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Regulator

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8 April 2021

Standing Committee on Indigenous and Northern Affairs
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Attention: Mr. Bob Bratina, M.P., Committee Chair

Dear Committee Members,

Canada Energy Regulator submission for Committee Review of Bill C-15

The Canada Energy Regulator (CER) is an independent federal energy regulator that works to keep energy moving safely across the country. The CER was established under the *Canadian Energy Regulator Act* (CER Act), which was part of Bill C-69¹ and came into force in August 2019.²

The CER's Mission reflects our legislative mandate:

Regulating infrastructure to ensure safe and efficient delivery of energy to Canada and the world, protecting the environment, recognizing and respecting the rights of the Indigenous peoples of Canada, and providing timely and relevant energy information and analysis.

The CER's Vision captures the type of regulator we strive to be, furthering commitments in the CER Act's preamble:

An energy regulator with an exemplary workforce that has the confidence of Canadians; is dedicated to ensuring safety and environmental sustainability; builds strong relationships with First Nations, the Métis, and the Inuit; and enhances Canada's global competitiveness.

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¹ *Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act, and to make consequential amendments to other Acts.*

² The CER replaced the former National Energy Board.

As demonstrated in our Mission and Vision, we are committed to the ongoing process of reconciliation with the Indigenous peoples of Canada and are taking meaningful actions in that direction.

Our efforts towards advancing reconciliation are aided with new tools provided in the CER Act to help us transform the way we work. The legislation designates the organization as an agent of the Crown which has resulted in the CER taking on the role of Crown Consultation Coordinator for certain mid-sized, CER-regulated projects.³ The legislation also sets clear policy objectives through its preamble, including a commitment to reconciliation and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). The CER has expressly reinforced these preambular commitments, through identifying Reconciliation as our Strategic Priority. We have also started, and will continue, to find ways to implement the UN Declaration in our work, collaboratively and with guidance from Indigenous representation on our Board and Commission,⁴ as well as from the new Indigenous Advisory Committee (discussed below).

We understand that, through its consideration of Bill C-15, the Government of Canada is seeking ways to take effective measures – including legislative, policy and administrative actions – to achieve the objectives of the UN Declaration.

While we recognize that we have further work to do, the CER is submitting this letter to share some practical steps our organization is taking to advance reconciliation and improve regulatory outcomes. The UN Declaration, the Truth and Reconciliation Commission's Calls to Action, the Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls and the Principles Respecting the Government of Canada's relationship with Indigenous peoples are forming the roadmap for this work.

CER Strategic Priorities

As outlined in the CER's Strategic Plan and 2021-22 Departmental [Plan](#), we have four interrelated Strategic Priorities: Trust and Confidence; Reconciliation; Competitiveness; and Data and Digital Innovation.

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³ Prior to the establishment of the CER, this role was undertaken by Natural Resources Canada, through the Major Projects Management Office.

⁴ The CER Act requires Indigenous representation on the Board of Directors (subsection 14(2)), and the Commission (subsection 26(2)).

As part of our Reconciliation Strategic Priority, the CER has made a clear commitment to implement the UN Declaration in the delivery of our mandate. The CER will transform the way we work with the Indigenous peoples of Canada by:

- Enhancing the involvement of Indigenous peoples in how we discharge our mandate recognizing their unique cultures, knowledge and histories;
- Building renewed relationships based on the recognition of rights, respect, co-operation and partnership;
- Improving the cultural competency of the CER and its staff; and
- Driving meaningful change in the CER's requirements and expectations of regulated industry.

Indigenous Advisory Committee

In August 2020, the CER announced the formation of its Indigenous Advisory Committee (IAC). The IAC fulfils a key requirement of the CER Act to establish an advisory committee to enhance the involvement of the Indigenous peoples of Canada and Indigenous organizations in the CER's regulated infrastructure.⁵

The IAC's work is grounded in advancing reconciliation. It serves as part of the overall governance of the CER as its overarching role is to advise the Board of Directors on how the CER can build a renewed relationship with the Indigenous peoples of Canada.⁶ The IAC:

- Advises on strategy, systemic, and policy and program development matters;
- Advises on how best to enhance the involvement of Indigenous peoples in respect of the CER's work;
- Advises on the integration of Indigenous perspectives, knowledge, teachings, values, use of the land, air, and water, oral traditions, and worldviews in the regulation of CER-regulated energy infrastructure, throughout the lifecycle; and,
- Helps the Board "raise the bar" when shaping the organization's strategy related to the integration of the rights, interests and values of the Indigenous peoples of Canada into the CER's work and processes.

