



Province of Alberta  
Order in Council

O.C. 262 /2018  
JUL 09 2018

# ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor  
or  
Administrator

The Lieutenant Governor in Council approves the Alberta Energy Regulator entering into an agreement with the Minister of the Environment, Canada for the establishment of a joint review panel for the Grassy Mountain Coal Project in the form attached.

CHAIR

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For Information only

Recommended by: Minister of Energy

Authority: Responsible Energy Development Act  
(section 18)

**AGREEMENT  
to Establish a Joint Review Panel  
for the Grassy Mountain Coal Project  
Between**

**The Minister of the Environment, Canada  
- and -  
The Alberta Energy Regulator, Alberta**

**PREAMBLE**

**WHEREAS** the Alberta Energy Regulator (the AER) has statutory responsibilities pursuant to the *Responsible Energy Development Act* (REDA); and

**WHEREAS** the Minister of Environment, Canada (the federal Minister of the Environment) has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act, 2012* (CEAA 2012); and

**WHEREAS** the proposed Grassy Mountain Coal Project (the Project) requires a public hearing and approvals from the AER pursuant to REDA and the *Coal Conservation Act* (CCA), the *Environmental Protection and Enhancement Act* (EPEA), the *Water Act*, the *Public Lands Act*, and is subject to an assessment under CEAA 2012; and

**WHEREAS** the Federal Minister of the Environment has referred the environmental assessment of the Project to a review panel in accordance with section 38(1) of CEAA 2012 and has determined that pursuant to section 40(1) of CEAA 2012 a review panel should be jointly established to consider the Project; and

**WHEREAS** the Government of the Province of Alberta and the Government of Canada established a framework for conducting joint review panels through the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)* signed on May 17, 2005; and

**WHEREAS** the AER and the Federal Minister of the Environment have determined that a joint review of the Project will ensure the Project is evaluated according to the spirit and requirements of their respective authorities while avoiding unnecessary duplication, delays and confusion that could arise from individual reviews by the Government of Canada or the AER; and

**WHEREAS** the AER and the Federal Minister of the Environment have determined that a joint review of the Project should be conducted in a manner consistent with the provisions of Appendix 2 of the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)* to the extent reasonable; and

**WHEREAS** the AER has determined that pursuant to section 18 of REDA a joint review panel cooperative proceeding should be established and that the Project should be considered in a cooperative proceeding by the AER and the Agency.

**THEREFORE**, the AER and the Federal Minister of the Environment hereby establish a Joint Review Panel for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

## 1. Definitions

For the purpose of this Agreement and of the Appendix attached to it,

**“Aboriginal”** describes those Aboriginal peoples of Canada as defined in the *Constitution Act, 1982*, subsection 35(2) including the Indian, Inuit and Métis peoples of Canada;

**"Agency"** means the Canadian Environmental Assessment Agency;

**"environment"** means the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in (a) and (b);

**"environmental effect"** means those effects described in section 5 of CEAA 2012;

**"federal authority"** means a Minister, agency or department of the Government of Canada;

**"follow-up program"** means a program for

- (a) verifying the accuracy of the environmental assessment of the Project, and
- (b) determining the effectiveness of any mitigation measures;

**“Indigenous”** describes an Aboriginal group or Aboriginal peoples;

**“interested party”** means any person who the Joint Review Panel determines, with respect to the Project, may be directly affected by the carrying out of the Project or has relevant information or expertise or is allowed to participate in the hearing;

**"Joint Review Panel"** refers to the Joint Review Panel established by the AER and the Federal Minister of the Environment through this Agreement, and is both a panel of AER hearing commissioners making decisions for the AER and a CEAA review panel;

**"mitigation measures"** means, in respect of the Project, the methods used for the elimination, reduction or control of the adverse environmental effects of the Project, and include restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means;

**"parties"** means the signatories to this Agreement;

**“project”** means the proposed Grassy Mountain Coal Project described in Part 1 of the Terms of Reference;

**“proponent”** has the meaning provided in section 2 of CEAA 2012;

**“public registry”** means the Canadian Environmental Assessment Registry established under section 78 of CEAA 2012;

**“report”** means the document produced by the Joint Review Panel, which contains decisions pursuant to REDA, the CCA, the EPEA, the *Water Act*, and the *Public Lands Act*, and the Joint Review Panel's rationale, conclusions and recommendations relating to the environmental effects of the Project including any mitigation measures and follow-up program pursuant to CEAA 2012 and a summary of comments received from the public, including Indigenous persons and groups.

