



**COMMENTS ON THE DRAFT
INTEGRATED REVIEW PANEL TERMS OF REFERENCE
FOR THE GAZODUQ PROJECT**

**Équiterre Submission to the Impact Assessment Agency of Canada
15 July 2020**

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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 Gazoduq Project – Integrated Review Panel Terms of Reference (“Review Panel TOR”). Équiterre thanks the Agency for this opportunity to provide comments on the Review Panel TOR 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 primarily in Québec and more than 120,000 supporters located largely in Eastern Canada.

Équiterre’s interest in the impact assessment of the Gazoduq Project flows from its concern with the potential risks posed to the environment and to Québec communities by the construction and operation of a 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. Additionally, and as will be discussed below, Équiterre is also highly concerned with the potential risks related to the natural gas liquefaction facility and associated marine terminal project that depend completely on the gas to be supplied by the Gazoduq project.

Équiterre has an extensive track-record in analyzing risks of pipelines and other hydrocarbon infrastructure projects. For many years and in a variety of contexts, Équiterre has 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 Gazoduc 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 Gazoduc Project (“Draft Public Participation Plan”), the Tailored Environmental Impact Statement Guidelines Pursuant to the Impact Assessment Act and the Canadian Energy Regulator Act (“Tailored EIS Guidelines”), and the Canada-Québec Cooperation Agreement on the Coordination of the Environmental and Impact Assessment Processes for the Gazoduc Project (“Canada-Québec Cooperation Agreement”).

II. Critical contextual considerations for the Review Panel TOR

COVID-19 pandemic requires putting public safety first and postponing impact assessments: As mentioned in Équiterre’s comments on the Canada-Québec Cooperation Agreement, since earlier this year, Canadians have been grappling with the pandemic involving the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the deadly disease associated with the virus, COVID-19. It should go without saying that a pandemic presents serious problems for carrying out impact assessments anywhere in Canada, but the problems are even more serious for projects passing through Québec and Ontario, given that these are the two provinces with the highest numbers of infections in Canada.

While Canada has made progress in countering the pandemic, worldwide cases are still on the rise. To quote the Director-General of the World Health Organization (WHO) in a July 9, 2020 briefing:

“....in most of the world the virus is not under control. It is getting worse. More than 11.8 million cases of COVID-19 have now been reported to WHO. More than 544,000 lives have been lost. And the pandemic is still accelerating.”¹

As has been said often in the past months, the highly infectious nature of this virus means that an outbreak anywhere in the world poses a risk everywhere in the world. Canada must remain cautious.

Additionally, in light of the fact that the WHO and many experts are concerned about a possible second wave of COVID-19 infections, perhaps in fall of 2020, and given that there is still no vaccine nor any widely available and effective 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 Review

¹ WHO, July 9 briefing remarks of the Director-General: <https://www.who.int/dg/speeches/detail/who-director-general-opening-remarks-at-the-member-state-briefing-on-the-covid-19-pandemic-evaluation---9-july-2020>.

Panel TOR are made without prejudice to our position that holding hearings during a pandemic is unwise, unreasonable and certainly not in the best interest of the public.

In light of the above, Équiterre recommends postponing further movement of the Gazoduc Project review process until such time as it may be held safely. Furthermore, in light of the fact that the Gazoduc Project and the inextricably related Énergie Saguenay Project are clearly designed for export, postponement of the impact assessment does not in any way affect the security of natural gas supply for Canadians.

Climate crisis calls for evaluating the Gazoduc and Énergie Saguenay Projects together: Équiterre underscores the need for heightened scrutiny of fossil fuel projects due to the climate crisis that is worsening by the day due to a lack of attention to decades of warnings from the scientific community coupled with too-little, too-late action from all levels of government – domestic as well international. 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 the issue remains the same.

In addition to that general concern, however, Équiterre firmly believes that, the growing climate crisis makes it more important than ever to evaluate potential impacts of interrelated fossil fuel projects together rather than separately. The Review Panel TOR should be revised to allow for a combined public hearing on both the pipeline and the liquefaction/marine terminal project (the Énergie Saguenay project), adjusting for the fact that the assessment process for Énergie Saguenay project is somewhat further ahead of that for the Gazoduc Project in the EIS Guidelines and EIS have already been completed for Énergie Saguenay.

