. Further, proponents are required to list direct government revenues expected to be generated by the project; however there is no similar requirement to provide information on revenue sharing with Indigenous governments.

### 2) EXPLAIN THE PROBLEM

Indigenous Nations have expressed the need for additional measures to support economic participation in major projects, including direct economic benefits as well as employment opportunities. Though proponents set employment, training, and procurement plans with targets for Indigenous participation and benefit, the Indigenous Committee members have observed a number of concerns with, and drawbacks to, how plans are implemented and outcomes are, or are not, achieved. One issue is that procurement targets are set by the proponent with no input from the impacted Indigenous Nations. Another concern surrounds the hiring of Indigenous Peoples from distant regions rather than from impacted Nations, potentially due to limited training within impacted Nations. Once targets are met, the proponent may stop seeking out Indigenous workers. Further, though the proponent makes the agreements, it is the mainline contractors and subcontractors who fulfill the targets, and Indigenous Nations have noted problems with ensuring they live up to the proponent's commitments.

Indigenous Committee members have also heard concerns expressed regarding the ability of Nations to take advantage of economic, business, and employment opportunities. Participation in these opportunities

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<sup>9</sup> *The Indigenous Economic Progress Report 2019*. The National Indigenous Economic Development Board

requires a certain level of capacity including, for example, appropriate training, ability to submit bids, etc. Concerns have arisen when members of impacted Nations were not able to participate because they did not have time or resources to receive the appropriate training or join a union. Furthermore, most jobs available are short-term opportunities without long-term employment benefits for Nations.

Several Indigenous Committee members have noted that anything below the depth of the plow was not signed over to the Crown during Treaty negotiations and signing. Additionally, the Metis Nation has established harvesting rights in the provinces and continues to assert their section 35 rights within each province. As a result, it is imperative that Indigenous Nations benefit from the resources found in and crossing through their traditional territories.

### 3) RECOMMENDATIONS OF INDIGENOUS COMMITTEE MEMBERS

#### **30. The federal government must allocate funding to support economic participation.**

The federal government must have a program with funding in place for each project. Unlike the Economic Pathways Partnership for the L3RP, this program must have a new pot of funding, with resources and staff that can work with the Metis Nation and First Nations to support capacity development, training, mentorship, and business development. This must be available for any major project that is subject to approval by the Governor in Council and shall include a focus on training for youth that will result in long-term benefits. Access to resources must include capacity funding as well as support for the application process.

#### **31. The federal government and CER must ensure increased opportunities for training to support participation, including a focus on youth and long-term employment.**

Indigenous Nations need capacity to participate in economic activity and receive benefits from that activity. This means having access to projects and being able to compete for jobs. It also means training enough individuals at the Nation so they have the right certificates and skills. Nations must be entitled to capacity and training programs to help increase their eligibility for employment and contracting opportunities. This must include information on the requirements and standards that need to be met to qualify for participation. Better notification of opportunities is critical, so Indigenous Nations can prepare.

#### **32. The CER must set increased employment and procurement targets for Metis and First Nations, with opportunities for Metis and First Nations to co-develop socioeconomic plans with the proponent.**

To ensure benefits accrue to impacted Nations, employment and procurement targets must be filled first from members of Nations on whose traditional territory the project is being built. There must be specific targets for Metis and for First Nations employment and procurement for all major projects.

#### **33. The CER must verify and validate the proponent's reported employment and procurement numbers.**

The proponent provides labour, engagement, procurement, and revenue numbers to the regulator in a report; however the regulator does not have a mechanism to verify those numbers. The CER must take an active role in validating the claims, quantifying outcomes, and verifying what the proponent is saying, with subsequent penalties if the targets are unfulfilled, or if the information is inaccurate. This must include increased oversight and enforcement of commitments from the proponent that are enacted by mainline- and sub-contractors.

#### **34. The CER must explicitly require, through project conditions or other enforceable mechanisms, that proponents fulfill all their commitments to Indigenous Nations.**

The CER must provide a mechanism that gives Indigenous Nations a recourse in the event that commitments by the proponent are not being fulfilled. Enbridge is required through Condition 14 of

Certificate OC-063 to file and update a Commitment Tracking Table that lists and provides updates on all commitments made in a proponent's application or related submissions; however, this is insufficient. The CER must move towards explicitly requiring that proponents implement the commitments made in the application as well as during and after the hearing, engagement, and consultation processes. Currently, there is not an accessible process for a Nation to seek a remedy if an agreement is put in place between a Nation and proponent but is not fulfilled. Nations need to be able to hold the proponent accountable for their actions, pre- and post-construction.

**35. The federal government must work toward a framework that supports discussion with Indigenous Nations on economic participation in major projects through mechanisms such as equity stakes, revenue sharing, Indigenous resource tax, royalty formulas, or others.**

The federal government must develop a framework to support discussions on revenue sharing/royalty formulas/equity/etc. in a major project, including targets. Until a national framework is in place, discussions on equity should be a mandated part of major projects early in the planning process.

## ISSUE 5: COMMUNICATION AND ENGAGEMENT

### 1) CONTEXT

The CER has a critical role in communicating with and engaging Indigenous Peoples, as well as setting the requirements for proponent engagement and communication. Indigenous Committee members bring forward two primary concerns pertaining to CER communication and engagement: 1) the regulator's engagement and communication with Indigenous Peoples, and 2) expectations of proponents set through the *Filing Manual* and through project conditions.

