

**From:** [Cathrine Shandler](#)  
**To:** [Robb Trend Coal Mine Expansion Project \[CEAA\]](#)  
**Cc:** [Van Deventer, Rachel \[CEAA\]](#); [Anderson, Candace \[CEAA\]](#); [foothills ojibway society \(FOS\)](#); [Cynthia Cowan](#); [kshepherd](#); [Peter Hutchins](#)  
**Subject:** Foothills Ojibway First Nation's comments on the Draft Joint Panel Agreement - Robb Trend Coal Mine Expansion Project  
**Date:** January 23, 2015 1:29:06 PM  
**Attachments:** [2014 01 22 Draft Joint Panel Agreement - Rob Trend Project - Foothills Ojibway First Nation comments.docx](#)

---

Dear Panel,

Please find attached the Foothills Ojibway First Nation's comments on the Draft Joint Panel Agreement for the Robb Trend Coal Mine Expansion Project.

We converted the original pdf document into a Word document and used tracked changes to incorporate the comments. We would be happy to discuss the comments with you.

Best regards,

**Cathrine Shandler**

**Hutchins Legal Inc.**

Avocate / Lawyer

**HUTCHINS LÉGAL INC.**

424, rue Saint-François-Xavier

Montréal (Québec) H2Y 2S9

Tél: (514) 849-2403 Ext 234

Fax: (514) 849-4907

Email: [cshandler@hutchinslegal.ca](mailto:cshandler@hutchinslegal.ca)

**Confidentiality Notice**

This message contains confidential information intended only for the use of the individual or entity named as recipient. Any dissemination, distribution or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this message in error, please immediately notify us and delete your copy. Thank you.

**Avis de confidentialité**

Les informations contenues aux présentes sont de nature privilégiée et confidentielle et ne peuvent être utilisées par aucune personne ou entité autre que le destinataire. Toute diffusion, utilisation ou reproduction de ce message ou des renseignements qu'il contient est strictement interdite. Si ce message vous a été transmis par mégarde, veuillez nous en aviser immédiatement et supprimer votre copie. Merci.



**S.V.P. Please consider the environment before printing. Pensez à l'environnement avant d'imprimer ce courriel.**

**AGREEMENT  
To Establish a Joint Review Panel  
for the Robb Trend Coal Mine Expansion Project  
Between**

**The Minister of the Environment, Canada  
- and -  
The Alberta Energy Regulator, Alberta**

**PREAMBLE**

**WHEREAS** the Alberta Energy Regulator (the AER) has statutory responsibilities pursuant to the *Responsible Energy Development Act* (REDA); and

**WHEREAS** the *Canadian Environmental Assessment Act* has been repealed and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) has come into force; and

**WHEREAS** the Minister of the Environment, Canada (the Federal Minister of the Environment) has statutory responsibilities pursuant to CEAA 2012; and

**WHEREAS** the proposed Robb Trend Coal Mine Expansion Project (the Project) requires a public hearing and approvals from the AER pursuant to REDA and the *Coal Conservation Act*, may include approvals from the AER pursuant to the *Environmental Protection and Enhancement Act* (EPEA) and the *Water Act*, and is subject to an assessment under CEAA 2012; and

**WHEREAS** the Federal Minister of the Environment has referred the Project to a review panel in accordance with section 38(1) of CEAA 2012 and has determined that pursuant to section 40(1) of CEAA 2012 a review panel should be jointly established to consider the Project; and

**WHEREAS** pursuant to section 124(5) of CEAA 2012, the assessment of the Project is continued as a review panel under section 38 of CEAA 2012;

**WHEREAS** the Government of the Province of Alberta and the Government of Canada established a framework for conducting joint review panels through the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)* signed on May 17, 2005; and

**WHEREAS** the AER and the Federal Minister of the Environment have determined that a joint review of the Project will ensure the Project is evaluated according to the spirit and requirements of their respective authorities while avoiding unnecessary duplication, delays and confusion that could arise from individual reviews by the Government of Canada or the AER; and

**WHEREAS** the AER and the Federal Minister of the Environment have determined that a joint review of the Project should be conducted in a manner consistent with the provisions of Appendix 2 of the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)* to the extent reasonable; and

**WHEREAS** the AER has determined that pursuant to section 18 of REDA a joint review panel cooperative proceeding should be established and that the Project should be considered in a cooperative proceeding by the AER and the Canadian Environmental Assessment Agency (the Agency).

