

July 30, 2018

Honourable George Heyman  
Minister of Environment and Climate Change Strategy  
Room 112 Parliament Building  
Victoria, British Columbia V8V 1X4

**Re: Environmental Assessment Revitalization – Discussion Paper**

Pembina Pipeline Corporation (“Pembina”) is writing to provide comments specific to our project and operational experiences in response to the British Columbia Environmental Assessment Office’s *Environmental Assessment Revitalization Discussion Paper* (“Discussion Paper”). We believe that the Province of British Columbia (“Province”) revitalization of its existing *Environment Assessment Act* and regulations has far-reaching implications with respect to the development of new energy infrastructure projects within British Columbia and will result in competitive disadvantage for energy companies operating within your jurisdictions. Essentially, the regulatory process cannot be used as a proxy to address the Crown’s reconciliation with British Columbia First Nations. Accordingly, we are filing this submission for consideration because we believe that the proposed Province’s revitalization strategy will lead to a marked decrease in investment and competitiveness for British Columbia’s energy sector, and threaten the sector’s future sustainability.

Pembina has provided transportation and midstream services to North America’s energy industry for over 60 years. Pembina’s integrated pipeline system transports hydrocarbon liquids, natural gas and natural gas products sourced primarily in western Canada to natural gas markets in eastern Canada and the United States.

Pembina is committed to working with communities and Indigenous groups, while providing value for investors in a safe, environmentally responsible manner. We strive to be a company of choice that both communities and Indigenous groups welcome because they recognize the net benefits of our work. Pembina has invested significant time and resources to build and sustain positive relationships with local government authorities, communities and Indigenous groups within our operating areas. These relationships and our projects have provided significant and tangible benefits to many local government authorities, communities and Indigenous groups through increased training, education, employment, procurement and other business opportunities. Our balanced approach to operating aims to build trust within the communities that we operate that is sustainable over the long-term.



Since the Minister Heyman's announcement of the "Environmental Assessment Revitalization" in March 2018, Pembina has actively participated both independently and through its membership in the Canadian Energy Pipeline Association ("CEPA") in direct engagement with the BC Environment Assessment Office

("BC EAO") to provide comments with respect to the Province's review of its *Environmental Assessment Act*. As a member of CEPA we agree with and support CEPA's comments regarding the Discussion Paper. We wish to submit the following additional comments for consideration.

### **Considerations Respecting First Nations - Early Engagement and Traditional Knowledge**

As earlier stated, Pembina believes in building mutually beneficial relationships with Indigenous communities which includes respectful engagement on proposed projects. In keeping with this approach, we also believe that Indigenous participation in the environmental assessment ("EA") processes is essential and must be part of processes that are meaningful and predictable and ensures an effective use of funding and community resources. It has been our practice to engage Indigenous communities early in our project planning process and commonly in advance of regulatory requirements. However, we are challenged by the BC EAO suggestion that early engagement efforts should include entering into project agreements. Rather, we believe that it is more appropriate that the Province enter into government to government agreements with Indigenous nations in advance of EA project proposal to support decision making for project EA(s) on a regional level. While project agreements between project proponents and Indigenous nations can take a considerable length of time to negotiate and may not be completed until after project certification, if at all.

Pembina recognizes the importance of Indigenous traditional knowledge to the creditability of an EA. With respect to traditional knowledge, our experience has been that capacity, resources and the existing repository of traditional knowledge within Indigenous communities varies significantly. Primarily due to a lack of funding, many communities have not established a traditional knowledge baseline and do not have any repository of this information. This makes it difficult for proponents to incorporate essential traditional knowledge in a timely manner. Pembina encourages the Province to address this issue urgently. Further, we recommend that the timelines for providing traditional knowledge within the EA process be clearly defined to avoid extended delay for proponents and communities throughout the EA processes.

### **Indigenous Decision-Making – Reconciliation Committee, Dispute Resolution (ADR) and Indigenous Led EA(s)**

#### ***Reconciliation Committee***

Pembina acknowledges the Province's mandate of reconciliation with Indigenous peoples. We understand that implementation of the United Nations Declaration on the Rights of Indigenous Peoples, ("UNDRIP") is one of the pillars for achieving reconciliation and as such is a common theme throughout the recommendations made by the Environmental Assessment Advisory Committee ("EAAC"). Most concerning is the unique parameters and implementation of the principle of "free prior and informed



consent” (“FPIC”), set out in the Advisory Committee’s Recommendation 4<sup>1</sup>. Specifically, consent must be obtained at each proposed EA stage gate and must conform to Indigenous peoples’ environmental and cultural standards and include economic benefits. We appreciate that the underlying concept to obtaining consent at each stage gate is consensus building; however, the requisite requirement of economic benefits affects the integrity of this proposed decision-making process. Additionally, consensus is not always achievable. In fact, there is not unilateral agreement as to the meaning of FPIC amongst Indigenous communities that participated in direct engagement with the BC EAO. Some Indigenous groups have interpreted FPIC as a legal requirement where a “no” mean that a project would not proceed. While other Indigenous groups stated FPIC should not be interpreted as a veto, but rather a process by which Indigenous Peoples are continually engaged as decision makers and are fully informed as to a project’s potential impacts and benefits.<sup>2</sup> We note that the EAAC has interpreted FPIC as distinct from the concept of veto which no party should be able to invoke unilaterally; however, not all Indigenous communities may align with this concept<sup>3</sup>.