#### CER Engagement Requirements:

The CER initiates their consultation with Indigenous Peoples when they receive a Project Description from the proponent; this usually comes about 3 months before an application is filed. The CER's *Early Engagement Guide* applies to relevant projects. In addition to the early engagement phase, the CER also communicates information and engages with Indigenous communities on an ongoing basis. Further, Section 74 of the CER Act requires the CER to have a process to appropriately engage with Indigenous Peoples and organizations during public hearings. Section 75 of the CER Act requires the CER to establish a participant funding program to support this Indigenous participation in hearings.

#### Engagement Requirements of Proponents:

The CER provides filing guidance to proponents in the *Filing Manual*. Due to changes in the CER Act, the *Filing Manual* will be receiving updates and is currently accompanied by Interim Guidance to address the changes in the new legislation, including a CER *Early Engagement Guide*. This guide provides greater detail on the steps and timing of the early engagement phase than what is currently found in the *Filing Manual*. Early engagement is intended to help identify and address issues, foster early discussions between the proponent, Indigenous Nations, and stakeholders, and assist in making the review process more focused and efficient. The CER has outlined its expectations regarding the early engagement that occurs prior to the filing of an application.

When a proponent submits an application to the CER for a project, they are expected to include an Engagement Program that must demonstrate a systematic, comprehensive, and proactive approach for engagement. The Engagement Program must include a specific Indigenous engagement policy. The application must also include an overview of the company-wide Engagement Program, the project-specific engagement activities, and either a description of the *outcomes* of the engagement activities, or the circumstances and justification for not undertaking engagement activities.

To learn about CER engagement requirements, the Advice to Government and CER Subcommittee met with the CER for an in-person workshop, focused on CER's role in incident and emergency notifications and early engagement with Indigenous Nations. The Committee learned about the existing regulations and the upcoming changes that the CER will implement regarding early engagement. During information sessions, the Committee also learned about concerns held by Indigenous participants around engagement.

### 2) EXPLAIN THE PROBLEM

Committee members and Nations have expressed concerns about the form and content of communication from the CER, particularly around incidents that occur on the line and the extent to which the appropriate First Nations bands and/or Metis Locals, Regions, and Provincial Governments are communicated with. It is

interpreted as a lack of communication and trust between the CER and potentially impacted Nations.

In the past, the NEB used the term “consultation” for outreach and involvement activities that do not compose part of the Crown’s Duty to Consult. The updated guidance addresses this problem by instead using the term “engagement” to avoid misunderstandings and artificially raised expectations. Further discussion and recommendations around consultation can be found in Section 6: Bill C-69, Policy under the CER Act, and Future Direction.

The new early engagement guidance is intended to support improved engagement by providing greater detail around expectations. Early engagement was already required; however, Nations have been clear that the implementation has been inadequate. Indigenous Committee members have the following concerns around engagement with impacted Nations:

- **Insufficient timeline:** Indigenous communities need to be engaged and consulted early in the process to have the opportunity to influence project design. The current Early Engagement timeframe does not give Indigenous communities enough time to gather resources, develop capacity, consult leadership, and undertake necessary steps (e.g. TLU study) to provide vigorous feedback to the applicant.
- **Participant Funding not sufficient:** the Participant Funding Program offered by the CER does not provide enough funds to allow many Indigenous communities to meaningfully engage within the given time period.
- **Capacity to engage:** many Nations do not have the prerequisite capacity (e.g. resources, technical expertise, training) to engage in the CER or proponent’s Early Engagement efforts. Additional funds and time are needed to ensure that Indigenous Nations have the capacity to meaningfully engage.
- **Intimidating processes:** some processes, such as the CER hearings, can be intimidating and reduce accessibility to certain participants, such as Elders.
- **Responsibility & accountability:** there is a lack of clarity and accountability regarding who (e.g. CER, proponent, Crown) is responsible for what when it comes to the consultation and engagement process.
- **Government of Canada lens:** many engagement activities and programs operate through a Government of Canada lens, with Government of Canada processes. These do not always align with First Nations or Metis protocols and cultural views.
- **Collaboration:** there are opportunities for more collaboration and co-development between Indigenous Nations, the CER, and proponents (e.g. opportunity for co-development of conditions).
- **Enforcement policy:** there are opportunities to better engage Indigenous Nations regarding enforcement policies and compliance monitoring (e.g. as it relates to cultural sites and chance finds and how they are treated).

### 3) RECOMMENDATIONS OF INDIGENOUS COMMITTEE MEMBERS

#### Engagement and Communication Activities of the CER

#### **36. The CER must improve its use of accessible language, including the provision of services in Indigenous languages as required.**

The CER needs to do a better job of incorporating plain, accessible language. Existing documentation is often full of formal and technical terminology, which reduces accessibility. Many Indigenous Elders and Traditional Knowledge Keepers cannot relate to the formal and technical terminology used. Further, the CER must have translation and interpreters available in Indigenous languages upon request. At the same time, it is recognized that formal and technical terminology can be useful to understanding the intricacies of pipeline regulation; therefore the Indigenous Committee members recommend that the CER offers education opportunities for Indigenous Peoples to learn relevant terminology.

**37. The CER must improve the accessibility of its website and other communication tools.**

The CER must provide an accessible, and easy-to-navigate Indigenous “portal” for land managers and staff for project updates, current status, plain language summaries, relevant facts, and bulletins of activities, filings, information, etc. that might be useful to or have impact on Indigenous Nations in relation to a project.

**38. The CER must significantly increase their presence in Indigenous communities.**

The CER must be more visible, present, and available to Indigenous Nations and leadership. Staff at the CER must frequently visit impacted First Nation and the Metis Nation to seek their perspectives, provide information, and find out if there are any outstanding concerns. This must be done in the context of individual protocols and agreements with Nations.

