



MITCHIKANIBIKOK INIK

Algonquins of Barriere Lake
Les Algonquins du Lac Barrière

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March 13, 2020

Electronic Submission

Ian Ketcheson

Director General, Crown Consultations
Impact Assessment Agency of Canada

RE: Algonquins of Barriere Lake Review of the draft Tailored Impact Statement Guidelines.

Dear Mr. Ketcheson,

I write on behalf of the Mitchikanibikok Inik (also known as the Algonquins of Barriere Lake) in response to the draft Tailored Impact Statement Guidelines, provided by the Agency on January 30, 2020.

The Mitchikanibikok Inik asserts and exercises authority, jurisdiction and stewardship over lands threatened by the proposed project. We do not consent to the project, which, if built, would violate both our sovereignty and our laws. Nor do we accede to Canadian state law as determinative of the project's legality. In submitting these comments, the Mitchikanibikok Inik should not be construed as accepting or supporting the project or the impact assessment regime in general.

Despite the limited time available for review, we have had a chance look over the draft Tailored Impact Statement Guidelines. Our comments are as follows:

1. Indigenous Consultation and Engagement

We have already raised concerns with the Agency, both verbally and in writing, about the speed with which the assessment process is moving forward, especially while key regulatory components have yet to be finalized.

One major area of uncertainty has been the role played by Indigenous knowledge in the assessment process. Since the summer of 2019, the proponent and our Nation have tried to negotiate a "process" agreement to fund our participation in the development of the Impact Statement. These negotiations have yet to produce a final agreement. The impasse can be traced, in part, to the proponent's assumption that the only Indigenous contributions that matter are those related to impacts on rights.

Our community has deep-seated ecological and environmental knowledge, acquired through long and intimate association with the land. Yet the proponent has gone ahead and completed its baseline studies in the absence of any Indigenous input. What is more, the proponent has been putting pressure on our Nation to sign a process agreement while the nature of our participation, as prescribed under the *Impact Assessment Act*, remains unclear.

Because of the extremely aggressive timelines pursued by the proponent and condoned – at least tacitly – by the Agency, Indigenous communities such as ours have been forced to negotiate process agreements in an informational vacuum. We are worried that we face a double bind: either sign an unfair agreement with the proponent or be left behind entirely. This hardly accords with the aims of respect and reconciliation enshrined in the preamble to the *Act*.

We request, accordingly, that the Tailored Impact Statement Guidelines more clearly set out the proponent's obligations with respect to soliciting and integrating Indigenous knowledge into the Impact Statement. We further request that the Agency impose or recommend minimum timelines for the completion of the Impact Statement, given the proponent's worrying assertion that they intend to file as early as this coming spring (notwithstanding the lack of meaningful Indigenous engagement to date).

The Impact Statement should also identify the particular sort of Indigenous engagement sought by the proponent – for instance, an assessment of impact on rights but not Indigenous knowledge – as well as detail the resources and supports offered. Our concern, here, is that the proponent will overstate its efforts to engage with affected Indigenous communities and then shift the blame over to us for any failure to reach a process agreement.

2. Valued Components

The Mitchikanibikok Inik can identify a number of key valued components, both environmental and cultural, that ought to be expressly and comprehensively addressed in the final Tailored Impact Statement Guidelines:

- the impact on aquifers and waterways, including the inevitable risk of contamination from construction activities or materials; maintenance; leaks; and, as a worst-case scenario, catastrophic failure resulting in fire and/or explosions;
- the resultant impacts on aquatic and terrestrial environments, including water systems, boreal forests and wildlife (aquatic and terrestrial) within our traditional territory; and
- the resultant impacts on our activities, rights and cultural practices, including our inherent rights to hunt, fish, gather and travel freely within our traditional territory.¹

¹ These rights, long recognized under Algonquin law, have since been affirmed by section 35 of the *Constitution Act, 1982*.

3. Indigenous Knowledge About Environmental Impacts

The draft Guidelines recognize the value of Indigenous knowledge in establishing baseline conditions. Yet the unique ecological and environmental knowledge of the Mitchikanibikok Inik, cultivated over generations, should also inform the determination of anticipated environmental changes and effects. We have community members, for instance, with intimate knowledge of the interactions between waterways and ecosystems in our traditional territory. That knowledge should be solicited and integrated into the proponent's Impact Statement.