**THEREFORE**, the AER and the Federal Minister of the Environment hereby establish a Joint Review Panel for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

## 1. Definitions

For the purpose of this Agreement and of the Appendix attached to it,

**"Aboriginal"** describes those Aboriginal peoples of Canada as defined in the section 91(24), Constitution Act, 1867, Constitution Act, 1982, subsection 35(2) including the Indian, Inuit non status Indians and Métis peoples of Canada and as describes in the United Nations Declaration of the Rights of Indigenous Peoples, 2008;

Formatted: Justified

**"Agency"** means the Canadian Environmental Assessment Agency continued under CEAA 2012;

**"Cultural impact"** means those impacts on the existing Aboriginal culture and community;

**"environment"** means the components of the Earth, and includes

- a. land, water and air, including all layers of the atmosphere,
- b. all organic and inorganic matter and living organisms, and
- c. the interacting natural systems that include components referred to in a) and b);

**"environmental effect"** means those effects described in section 5 of CEAA 2012;

**"federal authority"** means a Minister, agency or department of the Government of Canada;

**"follow-up program"** means a program for

- a. verifying the accuracy of the environmental assessment of the Project, and
- b. determining the effectiveness of any mitigation measures;

**"interested party"** means any person who the Joint Review Panel determines, with respect to the Project, may be directly affected by the carrying out of the Project or has relevant information or expertise;

**"Joint Review Panel"** refers to the Joint Review Panel established by the AER and the Federal Minister of the Environment through this Agreement;

**"mitigation"** means, in respect of the Project, the elimination, reduction or control of the adverse environmental effects and cultural impacts of the Project, and includes restitution for any damage to the environment caused by such effects through replacement,

restoration, compensation or any other means;

"**parties**" means the signatories to this Agreement;

“**project**” means the proposed Robb Trend Coal Mine Expansion Project described in Part 1 of the Terms of Reference;

“**proponent**” has the meaning provided in section 2 of CEAA 2012;

“**public registry**” means the Canadian Environmental Assessment Registry established under section 78 of CEAA 2012;

“**report**” means the document produced by the Joint Review Panel, which contains decisions pursuant to REDA and the *Coal Conservation Act* (and may include decisions pursuant to EPEA and the *Water Act*), and the Joint Review Panel's rationale, conclusions and recommendations relating to the environmental effects and cultural impacts of the Project including any mitigation measures and follow-up program pursuant to CEAA 2012 and a summary of comments received from the public, including Aboriginal persons and groups.

## **2. Establishment of the Joint Review Panel**

- 2.1 A process is hereby established to create a co-operative proceeding pursuant to section 18 of REDA, and a Joint Review Panel pursuant to sections 38, 39, 40 and 42 of CEAA 2012, for the purposes of the joint review of the Project.
- 2.2 The AER and the Agency will make arrangements to coordinate the announcements of a joint review of the Project by both the AER and Canada.

## **3. Constitution of the Joint Review Panel**

- 3.1 The Joint Review Panel will consist of three members. The chief hearing commissioner of the AER shall appoint the chairperson and shall appoint one other member of the Joint Review Panel, with the approval of the Federal Minister of the Environment. The third Joint Review Panel member will be appointed by the Federal Minister of the Environment in accordance with article 3.2 of this Agreement.
- 3.2 The Federal Minister of the Environment will select the third Joint Review Panel member and recommend the selected candidate as an individual who may serve as a potential hearing commissioner of the AER. If acceptable to the Lieutenant Governor in Council of Alberta and the Chief Hearing Commissioner of the AER, the Lieutenant Governor in Council of Alberta will nominate this candidate to serve as a hearing commissioner of the AER and the Chief Hearing Commissioner of the AER will appoint this candidate as a member of the Joint Review Panel. The selected candidate will also be appointed by the Federal Minister of the Environment as a member of the Joint Review Panel. The selected candidate shall be an Aboriginal person with cultural impact assessment training recognized by Aboriginal leaders and Elders as possessing sufficient cultural knowledge and training.
- 3.3 The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the Project and are to have knowledge or experience relevant to the anticipated environmental effects and cultural impacts of the Project. In the event that a Joint Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Joint Review Panel unless the

Federal Minister of the Environment and the AER determine otherwise. In such circumstances, the

Federal Minister of the Environment and the AER may choose to replace the member.

#### **4. Secretariat**

- 4.1** Administrative, technical, and procedural support requested by the Joint Review Panel shall be provided by a Secretariat, which shall be the joint responsibility of the AER and the the Agency. The Secretariat will consist of staff involved in the review process from the Agency and the AER.
- 4.2** The Secretariat will report to the Joint Review Panel and will be structured so as to allow the Joint Review Panel to conduct its review in an efficient and cost-effective manner.
- 4.3** The AER will provide its offices in Edmonton and/or Calgary, when required, for the conduct of the activities of the Joint Review Panel and the Secretariat.
- 4.4** Costs for conducting the joint review will be shared between the Agency and AER in accordance with Appendix 2 attached to this Agreement.

