



**COMMENTS ON THE
CANADA-QUÉBEC COOPERATION AGREEMENT ON THE COORDINATION OF THE
ENVIRONMENTAL AND IMPACT ASSESSMENT PROCESSES
FOR THE GAZODUQ PROJECT**

Équiterre Submission to the Impact Assessment Agency of Canada
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I. Introduction

The present comments are presented to the Impact Assessment Agency of Canada (“IAAC” or “Agency”) in response to IAAC’s May 15, 2020 invitation for public comment on the “Canada-Quebec Cooperation Agreement on the coordination of the environmental and impact assessment processes for the Gazoduq Project” (the Canada-Québec Cooperation Agreement), which appears as Appendix 1 of the “Gazoduq Project – Integrated Review Panel Terms of Reference” (the TOR). Équiterre intends to submit comments on the TOR itself in a subsequent submission at a later time. Équiterre thanks the Agency for this opportunity to provide comments on the Canada-Québec Cooperation Agreement as part of the Planning Phase under the new IAAC Integrated Assessment process.

Équiterre is the largest environmental organization in Québec, with offices in Montréal, Quebec City and Ottawa. As a non-profit, charitable organization, Équiterre has worked for over 25 years to raise awareness and advocate for sound environmental and energy policies in Quebec, Canada and on the international scene as well. Since its creation in 1993, Équiterre’s primary mission has been to help build a social movement by encouraging individuals, organizations and governments to make ecological and equitable choices, in a spirit of solidarity. Our organization includes 27,000 members and more than 120,000 supporters located largely in Eastern Canada, and manages the world’s largest community-supported agriculture program, with over 120 organic farms in Quebec.

Équiterre is concerned with the impact assessment of the Gazoduq Project out of its concern with the potential risks to the environment and to Québec communities posed by the construction and operation of this natural gas pipeline across the province. More specifically, Équiterre is concerned by issues including but not limited to the climate change implications of adding natural gas infrastructure that can

lead to increased hydrocarbon production, methane emissions (through fugitive emissions or planned releases), disturbances of water bodies, forests and other natural resources in Québec and potential safety hazards to communities.

Équiterre has a long and solid track-record in analyzing risks of pipelines and other hydrocarbon infrastructure projects. For many years and in a variety of contexts, we have participated in public hearings and other engagement activities at both federal and provincial levels to raise important issues about the impacts on the environment and on local communities of large-scale energy infrastructure projects. In recent years, Équiterre has participated in reviews of a proposed new marine terminal on the Saint-Laurent River at Beauport, the Energy East crude oil pipeline project and the reversal of the Enbridge Line 9 pipeline. Équiterre has also studied environmental and safety issues on the Portland-Montreal crude oil pipeline and the Trans-Nord refined petroleum products pipeline. Équiterre has also produced reports related to pipeline safety and drinking water issues.

In 2019, Équiterre provided comments to CEAA on the Environmental Impact Assessment for the Énergie Saguenay Project, prepared by GNLQ, and to IAAC on the Gazoduq Project Initial Project Description Documents (comments submitted jointly with the David Suzuki Foundation). In 2020, Équiterre has, to date, provided comments on the “Draft Public Participation Plan for the Impact Assessment of the Gazoduq Project” (“Draft Public Participation Plan”) and the “Tailored Environmental Impact Statement Guidelines Pursuant to the Impact Assessment Act and the Canadian Energy Regulator Act” (“Tailored EIS Guidelines”).

II. Important context for the Canada-Québec Cooperation Agreement

Équiterre underscores the need for heightened scrutiny of fossil fuel projects now more than ever, due to the worsening climate crisis. We are currently living in the uncharted territory of a climate crisis that has been hastened by a lack of attention to decades of warnings from the scientific community coupled with weak or absent action from all levels of domestic government as well internationally. We provided detailed comments on this concern in our comments on the Tailored EIS Guidelines and while we will not reiterate those details here, the seriousness and urgency of concern remains the same.

