

NORTHWATCH

March 10, 2020

Gazoduq Project
Impact Assessment Agency of Canada
901-1550, d'Estimauville Avenue
Québec, QC, G1J 0C1

Sent by Email: iaac.gazoduq.aeic@canada.ca

Agency Review Team:

Re. Comment on the Draft Public Participation Plan for the Impact Assessment of the Gazoduq Project

On January 22, 2020, the federal Impact Assessment Agency determined that an impact assessment was required for the Gazoduq Project, in accordance with section 16 of Canada's Impact Assessment Act (IAA) and that the impact assessment will be referred to an integrated review panel whose mandate covers both the IAA and the Canadian Energy Regulator Act (CERA)

On 30 January 2020 the Agency announced that they would accept comments until March 10th on draft Tailored Impact Statement Guidelines (Guidelines) and a draft Public Participation Plan.

Northwatch has reviewed the draft Public Participation Plan and provides comments by way of this correspondence. In summary, our comments on the draft Public Participation Plan include the following:

- The Public Participation Plan should include, at its beginning, a clear statement of the purpose of public participation, and a discussion of how the purpose of public participation is reflected in the plan
- We have continued concerns with respect to the structure and functionality of the Registry; these are set out in a later section of this submission
- In those instances where the draft plan sets out that "Comment periods will also be used to solicit comments from participants on key documents... if applicable" the draft Plan should clarify in what instances or under what circumstances comment periods would not be used, i.e. in what instances or under what circumstances would the NOT be applicable
- We appreciated the Agency providing the opportunity for the public to participate in a webinar associated with the Early Planning comment period, and would encourage the addition of webinars / online engagement sessions to the list of Public Participation Tools in Section 5; we would also recommend these webinars / online presentations being made available as archived webcasts and posted to the registry for the benefit of those whose schedules did not allow participation in real-time
- We encourage the Agency to include notice of all public participation opportunities on the Registry, including webinars and online presentations



- We encourage the Agency to include records of all public participation opportunities on the Registry, including webinars and online presentations
- In Phase 2 under “Public Participation Tools”, the statement “Online comments on the draft version of the Terms of Reference and on the Joint Review Panel Agreement, if applicable” requires clarification, or deletion of the words “if applicable”; under what circumstances would a public comment on opportunity on the Terms of Reference and on the Joint Review Panel Agreement NOT be applicable?
- In Phase 2 under “Expected Activities” we question the description of funding being made available to encourage public participation in the impact assessment process; a more apt description would be that the participant funding is made available to support public participation; the Agency may also wish to note here that participant funding is under a contribution agreement, and that it does not fully cover participants costs (we would very much welcome a change to the participant funding program, but note that in our experience participant funding covers only a portion of expenses incurred)
- The proposed 30 day comment period on the Panel’s Terms of Reference should be extended; for community groups who need to incorporate the views of their membership, for groups relying on expert opinion or the assistance of consultants, and in periods which overlap with holiday seasons a 30 day comment period is insufficient
- The proposed 60 day comment period on Proponent’s Impact Statement should be extended; for community groups who need to incorporate the views of their membership, for groups relying on expert opinion or the assistance of consultants, and in periods which overlap with holiday seasons a 60 day comment period is insufficient, particularly given this can be expected to be a technical document, and in most instances will be supported by a large number of technical documents, the review of which may be required to fully understand what the Proponent has put forward in their Impact Statement; this is an example of where the Proponent is clearly favoured in the process and the public greatly disadvantaged, with the Proponent having up to three years to prepare their Impact Statement (for a project which they presumably have begun technical work on long before submitting their Project Description) and the public is given only sixty days to complete their review; this limited comment period could prove to be the fatal flaw in the Impact Assessment Process
- The Notice of the Public hearing of only 45 days is likely to prove insufficient and to unduly limit public participation rights and opportunities; for example, in some instances public participants will be seeking to arrange technical support from consultants and experts who may not be available within this limited time frame; in other instances, public participants will be required to arrange time off work, make childcare and other essential arrangements, and may be unable to achieve this with only 45 days notice
- Under Phase 3, Part I, there should be greater clarity with respect to the public’s opportunity to “ask questions about the information presented”; the Public Participation Plan and the Panel’s Terms of Reference should clearly state that the public has the opportunity to pose questions directly to the Proponent and those providing evidence / information on their behalf, including the opportunity to pose questions in writing in advance of the hearing and to pose questions orally, including supplementary questions, during the hearing