#### **5. Record of the Joint Review and Report**

- 5.1** A public registry will be maintained by the Agency during the course of the joint review in a manner that provides for convenient public access and for the purposes of compliance with sections 79 to 81 of CEEA 2012.
- 5.2** The public registry will include relevant documents included during the environmental assessment and documents on the AER's public record prior to the referral to a review panel.
- 5.3** Subject to sections 45(3), (4), and (5) and 79(3) of CEEA 2012, the public registry will include all records relating to the review, including submissions, correspondence, hearing transcripts, exhibits and other information, received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the review of the Project.
- 5.4** On completion of the assessment of the Project, the Joint Review Panel shall prepare a report. The report shall include an executive summary in both official languages of Canada. The report will set out the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental effects and cultural impacts of the Project, including any mitigation measures and follow-up program, and a summary of comments received from the public, including Aboriginal persons and groups. The report will be conveyed to the Federal Minister of the Environment within the overall time limit for the Project review established by the Federal Minister of the Environment.
- 5.5** After the report is submitted, the Agency will maintain the public registry. The AER will continue to maintain records of the proceedings and the report in accordance with its normal practices and procedures. The registry will include all documents from the referral of the Project to a review panel until the submission of the Joint Review Panel's report to the Federal Minister of the Environment.
- 5.6** The Agency will be responsible for the translation of public notices and releases and the report prepared by the Joint Review Panel, into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the report.

## 6. Other Government Departments

- 6.1 The Joint Review Panel may request federal and provincial authorities having specialized information or knowledge with respect to the Project to make that information or knowledge available to the Joint Review Panel. The Joint Review Panel may also retain the services of independent non-government experts to provide advice on certain subjects within the Joint Review Panel's Terms of Reference, including additional cultural assessment experts.
- 6.2 Nothing in this Agreement will restrict the participation by way of submission to the Joint Review Panel by federal or provincial government departments or bodies, subject to article 6.1 above, under section 20 of CEAA 2012 and section 49 of REDA.
- 6.3 The names of the experts retained by the Joint Review Panel and any documents obtained or created by the experts and that are submitted to the Joint Review Panel will be placed on the Public Registry. This shall exclude any information subject to solicitor-client privilege.
- 6.4 The Joint Review Panel may, in its sole discretion, require any expert referred to in articles 6.1 and 6.3 of this Agreement to appear before the Joint Review Panel at the public hearing and testify in regard to the documents they have created or obtained and that were submitted to the Joint Review Panel and made public in accordance with the preceding paragraph.

## 7. Participant Funding

- 7.1 Decisions regarding participant funding by the Agency under the federal Participant Funding Program, and decisions on participant funding by the AER as provided for in REDA, the AER *Rules of Practice* and the AER's *Directive 031: REDA Energy Cost Claims* will, to the extent practicable, take into account decisions of the other party.

## 8. Amending this Agreement

- 8.1 The terms and provisions of this Agreement may be amended by written memorandum executed by both the Federal Minister of the Environment and the Chief Executive Officer of the AER.
- 8.2 Subject to sections 49 and 62 of CEAA 2012, this Agreement may be terminated at any time by an exchange of letters signed by both parties.

## 9. Signatures

**WHEREAS** the parties hereto have put their signatures

---

The Honourable Leona Aglukkaq  
Minister of the Environment

---

Jim Ellis  
CEO



Alberta Energy Regulator

Date

Date

DRAFT

## Appendix 1 Terms of Reference

### Part I - Scope of Project

Coal Valley Resources Inc. (the Proponent) proposes to continue operations of the Coal Valley Mine, located approximately 100 km south of Edson in the Coal Branch area of Alberta. The Coal Valley Mine has been in operation since 1978 employing both truck/shovel and dragline mining methods to supply high quality thermal coal for overseas and domestic markets.

Depleting coal reserves within the existing Coal Valley Mine permit area require further mine development to allow the Proponent to maintain its workforce and to continue to supply thermal coal to its customers. The Proponent is proposing to continue operations by developing coal resources in the Robb Trend Area. The Robb Trend Coal Mine Expansion Project (the Project) is an extension of the permit for the existing mining and coal processing activities at the Coal Valley Mine. The mine permit application provides conceptual details about how the Project will be developed, operated and reclaimed. Applications to commence mining operations will be made in the future to the AER and other regulatory agencies. It is expected that the existing infrastructure and workforce will be used to service the Project and that all office and maintenance facilities will be maintained at the present site. The Project will require additional infrastructure such as new road crossings, transportation, and utility corridors to join the Project area to existing mining infrastructure. The coal will be brought from the Project area to the existing processing plant where it will be cleaned and loaded into trains for transport to market.

