



ATLANTIC POLICY CONGRESS OF FIRST NATIONS CHIEFS SECRETARIAT

July 20, 2016

The Honourable Catherine McKenna
Minister of Environment and Climate Change
200 Sacre-Coeur, 2nd Floor
Gatineau, Quebec K1A 0H3
Canada

RE: Terms of Reference for Expert Panel for National Energy Board Modernization

Dear Minister McKenna:

The Atlantic Policy Congress of First Nations Chiefs (APC) is a policy research and advocacy secretariat for 37 Mi'kmaq, Maliseet, Passamaquoddy and Innu communities spanning the 4 Atlantic Provinces and the Gaspé region of Quebec. We are mandated by our Chiefs to provide expert advice, support and services on several essential aspects affecting First Nations including natural resources, environment, fisheries, health, water, economic development and governance. Our work supports informed decisions by our political leadership which is based upon the close working relationship we have with all communities, tribal organizations, and treaty tables in the Atlantic and Gaspé region.

We are writing to respond to the draft terms of reference for the expert panel that will be mandated to provide recommendations to you regarding the Environmental Assessment process. While we appreciate this initiative by the federal government to review the process for Environmental Assessments, the following are some concerns and recommendations we have regarding the terms and reference and the process for consultation and engagement with Atlantic First Nations scheduled over the coming months that have been raised by our leadership and community members.

Our first concern is the short timeline that has been allotted to this review. We understand that the intention of the EA review is to have the expert panel consult First Nations across Canada with face-to-face meetings in addition to written submissions. We know that it will take a considerable amount of time to engage in effective consultations with First Nations and that the expert panel will have need to travel extensively. This condensed timeline will diminish the importance and nuance of the matters raised by First Nations representatives and elevates the possibility of misunderstanding the context of these issues. We would like to see the entire review process extended past the January 2017 timeline to allow for meaningful consultations and possible follow up meetings as required.

A secondary concern is about support funding. We welcome the support the federal government will be providing for individuals to travel to make presentations to the expert panels. However, we would like

to know if funding resources will be available to allow for First Nation communities and tribal/treaty organizations to develop expert analysis. The EA process is complex with direct implication on Aboriginal and Treaty rights as identified and protected by section 35 of the Canadian Constitution Act. It is therefore important for First Nations to be granted proper support to identify and share with the panel how changes will impact various aspects of First Nations rights and title.

With respect to the fiduciary responsibility of the federal government's duty-to-consult, we expect that the expert panel and lead federal agency, Environment and Climate Change Canada, will abide by our regional consultation processes. Although this varies across the region, the Crown has signed binding agreements to a process that allows for open and respectful consultation on matters affecting Aboriginal and Treaty rights. We expect the Crown to continue to follow these signed protocols when consulting with our Atlantic and Gaspé First Nations.

Although there is no direct reference to Traditional Indigenous Knowledge (TK) in the terms of reference, it was specifically mentioned on the nation-wide conference call of June 29, 2016 that TK is an important part of environmental assessments. However, the federal representatives on the call did not have any direction on how the Government of Canada envisions this would be collected, incorporated, managed, or respected in the EA processes. The use of TK is not mentioned in the terms of reference.

Regarding the expert panel, we would strongly encourage that a First Nation person be selected as a panelist. Because of our unique treaty relationship with the Crown, and the number of laws, policies, regulations, and processes that affect First Nation governance, it is critically important that the expert panel fully understands the issues that will be brought forth during the consultation period. This would be partially served if there was a First Nation representative with the appropriate background appointed to the expert panel. A knowledgeable First Nation panelist would better understand the strengths and pressures put on our First Nation leadership and communities than a panelist with limited experience or exposure to First Nation issues.

I am hopeful that you will carefully consider these recommendations for the terms of reference of the expert panel for the Environmental Assessment process.

Cordially yours,



Kenneth Paul

Director of Fisheries and Integrated Resources
Atlantic Policy Congress of First Nations Chiefs

Cc: Chief George Ginnish, Eel Ground First Nation, APC Co-Chair
Chief Robert Gloade, Millbrook First Nation, APC Co-Chair
AFN Regional Chief Morley Googoo, NS/NL
AFN Regional Chief Roger Augustine, NB/PEI
John Paul, APC Executive Director
John McCauley, Canadian Environmental Assessment Agency