**39. The CER must verify proponents’ claims regarding the depth and adequacy of engagement by seeking the Nation’s perspectives on the engagement and follow through.**

Proponents submit engagement reports, but this information is not validated by Indigenous Nations. Indigenous Committee members strongly advocate that the CER must formally validate this information with the Nations. Engagement reporting by proponents must be more transparent to ensure Nations can verify what the proponent is claiming (e.g. it is insufficient to list “various” Nations when reporting on engagement activities, and instead a distinctions-based approach should be taken to define which Nation(s) has been engaged).

**40. The CER must require, as a precondition of project approval, that proponents demonstrate significant and meaningful engagement with impacted Indigenous Nations.**

Currently, engagement is ‘voluntary’, in that there is no specific result required. Engagement leads are not Enbridge decision makers, which makes the engagement superficial. Right now, the proponent is required to engage but not required to meet any criteria or standard within the engagement. Early engagement must be done with the appropriate First Nation(s) and/or Metis Governments.

**41. The CER must conduct more consultation with potentially impacted Indigenous Nations during development of conditions.**

Increased engagement must focus in particular on drafting of conditions and working with Indigenous Nations to co-draft conditions. Efforts are required to demonstrate the link between the concern raised, the appropriate remedy, and the condition.

**42. The CER must do a better job at communicating who is responsible for communication at what points in an incident lifecycle.**

There is a lack of trust from Indigenous Nations regarding what is and what is not being reported. Further, there are concerns regarding who is responsible for communicating at various levels and stages of incidents and emergencies. To increase trust and transparency, the CER must increase outreach, using clear and accessible language, to Indigenous Nations about these contacts and processes.

**43. The CER must work towards making the hearing process more accessible to Elders and Knowledge Keepers, including assuring them that their intellectual property will be protected.**

The hearing process can be very intimidating for Elders and Knowledge Keepers, who feel they are being interrogated in a court-like setting. Participants must be assured that their intellectual property will be kept safe.

**Support for Engagement**

**44. The federal government and CER must provide increased funding and capacity support.**

Indigenous Nations require increased funding and capacity support for participation in decision-making processes. Funding needs to be 'user-friendly' so that it is easy to apply for and administer. Funding must also be appropriate for the activity in question.

**45. The federal government and CER must provide more technical support to Nations.**

Training to build technical capacity will make consultation and engagement more meaningful and effective. The aim would be to build capacity of lands managers and lands and resources staff to provide access to basic level training on the CER and the regulatory framework, regulatory filings, reclamation, monitoring, and other topics. This would support inclusion and capacity building and also individual employability and business capacity.

**Engagement and Communication Requirements of Proponents**

**46. The CER must require that proponents co-develop individual communications strategies with all potentially impacted Nations or their delegates.**

The filing guidance for proponents related to engagement states that early engagement is an opportunity to develop a collaborative approach that may involve field studies, site visits, etc.; however this must be specifically required to be offered to Indigenous Nations. Further, communications strategies must be jointly developed with each impacted Nation to allow meaningful opportunities for engagement and communication. This must include having the appropriate contacts for each Nation.

**47. The CER must specify that proponents are expected to provide communication material in appropriate Indigenous languages, as required.**

The filing guidance states proponents are expected to consider distinct language needs of potentially affected persons and/or communities; however it only mentions English and French.

**48. The CER must encourage more responsibility by proponents who oversee mainline and sub-contractors', to ensure they adhere to their engagement responsibilities.**

There have been issues with contractors in the past where there has been no meaningful discussion about the project, no real involvement, and simply an obligation to meet with Nations without any commitment to the original understanding and commitment from the proponent.

**49. The CER must require the framework and principles for operational engagement as part of the proponent's initial application.**

Based on the experience of Conditions 21/29 (Operational Consultation Plan for Aboriginal Groups) imposed on Enbridge for the L3RP, the Indigenous Committee members recommend that approval for the framework and principles for operational engagement be required as part of project approval. This will require that the proponent's early engagement plan includes information on operations and maintenance activities, and provides Indigenous Nations additional input into the plan's development. Further, having this as part of the project application will allow the CER to write more specific conditions with requirements as part of the operational engagement plan.

### 1) CONTEXT

On June 21, 2019 the Government of Canada passed Bill C-69, which enacts and amends several acts, including the *Impact Assessment Act*, the *Canadian Energy Regulator Act*, and the *Navigation Protection Act*. These Acts created the Impact Assessment Agency (IAA or “Agency”) to replace the Canadian Environmental Assessment Agency as well as the Canada Energy Regulator (CER) to replace the NEB. The new legislation governing the CER impacts the way the government, regulator, and proponents engage with Indigenous Nations regarding resource development projects.

With the coming into force of the CER on August 28, 2019, there are new or updated regulations and policies underway, and an unprecedented opportunity for the CER to make changes to how it operates and involves Indigenous Knowledge and perspectives. Many regulations and policies to implement the Bill still need to be developed and refined, this creates an opportunity for greater Indigenous participation and inclusive engagement processes.

#### Crown Consultation

Bill C-69 sets up a "Whole of Government" approach to Crown consultation. Under the new laws, the Impact Assessment Agency is now the Crown Consultation Lead on behalf of all of the federal government and is the one-window for Indigenous Nations and groups participating in the impact assessment. This entails coordinating government participation in consultations and maintaining the Crown Consultation record during the impact assessment. For designated projects regulated by the Canada Energy Regulator, the CER and the IAA will collaborate on consultation during the impact assessment process. Once the impact assessment decision has been made, the Crown Consultation Lead function will transfer to the CER. This consultation is to be guided by the principle of the honour of the Crown, and to further the objective of reconciliation with Indigenous peoples.<sup>10,11</sup>

#### Indigenous Advisory Committee

Under Bill C-69, the *Canadian Energy Regulator Act* and *Impact Assessment Acts* were enacted. Both required the creation of an Indigenous Advisory Committee, with membership representing First Nations, Inuit, and Metis interests. The Impact Assessment Agency’s Indigenous Advisory Committee has been established, this committee provides expert advice and participates in the development of policy and guidance for the proposed new impact assessment system.<sup>12</sup> The CER will also be setting up an Indigenous Advisory Committee to enhance Indigenous involvement in energy projects and lifecycle oversight.

