

# NORTHWATCH

July 15<sup>th</sup>, 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](mailto:iaac.gazoduq.aeic@canada.ca)

Agency Review Team:

**Re. Comment on the Draft Terms of Reference for the  
Impact Assessment of the Gazoduq Project**

On May 15, 2020, the Impact Assessment Agency of Canada (the Agency) issued a public notice that the Agency was inviting the public and Indigenous groups and Nations to review and provide comments on the draft Terms of Reference of the Integrated Review Panel and the Canada-Quebec Cooperation Agreement on the Coordination of Environmental Assessment and Impact Assessment Procedures for the Gazoduq Project.

The proposed Gazoduq Project is a natural gas pipeline approximately 780 kilometres long, located 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.

The notice indicated that the “Terms of Reference of the Integrated Review Panel, when finalized, will set out the mandate and powers of the Integrated Review Panel, as well as the procedures and timelines for conducting the impact assessment”, and that “the Government of Canada subscribes to the “one project, one assessment” approach to impact assessment”.

To date, there is no indication that the Government of Canada is applying “one project, one assessment” approach to this project. In fact, the Government of Canada has allowed the proponents to engage in blatant project-splitting, with separate reviews for the Gazoduq natural gas pipeline and the proposed Énergie Saguenay Project of which it is an integral and inseparable part.

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



- While the failing may have arisen elsewhere and earlier in the review process, such as with the draft Guidelines, the draft terms of reference reflect fundamental flaws in the foundation and scope of this review, including:
  - project-splitting, with separate reviews for the Gazoduq natural gas pipeline and the proposed Énergie Saguenay Project of which it is an integral and inseparable part.
  - Omission of requirements for a full accounting of all project impacts, including upstream and downstream impacts which are fully connected to this project, but are not being considered; these include impacts of natural gas exploration and extraction, refinement of these carbon products, transport of natural gas from point of origin/production to the purported “start” of the project at Ramore, proposed Énergie Saguenay Project, shipment and export and utilization of the products of the proposed Énergie Saguenay Project to overseas markets
  - Placing the meeting of Canada’s climate commitments as just one of a list of areas to address; the review process fails to adequately elevate climate considerations, and as a result may quite likely fail to give climate impacts adequate consideration

### **Comments on Draft Terms of Reference**

The manner in which the ‘scope’ is presented has the effect of a shopping list, with no sense of there being environmental or social imperatives, or any of the many factors listed having paramountcy. While we accept that all the elements listed in Section 3 are important, the terms of reference should be restructured to convey a position of paramountcy for the following three areas:

- the extent to which the Project may contribute to or undermine or hinder the achievement of sustainability;
- the extent to which the effects and the carrying out of the Project, including upstream and downstream effects and activities, will hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, including and particularly the ability to meet net-zero by 2050 or earlier
- the extent to which the effects, the carrying out, and the review of the Project will meet Canada’s commitments and obligations to Indigenous peoples

In addition, we make the following comments with respect to several sections and subsections of the draft Terms of Reference.

### **3. SCOPE**

- Section 3.2. d. should also recognize the rights of Indigenous peoples, as in “the rights, interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes”, as well as recognizing established and emerging governance and decision-making practices of Indigenous peoples which may be at variance with those set out in these draft Terms of Reference and to which the Panel’s Terms of Reference may need to be reconciled.

- Section 3.2 e. should recognize not only “the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982” but also the inherent rights of these peoples, including the extent of these rights as is being continuously defined as through case law

#### 4. MANDATE OF THE REVIEW PANEL

The Review Panel, including in its conduct and in the preparation and writing of its final report and conclusions, must do more than simply ensure that it “takes into account scientific information, Indigenous knowledge, and community knowledge”; the Review Panel must demonstrate that its conduct and conclusions are fully informed by the evidence that has been brought before it; its reporting finding and recommendations must be clearly traceable to the evidence that has been placed before it, and it must document how the evidence has been considered and dispositioned

In addition to those items set out in the draft terms of conditions, the following should be added:

- the Panel must conduct itself and its review in a manner which is fully transparent; all communications with the proponent, the Secretariat, the Agency or the CER, other government departments and agencies, and others with an interest in the Project and who communicate with the Panel about the project just be placed on the public record (i.e. the Registry); these communications include all and any meetings, site visits, technical sessions, briefings, emails, telephone calls, reports provided, etc.
- the Panel, and all Panel members, must avoid any contact or communication with the proponent or any associates of the proponent, including business partner, customers, clients and consultants; should such contact or communication occur, including socially or inadvertently, the involved panel member must make a written report of it to be added to the Registry
- Should the Review Panel or any member of the review panel use any information “submitted in confidence as per the provisions of IAA, including any information collected prior to its appointment, to conduct its assessment” as per Section 4.6, that information must be placed on the registry and made available to all review participants; in the case of any information “submitted in confidence as per the provisions of IAA”, this provision should be used only very sparingly, and in each instance a notice that such information is being relied upon should be posted to the registry with key facts stated and the factors that resulted in a determination that the information could be submitted in confidence clearly set out in sufficient detail to allow any reasonable person to come to the same conclusion

