

Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping Proposed Terms of Reference

Alberta FNs and Métis Regional Meetings
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Goal and purposes

- **Participation.** Collaborative and meaningful involvement review and monitoring of the two pipelines, marine terminal and marine shipping (the “TM Activities”) → sections 2-4
- **Protection.** Enhance safety and protect environment and Indigenous interests in the lands and waters → sections 3 and 8
- **Culture change.** Integrate Indigenous interests, knowledge and values into government’s regulation and KM’s performance of the TM Activities → sections 6 and 9

Committee activities

- Review and monitoring of environmental, safety and socio-economic issues related to TM Activities over their lifecycles (section 19)
 - Whether KM is in compliance with NEB conditions
 - Regulatory standards informed by Indigenous knowledge and interests
 - Monitoring TM Activities, including accompanying and engaging with NEB Inspection Officers (see also section 54)
 - Participation in hiring and training of NEB staff
 - Reviewing emergency prevention, preparedness and response and working with KM to improve its safety culture
 - Information gaps
 - Engaging in “modernization” of regulatory processes (*NEB Act and CEAA 2012*)
- Marine TM Activities further addressed at section 23: includes meaningful engagement in the OPP

Collaborative forum

- 12 Indigenous members; 6 Government members (including NEB) (section 24)
- Quorum requires a majority of Indigenous members (section 28)
- Indigenous and NRCan co-chairs (section 27)
- Committee operates on consensus basis (sections 59-61)
- Objective is a forum where members can collaborate and innovate
- Section 8: **“Shared interest.** *Committee members share the objective of working together to enhance the safety of the TM Activities and protect the environment and Indigenous interests in the lands and waters.*
- Expected that most work will be conducted in subcommittees.

Supported by resources

- Cabinet approved up to \$65 million over 5 years (still subject to TB)
- The Committee can have staff (including technical), outside expert advice and boots on the ground (section 46)
- The Committee will be informed and technically sophisticated
- Not just about *talking*; also about *doing*. About putting Indigenous perspectives and interests into action in the regulation of the TM Activities.
- Budget administered by NRCan secretariat (section 46)
- Indigenous Committee members will receive honouraria (section 37)

Indigenous Caucus (sections 32-42)

- Collective name for the 12 Indigenous Caucus members who represent the interests of the 117 Indigenous Communities
- Committee is "Tier 2" whereas the Caucus is "Tier 1"
- Point is to allow Indigenous Communities to identify a common agenda and to advocate with one louder voice
- Caucus will continually engage with Indigenous Communities' leadership (or whomever leadership designates) to inform and receive feedback and mandate
- Caucus will have 2 staff loyal to it, and can use Committee resources
- As discussed below, Caucus can take strong positions and require government to consider and respond

"Initial" Indigenous Caucus

- Selected by the Indigenous Communities
- Membership of first Indigenous Caucus (section 39):
 - One member from each of Straits, Island Burrard Inlet, Stó:ló, Nlaka'pamux, Secwepemc, Okanagan, BC Métis, Alberta Métis
 - Three members from Alberta FNs
- Selection process to be discussed
- Initial Indigenous Caucus will determine future selection process (section 42)

Advisory but meaningful

- Advisory because regulators cannot "fetter" their decision-making (section 17)
- Government is required to be responsive to the Committee's advice (sections 56-57):
 - Seriously consider whether to follow the advice
 - Consider how to address underlying concerns
 - Provide reasons
- If consensus cannot be reached, then a majority can provide advice on behalf of the Committee (possibly accompanied by dissenting views), and government must respond as above (section 55)
 - Indigenous Caucus forms a majority

Adaptive and evolving

- Regular reviews of the effectiveness of the TORs – annually during the TMX construction period, and then at least every three years after that (section 67)
- Committee is expected to adapt its structure in light of its experience and any legislative/regulatory changes (section 13)
- Terms of Reference can be amended in writing by agreement
- Longer-term vision (section 14) still needs to be agreed upon.

Participation is without prejudice

- TORs are very clear that participation is “without prejudice”: it “does not indicate that a community supports or does not oppose the TM Activities.”
- Ability of Indigenous Communities to engage with government through the Committee is in addition to direct consultation – the Committee does not replace or diminish the duty to consult
- Same point applies to KM’s obligations to engage with Indigenous Communities

Longer-term vision

Our proposed language:

- “The Committee will seek opportunities to achieve the longer-term vision of shared jurisdiction and decision-making in relation to the TM Activities.”

Feds’ proposed language:

- “Advance reconciliation with Indigenous peoples through meaningful participation and recognition of rights”
- “Be responsible to Indigenous jurisdiction and governance”
- “Further involvement consistent with UNDRIP’s and Government’s approach to reconciliation”