- The Public Participation Plan should state clearly that the Secretariat will be staffed and supported by staff of the Impact Assessment Agency; past experience in Joint Review Panel's has demonstrated the need for the Secretariat to be staffed by the Agency rather than the regulator
- Under Phase 4, the statement "A response document to comments received on potential conditions prepared by the Agency is developed, if necessary" requires clarification, or deletion of the words "if applicable"; under what circumstances would a dispositioning of public comment NOT be applicable?
- The entirety of the section "Phase 5: Post- decision" assumes the Project has been approved and is moving to permitting and implementation; this is highly problematic and must be rewritten to clarify that not all projects that are subject to an impact assessment and a panel review will be approved

Northwatch provides these comments as part of the review process under the Impact Assessment Act. In no way should the provision of these comments be construed as a statement of acceptance of the project or a belief that the negatives of the project can be sufficiently mitigated to allow the project to move forward. However, we appreciate that the Act allows proponents to put forward projects, even those that would not meet the tests of sustainability or being consistent with Canada's climate change commitments. Given that, we have decided to participate in the review process, with the full expectation that the review outcomes will not include project approval.

The Project

Gazoduc Inc. is proposing the construction and operation of a natural gas pipeline approximately 780 kilometres long between northeastern Ontario and Saguenay, Quebec. This proposed project would connect TC Energy Limited's existing main natural gas transmission system in northeastern Ontario to the proposed Énergie Saguenay Project, a natural gas liquefaction facility by GNL Québec in Saguenay, Québec. The project would also include three compressor stations, one metering station, approximately 25 block valves and a dedicated control centre.¹

The Project, as currently proposed, includes approximately 780 km of natural gas transmission line and related components. Approximately 93% of the 780-km length will be in Québec. The remaining 7% will be in Ontario. For the purposes of this Project, the natural gas transmission line is an underground pipe of approximately 780 km in length that will transport natural gas from the interconnection point with TC Energy's mainline near Ramore, Ontario, to supply the future natural gas storage and export liquefaction complex in Saguenay, Québec.²

Northwatch's Interest in the Project

Northwatch is a regional coalition in northeastern Ontario. Our members - individuals and member groups - reside in the six federal districts that comprise the region of northeastern Ontario, namely Algoma, Manitoulin, Sudbury, Nipissing, Timiskaming and Cochrane District. Northwatch was founded in 1988 with a dual mandate of providing a regional voice for environmental protection in northeastern Ontario and supporting public participation in environment-related decision-making.

Three of the six districts of northeastern Ontario - Nipissing, Timiskaming and Cochrane District - are transversed by an existing natural gas pipeline, known as the TransCanada Mainline. The Gazoduc Project would seek to construct an additional pipeline from Ramore, Ontario to the Saguenay in Quebec, including a portion in northeastern Ontario. The preferred planning area is in Cochrane District; the study corridor is in Cochrane and Timiskaming Districts.

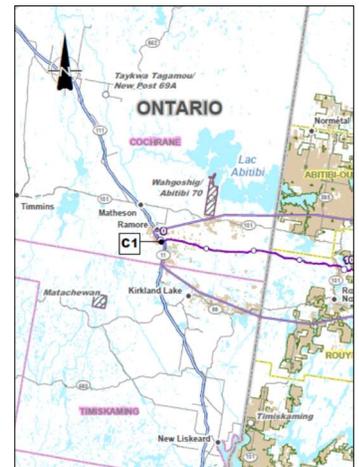


Figure 1 Initial Project Description Appendix A

The need and purpose of the project, potential environmental effects and impacts, climate related concerns, economic issues, potential effects on regional and future natural gas supply and prices, and potential consequences for wildlife, wildlife habitat, forest health, and species at risk are all concerns that Northwatch members have identified in connection with this project at this preliminary stage in our review. As with all natural resource and energy projects, Northwatch has a concern and interest in whether the review properly takes into account the potential for the project to impact on the rights of the Indigenous peoples and that the review requires that there be a clear expression of the free, prior and informed consent of Indigenous peoples with respect to the project in any part or in its entirety before any government body or agency grants permission for the project to proceed and before the proponent undertakes any activities on the land which would not be taken in the absence of an intent to proceed with the project.

