

**LINE 3 - INDIGENOUS ADVISORY AND MONITORING COMMITTEE  
FINAL TERMS OF REFERENCE**

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## 1. BACKGROUND

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- 1.1 The Line 3 Pipeline was constructed in the 1960s by Enbridge’s predecessor and put into service in 1968. The existing Line 3 Pipeline is 34-inches in diameter and 1067 kilometers long. The Line 3 pipeline traverses an international boundary and extends from Hardisty, Alberta to Gretna, Manitoba at which point it crosses into the United States.
- 1.2 On November 5, 2014, Enbridge Pipelines Inc. submitted an application to the National Energy Board (NEB) for the Line 3 Replacement Program (L3RP). A new 36-inch diameter pipeline will replace the existing 34-inch diameter pipeline along most of the original Line 3 Pipeline route. From February 4, 2015 to April 25, 2016 the NEB conducted public hearings on the L3RP application. Thirty-six Indigenous groups were intervenors in the NEB process and two were commenters.
- 1.3 On April 25, 2016, the NEB released its final report for the L3RP. The NEB recommended that the approval be subject to 89 conditions, including conditions related to the protection of the environment and continued consultation with Enbridge, landowners and Indigenous Peoples. On November 29, 2016, the Government of Canada announced the approval of L3RP, subject to the 89 conditions recommended by the NEB. Canada also announced its commitment to establish an Indigenous Advisory and Monitoring Committee, to be co-developed in partnership with Indigenous Peoples along the route of the L3RP.
- 1.4 Through co-development of these Terms of Reference, Indigenous participants in the co-development process have identified the following important principles which are articulated below from the voice of the Indigenous participants:
  - Indigenous Peoples are guided by our Natural Laws: our land is our identity; the earth is our Mother; and our environment is the foundation of our culture.
  - Indigenous Peoples’ interactions with the Crown are guided by the Honour of the Crown, our Treaties and the United Nations Declaration of the Rights of Indigenous Peoples.
  - Indigenous Peoples are distinct and have unique perspectives based on our individual laws, cultures, customs, and traditions, including differences between First Nations and the Métis Nation.
  - As Indigenous Peoples, we view the Committee as a starting point for enhancing future relations with the Crown through the effective implementation, reporting and tracking of our Rights, Uses, Benefits and Interests within our traditional territory which we continue to occupy, use and benefit from.

- As Indigenous Peoples we value our traditional way of life, which is founded on the principles of:
  - Maintaining **balance**;
  - **Respect** for all things that mother earth provides;
  - **Humility**; and,
  - **Honour** in how we conduct and govern ourselves.
- As Indigenous Peoples, we seek to actively participate in the modern economy. We choose to work with those who respect and honour our traditional and cultural way of life and who are willing to advocate, implement and report upon outcomes respectfully, collaboratively and in a manner which supports our inherent Treaty and Aboriginal rights.

## 2. PREAMBLE

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- 2.1 The Committee will facilitate the integration of Indigenous knowledge, teachings, values, use of the land, oral traditions and worldviews into the monitoring, regulation, compliance, mitigation, remediation, and performance for the lifecycle of the L3RP. To support this objective, the Committee will be guided by:
- a. the Treaty Relationship and Signatories affected by the L3RP;
  - b. s. 35 of the *Constitution Act, 1982* recognizing and affirming Aboriginal and Treaty Rights of the First Nations, Métis, and Inuit;
  - c. the United Nations Declaration on the Rights of Indigenous Peoples including all Principles and Articles; and,
  - d. the Calls to Action of the Truth and Reconciliation Commission of Canada.
- 2.2 The Committee acknowledges the diversity of Indigenous Nations’ views and respects the various perspectives and voices engaged through this process. In this way, the Committee will contribute to the process of meaningful reconciliation and will not replace or diminish the right of individual Indigenous Nations to be consulted and accommodated.

## 3. DEFINITIONS

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- 3.1 Defined terms in these Terms of Reference have the following meanings and interpretations:

“**Committee**” means the L3RP - Indigenous Advisory and Monitoring Committee established by these Terms of Reference, as may be amended from time to time in accordance with section 19.1 of these Terms of Reference.

“**Enbridge**” means Enbridge Pipelines Inc. or any company that holds the L3RP Authorizations.

