



KEBAOWEK FIRST NATION
110 OGIMA STREET
KEBAOWEK (QUEBEC)
J0Z 3R1

TEL: (819) 627-3455

FAX: (819) 627-9428

www.kebaowek.ca

November 26, 2019

Email Submission

The Honourable Johnathan Wilkinson
Minister of Environment

Terrance Hubbard
Vice President Operations
Impact Assessment Agency of Canada

Jason Boisvert
Crown Consultation Coordinator
Impact Assessment Agency of Canada

Marie-Eve Rousseau
Environmental Assessment Officer
Impact Assessment Agency of Canada

RE: Kebaowek First Nation Review of the Initial Project Description to Support the Preparation of a Summary of Issues.

Dear Minister Wilkinson and staff,

I am contacting you to express Kebaowek First Nation's deep concern about the Impact Agency of Canada's (IIAC) lack of response to our October 31, 2019 letter to Minister McKenna in advance of this imposed deadline to comment on the initial Gazoduq LNG Pipeline Project Description. As previously mentioned, we do not agree that it was appropriate to commence the 180 day planning phase in advance of establishing the Impact Assessment Act regulations. We would like to emphasize that our letters are not intended "to blow off steam" while the Crown proceeds to do what it always intended to do (*Mikisew Cree*, para 54). Your lack of response to our letter is problematic in that the duty to consult is not fulfilled by simply providing a process for exchanging and discussing information. There must be a substantive dimension to the duty (*Clyde River*, para 49). Both our August 2, 2019 and October 31, 2019 letters expressed serious deficiencies in the Crown consultation process surrounding the Gazoduq Inc. project to date. These dimensions included rolling out this particularly large impact assessment in advance of the Impact Assessment Act (IAA) capacity building and IAA regulations being in place and agreed upon with our Nation.

This issue was raised at the October 28, 2019 meeting between the IAAC and the Algonquin Anishinabe Nation Tribal Council (AANTC) as well as previous correspondence from our Nation (August 2, 2019). It is impossible to accept a process described as, “cart before the horse” October 28, 2019 by the IAAC.

At this time, the KFN submits that:

- 1) IAAC Indigenous early engagement and consultation process to date has been inadequate;
- 2) The Project Description for the Gazoduq Inc. proposal is incomplete, the project must include Saguenay LNG Quebec Inc. proposing the refinery infrastructures, and Gazoduq Inc. proposing the pipeline as these are two functionally interconnected projects that remain under one limited partnership LNG Quebec; and
- 3) In no way should the Gazoduq Inc. initial project description, without taking in account LNG Quebec total project effects, be approved.

Each of these arguments along with others related to the initial Gazoduq Project description will be discussed in more detail below.

I trust that you, as Minister of Environment, will take the necessary steps in this pressing matter to make sure that this disregard for the above mentioned issues are addressed.

Looking forward to your timely reply, I remain.

<Original signed by>

**Chief Lance Haymond
Kebaowek First Nation
November 26, 2019**

#1. Consultation to date has been inadequate

The federal government has a duty to consult and accommodate Indigenous peoples who may be affected by proposed development on their traditional territories. The federal government also has a duty to protect Aboriginal rights, recognized and affirmed in section 35 of the Canadian Constitution. However, due to several shortcomings of rolling out the new Impact Assessment process as outlined in our letters (August 2, 2019, October 31, 2019) and at the AANTC meeting October 28, 2019 this exercise cannot constitute proper consultation, nor can the IAAC determine how relevant Aboriginal rights are engaged. Insufficient IAAC and proponent funding combined with the short timeframe for the current review unfairly limit both KFN and the Nation’s involvement in this exercise.

While KFN will provide comments on Gazoduq Inc’s initial project description for the IAAC’s consideration in this matter, no aspect of this submission should be interpreted as an acceptance of the current process. Nor does this submission indicate any willingness to accept the initial project description of Gazoduq Inc or its’ impact on any of the Aboriginal rights or interests of KFN or other AANTC member communities. As such, our comments are as follows:

A. Issues with the Initial Project Description

The Initial Gazoduq Project Description must meet the standards set out by the courts and the Impact Assessment Agency of Canada's (IAAC's) requirements. This shortcoming is specifically aggravated by the fact that the Gazoduq draft project description lacks any details on how it will assess potential adverse impacts specific to Algonquin Rights and Interests linked to both the IAAC and Gazoduq Inc., recognition of Indigenous impact assessment jurisdiction and provisions for Indigenous impact assessment jurisdiction under Section 114 of the IAA. It is not clear with the IAAC or with Gazoduq Inc. how this assessment will be carried out financially and operationally. Although requested in advance, there is no consultation agreement with the Crown or process agreement between Gazoduq Inc. and KFN.