## **2. Establishment of the Joint Review Panel**

- 2.1** A process is hereby established to create a co-operative proceeding pursuant to section 18 of REDA, and a Joint Review Panel pursuant to sections 38, 39, 40 and 42 of CEAA 2012, for the purposes of the joint review of the Project.
- 2.2** The Joint Review Panel established under this Agreement will carry out its assessment in accordance with the Terms of Reference appended to this Agreement.
- 2.3** The AER and the Agency will make arrangements to coordinate the announcements of a joint review of the Project by both the AER and Canada.

## **3. Constitution of the Joint Review Panel**

- 3.1** The Joint Review Panel will consist of three members who will serve as Hearing Commissioners under section 12 of REDA and as panel members under CEAA 2012. The Chief Hearing Commissioner of the AER shall appoint the chairperson and shall appoint one other member of the Joint Review Panel, with the approval of the Federal Minister of the Environment. The third Joint Review Panel member will be appointed by the Federal Minister of the Environment in accordance with article 3.2 of this Agreement.
- 3.2** The third Joint Review Panel member will be selected by the Federal Minister of the Environment, who will recommend the selected candidate as an individual who may serve as a potential hearing commissioner of the AER. If acceptable to the Lieutenant Governor in Council of Alberta and the Chief Hearing Commissioner of the AER, the Lieutenant Governor in Council of Alberta will nominate this candidate to serve as a hearing commissioner of the AER and the Chief Hearing Commissioner of the AER will appoint this candidate as a member of the Joint Review Panel.
- 3.3** The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the Project and have knowledge or experience relevant to the anticipated environmental effects of the Project. In the event that a Joint Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Joint Review Panel unless the Federal Minister of the Environment and the AER determine otherwise. In such circumstances, the Federal Minister of the Environment and the AER may choose to replace the member.

## **4. Secretariat**

- 4.1** Administrative, technical, and procedural support requested by the Joint Review Panel shall be provided by a Secretariat, which shall be the joint responsibility of the AER and the Agency. The Secretariat will consist of staff involved in the joint review process from the Agency and the AER.
- 4.2** The Secretariat will report to the Joint Review Panel and will be structured so as to allow the Joint Review Panel to conduct the joint review in an efficient and cost-effective manner.
- 4.3** The AER will provide its offices, when required, for the conduct of the activities of the Joint Review Panel and the Secretariat.
- 4.4** Costs for conducting the joint review will be shared between the Agency and AER. The details of a cost-sharing agreement will be negotiated between the Agency and the AER.

## **5. Record of the Joint Review and Report**

- 5.1** A public registry will be maintained by the Agency during the course of the joint review in a manner that provides for convenient public access and for the purposes of compliance with sections 79 to 81 of CEAA 2012.
- 5.2** The public registry will include relevant documents submitted or produced during the environmental assessment under CEAA 2012 and documents placed on the AER's public record prior to the referral to the Joint Review Panel.
- 5.3** Subject to sections 45(3), (4), and (5) and 79(3) of CEAA 2012, the public registry will include all records relating to the review, including submissions, correspondence, hearing transcripts, exhibits and other information, received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the joint review of the Project.
- 5.4** On completion of the joint review of the Project, the Joint Review Panel shall prepare a report. The report shall include an executive summary in both official languages of Canada. The report will set out the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental effects of the Project, including any mitigation measures and follow-up programs, and a summary of comments received from the public, including Indigenous persons and groups. The report will be conveyed to the Federal Minister of the Environment within the overall time limit for the review established by the Federal Minister of the Environment. The report will also include the Joint Review Panel's written decision, with reasons, as required under section 35 of REDA.
- 5.5** After the report is submitted, the Agency will maintain the public registry in accordance with its normal practices and procedures. The AER will continue to maintain records of the proceedings and the report in accordance with its normal practices and procedures. In relation to the conduct of the environmental assessment, the registry will include all documents considered in the environmental assessment from the referral of the Project to a review panel until the issuance of the Final Decision Statement by the Federal Minister of the Environment.
- 5.6** The Agency will be responsible for the translation of public notices and releases and the report prepared by the Joint Review Panel, into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the report following its submission by the Joint Review Panel.