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⁵ The CER Act subsection 57(1) states, "The Regulator must establish an advisory committee for the purpose of enhancing the involvement, under Part 2, of the Indigenous peoples of Canada and Indigenous organizations in respect of pipelines, power lines and offshore renewable energy projects as well as abandoned pipelines."

⁶ Similar to the Board, the IAC does not make adjudicative decisions, engage in CER operational matters, or provide advice on any specific decision, order or recommendation made by the Commission of the CER.

The IAC and Board of Directors have co-developed the IAC's Terms of Reference, a key milestone in the IAC's development. The document reflects shared goals and a common understanding on a framework, roles and responsibilities.

While the IAC's advice is provided at a strategic level, it will have tangible impacts on the CER's day-to-day operations. Through its initial meetings, the IAC has provided advice and had discussions with the Board on the CER's Strategic Plan, the Reconciliation Strategic Priority, and the organization's ongoing work on its approach to Crown consultation.

Looking ahead, the CER will seek the IAC's advice on approaches to Indigenous peoples' involvement in CER regulatory oversight and on the implementation of the UN Declaration. This advice will bring meaningful changes to the way the CER works, including in our oversight of the CER's regulated companies.

We are confident that the IAC's strategic advice will help to build trust, mutual capacity and will support more meaningful and effective consultations with Indigenous communities impacted by CER-regulated infrastructure. We are also confident that the IAC's advice will help create certainty and predictability in the delivery of the CER's mandate.

Enhanced Indigenous Involvement in Lifecycle Oversight

Indigenous Advisory and Monitoring Committees

The work of the IAC will build on and support other work and initiatives that the CER has undertaken with Indigenous partners, such as the Indigenous Advisory and Monitoring Committees (IAMCs).

In November 2016, the Government of Canada committed to creating an IAMC for each of the Enbridge Line 3 Replacement Program (Line 3)⁷ and the Trans Mountain Existing Pipeline and Expansion Project (TMX).

The IAMCs bring together Indigenous and senior federal representatives to provide advice to regulators, and to monitor project construction and operation. The aim of the IAMCs is to develop meaningful relationships with Indigenous communities along the projects' corridors, for the entire lifecycle of the two projects. Indigenous peoples, the Government of Canada, and the CER have worked together to create the IAMCs and make progress on co-development work. One of the major achievements of the IAMCs and the CER was the co-development and implementation of an Indigenous Monitoring Program in 2017.

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⁷ The Line 3 project involves the replacement of existing pipeline from Hardisty, Alberta to Gretna, Manitoba. Further details are available on the CER website: <https://www.cer-rec.gc.ca/en/applications-hearings/view-applications-projects/line-3-replacement/project-information.html#s3>.

Moreover, learnings from the CER's work with the IAMCs and engagement with Indigenous peoples, notably with policy and program co-development and co-design initiatives, help to inform the organization's strategy.

Indigenous Monitors

There has been increased involvement of Indigenous Monitors (IMs) in the CER's oversight activities, and the CER is exploring options for IMs to bridge into roles that could then be designated as CER Inspection Officers (IOs).

Since the establishment of the IAMCs for Line 3 and TMX, IMs have been working with CER IOs to oversee construction of several projects.⁸ This includes environment and safety inspections, compliance meetings, emergency response exercises, and responding to incidents. IMs have participated in 70 compliance verification activities (CVAs) for the TMX IAMC and 34 for the Line 3 IAMC.⁹ Outside of the IAMCs, the CER has been contracting with IM employers for IMs to participate on CVAs on Keystone XL construction, and most recently on the NOVA Gas Transmission Ltd. 2021 System Expansion Project (NGTL 2021).¹⁰

Integral to our work with IMs has been the development of an IM training program where IMs, IOs, and other CER staff learn from one another about their respective approaches to safety and environmental protection. This training includes Elders opening each session with prayers and ceremonies, providing oral Indigenous knowledge, and leading the IM and IO teams on walks through their territories.