We are concerned that the Guidelines, as drafted, do not fully give effect to the importance and complementarity of both scientific and Indigenous knowledge in the impact assessment process.

4. Cumulative Effects

During the previous comment period, relating to the Initial Project Description, many groups and persons questioned the separation of the Gazoduq project from the natural gas liquefaction, storage and export complex located in Saguenay, Quebec. We remain of the view that these two projects are interdependent and, as such, must be considered together when determining the impacts of the Gazoduq project.

While the draft Tailored Impact Statement Guidelines recognize that the cumulative effects of the two projects ought to be addressed in each individual assessment, we worry that the Guidelines, as drafted, do not provide adequate direction to the proponent. We request, accordingly, that the Guidelines specify exactly how the Saguenay project must inform the proponent's cumulative effects assessment.

Canada has used the term "nation-to-nation" to describe its approach to Indigenous peoples. But as long as "meaningful" consultation does not include mutual agreement and free and informed consent, the term will remain nothing more than an empty catchphrase. The most our Nation can hope for, in the meantime, is that the Agency will seriously consider these comments and incorporate them into its final Tailored Impact Statement Guidelines.

Sincerely,

Chief Casey Ratt
Mitchikanibikok Inik

Appendix A – Detailed Review

Draft Tailored Impact Statement Guidelines (Section, Page, Text)		Algonquins of Barriere Lake (ABL) Comment
1	<p>3.4. Alternative means of carrying out the project, Pages 11–12:</p> <p>“The Impact Statement must then identify: ... timing options for various components and phases of the project”</p>	<p>ABL has repeatedly raised concerns, both to Agency and to Gazoduq, about the extremely aggressive timelines being pursued by the proponent. A major worry, as discussed above, is that those timelines have not allowed for meaningful Indigenous consultation and engagement.</p> <p>In the section of the Impact Statement pertaining to alternative means, the proponent should be required to explain and justify its aggressive timelines.</p>
2	<p>3.4. Alternative means of carrying out the project, Pages 12–13:</p> <p>“If applicable, the assessment of alternatives should include, but not be limited to, the following elements: ... Indigenous knowledge, community knowledge, comments received by the public, comments received from a jurisdiction”.</p>	<p>One source of uncertainty in the assessment process is the role played by Indigenous knowledge. The draft Guidelines add to that uncertainty by requiring the proponent to consider and integrate Indigenous knowledge only “<u>if applicable</u>” (emphasis added).</p> <p>The Guidelines should (1) specify when exactly Indigenous knowledge should be included in the Impact Statement and (2) require the proponent to expressly detail its efforts (or lack thereof) to solicit, consider and integrate Indigenous knowledge.</p>
3	<p>5.2. Record of Engagement, Pages 14–15:</p> <p>“The Impact Statement must provide a record of engagement that describes all efforts, successful and unsuccessful, taken to seek the views of each potentially affected Indigenous peoples with respect to the designated project. This record of engagement is to include all engagement activities undertaken prior to the submission of the Impact Statement</p>	<p>The proponent’s record of engagement should expressly include all efforts to solicit and integrate Indigenous knowledge for the Impact Statement – not only in terms of impact on rights, but also ecological impacts and the determination of baseline conditions.</p> <p>Where engagement efforts have proven unsuccessful, the proponent should specifically describe the reasons for those</p>

	<p>during the Planning Phase and in the preparation of the Impact Statement. The Impact Statement must include:</p> <ul style="list-style-type: none"> • the list of Indigenous peoples engaged by the proponent, including those which the proponent was unsuccessful in engaging; • the engagement activities undertaken with each Indigenous peoples, including the date, means and results of engagement; • a description of efforts to engage diverse populations of each Indigenous peoples in culturally appropriate ways, including groups identified by gender, age or other community relevant factors (e.g. hunters, trappers, and other harvesters) to support the collection of information needed to complete the GBA+; and • a description of how engagement activities by the proponent were intended to ensure Indigenous peoples were provided an opportunity to evaluate the designated project's potential positive and negative effects and impacts on their members, communities, activities, and Indigenous rights, as identified by the Indigenous peoples.” 	<p>failures – for instance, lack of internal capacity and the perceived inadequacy of funding proffered by the proponent.</p>
4	<p>5.3. Analysis and response to questions, comments and issues raised, Page 15:</p> <p>“The analysis in the Impact Statement must also include consideration of Indigenous knowledge provided by Indigenous peoples. Indigenous knowledge that is not already publicly available or where written consent has not been provided by the Indigenous group(s) should not be included. Permission from the Indigenous group should be sought before including Indigenous knowledge in the Impact</p>	<p>ABL is worried that the Guidelines, as drafted, do not clearly set out the proponent's obligations as to the solicitation of Indigenous knowledge.</p> <p>The Guidelines should particularize the sorts of Indigenous knowledge that must be solicited by the proponent and, if made available, integrated into the Impact Statement. For instance, many First Nations have cultivated rich ecological knowledge which ought to inform the proponent's baseline studies on wildlife.</p>