## **6. Other Government Departments**

- 6.1** The Joint Review Panel may request federal and provincial authorities having specialized information or knowledge with respect to the Project to make that information or knowledge available to the Joint Review Panel. The Joint Review Panel may also retain the services of independent non-government experts to provide advice on certain subjects within the Joint Review Panel's Terms of Reference.
- 6.2** Nothing in this Agreement will restrict the participation by way of submission to the Joint Review Panel by federal or provincial government departments or bodies, subject to article 6.1 above, under section 20 of CEAA 2012 and section 49 of REDA.
- 6.3** The names of any experts retained by the Joint Review Panel and any documents obtained or created by the experts and that are submitted to the Joint Review Panel will

be placed on the Public Registry. This shall exclude any information subject to solicitor-client privilege.

- 6.4** The Joint Review Panel may, in its sole discretion, require any expert referred to in articles 6.1 and 6.3 to appear before the Joint Review Panel at the public hearing and testify in regard to the documents they have created or obtained and that were submitted to the Joint Review Panel and made public in accordance with the preceding paragraph.

## **7. Participant Funding**

- 7.1** Decisions regarding participant funding by the Agency under the federal Participant Funding Program, and decisions on participant funding by the AER as provided for in REDA, the AER *Rules of Practice* and the AER's *Directive 031: REDA Energy Cost Claims* will, to the extent practicable, take into account decisions of the other party.

## **8. Amending this Agreement**

- 8.1** The terms and provisions of this Agreement may be amended by written memorandum executed by both the Federal Minister of the Environment and the Chief Executive Officer of the AER.
- 8.2** Subject to sections 49 and 62 of CEAA 2012, this Agreement may be terminated at any time by an exchange of letters signed by both parties.

## **9. Signatures**

**WHEREAS** the parties hereto have put their signatures

\_\_\_\_\_  
The Honourable Catherine McKenna  
Minister of the Environment

\_\_\_\_\_  
Jim Ellis  
Chief Executive Officer  
Alberta Energy Regulator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Appendix 1

## Terms of Reference

### PART I - SCOPE OF PROJECT

Benga Mining Ltd. (the proponent), a wholly owned subsidiary of Riversdale Resources Limited, proposes to construct and operate the Grassy Mountain Coal Project (the Project), an open-pit metallurgical coal mine near the town of Blairmore in the Crowsnest Pass in southwestern Alberta.

The Project would be located on the east side of the continental divide, approximately 150 km southwest of Calgary and approximately 13 kilometres from the Alberta border with British Columbia. As proposed, the mine would occupy an area of approximately 2,800 hectares and have the capacity to produce a maximum of 4.5 million tonnes of metallurgical coal per year over a mine-life of approximately 24 years.

Components of the Project would include the surface coal mine pits and waste disposal areas, a coal preparation plant, and associated infrastructure including a coal conveyor system, an access corridor, maintenance shops, a rail load-out facility and other pertinent facilities. Coal would be brought from the Project area to the processing plant where it would be cleaned and loaded into trains for transport to market.