## 5. IMPACT ASSESSMENT PROCESS

The Terms of Reference describe a process through which the Agency will review the draft EIS for sufficiency, and a process through which the Panel will review the draft EIS for sufficiency, and provides for a comment period by the public on the sufficiency of the draft EIS, but provides less detail for the Panel Review than for the Agency review, and no detail for the public review; in addition, the timelines suggest that the Agency can take 60 days to notify the Panel of the receipt of the draft IES, and the public is to have sixty days for comment, but the Panel must conclude their review within 170 days of the Agency receiving the draft EIS, which in combination could quite likely have the effect of leaving the Panel with insufficient time to consider public comments and there being no identified responsibility on the part of the Agency to do so

Based on the order of appearance in the draft terms of reference and no other clarifying details being provided, the draft terms of reference suggest, in section 5.35, that “the Review Panel will release a list of potential conditions that could be included in any certificate issued under the CERA and in a Decision Statement under IAA, should the Project be allowed to proceed” prior to the hearing. If this is the actual intent and intended sequencing, Northwatch strongly objects. It would be wholly unacceptable for the panel to set out potential conditions prior to the evidence having been presented, examined and tested through the hearing process.

Section 5.41. notes that “Following the close of the record of the review, the Review Panel will prepare and submit to the Minister and the Minister of Natural Resources a report” but should also identify that there will be an opportunity for review participants to make a final submission at some time after the final hearing day and the final response to information requests / requirements have been received, but prior to the review panel commencing writing of its report.

## 11. RECORD OF THE IMPACT ASSESSMENT

The public registry should operate in a manner which is clear and transparent; for example, document should be posted to the registry with the noted date being the date they are added to the registry, rather than the date they were issued or the date they were received by the Agency; posting items to the registry with falsified posting dates can result in harm to interveners who rely on the registry for fair, timely and accurate additions of documents

Within the document management system, a tracking system should be established specific to information requests, requirements for additional information, and undertakings by the proponent and others; the tracking system should support traceability between information requests, requirements for additional information, and undertakings and the associated responses

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.

## 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.<sup>1</sup>

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.<sup>2</sup>

The Government Canada has allowed the proponents to engage in blatant project-splitting, with separate reviews for the Gazoduc natural gas pipeline and the proposed Énergie Saguenay Project of which it is an integral and inseparable part.

## 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

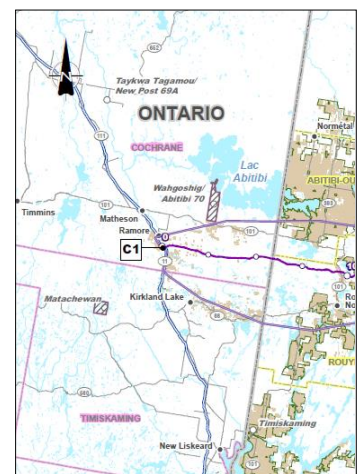


Figure 1 Initial Project Description Appendix A

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

<sup>2</sup> Initial Project Description – Summary, Page 3, Section F.25.5.1 Main Components

area is in Cochrane District; the study corridor is in Cochrane and Timiskaming Districts.

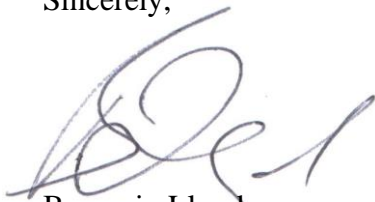
The need and purpose of the project, potential environmental effects and impacts, climate related concerns, economic issues, potential effects on regional and future natural gas supply and prices, and potential consequences for wildlife, wildlife habitat, forest health, and species at risk are all concerns 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.

### **Conclusion**

As outlined above and in the submission of others, the draft Terms of Reference are seriously flawed, and if these flaws are not remedied the review process itself can be expected to be fatally flawed. As a next step, the Agency is encouraged to consider all submissions, including those of Northwatch, and hold a second public comment period on a revised draft.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brennain Lloyd', is written over a light blue circular stamp.

Brennain Lloyd  
Northwatch Project Coordinator