#### The IAMC’s Engagement with Bill C-69

To learn about the CER, in March 2018 the Committee contracted a third party to provide an analysis for the Committee on the proposed changes to Canada’s environmental legislation in Bills C-69 and C-68. The Committee was invited to present a submission to the House of Commons Standing Committee on

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<sup>10</sup> <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html>

<sup>11</sup> [https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-policy-indigenous-participation-ia.html#\\_Toc17465767](https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-policy-indigenous-participation-ia.html#_Toc17465767)

<sup>12</sup> <https://www.canada.ca/en/environmental-assessment-agency/advisory/advisory-groups/indigenous-advisory-committee/iac-membership.html>

Environment and Sustainable Development considering the bills, but decided not to put forward a submission in order to ensure that the IAMC was not perceived as being used by the federal government to fulfill the Duty to Consult (since the IAMC is not a rights-holder). To continue learning about the CER, in October 2018 the Advice to Government and CER Subcommittee held an in-person meeting with the NEB Modernization team to remain informed about the content and timelines of Bill C-69 and future opportunities to provide input and advice into the development of regulations and policies under the CER Act.

Additionally, in 2018-19 the Committee held four regional information sharing events in Manitoba, Alberta, and Saskatchewan. At each session, participants heard from federal departments on the proposed changes to impact assessment, the NEB, and to the *Fisheries Act*. Through these events, the Committee helped facilitate access to relevant departments (including Department of Fisheries and Oceans, Natural Resources Canada, the National Energy Board, and Transport Canada). This was intended to facilitate information exchange between impacted Nations, the CER, and the federal government, and to build capacity. These events did not constitute consultation.

The Federation of Sovereign Indigenous Nations (FSIN) passed a motion on May 23, 2019 directing the Government of Canada not to use the IAMC to fulfil the Duty to Consult with Indigenous Nations. This motion is consistent with the Committee’s approved Terms of Reference.

## 2) EXPLAIN THE PROBLEM

Indigenous Committee members believe there is an opportunity to apply their learnings to the implementation of policies and regulations that support greater Indigenous participation and engagement under the *Canadian Energy Regulator Act* and the *Impact Assessment Act*. The experience of participating in the Line 3 Indigenous Advisory and Monitoring Committee has also provided valuable insights for suggestions—both for similar project-specific Committees and for national Indigenous advisory committees.

Indigenous Committee members have expressed frustration with regards to the Crown’s Duty to Consult and Accommodate, and the need for greater Indigenous oversight and shared decision-making. Indigenous Committee members note the importance of ensuring the government is fully clear and transparent about what is being offered in these committees. It is disingenuous to call a process “co-development” if the government remains the senior partner that predetermines limits and parameters.

The Government of Canada’s stated goal in passing Bill C-69 was to create “better rules for major project reviews to protect Canada’s environment and grow the economy.” These new rules only apply to federally regulated projects and do not cover the large number of non-designated and provincially regulated projects across Canada, which may equally impact Indigenous rights.

## 3) RECOMMENDATIONS OF INDIGENOUS COMMITTEE MEMBERS

### **50. The federal and provincial governments must work together to ensure strong measures to support Indigenous rights and interests are in place within both federal and provincial project review legislation.**

The new framework in the CER Act does not cover provincially regulated pipelines; however the protections in the new legislation should be extended to include projects that are provincially regulated. The federal government can promote these discussions with the provincial governments and the CER can promote these discussions with provincial regulators.

## **Duty to Consult and Accommodate**

### **51. The Minister must consider adverse impacts on the rights of Indigenous Peoples of Canada.**

Section 9(2) of the Impact Assessment Act says that “the Minister may consider adverse impacts...on the rights of the Indigenous peoples of Canada” (emphasis added). While this is standard legislative language, the legislation also stipulates that the Minister “must” do certain things; for example section 89(2) requires that the “Minister must consider public comments” on whether to designate a project. The same language must be used in consideration of impacts on Indigenous rights.

### **52. The CER and IAA must have sufficient capacity to fulfil the Duty to Consult without delegating it.**

Consultation is part of the Honour of the Crown and is a Nation-to-Nation process. It is important to ensure the IAA and CER have sufficient capacity to lead the whole-of-government approaches to consultation during impact assessments and project decisions. This is important so that consultation does not get delegated and watered down through departments and sectors or delegated to proponents. Consultation must honour and reinforce the rights affirmed in Section 35.

## **Indigenous Advisory and/or Monitoring Committee(s)**

### **53. The CER must establish protocols with Indigenous Nations to ensure that local Indigenous monitors to accompany all CER activity.**

These monitors must be First Nation and Metis Nation citizens from all regions in which the CER has authority. Monitors must accompany Inspection Officers for planned and unplanned inspections within their traditional territory as well as to investigate any incidents or potential chance finds and respond to emergencies. It is recommended that the CER have a point of contact with potentially impacted Nations who can then coordinate monitors for these inspections.