### PART II - SCOPE OF THE ENVIRONMENTAL ASSESSMENT OF THE PROJECT

The Joint Review Panel shall conduct an assessment of the environmental effects of the Project referred to in the Scope of the Project (Part 1) in a manner consistent with the requirements of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the *Responsible Energy Development Act* (REDA), the *Coal Conservation Act*, the *Environmental Protection and Enhancement Act* (EPEA), the *Water Act* and the *Public Lands Act* and these Terms of Reference.

As per section 19(1) of CEAA 2012, the assessment must include a consideration of the following factors:

- a) the environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
- b) the significance of the effects referred to in paragraph a);
- c) comments from the public, including Aboriginal groups and peoples, that are received during the joint review;
- d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
- e) the requirements of the follow-up program in respect of the Project;
- f) the purpose of the Project;
- g) alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means; and
- h) any change to the Project that may be caused by the environment.

In examining factors listed above, the Joint Review Panel shall take into account any community knowledge and Aboriginal Traditional Knowledge (such as, but not limited to,

traditional use studies) received during the environmental assessment. The Joint Review Panel shall also consider information provided to it on how to appropriately incorporate Aboriginal Traditional Knowledge into its assessment.

In addition to the factors listed above, pursuant to paragraph 19(1)(j) of CEEA 2012, the Minister of the Environment requires the following matters that are relevant to the environmental assessment to be taken into account:

- All incremental air pollutant and greenhouse gas emissions that are directly attributable to the Project, including rail to the west coast of B.C. and marine emissions within Canadian territorial waters; and
- Information on the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights as described by Indigenous groups or peoples, the proponent, government bodies, the public and other interested parties including any measures that may reduce or avoid potential impacts to asserted or established Aboriginal or Treaty rights.

In conducting its review, the Joint Review Panel shall uphold the principle that Aboriginal Traditional Knowledge is an important component in understanding potential effects to the environment and potential impacts of the Project on asserted or established Aboriginal or Treaty rights.

### **PART III – SCOPE OF THE FACTORS**

The scope of the factors includes those specified in the final “Guidelines for the preparation of the Environmental Impact Statement” (final Guidelines) for the Benga Mining Limited Grassy Mountain Coal Project issued by the Canadian Environmental Assessment Agency on June 24, 2015. These final Guidelines were prepared under CEEA 2012.

In considering the factors outlined in Part II, the Joint Review Panel shall have regard for the following:

#### **A. Aboriginal Rights**

The Joint Review Panel shall consider and include in its report the effects of the Project on asserted or established Aboriginal or Treaty rights, to the extent the Joint Review Panel receives such information as provided in Part III. The Joint Review Panel must invite Indigenous groups and peoples to provide information related to:

- the nature, scope, location and extent of asserted or established Aboriginal or Treaty rights that could be impacted by the the Project,
- the potential adverse environmental effects and the potential impacts that may be caused by the Project on asserted or established Aboriginal or Treaty rights,
- any potential adverse effects that may be caused by the Project on the health, social or economic conditions of Indigenous people,
- any measures proposed to avoid, mitigate or accommodate the potential adverse environmental effects of the Project and the potential adverse impacts on asserted or established Aboriginal or Treaty rights,
- cumulative environmental effects and cumulative impacts to asserted or established Aboriginal or Treaty rights and related interests,
- historic, current and intended future uses of lands and resources, and
- information on determining thresholds for significance of environmental effects as defined under s. 5 of CEEA 2012, and for severity of impacts to asserted or established Aboriginal or treaty rights, including Indigenous perspectives and criteria.

The Joint Review Panel may also receive information in this regard provided by the proponent, government bodies, the public and other interested parties.

The Joint Review Panel shall summarize in its report the information provided regarding the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights, and where appropriate, may summarize information received on the perspectives of Indigenous groups or peoples on the potential infringement that the Project may cause on asserted or established Aboriginal or Treaty rights.

The Joint Review Panel may use this information to make conclusions and recommendations that relate to the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights as described by Indigenous persons or groups and may incorporate any Indigenous perspective and Traditional Aboriginal Knowledge that it has received into its report. The Joint Review Panel should describe its rationale for how it came to its conclusions.