A list of potential impacts that need to be addressed include but are not limited to:

- The impact of upstream fracking on water supply, groundwater, and biodiversity health as per the Convention on Biological Diversity Agreement to which Canada is signatory;
- Ecological impact of the pipeline and refinery operations, including but not limited to Species at Risk such as Lake Sturgeon, caribou and beluga whales;
- Upstream and downstream greenhouse gas emissions, their impact on Indigenous territories, their impact on Canada's international obligations, and global climate change;
- Impact of the 750 km of proposed pipeline, including all affected forests, habitats, streams, rivers and oceans;
- An economic assessment of the LNG market and this project, and protections for the environment against abandonment of the project during its projected lifetime.
- Changes in physical attributes of land, waterways (air, noise, visual quality, etc.);
- Changes in preferred species of harvest/culturally critical species;
- Continued Algonquin access to resources;
- Changes in the perception of land (increased avoidance due to perceived environmental, aesthetic or safety concerns); and
- Changes in access to the Project corridor.

Presently, no Indigenous community can rely on Gazoduq Inc's various generated technical assessments, as we have not meaningfully participated. Algonquin peoples' use of surrounding land and waters will indicate Valued Ecosystem Components (VEC) that could potentially be impacted by the Gazoduq Inc. Project. However, to date, no process agreement has been reached between Gazoduq Inc. and KFN, that engages KFN input and incorporates our Indigenous VECS and Indigenous knowledge within any existing studies they have undertaken despite requirements under the *Impact Assessment Act* that Impact Assessments integrate and take into account Indigenous knowledge.¹ Gazoduq Inc's study standards to date are very generalized, and have been informed by their own specific industry assumptions of study methodology without consultation with affected Aboriginal Rights and Title Holders. Study methodology must accurately reflect Indigenous conceptions of VEC. Ultimately, a methodology must be agreed upon through a process agreement with the proponent that is responsive to Indigenous peoples' unique rights and uses of the land and water bodies that may be impacted by the project. Furthermore, Gazoduq Inc must discontinue use of the Euro Canadian assumption that Indigenous peoples' are groups within submissions and recognize and use the term "Nation" in all future documentation. Lastly, all technical study documentation related to the project proposal

¹ *Impact Assessment Act*, Preamble, ss. 6(1)(j), 22(1)(g), 51(1)(d)(ii.1).

and impact assessment must be made available in English to our community in order to support free, prior and informed consent.

B. Other Specific Concerns

We fully support the attached comment table prepared by Algonquins of Barriere Lake related to specific sections of the Initial Project Description in the attached Appendix A. It is our recommendation that the issues contained in this letter and Appendix reflect that **in no way should the initial project description, as currently proposed, be approved by the IAAC.**

Appendix A – Detailed Review

	Initial Project Description Section, Page, Text	Kebaowek First Nation Comment
1	<p>Preamble, Page 1</p> <p>“The PPA avoids the vast majority of potentially sensitive areas in the Study Corridor, including, in particular, lakes, parks, known municipal drinking water supply protection areas, federally and provincially designated wildlife habitats and designated protected areas.”</p>	<p>KFN has had no engagement with Gazoduq on the project, the definition of the Preferred Planning Area (“PPA”) has occurred without detailed discussion with KFN and other communities about their Indigenous Knowledge including sensitive areas related to their rights, title and interests and therefore, has set the regulatory process in motion without meaningful involvement of Indigenous peoples as required by the IAA 2019.</p>
2	<p>Preamble, Page 1-2</p> <p>“...Gazoduq will submit the information required by applicable laws and regulations in force in French (official version). Gazoduq will also provide an English translation; however, in the event of any discrepancy between the two versions, the French version will prevail.”</p>	<p>KFN would like to note that the official language used by KFN and its representatives is English. While we acknowledge that, to date, the Project Description has been provided to KFN we require this to continue for all technical documents as well.</p> <p>As we are unable to read and review documents in French due to a lack of translation capacity. Therefore, all regulatory documents, including the full Impact Statement (“IS”) (including appendices, enclosures, amendments or otherwise), must be provided in English to facilitate our review.</p>
3	<p>Preamble, Page 2</p> <p>“In accordance with recently adopted new legislation and its related regulations, Gazoduq plans to submit the impact assessment of its Project to the IAAC for review in the first quarter of 2020”</p>	<p>KFN objects to the compressed timeline identified. While superficial engagement has begun with KFN, there has yet to be conclusion to process agreement discussions and execution of an assessment of potential impacts to ABL’s rights, title and interests.</p> <p>Without an assessment of potential impacts to KFN’s rights, title and interests, any EIS submitted by Gazoduq will be deficient in meeting the requirements identified under the <i>Impact Assessment Act</i>.</p> <p>KFN requires Gazoduq to delay filing their IS until topics agreed upon in a process agreement are concluded, information on potential impacts is collected and mitigation/accommodation is properly identified, where practicable.</p>
4	<p>A.4 Engagement and Consultation Approach with Indigenous Groups, Page 9</p> <p>“Drawing on the values, principles, and objectives that serve as the basis for the general information and stakeholder consultation approach presented in Sections A 3.1 to A 3.4, Gazoduq has adopted a collaborative approach to engaging Indigenous groups throughout all phases of</p>	<p>The values, principles, and objectives outlined in Sections A.3.1 to A.3.4 include many ‘good neighbor’ principles of consultation that can define a public engagement process. However, what is missing from those principles and the approach identified within this section is an identification and assessment of impacts to constitutionally protected rights that constitutes the part of the procedural aspects of Duty to Consult.</p> <p>We request the delegated procedural aspects of</p>