In June of 2019, Équiterre submitted comments on the environmental impact assessment of the Énergie Saguenay liquefaction and export terminal project² which, among other things, highlighted the problems that arise from having separate reviews for what is more accurately considered as a single project. We stated:

Evaluating the Énergie Saguenay liquefaction/marine export complex separately from the pipeline that would supply the natural gas destined for liquefaction is unfortunate and unnecessary. When projects that are inextricably linked become the subject of separate impact assessments, all the risks normally associated with piecemeal environmental assessment come into play. Piecemeal assessment – the term used to describe the approach whereby infrastructure components of a problem (e.g. a facility and a pipeline serving the facility) are assessed separately rather than together – can and will lead to a poor understanding of the full impacts of the larger endeavor.³

We explained the problem further as follows:

At the core of the problem is the fact that separate the Énergie Saguenay liquefaction and marine export terminal project is entirely connected to and not viable without the pipeline that would supply all of the natural gas destined for liquefaction and marine export. Similarly, the 750-km pipeline that would supply the Énergie Saguenay project with the natural gas to be liquified has no other stated purpose but to serve that facility. Put bluntly, neither project serves a purpose without the other. An LNG plant located on the Saguenay

² Équiterre, “Comments on the Environmental Impact Assessment of the Énergie Saguenay LNG Liquefaction and Export Terminal Project Proposed By GNL Québec Inc”, June 17, 2019,

<https://registrydocumentsprd.blob.core.windows.net/commentsblob/project-80115/comment-35372/130692E.pdf>.

³ Ibid., p. 8.

River cannot liquify gas without a pipeline supplying the gas and the Gazoduc pipeline's promoters have indicated that new gas pipeline has been proposed in order to feed the LNG plant.⁴

Additionally, in our June 2019 submission, we provided substantial detail on the close and highly overlapping nature of the proponents of the two projects: Gazoduc Inc. for the pipeline project and GNL Québec Inc. for the Énergie Saguenay project. We will not reiterate all those details here,⁵ but simply remind IAAC that Gazoduc Inc. is wholly owned by the same limited partnership as GNL Québec Inc. and is administered by the same board of directors. For this and other reasons detailed in our June 2019 submission, Équiterre believes that viewing the proponents of the liquefaction/export complex and the supply pipeline as independent entities is inaccurate and does a disservice to the transparency and credibility of the impact assessment process. In light of the above reasons, Équiterre maintains its position that the Gazoduc pipeline and Énergie Saguenay liquefaction and marine terminal complex projects should be assessed together. Consequently, the best path forward would be to restructure the Review Panel TOR in order to allow for a combined assessment.

Without prejudice to the comments above, in the alternative to a combined hearing process, the Review Panel TOR must include a full assessment of potential impacts of the Énergie Saguenay Project in its evaluation of cumulative impacts and provide an explicit description of the approach to be used in evaluating all cumulative impacts, including GHG emissions.

Upstream emissions must be included in the Review Panel's assessment: In light of the climate crisis, it is essential that upstream emissions, (e.g. emissions from production, treatment, transport of natural gas) be considered by the Review Panel. While ss. 13.5 of the draft Tailored Guidelines indicates that upstream greenhouse gas (GHG) emissions are to be analyzed by the proponent in the EIS⁶ and Annexe 1 of the Guidelines provides detailed requirements on a “separate report” to be provided on upstream emissions, and while the Review Panel TOR refers to the fact that the impact assessment is informed by the requirements in the Tailored Guidelines, the TOR is not clear that the issue of upstream emissions is part of the Review Panel mandate, and this should be rectified. (More detail on this issue is provided in section III, below).

Difficulty of commenting on the Review Panel TOR without access to final Tailored Guidelines: The draft Review Panel TOR makes frequent reference to the Tailored Guidelines, but since the final guidelines have not yet been issued, those commenting on the Review Panel TOR face an uncomfortable “chicken-and-egg” problem: without the benefit of the final version of the Tailored Guidelines, which contain details on key matters like scope of assessment issues, it is difficult to comment effectively on the TOR.

