



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.

Strong relationships between the IAC, Board of Directors, and the CER more broadly is the basis upon which this work together is successful.

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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 First Nations, the Métis Nation and Inuit 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 First Nations, the Métis Nation and Inuit Peoples 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 First Nations, the Métis Nation and Inuit Peoples; 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 First Nations, the Métis Nation and Inuit Peoples and First Nations, the Métis Nation and Inuit 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 First Nations, the Métis Nation and Inuit 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 First Nations, the Métis Nation and Inuit Peoples 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 First Nations, the Métis Nation and Inuit 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's interactions with CER staff supports growing cultural intelligence within the organization. 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 and recognize and respect their inherent and constitutionally protected rights. 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 First Nations, the Métis Nation and Inuit Peoples and First Nations, the Métis Nation and Inuit organizations in respect of the CER's work;
 - c. advises on the integration of First Nations, the Métis Nation and Inuit perspectives, knowledge, teachings, values, use of the air, land and water, oral traditions, and worldviews in the regulation of CER-regulated energy infrastructure, throughout the lifecycle; and,
 - d. helps the Board consider and incorporate diverse views, needs, and perspectives when shaping the organization's strategy related to the integration of First Nations, the Métis Nation and Inuit 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 in supporting broader systemic transformative change.
13. The IAC is not a decision-making body, nor does it engage in CER operational matters or provide advice to the CER Commission 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 First Nations, the Métis Nation and Inuit 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. With exception of directly recommended members, IAC membership is determined by the Board. The Board also determines term length which is up to 4 years. Members may be re-appointed for consecutive terms. 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.

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.



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 First Nations, the Métis Nation and Inuit organizations. 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 First Nations, the Métis Nation and Inuit Peoples for engaging government, industry or others, or for gathering, documenting, managing or sharing First Nations, the Métis Nation and Inuit 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. The Chairperson and Vice-Chairperson are each appointed by the IAC for a term of three years or such length that does not exceed the length of their agreement with the CER. The Chairperson and Vice-Chairperson may step-down from the position (with notice) before the end of their term and remain a member of the IAC. The Chairperson or Vice-Chairperson's term may be extended, or they may be reappointed for subsequent terms by the Committee within the term of their agreement with the CER.
22. 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.

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, influencing the development of the CER's Strategic Plan, contributing to the incorporation of cultural intelligence throughout the CER's work and enhancement of the involvement of First Nations, the Métis Nation and Inuit Peoples 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 First Nations, the Métis Nation and Inuit values and teachings as a respected voice, so the IAC and CER can learn from each other and integrate First Nations, the Métis Nation and Inuit 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;
- b. Participates in regular meetings with the Chief of Staff and Board leadership and CEO; and
- c. 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 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;
- b. Supports the growing cultural intelligence of the organization and realizing systemic transformative change; and
- c. 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 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. The depth and impact of the IAC's advice is built on a strong foundation of trust and dialogue where the relationships between the IAC, Board of Directors, and



the organization are prioritized. In some instances, as identified in the IAC work plan, the IAC co-develops deliverables or initiatives with the Board.

- a. “Co-development” means a partnership and collaborative process that meaningfully strives for consensus endorsement by the IAC and Board. For greater clarity, co-development is inclusive of and considers IAC advice throughout the process, with sections 36(b), and 38-41 of these Terms of Reference applying equally in a co-development context. At a minimum, co-development applies to the Terms of Reference and IAC work plan.
- b. 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 dialogue), 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-develop and co-endorse an IAC work plan that outlines the business priorities of the Committee for a three year period, and sets out the deliverables and initiatives on which the IAC will provide strategic advice to, or co-develop with the Board. The work plan will be reviewed annually:

- 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, IAC member perspectives will be noted in meeting minutes; 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 advice and discussions of the IAC are enriched by the unique perspectives and input shared by others including the Indigenous Advisory and Monitoring Committees (IAMCs) for the Trans



Mountain Existing Pipeline and Expansion and the Line 3 Replacement Program, as well as other experienced external practitioners and experts. The lessons learned and views shared through these connections significantly benefit the IAC, and by virtue the advice received by the Board on how the CER can renew its relationship with First Nations, the Métis Nation and Inuit Peoples.

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 publicly 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 the Annexes 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 – Conflicts of Interest

- A1. The IAC is not a decision-making body and does not advise on matters that might impact unique and specific individual rights or interests, or on specific adjudicative matters. The IAC is focused on broad strategic, policy and program and development matters of systemic impact. Conflicts of interest with respect to IAC-related discussions and advice are expected to be rare, if ever.
- A2. IAC members are recognized to have existing relationships (including business or financial) with and experiences involving First Nations, the Métis Nation and Inuit 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 expected and valued, and without them the IAC would be less effective in the fulfillment of its mandate.
- A3. IAC members provide advice to the CER based on their unique experience, expertise and perspective. They work collaboratively, constructively and maintaining an open mind. IAC advice is of unique value due to the specific perspectives, knowledge and experience of IAC members.
- A4. Working from a foundation of transparency and value for diverse views, there may be cases where there is undue overlap of interest (personal or professional) in respect of an IAC discussion, creating a conflict. This may be particularly the case in respect of employment, procurement or other financial interests that may be influenced by matters that are the subject of IAC advice.
- A5. In the event that an IAC member identifies a real or perceived conflict of interest, the member:
- 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;
 - Declares the real or perceived conflict of interest to the Committee at that meeting; and
 - If considered appropriate (after discussing the real or perceived conflict of interest with the Committee, or otherwise), recuses themselves from relevant discussions.
- A6. The Secretariat records any declared conflicts of interest and resulting recusals in the meeting minutes.
- A7. 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.
- A8. 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.



Annex B – Adjudicative Independence

- B1. 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.
- B2. The IAC is not a decision-making body, nor does it engage in operational matters or provide advice to the CER Commission on any particular decision, order or recommendation made by the Commission or other CER adjudicative decision-makers.
- B3. The IAC protects adjudicative independence by:
- Focusing its discussions and advice on advancing First Nation, Metis & Inuit world views, relationships & rights to improve cultural intelligence in relation to strategic, policy and program development matters of broader, systemic impact; and
 - Refraining from discussing, or providing advice on any particular decision, order or recommendation actively before the Commission³
- B4. 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.
- B5. If an individual IAC member becomes a participant in a Commission adjudicative proceeding; for example, as an Intervenor in their individual capacity or representing a First Nations, the Métis Nation and Inuit 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 speak in their capacity as an IAC member or represent or speak on behalf of the IAC.
- B6. 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.

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.