The Proponent's reserve estimate for the Project area indicates that it would release approximately 172.4 million tonnes of coal for processing yielding approximately 86.2 million clean metric tonnes available for sale. This additional tonnage would provide the Proponent with the necessary resources to operate at a projected production rate of up to 4.0 million tonnes per year for approximately 22 years.

### Part II - Scope of the Environmental Assessment of the Project

The Joint Review Panel shall conduct an assessment of the environmental effects of the Project referred to in the Scope of the Project (Part 1) in a manner consistent with the requirements of CEAA 2012, REDA, the *Coal Conservation Act*, EPEA if applicable, and these Terms of Reference.

As per section 19(1) of CEAA 2012, the assessment shall include a consideration of the following factors:

- a) the environmental effects of the Project, including the environmental effects and cultural impacts of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects and cultural impacts that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
- b) the significance of the effects referred to in paragraph a);
- c) comments from the public, including Aboriginal persons and groups, that are received during the joint review;

- d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects and cultural impacts of the Project;
- e) the requirements of the follow-up program in respect of the Project;
- f) the purpose of the Project;
- g) alternative means of carrying out the Project that are technically and economically feasible and the environmental effects and cultural impacts of any such alternative means; and
- h) any change to the Project that may be caused by the environment.

The Joint Review Panel shall consider and include in its report the effects of the Project on asserted or established Aboriginal or Treaty rights, to the extent the Joint Review Panel receives such information as provided in Part III.

In examining all of the 19(1) factors set out in CEEA 2012, community knowledge and Aboriginal traditional knowledge (such as, but not limited to, traditional use studies), shall be taken into account.

### **Part III – Scope of the factors**

The scope of the factors includes those specified in the “Final Terms of Reference” for the preparation of the Environmental Impact Assessment Report for the Coal Valley Resources Inc. Robb Trend Project issued by Alberta Environment and Sustainable Resource Development on August 4, 2011. These Final Terms of Reference were prepared under the now repealed *Canadian Environmental Assessment Act*. CEEA 2012 has since come into force.

In considering the factors outlined in Part II, the Joint Review Panel shall have regard for the following:

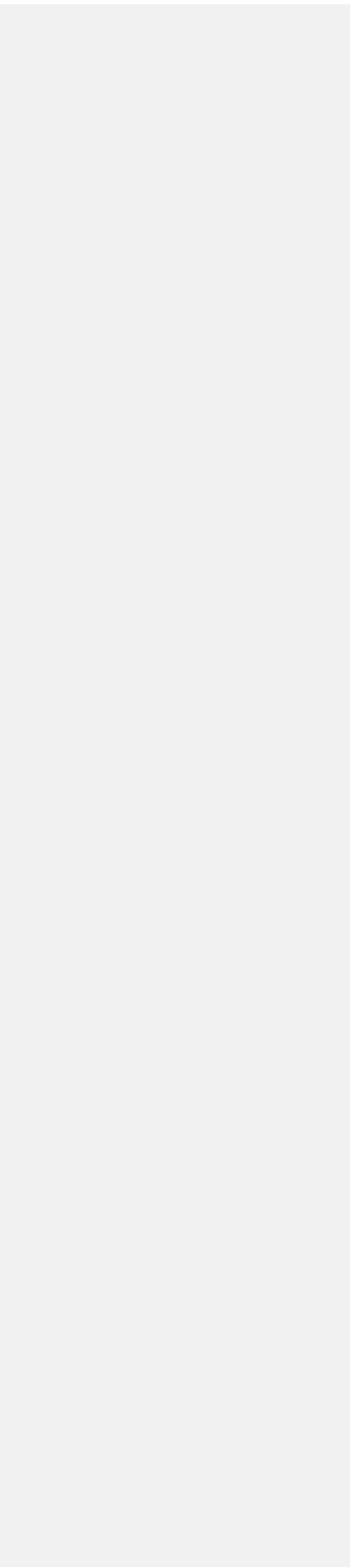
#### **A. Aboriginal Rights and Interests**

The Joint Review Panel shall accept as part of its record and review information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal or Treaty rights in the area of the Project, as well as information on the potential adverse environmental effects and cultural impacts that the Project may have on asserted or established Aboriginal or Treaty rights, and information regarding any measures proposed to avoid or mitigate the potential adverse effects of the Project on asserted or established Aboriginal or Treaty rights. The Joint Review Panel may also receive information provided in this regard by the Proponent, interested parties, federal authorities or government, and provincial departments or government.

The Joint Review Panel may use this information to make conclusions and recommendations that relate to the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights as described by Aboriginal persons or groups.