“**Government**” means Government of Canada its departments and its agencies;

“**Indigenous**” applies to all peoples referenced in the Project’s NEB conditions, filings, and related documents as “Aboriginal” as well as participants on the Committee who may identify as Indigenous in their own language and/or be recognized as Aboriginal peoples within Section 35(2) of the *Constitution Act, 1982*;

“**Indigenous Committee Members**” are the members of the IAMC appointed by the Indigenous Nations as specified in section 8.1 of these Terms of Reference;

“**Indigenous Peoples or Indigenous Nations**” For the purposes of the Line 3 IAMC, ‘Indigenous Peoples’ or Indigenous Nations and Indigenous communities to which the federal Crown determined it owed a duty to consult in relation to the L3RP, as set out in Annex A;

“**L3RP**” means Line 3 Replacement Program;

“**L3RP Activities**” are those activities that may be undertaken in the L3RP Corridor relating to the existing Line 3 Pipeline and the L3RP and includes the L3RP Authorizations or any activities the parties agree will form part of the L3RP Activities;

“**L3RP Authorizations**” means the new Certificate of Public Convenience and Necessity (CPCN), Instrument No. OC-063 issued to Enbridge Pipelines Inc., together with all related Orders (including Order XO-E101-004-2016 and Order MO-008-2016), authorizations, and exemptions for the L3RP Pipelines, including potential future amendments;

“**L3RP Corridor**” is the corridor comprising the routes of the existing Line 3 Pipeline and the L3RP;

“**Line 3 Pipeline**” means the existing Line 3 Pipeline that extends from Hardisty, Alberta to Gretna, Manitoba and into the United States of America;

“**Lifecycle**” means the planning, application, construction, operation, decommissioning and abandonment phases of a pipeline;

“**Monitor**” means a person designated by the Committee to accompany an NEB inspection officer while carrying out their duties related to the L3RP Activities regulated by the NEB;

“**NEB**” means the National Energy Board;

“**NEB Inspection Officers**” means any person who has been designated and duly authorized by the NEB to carry out the duties for that position, as described in sections 49 to 51 of the *NEB Act*.”

“**NRCan**” means Natural Resources Canada;

“**Parties**” means the participants on the IAMC as referred to at section 8.1 of these Terms of Reference;

“**Resources**” means financial, human, and technical resources available to support the Committee’s activities;

“**Socio Economic**” means health; social, cultural and spiritual well-being; identity; employment; and training;

“**Terms of Reference**” means *these Terms of Reference of the Committee*;

“**Traditional Knowledge**” Traditional Knowledge is a body of knowledge gathered by a group of people – First Nations, the Métis Nation, and communities through generations of living in close contact with their environment. It includes distinct knowledge and perspectives as well as ways of thinking, acting, living, and relating to lands, waters, and the environment. It is living, cumulative and dynamic and may include unique perspectives regarding other kinds of knowledge. It builds upon the contemporary and historic experiences of a Peoples and their use of the land. It adapts to social, economic, environmental, spiritual and political change and can help anticipate possible future conditions. Traditional Knowledge must be understood to form a part of a larger integrated and holistic body of knowledge that encompasses knowledge about cultural, environmental, economic, political, social and spiritual inter-relationships. The Traditional Knowledge of each Indigenous person and Indigenous Nation is unique as a result of unique experience, teachings, histories, and relationships to particular environments.

## 4. GOAL

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- 4.1 The Committee will form the basis of an enhanced relationship between Indigenous Nations, the Government and the NEB in respect of the L3RP Activities. Through communication and engagement the Committee will provide for collaborative and inclusive Indigenous involvement in the review, monitoring, and reporting of environmental, safety and Socio Economic aspects related to L3RP Activities over their lifecycle, with meaningful and adequate consideration of traditional land use, sacred sites, historical knowledge, and the diversity of Indigenous traditional and cultural worldviews.

## 5. PURPOSES

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- 5.1 The purposes of the Committee are as follows:
- a. To support Indigenous Nations’ effective and meaningful participation in the monitoring of traditional, environmental, safety and Socio Economic aspects of the L3RP Activities to protect the land, air, water, species, and natural resources for generations to come.
  - b. To enable a reciprocal exchange of information relating to traditional, environmental, safety and Socio Economic aspects of the L3RP Activities in a cooperative and transparent manner.
  - c. To provide a collaborative forum, supported by Resources for Indigenous Nations, the Government and the NEB to enhance the environmental protection and safety of L3RP Activities.
- 5.2 To enable Indigenous Nations to come together to identify common priorities and perspectives related to L3RP Activities and to voice those interests to Government, the NEB, and Indigenous Nations affected by the Project.
- 5.3 To create a shared and mutual understanding in order to develop a shared interest amongst Indigenous Nations, the Government, the NEB and Enbridge as appropriate, regarding the L3RP Activities and to provide informed advice to the Government and NEB on how to address those issues.

