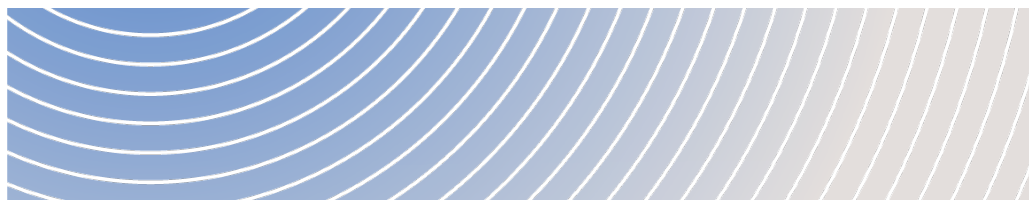




Memorandum of Understanding between the Impact Assessment Agency of Canada and the Canadian Energy Regulator



November 2019



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**Memorandum of Understanding concerning
Integrated Impact Assessments under the
*Impact Assessment Act***

Between

the Impact Assessment Agency of Canada

- and -

the Canadian Energy Regulator

(together, “the Parties”)

Preamble

Whereas the *Impact Assessment Act* and the *Canadian Energy Regulator Act* came into force on 28 August 2019;

Whereas under the *Impact Assessment Act*, projects that include one or more activities designated by the *Regulations Designating Physical Activities* are subject to the *Impact Assessment Act* and may require an impact assessment;

Whereas under the *Impact Assessment Act* and the *Regulations Designating Physical Activities*, the assessment of designated projects that are regulated by the Canadian Energy Regulator (CER) under the *Canadian Energy Regulator Act* will proceed by way of an integrated impact assessment;

Whereas the CER has statutory responsibilities pursuant to the *Canadian Energy Regulator Act* and the *Impact Assessment Act* and is responsible for, among other things, ensuring that pipeline, power line and offshore renewable energy projects within Parliament’s jurisdiction are constructed, operated and abandoned in a safe and secure manner that protects people, property and the environment;

Whereas the Minister of Natural Resources and the Minister of the Environment have statutory responsibilities pursuant to the *Canadian Energy Regulator Act* and the *Impact Assessment Act*;

Whereas the Impact Assessment Agency of Canada (the Agency) has statutory responsibilities pursuant to the *Impact Assessment Act*;

Whereas under section 43 of the *Impact Assessment Act*, the Minister of the Environment must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under the *Canadian Energy Regulator Act*;

Whereas the Government of Canada is committed to implementing an impact assessment and regulatory system that Canadians trust and recognizes the importance of fair, inclusive, transparent and efficient processes;

Whereas the Parties wish to ensure that the principle of 'one project-one assessment' is followed in reviewing designated projects that are regulated by the CER, and that any reviews of designated projects under the *Impact Assessment Act* are conducted in an efficient and effective manner, without unnecessary delays or duplication of effort;

Whereas it is necessary to take certain measures, and develop certain guidance documents and procedures to support the implementation of the *Impact Assessment Act* and *Canadian Energy Regulator Act* to ensure that the assessment of those designated projects can proceed efficiently and effectively; and

Whereas the Parties recognize and acknowledge that although guidance documents and procedures described herein are substantially complete, refinements may be necessary in implementing the *Impact Assessment Act* and the *Canadian Energy Regulator Act*.

Therefore,

The Parties agree to work collaboratively to design and implement integrated impact assessment processes under the *Impact Assessment Act* and the *Canadian Energy Regulator Act*, as outlined in this Memorandum of Understanding (MOU).

1. Scope

This MOU applies to the integrated impact assessment process of any designated projects as defined in section 2 of the *Impact Assessment Act* that are also regulated under the *Canadian Energy Regulator Act*.

2. Objectives

The objectives of this MOU are to:

- Outline a set of annexes which the Parties agree to develop in order to:
 - implement an overarching framework to allow for a single, comprehensive process for integrated impact assessments that is fair, inclusive, transparent and efficient,
 - describe the roles and responsibilities for the Parties for the conduct of integrated impact assessments, and
 - facilitate coordinated public engagement and Indigenous consultation activities in the integrated impact assessment process for designated projects regulated by the CER;
- Ensure the statutory requirements of both the *Impact Assessment Act* and the *Canadian Energy Regulator Act* can be fulfilled; and
- Facilitate timely and consistent information sharing and coordination between the Parties.