### ***Dispute Resolution (ADR)***

To assist with building consensus through the proposed EA stage gates, the EAAC has recommended the inclusion of time-limited dispute resolution (ADR) and has suggested that the Province create a mechanism known as a Reconciliation Commission to facilitate ADR as well as oversee the implementation of UNDRIP principles into the EA process<sup>4</sup>. EAAC recognizes that ADR processes cannot extinguish an Indigenous group’s right to seek redress through the courts in relation to a project approval. Pembina has participated in regulator-mandated ADR with Aboriginal communities in Alberta. In both instances, agreement was not reached amongst the parties. In one instance, the processes of ADR did not align with the cultural decision-making norms of that First Nation and ADR did not proceed past the first meeting. In the second instance, ADR extended over several meetings; however, it also did not result in an agreement as the Metis community’s legal representative sought remedies that were outside the context of the regulator’s authority. Based on our experiences, the ADR processes must be cultural appropriate and disputes must be resolvable within the regulatory framework. In addition, we appreciate the EAAC recognizes that ADR clearly set out timeframes. Based on the underlying concept of building consensus at each proposed EA stage gate, we recommend that there must be clearly defined time limits in which ADR must be concluded and if agreement cannot be reached that the EA process can move forward to the next proposed stage gate.

### ***Indigenous Led EA(s)***

The inclusion of BC EAO/Indigenous government led/co-led EA decision making reduces regulatory certainty and increases the likelihood of a great number, complex outcomes and perhaps even conflicting conditions. It is difficult to understand how prevention of duplication and/or conflicting conditions can be managed when there is more than one decision maker. Additionally, ensuring the continuation the concept of one review may not be possible, as more than one Indigenous nation may wish to undertake

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<sup>1</sup> Final Report of the Environmental Assessment Advisory Committee, May 2, 2018, p. 13.

<sup>2</sup> What We Heard – Summary of the EAO’s Direct Engagement on EA Revitalization, Environmental Assessment Office, May 2018, page 7.

<sup>3</sup> What We Heard – Summary of the EAO’s Direct Engagement on EA Revitalization, Environmental Assessment Office, May 2018, page 7.

<sup>4</sup> Final Report of the Environmental Assessment Advisory Committee, May 2, 2018, page 5.



an EA. The opportunity for substitution with the Federal government environmental assessment review process may no longer be available, as the Indigenous nations' approach to undertaking its EA(s) may not meet the requirements for environmental assessment under the Federal government's legislation and additional conditions imposed by the responsible Federal Minister. Finally, it is unclear as to whether the Province has retained the authority to approve a project in the instance when it does not have agreement from participating Indigenous governments. Ultimately, there must be clear and transparent jurisdiction, scope, timelines, process and decision-making authority to provide the necessary certainty required by proponents.

Finally, we respectfully caution the Province regarding the role of legislation and regulations in attempting to achieve its reconciliation ambitions. To direct proponents to undertake additional aspects of Aboriginal Consultation, under the guise of reconciliation will cause frustration, delay and cost.

### **Considerations respecting Proposed Timelines**

All proposed EA stage gates must have defined timelines with limited ability to pause the EA process. The timelines suggested in the Discussion Paper are very concerning as timing has not assigned to all EA process stages. The overall anticipated timeline for the revitalized EA process has not been disclosed. It is understood that timelines for certain stages/processes, such as ADR, must still be developed. It is imperative that reasonable timelines for each stage and process are established and fully disclosed either in legislation, regulation or by directive.

In conclusion, Pembina affirms the importance of a regulatory framework providing clarity, certainty and timely outcomes. In addition, regulatory frameworks are not an appropriate means for the Province to undertake reconciliation with Indigenous people. Going forward, numerous regulations and supporting policies will have to be developed to operationalize a revitalized *Environmental Assessment Act*, including but not limited to the reviewable projects list, timelines, process and required documents, and transition provisions. Given the impacts that the proposed revitalized framework will have on both business activities and the energy sector within the Province, it is important that all regulations and supporting policies be only implemented after significant consultation with stakeholders. As such, Pembina will continue to actively participate in and provide feedback to public consultation opportunities and discussion papers relating to the revitalized *Environmental Assessment Act*.

Thank you for considering this submission.

Regards,

Laura Lunt

**PEMBINA PIPELINE CORPORATION**

Vice President, External Affairs