



**Métis Nation of Ontario**  
Lands, Resources and Consultations

7 July 2020

Jason Boisvert  
Crown Consultation Lead  
Impact Assessment Agency of Canada  
Government of Canada  
E-mail: <email address removed>

Dear M. Boisvert,

**Re: Métis Nation of Ontario comments on the Terms of Reference for the Integrated Review Panel – Gazoduq project**

The Métis Nation of Ontario (“MNO”) has had the opportunity to review the Impact Assessment Agency of Canada’s (IAAC’s) proposed Terms of Reference (TOR) of the Integrated Review Panel for the proposed Gazoduq Natural Gas Transmission Line Project (the Project).

As you are aware, the Project lies within the MNO’s James Bay / Abitibi-Temiskamingue Traditional Territory of the regional rights-bearing Métis community as represented by the James Bay / Abitibi-Temiskamingue Traditional Territory Consultation Committee (the “Regional Consultation Committee”).

The MNO’s comments, prepared with the support of consultants at MNP, are attached to this letter. As noted in our previous correspondence with you, capacity, in terms of both available MNO staff and funding for studies and reviews, will be the biggest challenge for the MNO to meaningfully participate in this project.

We appreciate the effort the IAAC has made to the development of these reports and inclusion of MNO. The MNO looks forward to hearing your response to our comments.

Please feel free to contact Andy Lefebvre, Lands, Resources and Consultations Branch at <email address removed> if you would like to discuss the MNO’s comments further.

Yours sincerely,

<Original signed by>

Jacques Picotte  
Region 3 Councillor of the Provisional Council of the Métis Nation of Ontario and  
Chair of the James Bay / Abitibi-Temiskamingue Traditional Territory Consultation  
Committee

<contact information removed>

- c. Margaret Froh, President, Métis Nation of Ontario  
David Hamilton, President, Chapleau Métis Council  
Pierre Lefebvre, President (Interim), Timmins Métis Council  
Urgel Courville, President, Northern Lights Métis Council  
Lorette McKnight, President, Temiskaming Métis Council  
Andre Lefebvre, Captain of the Hunt, James Bay/Abitibi-  
Temiscamingue Traditional Territories  
Joanne Meyer, Chief Operating Officer, Métis Nation of Ontario  
Linda Norheim, Director, Lands, Resources and Consultations Branch,  
Métis Nation of Ontario

July 3, 2020

Linda Norheim  
Director, Lands Resources & Consultation  
Métis Nation of Ontario

<contact information removed>

**RE: Review of the Gazoduq Project Integrated Review Panel Terms of Reference**

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Dear Ms. Norheim,

As per our identified Statement of Work for review of the Integrated Review Panel Terms of Reference (“TOR”) pursuant to the *Impact Assessment Act* and the *Canadian Energy Regulator Act*, please see below for our comments as well as advice for consideration. A table is also included that outlines select deficiencies and instances where capacity and timeline clarification is required for Métis Nation of Ontario participation.

Overall, the terms proposed for the Integrated Review Panel are clear and well defined, however, there are some instances which require amendment or consideration.

In the current TOR, it appears that the focus for the panel will be on Indigenous Knowledge rather than the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act*, 1982. The rights of Indigenous peoples must be the focus and should be articulated in the mandate of the panel without caveat. The current caveat means the panel only must consider information on rights provided through the environmental assessment process. This wording can allow the proponent to control the ability of Nations to participate through the provision of capacity and the inclusion of information within the assessment.

Limited capacity from Gazoduq can severely impair the ability of Nations to provide information in the environmental assessment process. The Impact Assessment Agency should require information on the effects to Section 35 rights, similar to how information on wildlife, species at risk, etc., are all required before the Environmental Impact Statement is deemed complete and provided to the Integrated Review Panel. Following this, the Integrated Review Panel should consider this information without caveat.

Additionally, expertise on rights, specifically Métis rights are complex. Any specialist advisors selected to speak to Indigenous issues must also have some expertise on Métis rights and interests: the Métis Nation of Ontario would be well positioned to recommend an appointment.

It is our recommendation that the items contained in this letter be discussed between the MNO, the Impact Assessment Agency and, potentially, Gazoduq. It is our hope that through these discussions the Integrated Review Panel TOR can be updated to address the issues noted above and within the comment table.

Sincerely,

<Original signed by>

Germaine Conacher

MNP Consulting, Indigenous Services

<contact information removed>

No.	TOR Section, Page Number and Quote	MNO Comment
	<p><b>3.0 Scope of Assessment by the Review Panel</b> Page 4 of 24</p> <p>“3.2 In conducting its assessment under the CERA, the Review Panel must take into account – in light of, among other things, any Indigenous knowledge that has been provided to the Review Panel...”</p>	<p>The Review Panel should also consider where Indigenous Knowledge may <i>not</i> be provided for those Indigenous Nations or groups identified for consultation through the project planning process.</p> <p>Limited or no capacity from Gazoduq can severely impair the ability of Nations to provide Indigenous Knowledge information. Inhibiting funding can reduce consultation participation thereby reducing the potential opposition to a Project.</p> <p>The Review Panel should assess where gaps in provided knowledge exist and require explanation from the Indigenous Nation and the proponent on why this information was not collected or provided.</p>
	<p><b>3.0 Scope of Assessment by the Review Panel</b> Page 4 of 24</p> <p>“3.2 (e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>;”</p>	<p>For clarity, the Métis Nation of Ontario has clearly defined their harvesting rights in the 2018 MNO-MNRF Framework Agreement on Métis Harvesting to include:</p> <ul style="list-style-type: none"> <li>• Hunting, trapping, fishing or gathering natural resources for food, social or ceremonial purposes;</li> <li>• Collectively held Métis commercial harvesting rights;</li> <li>• As well as other Métis rights.</li> </ul> <p>Further, the MNO asserts a variety of other rights that may or may not be fully defined in agreements or policies such as governance rights, economic rights, cultural identity, and language.</p> <p>Will the Review Panel or the Impact Assessment Agency work with the MNO to define the rights to be considered in the assessment under CERA?</p>
	<p><b>4.0 Mandate of the Review Panel</b></p>	<p>Please see comment #1</p>