NGTL 2021 Initiative

The CER's [initiative](#) on NGTL 2021 is another step on this shared path towards reconciliation. This initiative will set a framework for ongoing dialogue between the CER and Indigenous peoples on matters that are relevant and important to them.

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⁸ Of note, during joint inspections on Line 3, challenges were encountered related to access to private lands.

⁹ The TMX IAMC was in place at the start of construction of the expansion project, while the Line 3 IAMC was established part way through construction. On-site inspections are more frequent during the construction phase, as this is the phase during which there is the greatest potential for risks to safety, environment and heritage resources.

¹⁰ The NGTL 2021 project involves adding new pipeline parallel or adjacent to the existing system in Alberta and British Columbia. Further details are available on the CER website: <https://www.cer-rec.gc.ca/en/applications-hearings/view-applications-projects/2021-ngtl-system-expansion/project-background.html>.

As part of this ongoing engagement, we have a contracting process underway to partner our IOs with IMs when conducting inspections in the field for CVAs. This “boots on the ground” presence on NGTL 2021 will allow the CER to better integrate Indigenous perspectives in our compliance and oversight activities. Similarly, while the Keystone XL Project did not have an IAMC, the CER had signed contracts with two Indigenous businesses to employ IMs for construction oversight of this project.

Enhancing Early Engagement

As noted in the preamble of the CER Act, the Government of Canada is committed to using transparent processes that are built on meaningful early engagement and inclusive participation.

From the CER perspective, engaging potentially impacted Indigenous communities at the earliest stages of project design and development is the best way to ensure that Indigenous knowledge is taken into account.

Under the commitments set out in the CER Act, and in line with best practices, the CER has released an *Early Engagement Guide*, which [includes](#) an “early engagement phase” aimed at ensuring consultations with Indigenous peoples begin earlier, are inclusive and meaningful, and reflect the rights and interests of Indigenous peoples. The CER continues to advance and refine its early engagement processes and offer opportunities for meaningful and inclusive participation in its regulatory processes, including offering participant funding.

Adjudicative Processes during COVID-19

In response to the COVID-19 pandemic, the Commission [adjusted](#) a number of its adjudicative processes to replace in-person meetings with alternative formats, such as written or virtual proceedings. This allowed the Commission to continue to offer processes that are fair, timely, transparent and accessible, while also respecting physical distancing measures.

The CER is aware that Indigenous communities face increased challenges and risks associated with COVID-19, and has taken extra measures to help minimize the latter. As such, when a Notice of Application is sent to an Indigenous community for comment, the CER is:

- Directly reaching out to Indigenous communities to assess their capacity to engage while under COVID-19 restrictions. Where communities have expressed that they have the ability to engage, CER staff will work with them to arrange engagement by phone or videoconference. This will ensure the safety of community members and CER staff by eliminating in-person contact; and,

- Continuing to provide additional time (30 days instead of the standard 14 days), for Indigenous communities to respond to Notices of Application from CER.¹¹ Further extension requests are assessed on a case-by-case basis.

The CER has taken steps to make adjudicative processes accessible to Indigenous communities during the COVID-19 pandemic, and is committed to continuing work to improve accessibility and being flexible where possible.

Building CER Cultural Competency

As part of the CER's commitment to advancing reconciliation, the organization has implemented training programs and initiatives geared towards enhancing cultural competency. CER Staff will continue to participate in courses to enhance their understanding of Indigenous peoples' history and rights. Cultural competency courses include: Indigenous-led content, decolonization, systemic racism, UN Declaration, Truth and Reconciliation Commission Calls to Action, National Inquiry into Missing and Murdered Indigenous Women and Girls Calls to Justice, and more.

Conclusion

While we recognize that reconciliation is a long journey and that we have considerable work to do as an organization, the CER knows that when Indigenous peoples are meaningfully involved in our work and an approach of co-development is used, we can bring together our collective perspectives – Indigenous knowledge and worldviews and Western knowledge and approaches – to ensure Canada's federally-regulated infrastructure including pipelines are safe, the environment is protected, and Indigenous rights and interests are recognized and respected.

