



The Honourable Richard Feehan  
Minister of Indigenous Relations  
104 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB  
Canada T5K 2B6

June 29, 2017

Dear Minister Feehan,

On behalf of the Canadian Energy Pipeline Association (CEPA), thank you for the opportunity to provide further comments to the Government of Alberta's First Nations Consultation Policy and Guidelines renewal. CEPA represents Canada's transmission pipeline companies, which are an essential component of the current and future economic prosperity of Alberta. In 2016, CEPA member companies directly employed over 11,000 Albertans and contributed about \$470 million in corporate and property taxes in the province. Furthermore, our members spent over \$250 million purchasing goods and services from local Indigenous suppliers and invested an additional \$1.5 million in Indigenous communities.

Our commitment to working with Indigenous communities goes well beyond socio-economic benefits. CEPA members are particularly sensitive to the concerns, needs and aspirations of Indigenous communities. Our members recognize the need for effective consultation and increased collaboration. We are committed to ensuring that Indigenous communities derive long-term positive benefits from Canadian resource development in a safe and environmentally sustainable manner.

In this context, we support the Ministry of Indigenous Relations' initiative to update the Government of Alberta's policy regarding First Nations consultation and offer the following comments for consideration.

### Capacity funding

CEPA and its members are supportive of the Government of Alberta's goal of ensuring that First Nations have the capacity to engage with industry and government in the consultation process. To achieve this goal in an efficient and effective manner, CEPA believes specific attention needs to be paid to: the scope of activities that would be eligible for funding, the source of funding, and, the distribution of funds.

**Scope of activities:** If industry is required to pay both a levy for capacity and additional engagement expenses to Indigenous groups, it is essential to have clear and transparent guidelines regarding what activities the levy would support, to avoid double-counting.

CEPA believes funds collected via project proponents should cover basic consultation-related staffing and training requirements, including wages and benefits, in addition to the establishment of a consultation office and basic office supplies. The scope of work supported by these funds should be focused purely on consultation between First Nations and industry. This requires that capacity tools for



engagement, such as GIS tools and other software include clear thresholds that determine levels of support capacity, as defined by number of staff, software required, office space, etc.

A basic level of support could be provided to First Nations annually to ensure offices are prepared as soon as consultation is required. Ancillary consultative activities such as map reviews, site visits, field studies etc., should not be funded through the levy as they are not part of the regulatory process. Additionally, the levy fund should not include capital funding for construction.

**Source of funds:** The collection of funds should have a direct connection between sector-specific consultation matrices and the levy fund. Thus, CEPA recommends proponents who are involved in consultation should be contributing to a consultation levy fund at a level commensurate with the level of engagement. We would also like to express support for the idea that funding levels should be tied to the number of proponents consulting within a defined timeframe.

**Distribution of funds:** CEPA recommends funds be collected by the Aboriginal Consultation Office (ACO), and then be designated to an auditable independent trust. In order to receive funds, each First Nation should be required to provide a budget and supporting financial statements that follow acceptable auditing practices. Approved expenses would then be determined based on consultation-related activities between First Nations and industry and be subject to thresholds.

### Timelines

Proponents require clear procedures, including reasonable timelines. Project delays are costly and have the potential to negatively impact Alberta's competitiveness and long-term investment in our energy sector, inhibiting employment and procurement opportunities for Indigenous and non-Indigenous businesses and labourers. Further, unclear or unreasonable timelines can impede the execution of operations and maintenance activities that are critical to the safe operations of Alberta's vast network of pipelines.

The current process that provides some flexibility for recognized community closures and unanticipated events is generally manageable. However, if greater flexibility in process timelines is being considered, it must be accompanied with guidance that includes the specific criteria and circumstances in which variances (flexibility) would be granted. This guidance will reduce uncertainty and support proponent planning activities. It is essential this guidance ensures variances in process timelines do not become the norm, but rather are, the exception based on a set of defined evaluation criteria.

### Economic Benefits

CEPA member companies have invested significant time and resources to build and sustain positive relationships with Indigenous groups that are near existing and proposed pipeline operations. These relationships and associated pipeline projects have provided tangible benefits to many Indigenous communities through increased training, education, and employment, as well as procurement, construction, and other business opportunities.



A clear distinction needs to be made between project economic benefits and accommodation. There has been a growing trend in some communities to group accommodation/consultation with economic benefits, which is a mounting concern for industry. The government should provide clear guidance regarding actions and benefits that fulfill the duty to consult and how these are distinct from accommodation.