While IAAC provided the public an opportunity to comment on the draft version of the Tailored Guidelines (Équiterre took advantage of that opportunity and provided detailed comments⁷), one cannot equate the draft version with the final version. For example, while the draft Tailored Guidelines included an Annexe on the assessment of upstream GHG emissions,⁸ it is unknown whether that Annex will be

⁴ Ibid., p. 6.

⁵ Ibid., pp. 9.

⁶ IAAC, “Gazoduc Project Tailored Environmental Impact Statement Guidelines”, January 30, 2020, <https://www.iaac-aeic.gc.ca/050/documents/p80264/133758E.pdf>, pp. 72-73.

⁷ Équiterre, “Comments on the Tailored Environmental Impact Statement Guidelines for the Gazoduc Project”, March 11, 2020, <https://registrydocumentsprd.blob.core.windows.net/commentsblob/project-80264/comment-47182/%C3%89quiterre%20Comments%20-%20Tailored%20EIS%20Guidelines%20-%20Gazoduc%20Project.pdf>.

⁸ *Supra* note 6, “Part 2 – Annex 1”, p. 128.

included in the final version and hence difficult to know how to evaluate completeness of the Review Panel TOR on this topic.

III. Specific comments on the Review Panel TOR

Équiterre presents below its key issues, concerns and suggestions with respect to the Review Panel TOR. These are presented under both general topic headings as well as, when possible, headings that refer back to the headings in the TOR.

COVID-19

In general, the Review Panel TOR – like the Canada-Québec Cooperation Agreement – makes no mention of the need to adapt hearing procedures in the context of a pandemic. Given that Québec is still the epicentre of the pandemic in Canada, this insufficiency should be rectified through a careful modification of the Review Panel TOR. The Review Panel TOR must acknowledge the risks and problems with proceeding with an impact assessment during the COVID-19 pandemic or other emergency and include specific language giving the Review Panel the power to modify or postpone the impact assessment or, at a minimum, to recommend to Minister that the assessment be postponed or its timing modified.

Équiterre raised specific concerns on this topic in its comments on the Canada-Québec Cooperation Agreement, and some of these are equally applicable to the Review Panel TOR. In the interest of time, however, we will not reiterate those specific comments here. Instead, we strongly encourage IAAC to refer to Équiterre's comments on the Canada-Québec Cooperation Agreement for more detail.⁹

Despite those suggestions, however, Équiterre maintains that the best path forward at this time is to postpone the entire hearing process for the Gazoduc Project (and Énergie Saguenay Project as well).

Scope of assessment by the review panel (TOR section 3)

Important error in Subsection 3.1: The list of factors, which reiterates the factors in ss 22(1) of the IAA, is incomplete. Specifically, it is missing factor “t”. We presume this is an error because the draft Tailored Guidelines include factor “t” as an adaptation of ss 22(1)(t) IAA. Specifically, factor “t” in the Tailored Guidelines¹⁰ reads as follows:

- t) any other matter relevant to the IA that the Agency or – if the IA is referred to a review panel – the Minister requires to be taken into account.

Équiterre asks that this error be corrected in the TOR, given the important function that this factor can fill in ensuring coverage of potential gaps in the assessment.

Mandate of the Review Panel (TOR section 4)

Specify that Review Panel must consider assessment of upstream GHG emissions: Underscoring a point made in section 2 of these comments, the climate crisis demands that assessments evaluate upstream

⁹ Équiterre, “Comments on the Canada-Québec Cooperation Agreement on the Coordination of the Environmental and Impact Assessment Processes for the Gazoduc Project”, June 4, 2020,

<https://registrydocumentsprd.blob.core.windows.net/commentsblob/project-80264/comment-47496/Gazoduc%20Project%20-%20%C3%89quiterre%20Comments%20on%20Canada-Qu%C3%A9bec%20Cooperation%20Agreement%20-%20June%204%202020.pdf>.

¹⁰ *Supra* note 7, p. 3.

GHG emissions of fossil fuel infrastructure projects. While ss. 4.6 of the TOR specifies that the Review Panel must use the information collected to conduct its assessment, assessments typically focus on evaluation of the proponent's impact statement. The Tailored Guidelines, however, state that "[t]he upstream GHG assessment should be presented in a separate report".¹¹ Équiterre asserts that the TOR should be explicit in the requirement that the Review Panel consider that "separate report".