¹¹ As part of the regulatory process, the CER sends a Notice of Application to Indigenous peoples to notify them that the CER has received an application that may impact their community. The Notice of Application provides details on how to submit comments to the CER.

The CER remains deeply committed to the ongoing process of reconciliation and continuing on our path of learning.

We offer our experiences to the Standing Committee on Indigenous and Northern Affairs (INAN) as an example of how a federal institution is working with Indigenous peoples toward the implementation of the UN Declaration.

Sincerely,

Gitane De Silva
Chief Executive Officer

Cassie J. Doyle
Chairperson of the Board of Directors

Damien Côté
Lead Commissioner

Tribal Chief Tyrone McNeil
Interim Chairperson of the
Indigenous Advisory Committee

Kaella-Marie Earle
Interim Vice-Chairperson of the
Indigenous Advisory Committee

Enclosures

c.c.: Canada Energy Regulator Board of Directors
Canada Energy Regulator Commission
Canada Energy Regulator Indigenous Advisory Committee
The Honorable Seamus O'Regan, Minister of Natural Resources
Jean-François Tremblay, Deputy Minister, Natural Resources Canada



Strategic Plan



TRUST AND CONFIDENCE:

Fostering trust and confidence of Canadians in the CER through robust communications, transparency, collaboration and inclusive engagement; building respectful relationships with the Indigenous peoples of Canada; and fostering an engaged and empowered workforce.

RECONCILIATION:

Transforming the way we work with the Indigenous peoples of Canada, with a commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, by enhancing their involvement in how we discharge our mandate recognizing their unique cultures, knowledge and histories; building renewed relationships based on the recognition of rights, respect, co-operation and partnership; improving the cultural competency of the CER and its staff; and driving meaningful change in the CER's requirements and expectations of regulated industry.

DATA AND DIGITAL INNOVATION:

Creating a data and digital innovation culture and systems that enable the effective delivery of the CER's mandate; allow for improved public access, use and analysis of accurate data and energy information for meaningful participation and informed decision-making; and enhance opportunities for digital engagement.

COMPETITIVENESS:

Enhancing Canada's global competitiveness by improving transparency, predictability and efficiency throughout the regulatory lifecycle, while driving innovation that contributes to the transition to a low carbon economy.





Indigenous Advisory Committee

Terms of Reference

These Terms of Reference are co-developed and co-endorsed by the IAC and the Canada Energy Regulator’s Board of Directors. They describe the foundation, guiding principles, goals and mandate of the IAC, as well as its governance and operations.

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Background

1. The Canada Energy Regulator (CER), which replaced the National Energy Board, was formed in August 2019 under its enabling legislation the *Canadian Energy Regulator Act* (CER Act). The CER Act came into force following a Government of Canada initiative to modernize the federal energy regulator, which included cross-country engagement with Indigenous Nations, communities, stakeholders and citizens.
2. The CER regulates infrastructure to ensure safe and efficient delivery of energy to Canada and the world; protecting the environment, recognizing and respecting the rights of the Indigenous peoples of Canada and providing timely and relevant energy information and analysis.
3. The CER Act contains key commitments in its preamble, including ensuring safety security and environmental protection; achieving reconciliation with the Indigenous peoples of Canada; enhancing Canada's global competitiveness; increasing transparency, diversity and inclusion; and driving innovation.
4. The preamble to the CER Act also expressly notes the Government of Canada's commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).
5. Subsection 57(1) of the CER Act requires the CER to establish an advisory committee for the purpose of enhancing involvement of the Indigenous peoples of Canada and Indigenous organizations in respect of CER-regulated pipelines, power lines and offshore renewable energy projects as well as abandoned pipelines.
6. The Indigenous Advisory Committee (IAC or Committee) is an integral part of the CER's governance structure and a key part of the CER's commitment to advance reconciliation.
7. As part of its commitment to advance reconciliation, the CER seeks to build a renewed relationship with First Nations, the Métis Nation and Inuit communities, recognizing that there has not historically been a good relationship, or in many cases any relationship, between the federal energy regulator and Indigenous Nations and communities.