### Site Visits

Site visits can provide an educational opportunity for both project proponents and Indigenous communities. An on the ground experience can enhance understanding of a project application. In this context, CEPA believes regulatory requirements related to site visits are not in the best interest of First Nations or project proponents. Site visits are just one mechanism proponents use to address specific issues/concerns and may not be appropriate in all circumstances.

Instead of making site visits mandatory, CEPA recommends that First Nations and the Government focus on building the capacity within communities to ensure they are equipped to identify project-related concerns that may or may not require a site visit to verify. The focus of this type of engagement should be on general pipeline knowledge and energy literacy.

### Cumulative effects

Any actions taken to address cumulative effects in a particular region should include input from relevant industries, Indigenous communities, municipalities and other stakeholders; however, this should be pursued outside of regulatory reviews of permitting specific projects. Proponents can only reasonably be expected to deal with the impacts of their respective projects. While cumulative effects are important to understand in the context of Indigenous and Treaty rights, the extent to which they can be appropriately managed falls outside of the scope of the Government's First Nations consultation policy and guidelines.

### Harmonization with other jurisdictions

For the purposes of consultation, the Crown should be viewed as one and indivisible. Indigenous communities risk fatigue of consultation for major projects; rigorous federal National Energy Board (NEB) process followed by provincial permitting may be unnecessarily burdensome; especially given existing challenges to capacity. In order to address this issue, federal and provincial governments should align on identifying which Indigenous communities require consultation on a given project and ensure consultation is done in an effective and coordinated manner. For example, when NEB-regulated companies receive approvals to build infrastructure, the Alberta permitting process should accept that adequate Crown consultation has occurred. Furthermore, agreement with respect to the strength of claim of a given Indigenous community should also be pursued. Jurisdictional alignment on the above will serve to ensure project proponents and Indigenous communities have clear expectations and the appropriate level of consultation takes place.



The federal and provincial governments should also work to consolidate their respective collections of traditional land use information. This will help to identify where there is existing information that could be used or updated in order to avoid expensive and duplicative studies. CEPA recognizes that the reports themselves may be confidential and thus cannot be made publicly available. However, we recommend that the federal government collect and consolidate the studies from various departments and agencies and create a list of the traditional land use studies that have been done for each Indigenous group on the Aboriginal Treaty Rights Information System (ATRIS). This will allow industry proponents to have more informed discussions with Indigenous groups about the utility of relying upon prior studies, determine the need for further studies, and help identify earlier in the process where rights are being exercised.

### **Dispute resolution mechanisms**

Dispute resolution mechanisms are one tool that could be used to address concerns that fall outside the formal regulatory process. Such mechanisms should be designed to function independently of the regulatory review and consultation process as well as the negotiation of agreements with Indigenous or Metis Settlements. Furthermore, they should not be designed to extend the consultation process or create unnecessary delays to project approvals. Clear criteria should be identified to determine when alternative dispute resolution mechanisms are warranted.

However, general concerns that are not site-specific and are beyond the scope of the regulator or the proponent should be addressed through other mechanisms/processes such as regional planning in the case of cumulative effects. It is important to identify these types of issues early in the process to avoid unnecessary delays and inefficient uses of proponent and regulator resources.

### **Interaction between the ACO and the AER**

The Alberta Energy Regulator (AER) is intended to be a single-window point of entry for regulatory applications for provincially-regulated pipeline projects. CEPA is supportive of current initiatives, such as updating the Joint Operating Procedures, which further this objective. However, our members continue to experience a lack of concurrence between the process for consultation and regulatory application.

As the AER and the ACO continue to update the Joint Operating Procedures, CEPA recommends a clear concurrent process for consultation and regulatory application be pursued. This should be done with the ultimate goal of achieving a one-review process that enables timely decision making, certainty for industry and First Nations, and predictability in project planning. Service level commitments for both the ACO and the AER would enhance the overall process.

### **Conclusion**

In closing CEPA believes that the Ministry of Indigenous Relations should continue to engage with both industry and First Nations as it moves forward with renewing the Consultation Policy and Guidelines.



canadian | association  
energy | canadienne  
pipeline | de pipelines  
association | d'énergie

Suite 1110 505 3rd St SW | P: (403) 221 8777  
Calgary, Alberta T2P 3E6 | F: (403) 221 8760  
| [aboutpipelines.com](http://aboutpipelines.com)

CEPA and its members are supportive of this initiative and would welcome the opportunity to provide further input as the new policy is drafted.

Thank you again for the opportunity to provide comments. We look forward to working with the Ministry in the coming months.

Yours sincerely,

Chris Bloomer  
President and CEO