The Joint Review Panel, based on its assessment of the environmental effects of the Project, may recommend measures to mitigate any potential adverse environmental effects that may be caused by the Project that could adversely impact the asserted or established Aboriginal or Treaty rights that were identified.

The Joint Review Panel shall not make any determinations as to:

- the validity of asserted or established Aboriginal or Treaty rights asserted by an Indigenous group or peoples or the strength of such claims;
- the scope of the Crown's duty to consult an Indigenous group;
- whether the Crown has met its respective duties to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*; or
- any matter of Treaty interpretation.

Nothing in these Terms of Reference limits the application of section 21 of REDA or Part 2 of the *Administrative Procedures and Jurisdiction Act* to the AER, and the Joint Review Panel (in its capacity as a panel of AER hearing commissioners) remains at all times subject to the requirements of those provisions, and is entitled to exercise the powers under Part 2 of the *Administrative Procedures and Jurisdiction Act*, including but not limited to section 13 thereof.

## **B. Cumulative Effects Assessment**

The cumulative effects assessment should take into consideration the approach described in the latest version of the Agency's "Technical Guidance for Assessing Cumulative Environmental Effects under CEAA 2012", and in the Operational Policy Statement "Assessing Cumulative Environmental Effects under CEAA 2012".

The Joint Review Panel should focus its consideration of cumulative effects on key valued components.

Cumulative effects assessment should include effects from projects or activities that have been or will be carried out, including a consideration of accidents or malfunctions, as of the issuance of the Joint Review Panel's Terms of Reference.

### **C. Accidents & Malfunctions**

In considering the environmental effects of malfunctions or accidents that may occur in connection with the Project, the Joint Review Panel should consider potential malfunctions or accidents associated with the Project, including the following components:

- tailings management;
- surface water diversion and management;
- waste management and disposal;
- use, handling or spills of chemicals and hazardous materials on-site;
- the increase in road traffic, and the risk of road accidents;
- any other project components or systems that have the potential, through accident or malfunction, to adversely affect the environment.

The Joint Review Panel should consider the likelihood of potential occurrence of a malfunction or an accident and the sensitive elements of the environment (e.g. communities, homes, natural sites of interest, critical habitat for species at risk, areas of major use, or areas of interest to Aboriginal peoples) that may be affected in the event of any such malfunction or accident.

Measures to reduce the potential occurrence of a malfunction or accident, as well as the effects or consequences that would result from any such malfunction or accident, should be considered in the assessment.

### **D. Species at Risk**

The Joint Review Panel shall consider the effects of the Project on *Species at Risk Act* listed wildlife species and their critical habitat and identify measures that could be taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.

### **E. Change to the Project Caused by the Environment**

In considering any change to the Project that may be caused by the environment, as required under s. 19(1)(h) of CEAA 2012 and Part II of this Terms of Reference, the Joint Review Panel will consider environmental changes and hazards that may occur and may affect the Project. The Joint Review Panel should also take into account the potential influence of climate change scenarios presented by the proponent, Indigenous groups or peoples, government bodies, the public and other interested parties on climate parameters (e.g. precipitation, temperature), and physical environmental processes.

The Joint Review Panel shall consider the influence that these environmental changes and hazards may have on the Project as predicted and described by the proponent, Indigenous groups or peoples, government bodies, the public and other interested parties.

### **F. Additional Information Available for Consideration**

If the Joint Review Panel concludes that, taking into account the implementation of mitigation measures, the Project is likely to cause significant adverse environmental effects, it may include in its report a summary of any information it has received and that may be relevant to

a determination by the Governor in Council with respect to the justifiability of any such significant adverse environmental effects. However, the Joint Review Panel does not have a mandate to make any conclusions or recommendations with respect to the justifiability of any significant adverse environmental effects for the purpose of the review under CEEA 2012.

