



COLD LAKE FIRST NATIONS
CONSULTATION DEPARTMENT



July 20, 2016

VIA EMAIL

National Energy Board Modernization Review
Natural Resources Canada
NRCan.NEBModernization-ModernisationONE.RNCan@Canada.ca

**Re: Comments on the Draft Terms of Reference for the National Energy Board (NEB)
Modernization Expert Panel**

Dear Sir or Madame,

Cold Lake First Nations is submitting comments regarding the Draft Terms of Reference for the Expert Panel that is to review the modernization of the National Energy Board (NEB). In June 2016, CLFN submitted comments on the *Canadian Environmental Assessment Agency's Technical Guidance for assessing the Current Use of Lands and Resources for Traditional Purposes under the Canadian Environmental Assessment Act, 2012* and we expect that comments related to this review process will be taken into consideration.

Cold Lake First Nations is an Indian Band pursuant to the *Indian Act*. Its members are the beneficiaries of Treaty 6, which affords them land use rights pursuant to the Treaty, the *Natural Resources Transfer Agreement* and Section 35 of the *Constitution Act, 1982*. Amongst these rights are the right to carry on their traditional vocations of hunting, fishing, trapping and gathering (the “Denesuline Way of Life” or “Traditional Land Uses” or “TLU”) in a manner consistent with the way in which they carried on these activities prior to Treaty.

The enforcement of mitigation and accommodation measures negotiated during project specific consultation processes is of critical importance to our Nation and the management of the natural and cultural resources within our traditional territory, *Denne Ni Nennè*. As the Federal government has committed to a renewed Nation to Nation relationship with First Nations people,

July 20, 2016

Page 2

we hold new optimism that you will see the added value of our comments. Your willingness to explain how, specifically, it has considered our comments would be a significant indication of Canada's serious intent towards a renewed Nation to Nation relationship. Should there be instances where the Agency does not incorporate our input, we would value an explanation of why our comments were not incorporated.

Comments

1. An explanation of how various environmental assessment and regulatory reviews interrelate to each other would be helpful. Specifically how restoring lost protections and introducing modern safeguards to the Fisheries Act and the Navigation Protection Act are related.
2. Bills C-38 and C-45 (enacted in 2012) should be repealed prior to considering improvements to the National Energy Board and regulatory processes. Bill C-38 weakened the environmental review process and the Fisheries Act. Bill C-45 removed protection to 95% of our lakes and streams.
3. Canada should develop a Nation to Nation regulatory environmental assessment appeal process with Indigenous Nations that oversees decisions at all levels of jurisdiction.
4. The expert panel membership should include a representative from the indigenous community.
5. The proposed timelines for the review, with a completion date of January 31, 2017, are not adequate to facilitate the participation of Indigenous groups, particularly in light of the fact that the Indigenous Engagement Plan has yet to be developed. Many Indigenous people and governments, including Cold Lake First Nations members, are occupied with traditional activities during the summer and consultation departments require time and flexibility to manage limited time and capacity to meaningfully participate. Consider increasing the timeline for consultation.
6. In addition to meeting with the leadership of National Indigenous Organizations in the preparation of an Indigenous Engagement Plan, the Panel should also meet with communities where project environmental assessments have been recently conducted or where communities have expressed interest in the review. Cold Lake First Nations should have the ability to comment on the Indigenous Engagement Plan.

7. In preparing the Indigenous Engagement Plan, the Panel should consider coordinating the engagement activities associated with the other mandated reviews to make the best use of time and to build an understanding of how the reviews interrelate to each other.
8. Indigenous Engagement and Consultation: In-person consultation with individual Indigenous organizations and governments is critical in the panel review process as consultation is not the mandate of national and regional organizations. Consultation is dealt with primarily at the local government level.
9. Funding should be available for participation in the review process. For Indigenous Groups, this funding should be provided at the level of the individual group if this is the organization that participates in the process. Funding is critical to support Cold Lake First Nations capacity to participate in this review process.
10. Indigenous groups interested in participating in the process should be able to develop individual engagement strategies through discussion with the Panel independently of regional Indigenous organizations. Options for these strategies should include community-based and community-led consultation.
11. Indigenous groups should be able to review and comment on the draft Review Report prior to its submission to the Minister.
12. An advisory committee specific to Indigenous groups should be formed to provide advice to the panel, given the unique nature of Indigenous interests in federal environmental assessment and regulatory processes.
13. Confidentiality: The Panel Terms of Reference should give consideration to the sensitive and confidential nature of information that may be shared by Indigenous people and organizations in the review process and should commit to adhering to ethical principles as requested by Indigenous peoples, including those of free, prior and informed consent in the process. A mechanism should exist for information to be provided confidentially to the Panel.
14. The scope of the review should include updating the NEB Filing Manual.
15. Reflecting the federal government's commitment to implement the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the Panel should ensure that consideration is given to the assessment of impacts to Indigenous rights, not Traditional Land Use. Cold Lake First Nations and Indigenous peoples of Canada need to have their

July 20, 2016

Page 4

right to free, prior, informed consent truly recognized with respect to reviewing and monitoring projects proposed on our traditional territories.

Please note that this letter should not be construed as a complete and total representation of Cold Lake First Nations' comments. CLFN reserves the right to raise additional comments as new information arises. We welcome any questions you may have that would assist you in better understanding our comments and we anticipate being directly consulted in this review process.

In closing, adequate resourcing and capacity to engage remains a challenge for our First Nation along with all First Nations in Canada. Funding is critical to support Cold Lake First Nations ability to participate in this review process.

Regards,

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**Please copy all correspondence to*

[Redacted signature]

cc: Cold Lake First Nations Access Committee