	the Project.”	the Duty to Consult be accurately and fully described in the Consultation Approach.
5	<p>A.4.1 Project Planning Phase, Page 9</p> <p>“The Objectives being pursued were the following:</p> <ul style="list-style-type: none"> • Create forums for mutual sharing of information and concerns, early on in the Project; • Foster active involvement of Indigenous groups in the Project’s development and progress; • Mitigate potential Project effects on the rights of Indigenous people; • Promote and maximize events and situations likely to result in benefits for neighboring Indigenous groups.” 	<p>While KFN acknowledges Gazoduq’s commitment to “...mitigate potential Project effects on the rights of Indigenous people”, it is unclear how Gazoduq will first identify and then assess those impacts in the first place. Sharing information and concerns, while valuable, cannot result in an identification of impacts to rights, particularly as concerns identified by the proponent are often relate to biophysical components of the Project and are disconnected from the rights, title and interests of KFN.</p> <p>As the Agency must consider any adverse impact that a designated project may have on the rights of Indigenous peoples of Canada, the identification and assessment of those rights must be clearly articulated.</p>
6	<p>A.4.1 Project Planning Phase, Page 10</p> <p>“It should be noted that the last three Indigenous groups have been consulted since 2015 as part of the Énergie Saguenay project, which would be supplied by the Gazoduq Project. Accordingly, they already had an understanding of the need for the natural gas transmission line and the related supply which the Gazoduq Project is proposing to transport.</p> <p>During the course of these meetings with representative from each of the previously identified communities, and despite concerns raised, no formal opposition was expressed regarding the possibility of a natural gas transmission line within the Study Corridor.”</p>	<p>It should be noted that KFN is not included in the list of Nations included in the early Project planning phase engagements. However, if Gazoduc is willing to introduce the Energie Saguenay project as they have done in this section they must be willing to merge the project descriptions to take into account the total project effects under LNG Quebec in the project description.</p> <p>Additionally, requiring the identification and assessment of impacts does not equal formal opposition of the Project as the identification, assessment, and accommodation of impacts to rights, title and interests formulate the Duty to Consult. Holding proponents accountable to legislative and legal requirements does not equal opposition, nor does raising concern within a regulatory process.</p> <p>We caution against the use of ‘formal opposition’ within this document or other documents in the future, as it can conflate accountability to requirements under the common law with obstructionist activities.</p>
7	<p>A.4.2 Filing of the Pre-Application Project Description, Page 10</p>	<p>KFN was not included in consultation activities for the Pre-Application Project Description. This has led to a lack of consideration of KFN information, including Indigenous knowledge, in all pre-application decisions to-date.</p>
8	<p>A.4.4 Identification of the PPA and Field Surveys, Page 11</p> <p>“In spring 2019, a PPA was defined within the Study Corridor. This new phase of the Project provided an opportunity for Gazoduq to once again communicate with the Indigenous groups and keep them informed. Letters were sent on April 24, 2019 (April 30, 2019 for the Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government).</p>	<p>KFN recommends this section be split into two sub-sections, one related to consultation activities and one related to nation-specific economic development. This will ensure that activities such as providing work opportunities to Indigenous groups is not confused with consultation activities required and delegated as part of the Duty to Consult.</p>