The Joint Review Panel, based on its assessment of the environmental effects of the Project, may recommend measures to mitigate any adverse environmental effects and cultural impacts caused by the Project that could adversely impact or infringe those asserted or established Aboriginal or Treaty rights that were identified.

The Joint Review Panel shall summarize in its report:



- o the information provided regarding the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights; and
- o where appropriate, the information on the potential infringement that the Project may cause on asserted or established Aboriginal or Treaty rights.

The Joint Review Panel may, where appropriate, provide recommendations on any additional measures to mitigate potential adverse impacts to asserted or established Aboriginal or Treaty rights.

The Joint Review Panel shall not make any determinations as to:

- o the validity of asserted or established Aboriginal or Treaty rights asserted by an Aboriginal group or the strength of such claims;
- o the scope of the Crown's duty to consult an Aboriginal group;
- o whether the Crown has met its respective duties to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*; or
- o any matter of Treaty interpretation.

Nothing in these Terms of Reference limits the application of section 21 of REDA or Part 2 of the *Administrative Procedures and Jurisdiction Act* to the AER, and the Joint Review Panel (in its capacity as a panel of AER hearing commissioners) remains at all times subject to the requirements of those provisions, and is entitled to exercise the powers under Part 2 of the *Administrative Procedures and Jurisdiction Act*, including but not limited to section 13 thereof.

#### **B. Cumulative Effects Assessment**

The cumulative effects assessment **including cultural impacts assessment** should take into consideration the approach described in the Agency's Cumulative Effects Assessment Practitioners Guide (1999) and in the Agency's Operational Policy Statement entitled "Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*" updated in May 2013.

The Joint Review Panel should focus its consideration of cumulative effects on key valued components.

The cumulative effects assessment should provide a justification and description of the spatial and temporal boundaries and include, but not be limited to, the following:

- a pre-Coal Valley Mine case to allow the Joint Review Panel to take into account the effects that may have already been experienced prior to the Project;
- projects or activities that have been carried out, including a consideration of accidents or malfunctions, as of the issuance of the Joint Review Panel's Terms of Reference; and
- activities that will be carried out for which an application has been made as of the time of the Joint Review Panel's Notice of Hearing.

### **C. Accidents & Malfunctions**

In considering the environmental effects and cultural impacts of malfunctions or accidents that may occur in connection with the Project, the Joint Review Panel should consider potential malfunctions or accidents associated with the following components:

- tailings management;
- surface water diversion and management;
- waste management and disposal;
- use, handling or spills of chemicals and hazardous materials on-site;
- the increase in road traffic, and the risk of road accidents; and
- any other project components or systems that have the potential, through accident or malfunction, to adversely affect the natural environment.

The Joint Review Panel should consider the likelihood of occurrence of a malfunction or an accident and the sensitive elements of the environment (e.g. communities, homes, natural sites of interest, cultural use, ceremonial sites, harvesting, gathering of traditional medicines, and areas of major use) that may be affected in the event of any such malfunction or accident.

Plans, measures and systems to reduce the potential occurrence of a malfunction or accident should be considered in the assessment and should indicate how they will reduce the effects or consequences of any such malfunction or accident.

### **D. Effects of Changes to the Environment**

The Joint Review Panel shall consider the effects of any changes caused to the components of the environment described in section 5(1) of CEEA 2012.

### **E. Change to the Project Caused by the Environment**

The Joint Review Panel will also consider any change to the Project that may be caused by the environment.

Environmental changes and hazards that may occur and may affect the Project shall be considered. The Joint Review Panel should also take into account the potential influence of climate change scenarios presented by the Proponent and other interested parties on climate parameters (e.g. precipitation, temperature), and physical environmental processes.

The Joint Review Panel shall consider the influence that these environmental changes and hazards may have on the Project as predicted and described by the Proponent and interested parties.

### **F. Additional Information Available for Consideration**

If the Joint Review Panel concludes that taking into account the implementation of mitigation measures, the Project is likely to cause significant adverse environmental effects and cultural impacts, it may include in its report a summary of any information it

has received and that may be relevant to a determination by the Government of Canada with respect to the

justifiability of any such significant adverse environmental effects and cultural impacts. However, the Joint Review Panel shall not have a mandate to make any conclusions or recommendations with respect to the justifiability of any significant adverse environmental effects and cultural impacts for the purpose of the review under CEAA 2012.

#### **Part IV – Review Process Mandate**

The Joint Review Panel shall conduct its review in a manner that discharges the responsibilities of the AER under REDA, the requirements set out in CEAA 2012, and the requirements set out in the Terms of Reference that were fixed and approved by the Federal Minister of the Environment and the AER.