Foundation

8. The work and advice of the IAC will be grounded in advancing reconciliation by helping to transform the relationship between the CER and the Indigenous peoples of Canada and bring a broader perspective to the CER reflecting the worldview of First Nations, the Métis Nation and Inuit. The UN Declaration, the Truth and Reconciliation Commission's (TRC) Calls to Action, and the Principles Respecting the Government of Canada's Relationship with Indigenous peoples will form the foundation and provide the roadmap for this work.

Guiding Principles

9. All of the Committee's work and interactions will be guided by the principles set out below. These guiding principles are intended to be cumulative, mutually supportive and of equal value.



Shared Goals

10. The Committee and the Board will strive to achieve their shared goals and objectives for the IAC, being:
- a. Strong relationships are established between the IAC and the Board, and between the IAC and the CER more broadly, in a manner that builds trust and mutual capacity, fosters learning, and allows for discussions to be carried out and decisions to be made differently.
 - b. The IAC's advice has a meaningful, timely and measurable impact on the CER's strategies and work. The IAC operates at a strategic level, but with a clear line of sight between IAC advice and tangible impacts on the ground, and supported by robust change management. The IAC's advice results in meaningful change in the way the CER exercises its mandate, including the CER's oversight, expectations and requirements of regulated industry.



Mandate

11. The overarching mandate of the IAC is to advise the Board on how the CER can build a renewed relationship with First Nations, the Métis Nation, and the Inuit. The IAC:
 - a. advises on strategic, systemic, and policy and program development matters relevant to the IAC and CER mandates;
 - b. advises on how best to enhance the involvement of the Indigenous peoples of Canada and Indigenous organizations in respect of the CER's work;
 - c. advises on the integration of Indigenous perspectives, knowledge, teachings, values, use of the land and water, oral traditions, and worldviews in the regulation of CER-regulated energy infrastructure, throughout the lifecycle; and,
 - d. helps the Board "raise the bar" when shaping the organization's strategy related to the integration of Indigenous rights, interests and values into the CER's work and processes.
12. IAC advice may, over time, be shared by the CER with the broader Government of Canada to inform wider policy and program development.
13. The IAC is not a decision-making body, nor does it engage in CER operational matters or provide advice on any particular decision, order or recommendation made by the CER Commission or other CER adjudicative decision-makers.

Membership

14. IAC membership reflects Canada's diversity of Indigenous communities, languages, genders, geographies, and skills and expertise. IAC membership includes one directly recommended member from each of the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis National Council.¹
15. If a member wishes to resign from the Committee prior to the expiry of their term, they are requested to provide two weeks' notice to the Chairpersons of the IAC and the Board.
16. The CER recognizes that members are not elected representatives for the purpose of IAC membership, and that only certain members have been recommended by Indigenous organizations to represent the interests of First Nations, the Métis Nation, and the Inuit. Those directly recommended members may bring to the IAC's discussions the views and perspectives of the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis National Council, as they deem appropriate.
17. The CER encourages the IAC to take an integrated and cohesive approach to its discussions and advice, finding common ground and consensus where possible, in line with the "IAC Advice" section of these Terms of Reference. The CER generally seeks member advice based on personal knowledge, experience and views.
18. The IAC does not replace other types of engagement, or Crown consultation carried out by the CER with First Nations, the Métis Nation or the Inuit, whether in respect of specific projects or other CER initiatives. Nor does the IAC work affect protocols of the Indigenous peoples of

¹ Subsection 57(2) of the CER Act requires that the IAC include at least one person recommended by an Indigenous organization that represents the interests of First Nations; one person recommended by an Indigenous organization that represents the interests of the Inuit; and one person recommended by an Indigenous organization that represents the interest of the Métis Nation.



Canada for engaging government, industry or others, or for gathering, documenting, managing or sharing Indigenous knowledge.

