



## ATLANTIC POLICY CONGRESS OF FIRST NATIONS CHIEFS SECRETARIAT

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July 20, 2016

**The Honourable Jim Carr**  
**Minister of Natural Resources**  
580 Booth Street, 21st Floor, Room: C7-1  
Ottawa, Ontario K1A 0E4  
Canada

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

Dear Minister Carr:

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 National Energy Board Modernization. While we appreciate this initiative by the federal government to modernize the National Energy Board, 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 NEB 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 the need to travel extensively. This 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 panel process extended past the January 2017 timeline to allow for meaningful consultations and possible follow up meetings that may be required.

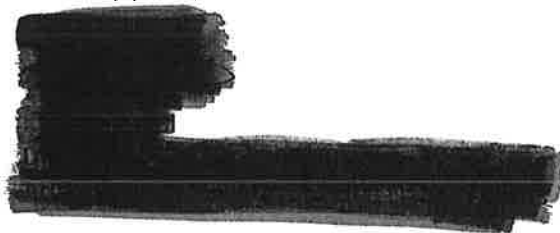
A secondary concern is about support funding. We welcome the support the federal government will be providing for individuals to travel to make submissions to the expert panels. However, we would like to know if funding resources will be available to allow for First Nation communities and tribal/treaty organizations to develop expert analysis. The NEB 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.

With respect to the fiduciary responsibility of the federal government's duty-to-consult, we expect that the expert panel and lead federal agency, Natural Resources 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 dialogue 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.

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 National Energy Board Modernization process.

Cordially yours,



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