The Joint Review Panel shall have all the powers and duties of a panel described in section 45 of CEAA 2012 and of a panel of hearing commissioners described in REDA and the rules and regulations thereunder.

A majority of the Joint Review Panel members constitutes a quorum for the purposes of the proceeding to be conducted by the Joint Review Panel. When a hearing, public meeting, or other activity is conducted by the Joint Review Panel and a member of the Joint Review Panel for any reason does not attend on any day or part of a day, the other members who are sitting at the hearing, public meeting or other activity may continue as fully and effectively as though the absent member were present.

#### **Part V – Process**

The environmental assessment for the Project consists of three stages. These stages are referred to as the Pre-Panel Stage, the Joint Review Panel Stage and the Post-Panel Stage. This description of the review process is limited to the Joint Review Panel stage.

The main steps of the review process during the Joint Review Panel stage of the environmental assessment will be as follows:

##### **A. Review of the documentation**

1. As soon as possible following its appointment, the Joint Review Panel will initiate a public comment period on whether the information available on the public registry is sufficient to allow a review that complies with the Joint Review Panel's Terms of Reference and to proceed to the public hearing phase of the process. The public, Aboriginal groups and government departments and agencies will be provided with a minimum of 30 days to provide comments.
2. Comments received during the comment period will be made available to the public through the public registry as soon as possible.

##### **B. The Joint Review Panel Process**

3. The Joint Review Panel shall undertake its mandate in three stages:

Stage 1 – Sufficiency review of the Environmental Impact Assessment and Supplemental Information

Stage 2 – Conduct of a public hearing



Stage 3 – Preparation and submission of a report to the Federal Minister of the

## Environment

4. The Joint Review Panel shall fulfill its mandate and submit its report to the Federal Minister of the Environment within 425 days (14 months) of the date of establishment of the Joint Review Panel. The 425 days does not include the time period(s) between a request for information from the Joint Review Panel to the Proponent and receipt of the requested information by the Joint Review Panel.

### **Stage 1 - Sufficiency Review of the EIA and Supplemental Information by the Joint Review Panel**

5. If the Joint Review Panel determines that the EIA, including supplemental information on the Canadian Environmental Assessment Registry, is not sufficient to proceed to a public hearing after review of the documentation outlined in A.1. above, it shall request additional information to be provided by the Proponent.
6. The Joint Review Panel will allow for the public review of and comment on additional information it receives.
7. The process described above will apply, with any necessary adjustments, until such time as the Joint Review Panel determines it has sufficient information to proceed to a public hearing.
8. If the Joint Review Panel is of the view that it requires additional information from the Proponent but the information deficiency is minor in nature, and the Joint Review Panel receives a commitment from the Proponent to provide the outstanding information in a timely manner, the Joint Review Panel may announce the hearing.
9. The Joint Review Panel may request specialist or expert information or knowledge with respect to the Project from federal authorities in possession of such information or knowledge.
10. The Joint Review Panel may retain the services of independent non-government experts to provide advice on certain subjects with respect to the environmental and cultural impact—assessment of the Project.
11. The Joint Review Panel shall notify Aboriginal groups, government bodies, the public and other interested parties of the names of experts retained by the Joint Review Panel, and any relevant documents obtained or reports prepared by the experts that are submitted. For greater certainty, this shall exclude any information subject to solicitor-client privilege.
12. The Joint Review Panel may require any expert to appear at the public hearing to address the report(s) they have created or relevant documents obtained and that were submitted to the Joint Review Panel and made public in accordance with the preceding paragraphs.

### **Stage 2 – Public Hearing**

13. If, after reviewing the additional information and any written comments from the

public, Aboriginal persons and groups, government departments or agencies, or other technical experts, the Joint Review Panel concludes that it has sufficient information to proceed to hearing, it will announce the hearing, providing for a minimum of notice of 30 days prior to the commencement of the hearing.

14. The public hearing shall provide opportunities for timely and meaningful participation by the public, including Aboriginal persons and groups, in accordance with CEAA 2012 and subsection 34(3) of REDA. The Joint Review Panel shall conduct its hearing in substantial accordance with the AER's *Rules of Practice*. The Joint Review Panel will, however, attempt to make the review process as accessible as reasonably possible for individuals or groups who are not represented by legal counsel or who may lack experience with the quasi-judicial nature of the hearing process.
15. The Joint Review Panel shall hold at least a portion of the public hearing sessions in the area(s) in proximity to the Project. The Joint Review Panel has discretion to consider holding some oral hearing sessions in or near an Aboriginal community or **communities**.
16. The Joint Review Panel shall take into account the timing of traditional activities in Aboriginal and local communities when setting the time and location of the public hearing session.
17. The Joint Review Panel shall make best efforts to conduct a public hearing and close the hearing record within 45 days of commencing the public hearing.