## 6. GUIDING PRINCIPLES

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- 6.1 **Shared interest.** Committee members share the objective of working together to enhance the safety of the L3RP Activities, to preserve and protect treaty and Aboriginal rights of First Nations and Métis as entrenched in the Constitution, and

to protect the environment, as well as the Indigenous interests in the related land, air, water, species and natural resources.

- 6.2 **Capacity.** The Committee will strive to improve the capacity of Indigenous Nations to effectively monitor the L3RP Activities and to engage with the NEB and Enbridge.
- 6.3 **Collaborative forum.** The Committee is a forum for collaborative problem solving, priority setting and innovation. Committee members approach their work with openness to the concerns and perspectives of other members and will resolve to develop consensus-based solutions.
- 6.4 **Adaptive approach.** It is anticipated that the Committee, consistent with its purposes, will adapt its structure and activities, including through amendment of these Terms of Reference to reflect the progress of the L3RP Activities, changes in scope of the L3RP Activities and changes in the federal regulatory framework and/or other government initiatives.
- 6.5 **Duplication to be avoided.** The Committee will seek to avoid duplication of efforts and to apply attention and resources to matters that, in the Committee’s view, are not being fully addressed through other processes. In addition to or as an alternative to the Committee and other government processes, individual Indigenous Nations are encouraged to resolve concerns regarding L3RP Activities with Enbridge directly. Where matters of interest are being addressed through other processes, or other Government initiatives, the Committee may seek to participate in those processes or refer issues to them.
- 6.6 **Working within timelines.** In order to have the greatest possible impact and have its views taken into account, the Committee will strive to work within regulatory timelines through the Lifecycle of the Project.
- 6.7 **Working within current legislative and regulatory frameworks.** The Committee recognizes the current legislative and regulatory frameworks and the applicable principles of administrative law, including procedural fairness, and understands that statutory and ministerial decision-making powers, or other statutory authorities and duties, cannot be fettered or delegated to others, including the Committee. Within those frameworks, the Government seeks to develop innovative and creative ways to support the Committee’s goals and purposes.
- 6.8 **Indigenous Worldviews.** Indigenous Peoples are guided by Natural Laws and teachings, some of which are unique to each Indigenous Nation and some of which are universal to all Indigenous Peoples (e.g. the value of

interconnectedness). Indigenous worldviews are also infused with the unique cultural, historical, and spiritual traditions of each Indigenous Nation. Sometimes Indigenous laws and teachings are in conflict with federal legislative and regulatory frameworks. Through the work of the Committee, such conflicts will be discussed and all the Parties will commit to work towards a shared and mutual understanding of those worldviews.

## 7. COMMITTEE STRUCTURE

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- 7.1 **Resources.** The Committee is supported by a secretariat established within NRCan. The Committee operates within an overall funding envelope, which has been allocated by Government over five years, and is administered by NRCan. For submission to NRCan, the Committee will develop an annual workplan and associated budget on a consensual basis. The Committee may also develop a multiyear workplan and budget.
- 7.2 **Elders.** Indigenous Elders are respected and cherished individuals who have amassed valuable knowledge, wisdom, and experience over many years. The Committee will establish protocols to enable Elders to participate as traditional and cultural advisors in Committee discussions. The Committee will communicate with Elders in a manner which respects oral traditions.
- 7.3 **Sub-committees.** The Committee, at its discretion, may establish and oversee sub-committees that will address each regions’ specific issues and interests, or work on broader thematic issues. The sub-committees may undertake work that requires more expertise or focus on a particular issue.
- 7.4 **Sub-committee terms of reference and work plans.** The Committee will develop terms of reference and/or work plans and associated budgets for sub-committees.
- 7.5 **Sub-committee membership.** The Committee will determine the membership of sub-committees. Membership on subcommittees will be determined by consensus of the Parties.