### **54. The provincial governments must be involved in advisory and monitoring committees.**

While projects like the L3RP are federally regulated, the variety among provincial regulations still creates differences between provinces. Further, many of the concerns observed with the L3RP fall within provincial jurisdictions, such as permitting for access roads and protection of heritage resources. Additionally, there are a large number of smaller pipelines and other projects that are provincially regulated but have equal impacts on Indigenous rights and interests as federally regulated projects, and pose equal environmental and cultural risks.

## **Increased Indigenous oversight and shared decision-making**

### **55. The federal government must co-develop a framework with Indigenous Nations on moving toward shared decision-making models.**

The Line 3 IAMC is a positive step toward increased Indigenous oversight in a major project, but the Committee has no decision-making powers or authority. To move towards meaningful Indigenous oversight, the federal government needs a model of shared decision-making with Indigenous Nations. This will require discussions with Indigenous Nations as to what form this takes. Co-management boards in the North, like the Mackenzie Valley Land and Water Board, provide useful models with lessons that can be applied even to the different context of resources in the South.

Co-governance and co-management arrangements may take different forms in different regions and for different types of resources. Success will rely on effective relationships where trust has been built between the parties and where all participants value and prioritize the decision-making forum. It is imperative that the role, mandate, and authorities of the arrangement are clear to all participants. Without agreement as to the extent of the decision-making powers, the arrangement will break down in conflict, frustration, and disappointment.

## CONCLUSION

During its first membership term, the Indigenous members of the Line 3 Indigenous Advisory and Monitoring Committee have had the opportunity to discuss their experiences and perspectives, hear from leadership and others within Indigenous Nations, and exchange information and ideas with Enbridge and the CER. As a result, the Indigenous Committee members have been able to identify common issues, lessons, and solutions. These are provided in this report as advice to government and the regulator and are a basis for further discussion and dialogue.

The recommendations contained within this report reflect the experiences, perspectives, and opinions of the Indigenous committee members, and do not necessarily reflect the views of all the Nations potentially impacted by the Line 3 Replacement Program. While the Committee's mandate is to provide Indigenous oversight to the project and provide advice to the CER and the federal government, it does not have a mandate to conduct consultation with impacted Nations; the obligation to consult on any measures, including those within this report, which may impact rights and interests of Nations falls to the Crown. As well, these recommendations are provided recognizing that true inclusion implements a distinctions-based approach that will ensure that the unique rights, interests, and circumstances of the First Nations, the Metis Nation, and Inuit are acknowledged, affirmed, and implemented.

The recommendations are focused on the topics of: emergency preparedness and response; protection of heritage resources; access to private lands; economic participation; and Indigenous engagement. The recommendations in these topics revolve around central issues of Indigenous participation, inclusion, the application of a decolonial approach to regulatory systems, and the provision of sufficient capacity support. In the spirit of the Government of Canada's commitments to achieve reconciliation with Indigenous Peoples, the recommendations in this report are intended as focal points for exploration and for discussion among the impacted Indigenous Nations and the federal government and regulator. They do not represent a single destination, but can be a guide as steps are taken toward honoring the commitment to reconciliation and bringing about transformative change.

The Indigenous Committee members hope that submitting this advice is just the beginning of a conversation with the government and the CER. The Indigenous Committee members look forward to a response from government and the CER and to hearing of the next steps taken among the impacted Indigenous Nations, the federal government, and the CER.

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<sup>i</sup> The IAMC Secretariat provides logistics support for the Committee. This report is not intended to reflect views of the CER/Government of Canada.

# **APPENDIX A**

## **Minority Opinion**

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**From:** Shannon Thomson

**Sent:** Monday, December 9, 2019 11:50:22 PM (UTC-08:00) Pacific Time (US & Canada)

**To:** Line3 Committee / Comité Canalisation3 (NRCAN/RNCAN)

**Cc:** [kirk\\_poitras@shaw.ca](mailto:kirk_poitras@shaw.ca); Mike Oka; Kyra Northwest ([kyra@consultsamson.com](mailto:kyra@consultsamson.com)); Norine Saddleback; Wendy Gervais; [billykennedy@mns.work](mailto:billykennedy@mns.work); Roberta Soo Oyewaste ([royewaste4@gmail.com](mailto:royewaste4@gmail.com)); Joe Daniels ([jakdaneels@yahoo.com](mailto:jakdaneels@yahoo.com)); Gary LaPlante ([gdlaplante@gmail.com](mailto:gdlaplante@gmail.com)); Neil Sasakamoose ([neil.sasakamoose@batc.ca](mailto:neil.sasakamoose@batc.ca)); Richard Aisaican ([richard.aisaican@cowessessfn.com](mailto:richard.aisaican@cowessessfn.com)); Mike Sutherland ([peguis\\_recreation@hotmail.com](mailto:peguis_recreation@hotmail.com)); [Craig.iamc@gmail.com](mailto:Craig.iamc@gmail.com); Preston Swan ([Prestonswan@gmail.com](mailto:Prestonswan@gmail.com)); Marci Riel ([marci.riel@mmf.mb.ca](mailto:marci.riel@mmf.mb.ca)); Deshield, Coral (NRCAN/RNCAN); [Jonathan.Timlin@cer-rec.gc.ca](mailto:Jonathan.Timlin@cer-rec.gc.ca); [Amanda.Chow@cer-rec.gc.ca](mailto:Amanda.Chow@cer-rec.gc.ca); [maggieokeke@outlook.com](mailto:maggieokeke@outlook.com); Line3 Committee / Comité Canalisation3 (NRCAN/RNCAN)

**Subject:** Re: Results of Motion on Advice Report

## **Motion to approve the following changes to Annex A of the Line 3 IAMC Terms of Reference:**

### **1. New additions:**

- Mistawasis First Nation,
- Muskeg Lake First Nation,
- English River First Nation,
- Metis Nation of Alberta
- Metis Nation of Alberta – Region 4
- Métis Nation – Saskatchewan Western Region 1A
- Métis Nation – Saskatchewan Western Region 2A
- Métis Nation – Saskatchewan Eastern Region 2A

### **2. Administrative amendments:**

- “Sakimay First Nation” spelling changed to “Zagime Anishinabek First Nation,”
- “Manitoba Metis Federation – Southeast, Southwest, and Winnipeg” changed to “Manitoba Metis Federation”,
- Central Urban Metis Federation Inc. (CUMFI) removed and represented by Métis Nation – Saskatchewan Western Region 2A.