	<p>During the spring and summer of 2019, the Indigenous groups were also informed of the types of field surveys that were planned, 10 as well as the schedule for each one. To enable the Indigenous groups to benefit from this work, Gazoduq offered health and safety training and data gathering techniques to 20 candidates from the Indigenous groups located along the PPA so that they could participate in the surveys. Of that group, 11 workers were hired by Gazoduq to participate in the fieldwork carried out in 2019.</p> <p>Gazoduq also informed Indigenous groups that the gathering of information about the traditional land and resource use (TLRU) of each of those Indigenous groups would be part of the Impact Statement. Gazoduq also indicated its desire to reach an agreement regarding the objectives and the means necessary for the Indigenous groups to conduct their own TLRU studies.”</p>	
9	<p>A.4.6 Engagement Activities Conducted to Date. Page 12-13</p>	<p>Please disaggregate the activities and include the Indigenous nations engaged for each activity type. It would also be helpful to have a status update for each activity.</p>
10	<p>A.4.6.2 Highlights of Discussions with Indigenous Groups, Page 13-14</p> <p>“Given Gazoduq will undergo the regulatory process under the new federal authorization process and the Crown will undertake its own direct consultation with Indigenous groups in September 2019, discussions between Indigenous groups, Gazoduq and the Crown are expected to increase significantly in the coming months. Consequently, more specific issues and concerns are expected to be identified.</p> <p>Gazoduq plans to continue its efforts to adapt and distribute information, stimulate and support the exchange of documents, and request information and discussion meetings so as to clearly identify issues and concerns of Indigenous groups. These interactions will include discussions on the methods to avoid, minimize or mitigate potential Project impacts, all of which will be documented by Gazoduq. The means identified and/or agreed to will, insofar as necessary, be integrated into the Project.”</p>	<p>Issues and concerns do not necessarily translate into potential impacts on KFN’s rights and interests. Please explicitly state that the Crown will undertake an assessment of this, as required by the <i>Impact Assessment Act</i>.</p> <p>Further, this section indicates, again, that interactions with Indigenous Nations will include discussions on the methods to avoid, minimize or accommodate potential project impacts but does not include the necessary step of identifying and assessing those impacts in the first place. This is an obvious gap and signals to KFN that Gazoduq may not undertake this as part of their IS development.</p>
11	<p>A.4.7 Next Steps, Page 18-19</p> <p>“During the Project’s development, Gazoduq will continue to provide Indigenous groups</p>	<p>It would be helpful to have the next steps disaggregated and included in the Indigenous-specific summaries included in Section A.4.6.2, as the next steps listed do not apply uniformly to each</p>

	<p>with useful information allowing them to identify potential Project impacts on their rights and use of resources and land for traditional purposes. Through dialogue, and ideally, meetings with Indigenous groups and their representatives, the issues associated with the Project will be identified.</p> <p>For each group, issues identified during dialogue with Gazoduq will be discussed and the means to avoid, minimize or mitigate potential Project impacts will be discussed, clarified and to the extent necessary, integrated into the Project”</p>	<p>Indigenous group.</p> <p>More specifically, KFN would like to highlight this section, as it is the first instance within the Initial Project Description where identification of potential Project impacts on rights and uses has been discussed. It is important to note that Gazoduq is placing the onus of this identification on the Nations and therefore, sufficient capacity to do so must be provided. Nations do not have access to the expertise or information that Gazoduq has about this Project; this expertise and information must be secured and provided by Gazoduq for Nations such as KFN to functionally conduct an assessment. Further, sufficient capacity must be provided a timely manner to allow for the concurrent collection and assessment of information.</p>
12	B.9.1 Main Components , Page 23-24	It would be helpful if all main components of the project could identify (in hectares) the amount of Algonquin Title Lands required as part of the land ownership identification. Further, it would be helpful if the proponent could identify the amount of Occupied and Unoccupied Algonquin Title lands (in hectares) required, per component of the project.
13	C.13 Proposed Location , Page 30 “The Study Corridor was made public in November 2018. Its width ranges from 30 km to 60 km and it covers an area of nearly 2,948,000 hectares. Approximately 93% of the Study Corridor is located in Québec, with the remaining 7% in Ontario. The Study Corridor spans three administrative regions in Québec and two districts in Ontario. The Study Corridor includes, in whole or in part, nine RCMs or equivalent territories, 48 municipalities or unorganized territories (43 in Québec and 5 in Ontario), and one First Nations reserve under the Indian Act.”	Please update to include information related to Algonquin Unceded Title territory. The Study Corridor spans Algonquin unceded Title territory.
14	C.13 Proposed Location , Page 30 “In April 2019, Gazoduq announced that a 780 km long PPA had been identified within the Study Corridor. In unconstrained areas, the PPA was an average width of approximately 400 m on public lands and approximately 200 m on private land. The PPA width was however, more than 400 m in two specific locations, in order to optimize the connection to the TC Energy mainline and for routing through a geotechnically complex area. The PPA includes 21 municipalities (19 in Québec and 2 in Ontario) and no First Nation reserves or federal Crown land.”	Please identify how much of the PPA is covered by Provincial Crown Land (in hectares) and how much of that Crown Land is Unoccupied (in hectares).
15	C.13.3 Legal Land Descriptions	Please provide example text of the required servitudes for the passage of the natural gas