	Statement, regardless of the source of the Indigenous knowledge.”	
5	<p>5.3. Analysis and response to questions, comments and issues raised, Page 15:</p> <p>“It is important that Indigenous knowledge be included for all of these aspects of the technical assessments, not only to look at potential impacts of the project on Indigenous peoples.”</p>	The Guidelines should specify that Indigenous knowledge, if available, ought to inform ecological and other baseline studies.
6	<p>5.3. Analysis and response to questions, comments and issues raised, Page 16:</p> <p>“The Impact Statement must also document how the proponent responded to questions, comments and issues raised by Indigenous peoples, and how unresolved matters have been addressed in the Impact Statement. Any proposed mitigation measures are to be clearly linked, to the extent possible, to VCs in the Impact Statement as well as to project components or activities. The analysis and responses are to include:</p> <ul style="list-style-type: none"> • main issues, questions and comments raised during the engagement activities by each Indigenous peoples and the proponent’s responses, including how matters have been addressed in the Impact Statement or will be addressed through the Impact Assessment; • future planned engagement activities, and if none are planned, rationale for not undertaking future engagement activities; 	<p>ABL is concerned that the proponent will blame affected First Nations for any failures in engagement, even though, to date, the proponent has taken minimal steps to solicit or integrate Indigenous (and especially ecological) knowledge.</p> <p>Not only should the proponent specify where and how Indigenous peoples’ perspectives and input informed the Impact Statement – whether it be in terms of valued components, community knowledge or ecological expertise – but it should have to explain and justify why Indigenous perspectives and input were <u>not</u> solicited and/or considered in particular instances.</p>

	<ul style="list-style-type: none"> • where and how Indigenous peoples’ perspectives and input were integrated into or contributed to decisions regarding the project (e.g. project design), including: <ul style="list-style-type: none"> ○ development and collection of baseline information; ○ plans for construction, operation, decommissioning, abandonment, and maintenance; and ○ follow-up and monitoring; • where and how Indigenous peoples’ perspectives and input were integrated in the characterization of the nature of environmental, health, social and economic effects and impacts expected from the project for each Indigenous peoples; • where and how Indigenous peoples’ perspectives and Indigenous knowledge and input were integrated in avoiding, mitigating or accommodating identified effects and impacts; and • where potential impacts on Indigenous rights or interests are identified, provide a description of how each potential impact would be avoided, managed, mitigated, or otherwise accommodated (and provide this information for each Indigenous people separately).” 	
7	<p>6.1. Defining the baseline conditions, Page 17:</p> <p>“Meaningful dialogue with communities and Indigenous peoples provides input that may describe how these components and processes are interrelated.”</p>	<p>ABL is concerned that the draft Guidelines, when discussing Indigenous consultation and engagement, frequently uses permissive rather than prescriptive language (“may”, “can”).</p> <p>The Guidelines should clearly spell out the proponent’s obligations when it comes to Indigenous engagement.</p>
8	<p>6.1. Defining the baseline conditions, Page 17:</p>	<p>See comment 2 above.</p>

	<p>“In describing the biophysical environment, the Impact Statement must take an ecosystem approach that considers how the project may affect the structure and functioning of biotic and abiotic components with the ecosystem using scientific, community and Indigenous knowledge regarding ecosystem health and integrity, as applicable.”</p>	<p>The Guidelines should specify what it means for Indigenous knowledge to be “applicable”. This should not be left to the proponent to determine.</p>
9	<p>6.1.1. Sources of baseline information, Pages 18–19:</p> <p>“Information sources and data collection methods used for describing the baseline environmental, health, social and economic setting may consist of: ... Indigenous knowledge, including oral histories”</p>	<p>See comment 7.</p> <p>The Guidelines should stipulate that Indigenous knowledge, if relevant and voluntarily provided by affected First Nations, <u>must</u> inform the baseline information.</p>