Specify that Review Panel's report address all five "public interest" factors in s. 63 IAA: The TOR does not address how the five public interest factors in s. 63 IAA will be treated in the Review Panel's report to the Minister. This is a serious lacuna given that the Minister requires precisely such information in order to make decisions following receipt of the report. Additionally, the TOR seems to reference "public interest" more from the perspective of CERA than from the IAA, and this needs to be rectified. Subsection 63(e) IAA, for example, concerns climate change and a project's potential impact on Canada's ability to meet its climate change commitments. Given the current climate crisis, and its implications for human health and biodiversity, it is essential that the TOR include explicit consideration of this factor.

Record of the Impact Assessment (TOR section 11)

The Review Panel TOR must specify that *all* documents relating to the project that are posted on the BAPE's hearing registry also be included in the IAAC public registry. Subsection 11.5 does not go far enough in this regard, because it only requires that "all documents filed in the context of the public hearing will be accessible simultaneously by the BAPE and the Review Panel". This is not the same as requiring that the IAAC public registry actually contain copies the BAPE filings and reports. While this seems like splitting hairs, it has real-life consequences for public participants in the hearing process, and for federal and provincial agency personnel as well. For example, for the Énergie Saguenay project hearing process, when the Québec government posted on its online environmental impact registry, the opinions from 25 provincial agency departments on the admissibility of the EIA (which was the same EIA as that submitted for the federal process), those valuable documents were not posted to (then) CEAA's public registry, and thus were not necessarily available to all hearing participants or federal government officials when CEAA was preparing its own preliminary review on admissibility. Équiterre discussed this and related problems in detail in its 2019 comments on Énergie Saguenay.¹²

Additional specific comments

- Conflict of interest issues: The TOR provisions on appointment of persons to the Review Panel (ss. 5.7), and the retention of "independent experts" by the Panel (ss. 9.2) or the use of independent scientific and technical experts or Indigenous knowledge holders for external technical reviews (ss. 9.5) must be substantially improved on the issue of avoiding even the *appearance* of conflict of interest.
- Precautionary principle as key guide for Review Panel: The Precautionary principle should be key approach used by Review Panel when addressing uncertainty about impacts, given that the principle is a foundational concept of the IAA (s. 2).
- Flexibility to go beyond the Tailored Guidelines: The TOR should be revised to explicitly allow the Review Panel the discretion to consider information beyond that required of the proponent in the

¹¹ *Supra* note 8.

¹² *Supra* note 2, pp. 7-8.

Tailored Impact Statement Guidelines, in order to accurately assess any important factors that fall outside of the scope described in the Guidelines.

- TOR should mandate an independent, technical review of the expected climate change impacts: We agree with Greenpeace that an additional clause be added to the TOR to require an external, independent, technical review of the expected climate change impacts of the project and that these impacts include 1) upstream impacts, 2) downstream impacts of both the pipeline project as well as all aspects of the Énergie Saguenay Project.
- TOR should give Review Panel power to ask for updated market information: Even prior to COVID-19, the world gas and oil demand and other economic factors around LNG projects were changing. Now, the pandemic has drastically changed the entire demand/supply picture. Market information has quickly become outdated. Consequently, the Review Panel must have the power to require the proponent to update any and all market studies previously submitted to the agency and/or included in its impact assessment statement, and provide specific explanations as to how the demand for the commodity supplied by the project is likely to be affected and how continuing uncertainty around world oil markets in general and under pandemic conditions will affect the need for the project.

Conclusion

Équiterre thanks the Agency for this opportunity to provide comments on the Review Panel TOR and hopes that these comments prove useful in ensuring a comprehensive, fair, transparent and safe hearing process allowing for full participation of the public before the federal Review Panel and the BAPE.

While Équiterre looks forward to additional engagement with IAAC and the BAPE concerning the Gazoduc and Énergie Saguenay projects, we sincerely hope that IAAC and, by virtue of the Canada-Québec Agreement, the BAPE will postpone the joint hearing process until pandemic conditions have passed, and the public can safely and more effectively give proper attention to evaluating the potential impacts of this large fossil fuel infrastructure project. In light of the ongoing climate crisis, the public must be allowed the time and conditions necessary to evaluate impacts of fossil fuel projects such as the Gazoduc Project and the Énergie Saguenay Project.