#### **PART IV – JOINT REVIEW PANEL MANDATE**

The Joint Review Panel shall conduct the joint review in a manner that discharges the responsibilities of the AER under REDA, the requirements set out in CEEA 2012, and the requirements set out in this Terms of Reference that were fixed and approved by the Federal Minister of Environment and the AER.

The Joint Review Panel shall have all the powers and duties of a panel described in section 45 of CEEA 2012, a panel of hearing commissioners described in REDA, and the rules and regulations thereunder.

A majority of the Joint Review Panel members constitutes a quorum for the purposes of the proceeding to be conducted by the Joint Review Panel. When a public hearing or meeting, or other activity is conducted by the Joint Review Panel and a member of the Joint Review Panel for any reason does not attend on any day or part of a day, the other members who are sitting at the public hearing or meeting or other activity may continue as fully and effectively as though the absent member were present.

#### **PART V – ENVIRONMENTAL ASSESSMENT PROCESS**

The environmental assessment for the Project consists of three stages. These stages are referred to as the Pre-Panel Stage, the Joint Review Panel Stage and the Post-Panel Stage.

##### ***Pre-Panel Stage***

This description of the joint review process is limited to those activities occurring from the referral of the environmental assessment to a review panel under CEEA 2012 to the appointment of the Joint Review Panel members. The main steps of the joint review process during the Pre-Panel stage of the environmental assessment will be as follows:

1. The proponent will prepare its EIA report in accordance with the Provincial Terms of Reference and the Agency's EIS Guidelines and submit it to the Agency and the AER. The Agency will make the EIA report available to the public in a timely manner.
2. Prior to the establishment of the Joint Review Panel, the Agency and the AER will evaluate the EIA report against the requirements of the Provincial Terms of Reference and the Agency's EIS Guidelines and applicable legislation. The AER and the Agency will determine if the required information is present and if there is enough information to enable the Joint Review Panel to commence its assessment of the EIA report. This will ensure adequate information is available for the Joint Review Panel to start the joint review of the EIA report, upon the members' appointments, in an efficient manner.

3. If the Agency or AER determines that the EIA report does not contain the information required in the provincial Terms of Reference and the Agency's EIS Guidelines, they shall request additional information from the proponent. Upon receipt of the additional information, the Agency or AER shall determine if additional review is required, and if so, will conduct the additional review.
4. The procedures above will apply until such time as the Agency and the AER determine that there is enough information for the Joint Review Panel to commence its assessment of the EIA report.
5. When the Agency and AER determine that there is enough information for the Joint Review Panel to commence its review of the EIA report, the Joint Review Panel will be appointed in accordance with sections 3.1 and 3.2 of the Joint Review Panel Agreement.
6. If the Agency or AER determine that additional information is required from the proponent but the information deficiency is minor in nature, and the Agency and AER receive a commitment from the proponent to provide outstanding information in a timely manner, the Joint Review Panel may be appointed in accordance with sections 3.1 and 3.2 of the Agreement.
7. The Pre-Panel review of the EIA report does not affect or predetermine the result of the assessment of the proponent's EIA report by the Joint Review Panel, and in particular the Joint Review Panel may decide that the proponent must provide additional information.

### ***Joint Review Panel Process***

The main steps of the joint review process during the Joint Review Panel stage of the environmental assessment will be as follows:

8. The Joint Review Panel shall undertake its mandate in three stages:
  - Stage 1 – Review of the EIA report and any Supplemental Information;
  - Stage 2 – Conduct of a public hearing; and
  - Stage 3 – Preparation of a report and submission to the Federal Minister of Environment
9. The Joint Review Panel shall fulfill its mandate and submit its report to the Federal Minister of the Environment within 420 days (14 months) following the date of establishment of the Joint Review Panel. The 420 days does not include the time period(s) between a request for information from the Joint Review Panel to the proponent and receipt of the requested information by the Joint Review Panel.