3. Designation Of Projects By The Minister of the Environment

The Agency commits to consult with the CER prior to making recommendations to the Minister of the Environment regarding any requests to designate projects that are received under the *Impact Assessment Act* and are not listed on the *Regulations Designating Physical Activities*,

which include physical activities regulated under the *Canadian Energy Regulator Act*. The Agency will consult with the CER:

- regarding any project-specific information received from a project proponent or a third party in relation to a potential designation, and/or
- prior to making any recommendations to the Minister of the Environment regarding a potential designation, and/or
- following any decision by the Minister of the Environment to designate a project.

4. Information Sharing

4.1 Reciprocal Notification

The Agency and the CER agree to keep each other informed, in a timely manner, of emerging projects which may be subject to both the *Impact Assessment Act* and the *Canadian Energy Regulator Act*. The Parties will each identify an official who will act as the principal point of contact for the sharing of information regarding emerging projects.

4.2 Public Registry

Insofar as both the Agency and the CER maintain public registries, the Impact Assessment Registry Internet Site (the Public Registry) maintained by the Agency will be the official record of the integrated impact assessment process. The Public Registry will include all information related to all integrated impact assessments undertaken by the Agency and the CER, until the issuance of a decision statement under the *Impact Assessment Act*.

Following the issuance of a decision statement, the CER will ensure that all subsequent filings and records (e.g., condition compliance filings and other filings related to the lifecycle oversight of the project) are posted to the CER's public registry; the Public Registry (for each designated project) will also contain a link to the CER's public registry.

5. Participant Funding

Participant funding for all integrated impact assessments will be provided and administered by the Agency pursuant to its Participant Funding Program. The funding will cover participation in the impact assessment, until the issuance of the decision statement.

6. Timeline For Impact Assessment Phase

Prior to the Agency posting a copy of the notice of commencement of an integrated impact assessment on the Public Registry, the Parties will discuss the need for any recommendation as to whether a time limit longer than 300 days is required and the reasons for any such recommendation.

The Agency will consult the CER prior to any decisions being made with respect to an overall time limit for the impact assessment of a designated project that is longer than 300 days. Time limits that are longer than 300 days should only be sought where appropriate due to the nature of the designated project.

7. Joint Agency-CER Project Team / Secretariat

Upon submission of a proponent's initial project description under the *Impact Assessment Act*, the Parties shall jointly set up a project-specific Project Team. This team may transition into a Secretariat when the review panel is appointed. The Project Team / Secretariat, as relevant, will:

- i. coordinate and conduct all tasks necessary to complete early engagement and other procedural steps required in the Planning Phase; and
- ii. support the review panel in conducting the integrated impact assessment on behalf of their respective organizations.

The composition and functioning of the Project Team / Secretariat will be in accordance with the terms set out in certain guidance documents and procedures to be established by the Parties and as described below.

8. Cost Sharing

Costs associated with integrated impact assessments will be apportioned between the Parties in accordance with a cost-sharing agreement to be finalized prior to the appointment of the review panel for each integrated impact assessment.

9. Annexes

The Parties agree to develop and implement a set of annexes that set out the principles and details necessary to facilitate the implementation of integrated impact assessments. These documents will be publicly available when complete. These annexes may include:

- Information Sharing and Notification;
- Public Engagement and Participation;
- Crown Consultation;
- Generic Terms of Reference for an Integrated Review Panel;
- Appointments to rosters and integrated Review Panels;
- Project Team and Panel Secretariat;
- Development of Conditions; and
- Generic Joint Integrated Review Panel Agreement.

10. Interpretation

This MOU:

- creates an administrative framework within which the Parties will cooperatively allow for the exercise of the powers and duties established by the *Impact Assessment Act* and the *Canadian Energy Regulator Act*, as necessary and as reflected in those Acts;
- is to be read and interpreted in a manner consistent with the *Impact Assessment Act* and the *Canadian Energy Regulator Act* and all other legal requirements, including, but not limited, to applicable legislative and regulatory requirements; and
- does not create any new legal powers or duties, nor does it alter the powers and duties to be established by the *Impact Assessment Act* and the *Canadian Energy Regulator Act* and is not legally binding on the Parties.

11. Terms Of The MOU

This MOU comes into effect upon the date of final signing by both Parties and remains in effect until withdrawn by either signatory upon reasonable notice in writing. The MOU may be amended with the mutual written agreement of both Parties.

This MOU is also subject to review upon the agreement of both Parties to ensure that the agreement continues to fully align with the relevant legislation, and reflects the full intentions of the Parties.

Signatures



David McGovern
President
Impact Assessment Agency of Canada



Peter Watson
Chief Executive Officer
Canadian Energy Regulator

OCTOBER 31, 2019
Date

October 17, 2019
Date