	“No land has been acquired by Gazoduq at this time. It should be noted that the passage of the natural gas transmission line will not necessarily require the acquisition of land, unless a compressor or metering station is located on private land. However, servitudes will be required for the passage of natural gas transmission line.”	transmission line so that KFN can evaluate the priority rights that would be granted to Gazoduq if the project is approved
16	C.15.1 Health , Page 37	This section does not include specific reference to changes occurring to Indigenous health conditions. Please update to include the well-being of Indigenous Nations and health perceptions of Indigenous groups as per the <i>Impact Assessment Act</i> . This should include specific text within each indicator presented that indicates Nation-specific information will be collected and assessed.
17	C.15.2 Social , Page 38-39	This section does not include specific reference to changes occurring to Indigenous social conditions. Please update to include data related to social conditions of Indigenous Nations. This includes a description of how sparsely populated areas of provinces are conducive to the exercise of Indigenous rights, the land use activities undertaken in the support of those rights and a surface area/proportional percentage calculation of traditional land use areas within the Study Corridor based on the amount of available land.
18	C.15.3 Economy , Page 40	This section does not include specific reference to changes occurring to Indigenous economic conditions. Please update to include specific references to Indigenous economic conditions, including trade economy.
19	D Federal, Provincial, Territorial, Indigenous and Municipal Involvement , Page 41	There is no information contained within this section or sub-section(s) related to Indigenous involvement. Please remove this reference from the heading or update to include information.
20	E.21 Potential Impacts on Indigenous Peoples , Page 45	Please see the above Cover Letter for specific details on rights and impacts which can be translated into potential valued components of interest to KFN. In addition, tentative concerns of KFN which may translate into potential effects requiring further assessment include: <ul style="list-style-type: none"> • project-related blasting; • gas leaks (terrestrial/aquatic); • other project-related risks of water, air and/or soil contamination (e.g., construction materials); • risk of explosion; • reliability of Gazoduq’s Emergency Response Planning and Monitoring Systems; and • community access to right-of-way.
21	E.21 Potential Impacts on Indigenous	KFN disagrees with the statement that project

	<p>Peoples, Page 46</p> <p>“The Project's impacts on these valued components could be primarily related to construction and decommissioning activities. In operation, regular maintenance and monitoring activities are expected to have less impact on Indigenous peoples.”</p>	<p>impacts are primarily related to construction and decommissioning activities. A key impact which most certainly will occur is the conversion of Unoccupied Crown land from the inventory of available Crown land available for Algonquin’s use to land held by servitude by Gazoduq. If approved, Unoccupied Crown lands will be converted to Occupied Crown lands. This land will include priority rights granted to Gazoduq for access to, maintenance of and control for that land. These priority rights would allow Gazoduq to exclude Algonquin peoples, at their discretion, from areas of the right-of-way for maintenance activities. This represents an ongoing and real impact throughout operations which must be addressed.</p>
22	<p>E.22 Potential Changes to Health, Social or Economic Conditions of Indigenous Peoples, Page 46</p> <p>“Gazoduq continues to seek input and feedback from potentially impacted Indigenous groups regarding the potential impacts of the Project on their health, social or economic conditions. Clearly, these groups are in the best position to identify the potential impacts of the Project on these conditions. Although Gazoduq cannot assume the impacts that these groups will identify through their consultation processes, some impacts are identified in this section for information purposes. These impacts have been identified through interactions with Indigenous groups and what might normally be identified at this stage of the Project.”</p>	<p>KFN has not contemplated conduct of assessment on their health, social or economic conditions beyond the secondary connection to their rights, title and interests. Should this information be required by Gazoduq, this should be clearly articulated and included in capacity discussions.</p> <p>Further, the specific requirements listed in C.15.1, C.15.2 and C.15.3 should be carried forward to this section as well to ensure perceptive effects are considered.</p>
23	<p>G.3.1 Emergency Preparedness and Response, Page 50</p>	<p>KFN requires involvement in the development of Emergency Response Plans for the line, compressor stations and metering stations within Algonquin unceded territory, as the reliability of these plans and systems is a key concern.</p>