#### **Stage 1 - Review of the EIA Report and Supplemental Information**

10. As soon as possible following its appointment, the Joint Review Panel will initiate a public comment period on whether the information available on the public registry, including the EIA report, is sufficient to allow a joint review that complies with the Joint Review Panel's Terms of Reference and to proceed to the public hearing stage of the process. The public, Indigenous groups or peoples and government departments and agencies will have a minimum of 60 days to provide comments.

11. If the Joint Review Panel determines that the EIA report, including supplemental information on the public registry, is not sufficient after review of the documentation and comments received outlined in article 10 above, it shall request additional information to be provided by the proponent.
12. Information gathering is not limited to a written process and the Joint Review Panel has the discretion to hold oral information gathering sessions in or near an Indigenous community or communities. If the Joint Review Panel decides to hold oral information gathering sessions, the Joint Review Panel will seek input from the proponent, Indigenous groups or peoples, government bodies, the public and other interested parties on appropriate locations, duration and timing.
13. The Joint Review Panel will allow for the public review of and comment on any additional information it receives. The length of the public comment period on the additional information will be determined by the Joint Review Panel.
14. The process described above will apply, with any necessary adjustments, until such time as the Joint Review Panel determines it has sufficient information to proceed to the public hearing stage of the process.
15. If the Joint Review Panel is of the view that it requires additional information from the proponent, Indigenous groups, government bodies, the public or other interested parties, but the information deficiency is minor in nature and the Joint Review Panel receives a commitment to provide the outstanding information in a timely manner, the Joint Review Panel may issue the Notice of Hearing.
16. The Joint Review Panel may request specialist or expert information or knowledge with respect to the Project from federal or provincial authorities in possession of such information or knowledge.
17. The Joint Review Panel may retain the services of independent non-government experts to provide advice on certain subjects with respect to the environmental assessment of the Project to meet its mandate.
18. The Joint Review Panel shall post on the registry names of experts retained by the Joint Review Panel, and any relevant documents obtained or reports prepared by the experts that are submitted. For greater certainty, this shall exclude any information subject to solicitor-client privilege.
19. The Joint Review Panel may require any expert to appear at the public hearing to address the report(s) they have created or relevant documents obtained and that were submitted to the Joint Review Panel and made public in accordance with the preceding paragraphs.
20. Comments received during all comment periods will be made available to the public through the public registry as soon as possible.

## **Stage 2 – Public Hearing**

21. If, after reviewing the information on the record including any written comments from the public, Indigenous groups and peoples, government departments or agencies, or other technical experts, the Joint Review Panel determines that it has sufficient

information to proceed to the public hearing, it will announce the hearing, providing for a minimum notice of 45 days prior to the commencement of the hearing.

22. The Joint Review Panel shall conduct its hearing in accordance with the AER's *Rules of Practice*.

23. The public hearing shall provide opportunities for timely and meaningful participation by the public, including Indigenous groups and peoples, in accordance with CEEA 2012, subsection 34(3) of REDA, and section 9 of the AER *Rules of Practice*. The Joint Review Panel will make the hearing as accessible as reasonably possible for individuals or groups who are not represented by legal counsel or who may lack experience with the quasi-judicial nature of the hearing process.

24. The Joint Review Panel shall hold at least a portion of the public hearing sessions in the area(s) in proximity to the Project.

25. The Joint Review Panel shall take into account the timing of traditional activities in Indigenous and local communities when setting the time and location of the public hearing session, having due regard for the timelines set out in articles 9 and 26 of this Part V.

26. The Joint Review Panel shall make best efforts to conduct a public hearing and close the hearing record within 45 days of commencing the public hearing.