Chairperson and Vice-Chairperson

19. The IAC selects its Chairperson and Vice-Chairperson, striving to do so on consensus (as described in section 40 of these Terms of Reference). If consensus cannot be obtained, the Chairperson and Vice-Chairperson are selected based on a simple majority vote.
20. In selecting a Chairperson and Vice-Chairperson, members may consider candidates' experience chairing boards or committees; leadership, communication and facilitation skills; and ability to devote additional time to the work of the IAC.
21. When a new Chairperson or Vice-Chairperson is required, IAC members will be requested to self-identify their interest in being Chairperson or Vice-Chairperson to the Chief of Staff, who will bring the names forward to the IAC for consideration.
22. The Chairperson and Vice-Chairperson are each appointed by the IAC for a term that does not exceed the length of their contract or agreement with the CER. The Chairperson or Vice-Chairperson's term may be extended, or the Chairperson or Vice-Chairperson may be reappointed for subsequent terms by the Committee, within the term of their contract or agreement with the CER.

Roles and Responsibilities

23. IAC members:
 - a. Contribute strategic advice and perspectives on how the CER can make meaningful progress towards reconciliation, including through implementation of the UN Declaration and the enhancement of the involvement of the Indigenous peoples of Canada in the CER's work;
 - b. Promote opportunities for positive systemic change within the CER and its regulated industry, through building and strengthening relationships with the Board and CER staff and partaking in shared learning opportunities;
 - c. Leverage their experience with the CER (and former National Energy Board) and with the energy and/or natural resource sector in providing their advice; and
 - d. Share Indigenous values and teachings as a respected voice, so the IAC and CER can learn from each other and integrate Indigenous perspectives and worldview in the CER's strategies, plans and actions.
24. The IAC Chairperson:
 - a. Takes a leadership role within the IAC and serves as its spokesperson;
 - b. Co-endorses, with the Board Chairperson, meeting agendas, and presides over meetings;
 - c. Guides the IAC in the delivery of its mandate, ensuring the Terms of Reference and other applicable protocols and guidance are respected;
 - d. Ensures IAC meetings are carried out effectively, including by ensuring participation from all members, and that all relevant matters are addressed;
 - e. Is a liaison between the IAC and CER including by participating in regular meetings and communications with the Chief of Staff and the Board Chairperson and CEO; and
 - f. Ensures, with Secretariat support, that new IAC members receive effective orientation.



25. The IAC Vice-Chairperson:

- a. Supports the Chairperson in the delivery of his or her roles and responsibilities, as requested by the Chairperson; and
- b. Acts as IAC Chairperson, in the event that the Chairperson is absent, or unable to act, or if there is a vacancy in that position.

26. The Board:

- a. Sets priority areas for requesting IAC advice;
- b. Receives and responds to IAC advice on behalf of the CER;
- c. Endorses IAC membership;
- d. Co-endorses with the IAC the Terms of Reference and the annual IAC work plan; and
- e. Liaises directly with and works collaboratively with the IAC.

27. The CEO:

- a. Supports the Board in considering and responding to IAC advice, ensuring advice adopted by the Board is integrated and implemented within the organization efficiently and effectively; and
- b. Provides all reasonable support services and resources to support the IAC in the delivery of its mandate.

Chair-to-Chair Relationship

28. A primary point of contact and collaboration between the IAC and the CER will be through the Chairpersons of the IAC and Board. The Chairpersons will work to create and maintain a positive working relationship through open dialogue and regular communications. This includes meeting bilaterally on a monthly basis, at a minimum.

Secretariat

29. Secretariat support for the IAC is provided by the CER's Executive Office under the leadership of the Chief of Staff. The Chief of Staff serves as the primary staff contact for IAC members.

30. The Secretariat:

- a. Provides 'one-window' governance, operational and administrative support to the IAC;
- b. Facilitates the work of the IAC and maintains associated official records;
- c. Supports the Board and Chief Executive Officer (CEO) in ensuring IAC advice is communicated, considered, and responded to and that advice adopted by the Board is implemented efficiently, effectively and meaningfully;
- d. Prepares meeting minutes, highlighting key areas of discussion and IAC advice, generally in a manner that is not attributed to individual members; and
- e. Keeps a record of advice from the IAC to the Board and supports the Board in reporting back to the IAC on how advice was incorporated or not incorporated into CER strategy, policies, and programs.

IAC Meetings

31. Meetings are held quarterly, with additional meetings being held on an as-needed basis, as determined by the CER in consultation with the IAC Chairperson.