**Motion: To approve Draft 7 of the 2019 Report with Advice to Government and the CER from the Indigenous IAMC Members, to be submitted immediately to the Minister of NRCan and the CEO of the CER.**

In reply to your emails of December 6.2019 8:17pm and December 4.2019 4:09pm regarding the above two Motions:

As per Policy on Motions and Recommendations, for purposes of clarity I am unable to live with both Motions. This means that I block both Motions in that "I cannot support this or allow the group to support this. I perceive it to be in contradiction of our core values and/or unethical."

Being that it is my obligation to explain concerns and suggest alternative solutions that can achieve consensus I present the following:

1. FHQTC provided two separate written correspondence packages to the IAMC dated December 5.2019 in regard to the the activities specific to the two Motions above.

The material content has not been properly reviewed by the IAMC in keeping with Sections 9.3, 9.4, 15.1 a, 15.2, 16.1, 16.2 and 16.3 of the IAMC Terms of Reference.

2. In an email of April 23.2019 the Line 3 Secretariat issued a call for IAMC Members interested in parttaking in an IAMC "Working Group on Terms of Reference Amendments." I have not been informed as to the amendments to the Terms of Reference to date nor if the Working Group conducted any work relating to amendments to the Terms of Reference. This process was initiated approximately 8 months ago without an ability to carry through that mandate therefore disabling engagement from impacted Nations of FHQTC and Treaty Four in contributing or providing input to Section 6.4, 6.8 and 7.2 of the Terms of Reference.

3. The IAMC has not fulfilled the Terms of Reference Section 19.1.

4. These two IAMC Motions are unethical as they do not allow engagement of First Nations that have issued notice of their request to participate in procedural fairness toward engagement.

5. Correspondence issued from IAMC CoChairs of November 21.2019 confirms that the First Nation of FHQTC would be provided meeting with IAMC on the Advice To Government Report.

Correspondence via Line 3 email and myself of November 28.2019 confirms the activity to coordinate those meetings between IAMC and FHQTC Nations. These engagement meetings were not allowed time to be scheduled and confirmed when the Line 3 Secretariat issued the two Motions.

6. The IAMC has offered no deliberation nor consideration to the matters raised in the correspondence of FHQTC/ Treaty 4 Nations dated December 5.2019 and Kirk Poitras and has since instead went ahead and advanced votes on Motions and emails denoting Motions having been passed.

I vote to BLOCK both of the Motions as presented, as I cannot live with either Motions.

I offer that the IAMC immediately proceed to undertake a comprehensive review of the Terms of Reference in order to facilitate the proposed changes to the Terms Of Reference Annex 'A' and that until such time that occurs, no proposed amendments be adopted or moved to Motion by IAMC regarding Amendments to the Terms of Reference Annex A. This will require engagement activity of IAMC with First Nations.

I offer also that the FHQTC First Nations and further those of Treaty 4, be immediately engaged with as committed to in writing by CoChairs Coral deSheild and Joe Daniels this be done prior to issuance of the Advice To Government report as these 11 Nations and the other of Treaty 4 have provided their notices in writing to the IAMC.

It is unethical to ignore these submissions.

I am being propelled into engaging in decisions within the IAMC that deliberately ignore impacted Nations and the ability of Nations to convey any oral traditions or traditional knowledge that may impact these Motions and consequential impacts to those decisions and recommendations. This in effect abolishes Terms of Reference Section 5.2..

There is no balance of interest achieved.

I am not in a conflict of interest as I am conveying my concern to the activity of the IAMC and furthermore my relationships with the FHQTC, FHQTC Nations and Nations of Treaty 4 does not give rise to a conflict of interest within the Conflict of Interest Policy.

As per Section 1.8 of the IAMC Motions and Recommendations Policy I request that I be afforded a process of dispute resolution to reach consensus on these two Motions as presented.

Pinamayaya

Shannon Thomson  
Director of Lands, Resources, Environment & Stewardship  
File Hills Qu'Appelle Tribal Council  
Treaty 4 Territory  
cell: 639-571-8807

On Dec 6, 2019, at 8:17 PM, Line3 Committee / Comité Canalisation3 (NRCAN/RNCAN) <[nrcan.line3committee-comitecanalisation3.rncan@canada.ca](mailto:nrcan.line3committee-comitecanalisation3.rncan@canada.ca)> wrote:

Good evening Committee members,

Thank you for responding to the motion sent out this week, that was put forward by the Indigenous Co-chair and the Chair of the Advice Subcommittee. The results are:

**Motion: To approve Draft 7 of the 2019 Report with Advice to Government and the CER from the Indigenous IAMC Members, to be submitted immediately to the Minister of NRCAN and the CEO of the CER.**

The motion **passed** as follows:

**In favour:** Preston Swan, Mike Oka, Richard Aisaican, Wendy Gervais, Gary LaPlante, Joe Daniels, Marci Riel, Craig Soldier, Kirk Poitras, Kyra Northwest, Mike Sutherland, Bill Kennedy (12)

**Abstaining:** Coral deShield, Jonathan Timlin (2)

**Opposed:** Shannon Thomson (1)

**Did not vote:** Neil Sasakamoose, Roberta Soo-Oyewaste, Norine Saddleback (3)

As per clause 15 of the Committee's Terms of Reference, advice supported by the majority of members may be put forward provided that all Committee members were provided with an opportunity to explain, in writing, why they could not support the advice in whole or in part, and those reasons will be conveyed along with the advice.