	<p>Page 5 of 24</p> <p>“4.2 The Review Panel will ensure that an impact assessment takes into account scientific information, Indigenous knowledge, and community knowledge.”</p>	
	<p><b>4.0 Mandate of the Review Panel</b> Page 5 of 24</p> <p>“4.3 (b) ensure that the information that it uses when conducting the impacts assessment is made available to the public;”</p>	<p>Information used in conducting the impact assessment must also be made available to Indigenous nations, specifically, the Métis Nation of Ontario, preferable in advance of public review periods to allow for fulsome review</p>
	<p><b>4.0 Mandate of the Review Panel</b> Page 6 of 24</p> <p>“4.7 While the Crown retains the duty to consult, as per the scope of the assessment, the Review Panel shall assess impacts that the Project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act</i>, 1982 (hereafter referred to as Aboriginal or Treaty rights), to the extent the Review Panel receives such information as part of the impact assessment process.”</p>	<p>Provision of information on Indigenous Nations rights and the assessment of impacts to those rights is often driven by proponent capacity. If the proponent chooses, they can effectively impair the ability of nations to participate. If information is not provided by a Nation designated for consultation, the Impact Assessment Agency and Integrated Review Panel should consult with those Nations to identify whether it was not provided due to insufficient capacity, limited interest in the process, or confidentiality concerns.</p> <p>In order to compel the proponent to adequately fund nations “to the extent the Review Panel receives such information...” should be removed to strengthen the clause.</p>
	<p><b>4.0 Mandate of the Review Panel</b> Page 7 of 24</p> <p>“4.10 The Review Panel will ensure that Indigenous communities and Nations are provided an opportunity to meaningfully participate in the impact assessment process, including, but not limited to the following:</p> <ul style="list-style-type: none"> <li>a. where possible and, at the discretion of the Review Panel, holding public hearing sessions in the communities of potentially affected Indigenous communities and Nations;</li> </ul>	<p>All activities noted require capacity to participate. The Review Panel should include capacity provision in this listing and funding should either be provided through the IAAC PFP.</p>

	<p>b. as requested, providing interpretation services for Indigenous languages during the public hearing, where practical and available;</p> <p>c. considering the timing of traditional activities and cultural approaches of potentially affected Indigenous communities and Nations in scheduling and carrying out the public hearing;</p> <p>d. as requested, translating the executive summary of its report into relevant Indigenous languages, assuming such services are available;</p> <p>e. subject to the provisions of section 119 of the IAA, accepting Indigenous knowledge provided in confidence;</p> <p>f. inviting Indigenous communities and Nations to provide any information that they may have to the Review Panel as early in the process as possible, and;</p> <p>g. facilitating the presentation of information in different formats (written, oral or other formats) depending on the Indigenous communities and Nations' preferences and the direction of the Review Panel.</p>	
	<p><b>5.0 Impact Assessment Process</b> Page 8 of 24</p> <p>“5.7 The persons appointed to the Review Panel must be unbiased and free from any conflict of interest relative to the Project and have knowledge or experience relevant to the Project’s anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.”</p>	<p>The person appointed to the Review Panel must have expertise on the Section 35 rights and interests of Indigenous peoples of Canada and must understand those rights to include Métis rights and the unique aspects of Metis way of life.</p>
	<p><b>7.0 Principles of Indigenous Engagement and Participation</b> Page 12 of 24</p> <p>“7.2 The Review Panel will create a process that allows it to hear Indigenous knowledge. The Review Panel</p>	<p>While Indigenous Knowledge is an important component which should not be minimized, a process <i>must</i> be created which allows the Review Panel to hear information about Indigenous rights and interests. This must be emphasized to ensure Métis rights and interests are heard.</p>

	<p>will recognize that Indigenous knowledge is holistic and, in an impact assessment, it can provide information and perspectives for understanding the biophysical environment, as well as social, cultural, economic, health, Indigenous governance and resource use.”</p>	
	<p><b>9.0 Specialist Advisors to the Review Panel</b> Page 12 of 24</p> <p>“9.2 The Review Panel may also retain the services of independent nongovernment experts, including Indigenous knowledge holders, to provide advice on certain subjects within these Terms of Reference. Any such information received will be posted to the Public Registry.”</p>	<p>Métis rights and interests are complex and not well understood in the broader academic landscape. The Review Panel must ensure that any expert retained for advice on Indigenous knowledge can also speak to Métis rights and interests and should be confirmed with the Métis Nation of Ontario.</p>