In the past few months, however, we have another pressing crisis requiring attention from Quebecers and in fact from each and every Canadian: the pandemic involving the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the deadly disease associated with the virus, COVID-19. This presents serious problems for carrying out impact assessments anywhere in Canada, but such problems are yet more serious for projects passing through Québec given that Québec is currently the epicentre of pandemic within Canada.

Given that the World Health Organization and other government agencies have recognized the likelihood of a second wave of COVID-19 infections, perhaps in fall of 2020, and given that there is still no vaccine nor any treatment for COVID-19, it is simply unreasonable to go forward with this hearing process at this time. Consequently, Équiterre underscores that our comments on the Canada-Québec Cooperation Agreement and any comments concerning the holding of public hearings on Gazoduq are made without prejudice to our position that holding hearings during a pandemic are unwise and unreasonable and not in the best interest of the public.

III. Comments on the Canada-Québec Cooperation Agreement

Équiterre presents below its key issues, concerns and suggestions with respect to the Canada-Québec Cooperation Agreement, and we present these under general topic headings, referring to the specific provisions of the Agreement when possible. Please note that during the course of our review, we noted some typos, confusing wording and potential translation issues that we wish to bring to IAAC's attention, but we will do that in the course of a follow-up document submitted as soon as possible. (To cite one example, the title of Schedule I of the Agreement begins with the word "Adaptating", which does not represent correct English usage. "Adaptation of" is a better choice of wording in the context of that title).

COVID-19

As currently drafted, the Agreement itself makes no mention of the need to adapt hearing procedures in the context of a pandemic, through such mechanisms as increased discretion to apply flexibility with respect to timeframes, to deadlines for documents, submissions and notices, etc., and the arrangement of alternative venues and arrangements etc. for the holding of the joint BAPE/Review Panel hearing sessions. Again, given that Québec is currently the epicentre of the pandemic in Canada, this is both unwise and unacceptable and therefore needs to be addressed via a modification of the Agreement prior to its signing and implementation.

Équiterre wishes to point out the BAPE Rules of Procedure (found in QC regulation r.45.1 under Québec's *Environmental Quality Act*), already contains certain provisions that allow for some mechanisms of flexibility which – at a minimum – could be incorporated into the Agreement in order to create the necessary capacity for flexibility of the joint BAPE/Review Panel hearings under pandemic conditions. Specifically, sections 22 and 23 provide information on the "terms and conditions of participation by technological means," and section 29 affords the BAPE the discretion to adjourn a public hearing "for any reason deemed valid by the commission". A procedure is mentioned for notification of the public as to the date when the hearing would be resumed.

Should the hearing process go forward, it is critical that the Management Committee established for oversight of the Agreement under section 6 of the Agreement acknowledge and plan for various contingencies during the pandemic that are necessary to ensure full public participation and also proper health and safety of hearing participants while Québec and the rest of Canada endure not only the risk of infection but all of the various spin-off effects of the pandemic on everyday activities (i.e., remote work, financial difficulties of organizations and employees, and delays and other impacts related to the need for social distancing, etc.). These contingencies should include such things as extended participation timeframes, greater flexibility on delays and deadlines, holding hearing sessions remotely and, for any activities not done via remote format, protocols approved by both Canada and Québec for protecting citizens from the novel coronavirus.

The comments and suggestions above, however, are made without prejudice to the fact that Équiterre remains convinced that the best path forward during pandemic conditions is to postpone the entire hearing process for the Gazoduq Project.

Modifications to the BAPE rules of procedure

Schedule 1 of the Agreement presents an "adaptation" of the regular BAPE Rules of Procedure for purposes of the assessment of Gazoduq. Given the fact that the BAPE is well known for its focus on fair

and transparent public participation processes, Équiterre believes that it is essential that the adaptation of BAPE rules not result in any type of reduction in opportunity, scope or extent of public participation relative to what is afforded under the Québec regulations (r. 45.1). This is such a critical point for Équiterre, and no doubt for other civic groups in Québec that may wish to participate in the joint hearings, that Équiterre requests from IAAC a table showing exactly which provisions of the BAPE Rules of Procedure are affected by the Canada-Québec Cooperation Agreement, and in what way.