### **Stage 3 - Joint Review Panel Report**

27. Following the completion of the public hearing, the Joint Review Panel shall prepare and submit to the Federal Minister of the Environment a report as required in article 5.4 of the Agreement. The Joint Review Panel shall provide the executive summary of the report in both official languages of Canada. The report will include:

- An executive summary;
- A summary description of the Joint Review Panel's process;
- The rationale, conclusions, and recommendations of the Joint Review Panel relating to the environmental assessment of the Project, including any mitigation measures and follow-up programs;
- The rationale, conclusions and recommendations that relate to the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights as described by Indigenous persons or groups and other parties including any measures that may reduce or avoid potential impacts to asserted or established Aboriginal or Treaty rights;
- A summary of any comments received including those from Indigenous groups, government bodies, the public and other interested parties;
- An identification of those conclusions that relate to the environmental effects defined in section 5 of CEEA 2012;
- An identification of recommended mitigation measures and follow-up programs that relate to environmental effects, socio-economic impacts, , including impacts on asserted or established Aboriginal or treaty rights and related interests, including,

as appropriate, any commitments identified by the proponent in the EIA report or during the joint review panel process; and

- A summary of the information received from participants as set out in Part III (A) on Aboriginal rights above.
28. If the Joint Review Panel concludes that, taking into account the implementation of mitigation measures, the Project is likely to cause significant adverse environmental effects, it may include in its report a summary of any information it has received on the justifiability of any such significant adverse environmental effects.
  29. Under its authority as the AER, the Joint Review Panel shall make a decision on the Project applications and as appropriate for the purposes of that decision, shall include conclusions about the justifiability of any significant adverse effects. In relation to its role as a review panel under CEAA 2012, the Joint Review Panel shall not make any conclusions or recommendations with respect to the justifiability of any significant adverse environmental effects. The Federal Minister of the Environment will determine the significance of adverse environmental effects under CEAA 2012. If the Federal Minister of the Environment decides that the Project is likely to cause significant adverse environmental effects, the matter is referred to the Governor in Council (Cabinet) who must decide whether these environmental effects are justified in the circumstances.
  30. The report shall take into account and reflect the views of all Joint Review Panel Members.
  31. The Joint Review Panel may consider any request made by an Indigenous group to have the executive summary of the report translated into its Indigenous language. If the Joint Review Panel agrees with such a request, it must recommend to the Agency and the AER that such translation be provided by the Agency and the AER in a timely manner.
  32. The Joint Review Panel will submit its report to the federal Minister of the Environment at the earliest possible date, and within the overall time limit established by the Federal Minister of the Environment for the Joint Review Panel process provided in Part V, article 9.
  33. Upon receiving the report submitted by the Joint Review Panel, the Federal Minister of Environment and the AER will make the report available to the public and will advise the public that the report is available.
  34. In accordance with paragraph 43(1)(f) of CEAA 2012, the Joint Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

## **PART VI - AMENDMENTS**

1. The Joint Review Panel may request clarification of its Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the Chief Executive Officer of the AER, setting out the request. Upon receiving such a request, the President is authorized to act on behalf of the Federal Minister of the Environment and collaborate with the AER to provide to the Joint Review Panel such clarification. The President and the AER shall use best efforts to provide a response to the

Joint Review Panel within 14 calendar days. The Joint Review Panel shall continue with the joint review to the extent possible while waiting for the response in order to adhere to the timelines of these Terms of Reference. The Joint Review Panel shall notify the public of any clarifications to its Terms of Reference.

2. Subject to articles 9 and 26 above, the Joint Review Panel may seek an amendment to its Terms of Reference by sending a letter signed by the chairperson to the Federal Minister of the Environment and the AER setting out the request. As appropriate, the Federal Minister of the Environment may delegate to the President of the Agency the authority to act on the Federal Minister of the Environment's behalf and, in collaboration with the AER, consider and respond to any request from the Joint Review Panel to amend the Terms of Reference. The Federal Minister of the Environment, or the President in case of such delegation, and the AER shall use best efforts to ensure a response is provided to the Joint Review Panel's letter within 14 calendar days. The Joint Review Panel shall continue with the joint review to the extent possible while waiting for the response in order to adhere to the timelines of these Terms of Reference. Any requests for amendments under this article, as well as any amendments to these Terms of Reference, shall be posted on the Public Registry.