As per the Terms of Reference, the Indigenous Co-chair and the Advice Subcommittee Chair request that the opposing member who cannot support the advice provide confirmation that the attached Appendix is an accurate portrayal of the reasons they cannot support the advice. Please respond by Monday,

December 9. As per clause 15 of the Terms of Reference, this minority opinion will be submitted alongside the Advice report.

Thank you,  
*Line 3 IAMC Secretariat*

<Appendix- Minority Opinion.pdf>

**From:** Shannon Thomson <[Shannon.Thomson@fhqtc.com](mailto:Shannon.Thomson@fhqtc.com)>

**Sent:** December 5, 2019 17:05

**To:** Line3 Committee / Comité Canalisation3 (NRCAN/RNCAN) <[nrcan.line3committee-comitecanalisation3.rncan@canada.ca](mailto:nrcan.line3committee-comitecanalisation3.rncan@canada.ca)>

**Cc:** Joe Daniels <[jakdaneels@yahoo.com](mailto:jakdaneels@yahoo.com)>; Gary LaPlante ([gdlaplante@gmail.com](mailto:gdlaplante@gmail.com)) <[gdlaplante@gmail.com](mailto:gdlaplante@gmail.com)>; [mike.oka@bloodtribe.org](mailto:mike.oka@bloodtribe.org); [norine@mctc.ca](mailto:norine@mctc.ca); [kyra@consultsamson.com](mailto:kyra@consultsamson.com); [kirk\\_poitras@shaw.ca](mailto:kirk_poitras@shaw.ca); [richard.aisaican@cowessessfn.com](mailto:richard.aisaican@cowessessfn.com); Chief Roberta Soo-Oyewaste (Standing Buffalo Dakota Nation) <[royewaste4@gmail.com](mailto:royewaste4@gmail.com)>; [neil.sasakamoose@batc.ca](mailto:neil.sasakamoose@batc.ca); [billykennedy@mns.work](mailto:billykennedy@mns.work); [nbimfc@sasktel.net](mailto:nbimfc@sasktel.net); [wendysgervais@gmail.com](mailto:wendysgervais@gmail.com); [wendygervais@mns.work](mailto:wendygervais@mns.work); [prestonswan@gmail.com](mailto:prestonswan@gmail.com); [peguis\\_recreation@hotmail.com](mailto:peguis_recreation@hotmail.com); [maggieokeke@outlook.com](mailto:maggieokeke@outlook.com); [craig.iamc@gmail.com](mailto:craig.iamc@gmail.com); [marci.riel@mmf.mb.ca](mailto:marci.riel@mmf.mb.ca); [jonathan.timlin@cer-rec.gc.ca](mailto:jonathan.timlin@cer-rec.gc.ca); Deshield, Coral (NRCAN/RNCAN) <[coral.deshield@canada.ca](mailto:coral.deshield@canada.ca)>; Line3 Committee / Comité Canalisation3 (NRCAN/RNCAN) <[nrcan.line3committee-comitecanalisation3.rncan@ca.nada.ca](mailto:nrcan.line3committee-comitecanalisation3.rncan@ca.nada.ca)>; Penner2, Melissa (NRCAN/RNCAN) <[melissa.penner2@canada.ca](mailto:melissa.penner2@canada.ca)>

**Subject:** Re: FOR DECISION: Report with Advice to Government and the CER

I am unable to live with the Motion.

I provide that the FHQTC written correspondence of December 5, 2019 received speaks in detail to the issues that I as an IAMC Member share in my inability to live with this Motion.

I propose that the IAMC review the FHQTC material and take into serious consideration the matters raised.

Regards.

Shannon Thomson  
Director of Lands, Resources, Environment & Stewardship  
File Hills Qu'Appelle Tribal Council  
Treaty 4 Territory  
cell: 639-571-8807

On Dec 3, 2019, at 11:57 AM, Line3 Committee / Comité Canalisation3 (NRCAN/RNCAN) <[nrcan.line3committee-comitecanalisation3.rncan@canada.ca](mailto:nrcan.line3committee-comitecanalisation3.rncan@canada.ca)> wrote:

Good afternoon Indigenous Committee members,

As you know, the Advice to Government Report draft 7 (attached) was reviewed again by members at the November 25<sup>th</sup> meeting, along with a draft cover letter to NRCAN/CER. The cover letters have been separated and revised based on discussion at the meeting and are also attached.

The Secretariat is sharing the following motion to submit the report on advice, Moved by Gary LaPlante (Advice to Government & CER Subcommittee Chair), and Seconded by Joe Daniels (Indigenous Co-Chair).

**Please submit your vote, along with any comments on the draft cover letters, by COB Thursday, December 5.**

**Motion:**

**To approve Draft 7 of the 2019 Report with Advice to Government and the CER from the Indigenous IAMC Members, to be submitted immediately to the Minister of NRCan and the CEO of the CER.**

As per the instructions in the Terms of Reference, if the motion receives a majority of support it will be submitted. Members who are not in favour are encouraged to provide a detailed explanation with their vote, which will be submitted along with the majority opinion.