**Comment [CS1]:** The Foothills Ojibway First Nation request details on how a decision would be made to hold or not hold oral hearing sessions in or near an Aboriginal community or communities.

### Stage 3 - Joint Review Panel Report

18. Following the completion of the public hearing, the Joint Review Panel shall prepare and submit to the Federal Minister of the Environment a report as required in article 5.4 of the Agreement. The Joint Review Panel shall provide the executive summary of the report in both official languages of Canada. The report will include:
  - A summary description of the Joint Review Panel's process;
  - A summary of the report;
  - The rationale, conclusions, and recommendations of the Joint Review Panel relating to the environmental assessment of the Project including any mitigation measures and follow-up programs;
  - A summary of any comments received including those from Aboriginal groups, government bodies, the public and other interested parties;
  - An identification of those conclusions that relate to the environmental effects defined in section 5 of CEAA 2012;
  - An identification of recommended mitigation measures and follow-up programs that relate to the environmental effects defined in section 5 of CEAA 2012, including, as appropriate, any commitments identified by the Proponent in the EIA or during the review panel process; and
  - A summary of the information received from participants as set out in Part III (A) on Aboriginal Rights and Interests above.

19. If the Joint Review Panel concludes that, taking into account the implementation of mitigation measures, the Project is likely to cause significant adverse environmental effects and cultural impacts, it may include in its report a summary of any information it has received on the justifiability of any such significant adverse environmental effects and cultural impacts.
20. Under its authority as the AER, the Joint Review Panel shall make a decision on the Project applications and as appropriate, shall include conclusions about the justifiability of any significant adverse effects. In relation to its role as a review panel under CEAA 2012, the Joint Review Panel shall not make any conclusions or recommendations with respect to the justifiability of any significant adverse environmental effects and cultural impacts.
21. The Federal Minister of the Environment will determine the significance of adverse environmental effects under CEAA 2012. If the Minister decides that the Project is likely to cause significant adverse environmental effects, the matter is referred to the Governor in Council (Cabinet) who must decide whether these environmental effects are justified in the circumstances.
22. The report shall take into account and reflect the views of all Joint Review Panel Members, including the Aboriginal perspective of the third Joint Review Panel member.
23. The Joint Review Panel may consider any requests made by Aboriginal groups to have the executive summary of the report translated into their Aboriginal languages. If the Joint Review Panel agrees with such a request, it must recommend to the Agency and the AER that such translations be provided by the Agency and the AER in a timely manner and include any conditions as to payment of the costs of translation that it considers appropriate.
24. The Joint Review Panel will submit its report to the federal Minister of the Environment at the earliest possible date, and within the overall time limit established by the Federal Minister of the Environment for the review.
25. Upon receiving the report submitted by the Joint Review Panel, the Federal Minister of the Environment and the AER will make the report available to the public and will advise the public that the report is available.
26. In accordance with paragraph 43(1)(f) of CEAA 2012, the Joint Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

### **Timelines**

27. The Joint Review Panel may request clarification of its Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the Chief Executive Officer of the AER setting out the request. Upon receiving such a request, the President is authorized to act on behalf of the Federal Minister of the Environment and collaborate with the AER to provide to the Joint Review Panel such clarification. The President and the AER shall use best efforts to provide a response to the Joint Review Panel within 14 calendar days. The Joint Review Panel shall continue with the review to the extent possible while waiting for the

response in order to adhere to the time periods of the original Terms of

Reference. The Joint Review Panel shall notify the public of any clarifications to its Terms of Reference.

28. Subject to article 24 above, the Joint Review Panel may seek an amendment to its Terms of Reference by sending a letter signed by the chairperson to the Federal Minister of the Environment and the AER setting out the request. As appropriate, the Federal Minister of the Environment may delegate to the President of the Agency the authority to act on the Federal Minister of the Environment's behalf and, in collaboration with the AER, consider and respond to any request from the Joint Review Panel to amend the Terms of Reference. The Federal Minister of the Environment, or the President in case of such delegation, and the AER shall use best efforts to ensure a response is provided to the Joint Review Panel's letter within 14 calendar days. The Joint Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the timelines of these Terms of Reference. Any requests for amendments under this article, as well as any amendments to these Terms of Reference, shall be posted on the Public Registry.