32. Joint meetings between the IAC and the Board will be held bi-annually, with additional joint meetings being held on an as-needed basis, as deemed necessary by the Chairpersons of the IAC and Board.
33. A majority (more than 50%) of members must be present for a meeting to proceed.
34. Meetings occur at the CER's head office in Calgary, at other locations across Canada, or remotely, as determined by the CER in consultation with the IAC Chairperson.
35. Every IAC meeting has an Agenda, co-endorsed by the Chairpersons of the IAC and Board, which includes:
 - a. Cultural protocol, to be discussed and agreed upon by members on a consensus basis, which protocols may evolve over time;
 - b. For approval, the minutes of the previous IAC meeting; and
 - c. An update from the CER on its progress towards considering and responding to IAC advice, and, as applicable, how advice has resulted in systemic or organizational changes.

IAC Advice

36. IAC advice is provided to the Board.
 - a. Generally, the IAC is encouraged to provide its advice collaboratively and orally (e.g., through collaborative workshops, by items presented by CER staff to both the IAC and the Board jointly for feedback, or via roundtable discussions), which will be appropriately reflected in meeting minutes. However, advice may also be provided in writing should the IAC consider it appropriate.
37. The IAC and Board co-endorse an annual IAC work plan that outlines the business priorities of the Committee for the fiscal year. The work plan will be flexible, leaving room for continual improvement in approaches.
 - a. The work plan prioritizes topics for which advice is requested from the IAC by the Board, taking into consideration any IAC-recommended topics. Topics may be wide-ranging and relate to strategic, systemic, policy and program development matters within the IAC and CER mandates.
 - b. The work plan includes shared learning and mutual capacity building opportunities, IAC onboarding, and IAC governance and operational matters.
38. The IAC strives to frame its advice within the context of the CER's mandate and priorities.
39. The IAC, in formulating its advice, strives to find common ground and consensus where possible; it is understood that a single voice reflecting areas of common ground and consensus will speak persuasively to the Board. While a consensus view will be sought, the IAC acknowledges that the diversity of the Committee may result in multiple points of advice being provided on some issues.
40. A "consensus" approach for advice to be given by the IAC will be based on the following:
 - a. All members have an equal voice and an opportunity to be heard;
 - b. "Consensus" means accepting or consenting to a proposal that has achieved popular support from members, even if the proposal is not a personal first or preferred choice out of the available options. Consensus does not require concurrence on every point, but



rather broad agreement on the general approach and a willingness to accept an overall course of action;

- c. It is understood that members have diverse and unique perspectives, may have divergent views, and consensus on all matters is not required;
- d. If consensus is not practicable, required or where diversity of views may assist in the circumstances, the IAC will formulate member's advice, highlighting areas of concurrence and divergence; and,
- e. If consensus is required (e.g., on a binary decision to be made by the Committee), a simple majority vote will be used. In the event of tie, the Chair's vote will be relied on to break the tie.

41. The IAC's advice may be informed by feedback, perspectives, recommendations and lessons learned of the Indigenous Advisory and Monitoring Committees for the Trans Mountain Existing Pipeline and Expansion and the Line 3 Replacement Program, and any similar committee or body which may be established in future.

Transparency and Communication

42. The IAC operates in a transparent manner.

- a. IAC materials are posted to the CER's website, including Terms of Reference, member biographies, approved meeting minutes and any final written IAC advice.
- b. Material provided by the CER to support IAC meetings and the delivery of its mandate is made available to any member of the public who requests it.

43. Members are encouraged to speak and share information about the mandate, outcomes, activities and advice of the IAC in the course of their other roles, business and activities. The Secretariat, at the request of members, may provide CER and IAC information or material to assist. In doing so, IAC members do not represent the CER or speak on its behalf.

44. The CER may invite members to contribute to or participate in engagement or communication material or events, learning opportunities or conferences.

45. The CER shares the work, activities and any final advice of the IAC publically in a variety of ways and on a variety of platforms, including in its annual reports to Parliament.

46. Members are requested to direct media inquiries about the IAC to the Secretariat and to make the Secretariat aware of any media request to which they intend to respond in their capacity as an IAC Member. The Secretariat can support IAC members in responding to any media inquiries.

Adjudicative Independence and Conflicts of Interest

47. The IAC and its members act in accordance with Annex A to these Terms of Reference, to ensure the protection of adjudicative independence and avoidance of any real or perceived conflicts of interest that may arise in the course of the IAC's work.