¹ IAA Project Page for Gazoduc, as found at <https://ceaa-acee.gc.ca/050/evaluations/proj/80264?culture=en-CA>

² Initial Project Description – Summary, Page 3, Section F.25.5.1 Main Components

The IAA Review Process to Date

Under the (still) new Impact Assessment Act, many of the key features of the previous Canadian Environmental Assessment Act persist, including the requirement that the public be provided with opportunities for meaningful public participation. Under the IAA, it is clearly set out that it is the responsibility of the Agency to “ensure that the public is provided with an opportunity to participate meaningfully.”³

This is the first project review Northwatch has participated in under the new Act, and we are still learning the details of the new Act how they operationalize and – in particular – ways in which it is the same or different from CEAA (1996) and CEAA (2012). However, at this early stage, we have some concerns about whether we – the public – are being provided with opportunities to participate in a manner that is meaningful.

The following concerns relate to this stage of review for this project:

- The comment period was inadequate in terms of length
- The comment period coincided with winter and winter travel conditions, making it more difficult to attend the sessions offered by the Agency and/or to schedule other community discussions
- A draft Permitting Plan was posted to the registry on 6 March 2020; no email notice was received notifying participants on the distribution list of the document availability or it having been posted; the document is highly relevant to the Tailored Guidelines, and we are disappointed that it was not provided in a more timely manner, or the comment period extended to allow the consideration of this document within the review period
- While we are not providing detailed comments on the Permitting Plan at this point, due to it only recently having become available and no notice of its availability having been provided, we do note that the draft Permitting Plan does not include any description of the requirements of the Impact Assessment Act or even a link to the Impact Assessment Act in a reference section (which it does for the CERA)
- We have continued concerns with the Registry and its functionality and usefulness, as expressed in our comments on the Project Description

It is our assessment that the Agency has not reconstructed the registry in a manner that provides the publicity with convenient access to the review information and records, as is required by Section 104 of the Impact Assessment Act:

Establishment of Registry

Canadian Impact Assessment Registry

104 (1) There is to be a registry called the Canadian Impact Assessment Registry, consisting of an Internet site and project files.

Right of access

(2) The Registry must be operated in a manner that ensures convenient public access to it. That right of access to the Registry is in addition to any right of access provided under any other Act of Parliament.

³ Impact Assessment Act 2019, Section 11

The registry as reconstructed is problematic. Most notably:

- The ability to display all documents in table format is lost; this option was extremely useful in that it provided a means of tracking key submissions for reference
- The registry does now provide a table-format listing of “Key Documents” and we welcome this as a definite improvement; however, we would like to see this format used for all documents
- The registry includes a “List all documents” hyperlink but this link excludes comments submitted – they are accessed by a separate “View Comments” hyperlink; this is problematic for multiple reasons, not the least of which that it messages that public comments are in fact not “documents” for consideration or reference in the review

We believe that “convenient” access implies and includes “convenient” use, as in the registry should function in a manner which makes allows convenient, efficient and productive use of its functions for review participants. In its present form, the reconstructed registry does not achieve this.

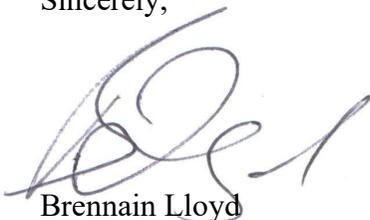
As expressed in our comments on the Project Description, we are disquieted by the Agency decision to make the provision of online feedback “subject to social media authentication”. We will subject ourselves to this requirement, but under protest. And we are of the view that this could exclude many who may disagree with the federal government making participation with the likes of Facebook and Google a requirement of public participation. Yes, Northwatch uses these social media tools but we are also aware of many members of the public who are reluctant to do so, largely out of concerns over privacy, the harvesting of personal data, and potential identity theft. Frankly, it was shocking to find that this requirement had been put in place. Having the federal government adopt the “the terms of service of that social media platform, and its related policies and rules” is setting the bar extremely low.

Conclusion

As was the case with the Project Description, due to the limited comment period and an already crowded work plan, we have had limited time to undertake this review, consult with our membership, and seek any technical expert or advice. As a result, these comments are preliminary.

Thank you for your consideration.

Sincerely,



Brennain Lloyd
Northwatch Project Coordinator