Languages

The Agreement should specify that all documentation connected to the joint BAPE/Review Panel hearings are provided in both French and English at the same time. This includes all Notices, the Participation Guide, and all communications from the Parties (Québec and Canada) and Gazoduq. As we noted earlier in these comments, there are some imperfections in the English version of the Agreement, and therefore we suggest that the Agreement be modified to specify that, in the case of discrepancy, the French version be considered the correct version of the Agreement.

Cooperation principles

Currently, the cooperation principles, particularly under subsection 5.6 of the Agreement, require only that the parties – the Canadian and Québec governments – coordinate their environmental and impact assessment processes “with a view to sharing information between the Parties” (and Équiterre understands that the term “Parties” in the Agreement refers only to governments of Canada and Québec). Équiterre believes that, given that the core subject of the Agreement is the holding of public hearing sessions on the Gazoduq project, the cooperation principles should better reflect the fact that the ultimate benefit of cooperation should not be only the lessening of burdens on the proponent, but the facilitation of an improved and less burdensome participation process for the public. As such, Équiterre recommends that in subsection 5.6 of the Agreement, the words “and with the public” should be added to the end of the sentence comprising this provision. In the same vein, Équiterre suggests that the wording in the Preamble to the Agreement be modified to reflect the fact that the Agreement is also intended to reduce burdens upon public participants – not simply upon the proponent.

Technical sessions

Schedule 1 of the Agreement, section 10 states, that “If appropriate, the BAPE Panel may co-chair these sessions”. Équiterre believes that this wording should be modified to read “If the BAPE so desires...” rather than “If appropriate...”. This modification would serve to clarify that the BAPE, not the federal government, should determine whether it (the BAPE) wishes to co-chair any of the technical sessions. We believe this is a small but important change necessary to ensure the integrity of an equal roles of Canada and Québec under the Agreement.

Format of public sessions

There is currently nothing in the Agreement concerning the specific manner in which information sessions or technical sessions would be held, and Équiterre has concerns about the format of such sessions. As such, Équiterre believes that the Agreement should reflect the fact that, as with public

hearing sessions, any public engagement sessions such as information sessions or technical sessions should be held in remote format. Furthermore, where this is not possible sessions should be held in carefully controlled, socially-distanced group settings rather than “Open House” settings in which participants mingle and discuss with the proponent or experts or hearing officials in a face-to-face manner. The Open House format creates obvious unacceptable and unnecessary health risks during pandemic conditions. As well, the Open House format prevents all participants from hearing the responses of proponents to questions.

Autonomy of the BAPE

Équiterre is pleased to see that subsection 3.4 of the Agreement specifies that it “does not in any way affect the independence and autonomy of the BAPE Panel....” We suggest that the table requested above in these comments, outlining the specific modifications of the BAPE Rules of Procedure for purposes of the Agreement and the joint hearing for the Gazoduq project would help to demonstrate how the BAPE’s autonomy would be preserved.

Planning for possibility that Gazoduq may abandon its project

Équiterre is pleased to see in subsection 10.1 of the Agreement that the Agreement would terminate, *inter alia*, when Gazoduq Inc. decides to abandon its Project. We suggest that other provisions in the Agreement be reviewed for similar recognition and potential adaptation for this possibility.

Conclusion

Équiterre thanks the Agency for this opportunity to provide comments on the Canada-Québec Cooperation Agreement and hopes its input proves useful in ensuring a comprehensive, fair, transparent and safe hearing process allowing for full participation of the public before the BAPE and the federal Review Panel for the Gazoduq Project. We look forward to additional engagement with IAAC and the BAPE concerning this project.