DRAFT

## **Appendix 2 Cost Sharing Provisions**

### **1. Cost Sharing**

- 1.1** The AER and the Agency will collaborate to develop a budget estimate of expenses agreeable to both parties prior to the initiation of Joint Review Panel activities.
- 1.2** The costs of the joint review will be apportioned between the AER and the Agency in the manner set out in articles 1.3, 1.4 and 1.5 of this Appendix.
- 1.3** The AER will be solely responsible for the following costs:
- salaries and benefits of the Joint Review Panel Chairperson and the member of the Joint Review Panel not appointed in accordance with article 3.2 of this Agreement;
  - travel-related expenses associated with the review incurred by Joint Review Panel Chairperson and the member of the Joint Review Panel not appointed in accordance with article 3.2 of this Agreement;
  - salaries and benefits of AER staff involved in the joint review;
  - travel-related expenses associated with the review incurred by Joint Review Panel Secretariat members who are AER staff; and
  - all costs associated with AER energy cost orders, as provided for in REDA.
- 1.4** The Agency will be solely responsible for the following costs
- per diems of the Joint Review Panel member appointed in accordance with article 3.2 of this Agreement;
  - travel-related expenses associated with the review incurred by the Joint Review Panel member appointed in accordance with article 3.2 of this Agreement;
  - salaries and benefits of Agency staff involved in the joint review;
  - travel-related expenses associated with the review incurred by Joint Review Panel Secretariat members who are Agency staff,
  - all costs associated with the Joint Review Panel's legal counsel retained by the Agency for the proceeding;
  - all costs associated with the federal Participant Funding Program;
  - translation of records and documents into the official languages of Canada and translation required as outlined in articles 5.4 and 5.6 of this Agreement; and
  - all costs associated with the public registry established pursuant to section 78(1) of CEAA 2012.

**1.5** The AER and the Agency agree to share equally all those costs listed below, incurred between the date of this Agreement and the date the final report is issued by the Joint Review Panel, provided these costs are in direct support of the Joint Review Panel review:

- per diems and associated expenses of independent/non-government expert consultants, analysts and communications specialists retained by the Secretariat on behalf of the Panel;
- language translation and interpretation services and facilities related to the evidence, as required by the Joint Review Panel, but not including translation service referred to in articles 5.4 and 5.6 of this Agreement;
- printing of any reports and documents distributed by the Joint Review Panel necessary for the Joint Review Panel's work;
- the publication of notices and releases;
- photocopying, including the reproduction of documents contained in the public registry, and postage related to the joint review;
- court reporting and transcription services as required by the Joint Review Panel;
- rentals associated with the public hearing, public meetings and public information office facilities and equipment;
- audio and audio-visual services at the hearing and public meetings; and
- miscellaneous reasonable expenditures relating to the joint review process, up to a maximum of five percent (5%) of the total budget for the joint review.

**1.6** Shareable costs of the joint review as detailed in article 1.5 of this Appendix will be incurred at the sole discretion of the Joint Review Panel with due regard for economy and efficiency.

**1.7** All expenses not listed above will need prior approval of both parties if they are to be equally shared.

## **2. Invoicing**

**2.1** The AER will be responsible for advancing funds for the payment of the shareable costs and will invoice the Agency for the amounts owed under this Agreement. In the event that the Agency is required to advance shareable funds directly, it will advance funds for payment and will invoice the AER as determined under this Agreement.

**2.2** The invoicing will be done either at the end of each month or quarterly at the discretion of the AER. The invoice will cover all shareable costs paid by the AER.

**2.3** Each invoice will be accompanied by a summary description of the shareable costs actually incurred and paid for the period covered by the invoice, in a form satisfactory to both parties and will be approved by an official acceptable to both parties. Detailed information about incurred costs will be retained and made available to either party upon request.



- 2.4 Subject to compliance with the above requirements, each party will pay to the other the amount stated as being owed to it in the invoice within sixty (60) days of having received such invoice.
- 2.5 With respect to invoices covering the last period of any fiscal year (ending March 31), and the last invoice to be produced for the Joint Review Panel, each party may review and deduct from the invoice, any incurred shareable costs that have not been previously recovered, so as to determine a net transfer of shared costs from one party to another. The payment will be made within thirty (30) days of having received such invoice. An accounting of the shared expenses incurred by the Agency will be sent with the year-end and final payments, or earlier as may be requested by the AER.

### **3. Audit**

- 3.1 Subject to this Agreement, both parties will keep open to audit and inspection by the Agency or the AER, or their duly authorized representative, all invoices, receipts, vouchers and documents of any nature or kind whatsoever that have been relied on by either of the two parties to calculate the shared cost of conducting the public review.
- 3.2 The party exercising its option to audit will be responsible for the cost of the audit.
- 3.3 Where an audit conducted by either party in connection with this Agreement reveals discrepancies regarding the amount billed to the other party, and where prompt resolution between the parties is unattainable, an independent auditor acceptable to both parties will resolve the issue.