Kind regards,

*The Line 3 IAMC Secretariat*

<2019-12-03 Advice Cover Letter to CER DRAFT.docx>

<2019-12-03 Advice Cover Letter to Minister DRAFT.docx>

<Report L3 IAMC Advice to Gov-CER - Clean Draft 7 - Dec 2019.docx>



# File Hills Qu'Appelle Tribal Council

Treaty Four Territory

Reserve #77

Box 985  
Fort Qu'Appelle SK S0G 1S0

December 5, 2019

Honourable Seamus O'Regan, Minister of Natural Resources

Natural Resources Canada

580 Booth Street, 21st Floor, Room: C4-2

OTTAWA ON K1A 0E4

[NRCan.Minister-Ministre.RNCan@Canada.ca](mailto:NRCan.Minister-Ministre.RNCan@Canada.ca)

Peter Watson, Chief Executive Officer

Canada Energy Regulator

Natural Energy Board

517 Tenth Avenue SW

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Mr. Joe Daniels, Indigenous IAMC Co-Chair  
Indigenous Advisory Monitoring Committee  
Line 3 Replacement Program, Enbridge Pipelines  
[jakdaneels@yahoo.com](mailto:jakdaneels@yahoo.com)

Ms. Coral deShield, IAMC Co-Chair  
Natural Resources Canada  
Indigenous Advisory Monitoring Committee  
Line 3 Replacement Program, Enbridge Pipelines  
[Coral.Deshield@canada.ca](mailto:Coral.Deshield@canada.ca)

To Minister O'Regan, President Watson, Mr. Daniels and Ms. deShield:

## Re: Enbridge Line 3 Replacement Project Indigenous Advisory Monitoring Committee Advise to Government Report

The Indigenous Advisory Monitoring Committee (IAMC) for the Enbridge Line 3 Replacement Pipeline Program (L3RP) is in the process of advancing and submitting to your offices a report containing approximately 53 recommendations from the L3RP IAMC.

The L3RP IAMC is proposing to submit this report under the guise of having the "input and engagement of impacted Indigenous Nations". This statement is completely false for the 11 impacted First Nations of the File Hills Qu'Appelle Tribal Council.

Further to my letter dated November 7, 2019, I did receive a response in a letter dated November 21, 2019 from Coral deShield, NRCan IAMC Co-Chair and Joe Daniels, IAMC Indigenous Co-Chair. In this reply, it was committed to that our 11 FHQTC Nations would be accommodated in our request, supported by Chiefs Resolutions and Chiefs Motions, to meet on these recommendations prior to the issuance of the report.

This request was further asserted and discussed at a meeting of the IAMC and the impacted Nations' Chiefs of Saskatchewan at a meeting of November 22, 2019, with IAMC Members, CER and NRCan representatives. We were assured that we would be afforded meetings for our 11 Nations on this report

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and its findings prior to its issuance. This report is illegitimate on its face as it does not satisfy the requested and required engagement with our Nations on its recommendations findings. The recommendations findings require meaningful context and require participation with our Nations prior to its issuance or it remains unsanctioned and unrepresentative of our 11 First Nations. Issuing the recommendations reports to government officials and pipeline regulators without our engagement further erodes our relationships toward reconciliation. It further delegitimizes the L3RP IAMC Terms of Reference.

We do not consent to the report being released without our consent. If the report is issued we will find remedy to be injunctive of its release. Be reminded that our 11 First Nations are the most significantly eminently impacted Nations to this L3RP pipeline right of way. We are distinct First Nations of Nehiyaw (Cree), Anishnaabe (Saulteaux), Dakota, Lakota and Nakoda and have our distinct processes to review of such documents.

The IAMC shall not be used as a mechanism nor shall it purport to substantiate its finding, on behalf of our 11 Nations, and moreover, root those findings as being representative of our interests as recommendations to Canada Energy Regulator and Minister of Natural Resources. This is wrong!

This is not representative to recognition of reconciliation, and principles of “co-development”. This certainly does not represent our principles held within Treaty nor the commitment toward the fulfillment of fiduciary obligations for the lifecycle of your L3RP project.

We demand that NRCan, CER, your IAMC Secretariat and the IAMC itself cease and desist to all activity to the release of the report by IAMC.

We demand that NRCan, CER, your IAMC Secretariat and the IAMC itself cease and desist to any acceptance of the report, whole or in part, of the report until such time the engagement of our Nations in a meaningful process is achieved.

We demand that any further such embargo of our rights and interests that are manifested within this IAMC process cease and desist immediately.

Lastly, my office was in contact with IAMC representative Shannon Thomson last week to begin the process of coordinating meetings between our FHQTC First Nations and IAMC and that too is now negatively

impacted and redundant. If you require any clarification to this information please contact my office immediately. Submission of this via email to your attentions will serve to confirm your immediate receipt of this correspondence. Your delay in formal response to our correspondence has been problematic and continues to raise concerns to full recognition of our decisions regarding IAMC matters that impact our interests and exercise of our rights.

Respectfully,



Edmund Bellegarde  
Tribal Chief and Chief Executive Officer

Attachments:

1. FHQTC Response to IAMC Treaty 4 Chiefs Resolutions\_2019-11-07, with attached resolutions
2. 2019-11-21 Letter to FHQTC from IAMC

cc: Distribution List (attached)

Honourable Jonathan Wilkinson, Minister of Environment, [Jonathan.Wilkinson@canada.ca](mailto:Jonathan.Wilkinson@canada.ca)

Jean-Francois Tremblay, Deputy Minister, Indigenous Services Canada

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Shannon Thomson, Indigenous Advisory Monitoring Committee

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