Other Matters

48. Additional governance or operational protocols or guidance may be developed by the IAC or co-developed with the Board, as appropriate, should a need arise. If there is a conflict between an additional protocol or guidance and these Terms of Reference, the Terms of Reference prevail.
49. The Terms of Reference are intended to be subject to continual improvement and may be amended at any time by co-endorsement of the IAC and Board. At a minimum, the Terms of Reference will be formally reviewed once every three (3) years.



Annex A to the Terms of Reference

Adjudicative Independence and Conflicts of Interest

Protecting Adjudicative Independence

1. Adjudicative decisions and recommendations made by the Commission, such as those relating to specific infrastructure projects, must be made independently, fairly and without bias.² This adjudicative independence is central to the CER's mandate. The Board, Commission, IAC, CEO, and CER Staff all have a positive obligation to protect adjudicative independence.
2. The IAC operates to protect adjudicative independence by:
 - a. Focusing its discussions and advice on strategic, policy and program development matters of broader, systemic impact (as opposed to individual or project-specific impact); and
 - b. Refraining from discussing, giving direction, or providing advice on any particular decision, order or recommendation made by the Commission³.
3. The Secretariat plays a support role in ensuring the above measures to protect adjudicative independence are followed, including by putting in place any CER protocols or guidance considered necessary.
4. If an individual IAC member becomes a participant in a Commission adjudicative proceeding; for example, as an Intervenor in their individual capacity or representing an Indigenous Nation, community, organization or group; they participate in the proceeding in that personal or representative capacity, not in their capacity as an IAC member. They do not identify themselves or speak in their capacity as an IAC member or represent or speak on behalf of the IAC.
5. Members refrain, in the course of carrying out their non-IAC related roles, business and activities from holding themselves out as speaking for the CER or IAC, or indicate that they are in a position to provide advice on CER adjudicative matters.

Avoiding Conflicts of Interest

6. A conflict of interest arises when a member's private interests impair or could be perceived to impair their ability to provide advice to the CER collaboratively, constructively and maintaining an open mind.
7. It is recognized that IAC Members have existing relationships (including business or financial) with and experiences involving Indigenous Nations, governments or communities, regulated companies or projects, or with other people or organizations who could be impacted by projects and facilities regulated by the CER. These relationships and experiences are

² This Annex applies equally to the independence of CER staff-level adjudicative decision makers (e.g., CER designated officers, Inspection Officers, and persons authorized to issue administrative monetary penalties)

³ This is the same restriction placed on the Board of Directors by the CER Act.



expected and valued, and without them the IAC would be less effective in the fulfillment of its mandate.

Further, the IAC does not advise on specific adjudicative matters or other matters that might impact unique and specific individual rights or interests. Rather, the IAC is focused on broader strategic, policy and program and development matters of systemic impact. Accordingly, conflicts of interest with respect to IAC-related discussions and advice are expected to arise rarely, if ever.

8. In the event that a member identifies a real or perceived conflict of interest, the member:
 - a. Notifies the IAC Chairperson and Chief of Staff ahead of any meetings where topics relevant to the real or perceived conflict of interest will be discussed;
 - b. Declares the real or perceived conflict of interest to the Committee at that meeting; and
 - c. If considered appropriate (after discussing the real or perceived conflict of interest with the Committee, or otherwise), recuses themselves from relevant discussions.
9. The Secretariat records any declared conflicts of interest and resulting recusals in the meeting minutes.
10. At any time, IAC members may seek advice from the Secretariat, who may engage CER legal counsel, regarding whether a real or perceived conflict of interest exists. IAC members may also raise questions or concerns regarding real or perceived conflicts of interest to the IAC Chairperson for discussion with the Committee or the CER, as may be appropriate in the circumstances.

If there remains any question or concern on the part of the IAC, an IAC member, or the CER about whether a real or perceived conflict of interest exists, the Secretariat will bring the matter forward for consideration by the Chairperson of the Board, who, in consultation with the Chairperson of the IAC, will determine the matter and may, if a conflict of interest is determined to exist, require an IAC member to recuse themselves from relevant discussions.