## 8. COMMITTEE MEMBERSHIP AND MEETINGS

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- 8.1 **Membership.** The Committee is comprised of:
- a. Sixteen representatives of the Indigenous Nations, appointed in accordance with section 11.3 of these Terms of Reference; and



- b. One senior representative appointed in accordance with section 12.1 of these Terms of Reference from each of the following:
  - i. Natural Resources Canada; and
  - ii. National Energy Board.
- 8.2 **Meetings.** The Committee will meet as frequently as it deems necessary, and at a minimum once per year, and will seek to hold in-person meetings in Indigenous communities.
- 8.3 **Non-member participants.** Other individuals and representatives may, with the consent of the Committee, be invited to attend Committee or sub-committee meetings, including representatives from Indigenous Nations, Enbridge, other Ministries, Agencies or Department of the Federal, Provincial or Municipal government, Non-Governmental Organizations, and others.
- 8.4 **Co-Chairs.** The work of the Committee is facilitated by two co-chairs, one Indigenous Committee Member selected by the Indigenous Committee Members, and the Committee member representing NRCan. The co-chairs together have the power to call Committee meetings and, on an exceptional basis, to authorize the inclusion of alternates.
- 8.5 **Quorum.** Unless modified by the Committee, quorum for Committee meetings requires:
  - a. The attendance of at least 50% of the membership of the Committee, which must include the representatives of NRCan and the NEB; and
  - b. That a majority of the attendees of the meeting are Indigenous Committee Members and include at least one member from Alberta, one member from Manitoba, one member from Saskatchewan, and one Métis member.
- 8.6 **Recusal.** Committee members will recuse themselves from the work of the Committee in situations where their continued participation would result in a conflict of interest, or a reasonable perception of a conflict of interest.
- 8.7 **Transparency.** The Committee is committed to the principle of transparency in its dealings. While there may be circumstances where it is not advisable or permissible to fully disclose information in the Committee’s possession (e.g. in accordance with procedures developed by the Committee to protect Indigenous Traditional Knowledge), to the extent appropriate the Committee will strive to ensure that its work is made available to the public, including but not limited to the Committee’s Terms of Reference, approved records of meetings, the names

and affiliations of all Committee and sub-committee members, and the final version of all Committee reports, including financial reports. Notwithstanding the foregoing principles, the Committee will retain the right to make all determination or amendments on the scope of such transparency based on the confidentiality concerns of the Parties as identified in these Terms of Reference.

- 8.8 **Terms for Members.** Members on the Committee will serve initial terms of two years. During the first two years, the Committee will determine an approach to succession planning, which may include staggered terms. Committee members may serve for multiple terms.

## 9. COMMITTEE ROLES AND RESPONSIBILITIES

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- 9.1 **Annual work plans.** At least annually, the Committee sets out in a work plan the activities it intends to undertake in that year to fulfill its purposes. The work plan will include accountabilities, budgets, and timeframes and be available for Indigenous Nations’.
- 9.2 **Committee Activities.** The activities of the Committee will be informed by the Guiding Principles in sections 6.1-6.8 of these Terms of Reference and may include – but need not be limited to – any of the following:
- a. **Input and advice.** Providing input and advice to the NEB with respect to environmental, safety, and Socio Economic aspects of the performance of the L3RP Activities, including:
    - i. Issues of concern to the Committee, including the effects of the L3RP, compliance with the 89 conditions set out in the L3RP Authorizations, as well as other requirements under the regulatory framework;
    - ii. Regulatory standards, policies, and procedures applicable to the L3RP Activities, so that they are informed by Indigenous knowledge, worldviews, and interests; and
    - iii. Indigenous Nations’ views on the adequacy and accuracy of reports and filings made by Enbridge in connection with the L3RP Activities.
    - iv. Recommendations for how concerns related to Enbridge’s performance could be addressed by the NEB, which will take into account treaties, Indigenous territories and traditional land use, and

Traditional Knowledge and be evaluated against benchmarks identified by the Committee.

- b. **Government Initiatives.** The Committee can provide input to proposed or existing Government initiatives to improve environmental protection policies and processes to modernize regulatory systems, such as by providing advice related to legislative, regulatory or policy changes, including any changes that would enhance the Committee’s role in monitoring the L3RP Activities.
- c. **Hiring and training of NEB staff.** Involvement in the hiring and training of certain NEB staff who may be involved in L3RP Activities, including:
  - i. Making recommendations on the hiring of NEB Inspection Officers and engagement staff who may be assigned to work related to L3RP Activities, including by designating a Committee member or other individual to sit on the relevant selection panels. The hiring process will follow the NEB’s hiring practices, including those set out by the Public Service Commission, and all related legislation;
  - ii. Participating in the training of NEB Inspection Officers and other staff to build an awareness of Traditional Knowledge; perspectives on the Treaty Relationship; s. 35 of the *Constitution Act, 1982*; Métis history and perspectives including the Métis Laws of the Hunt; the United Nations Declaration on the Rights of Indigenous People, including all Principles and Articles; the Calls to Action of the Truth and Reconciliation Commission of Canada; and other areas identified as being important to fostering cultural awareness of Indigenous Peoples.
- d. **Incident prevention, emergency preparedness and response.** The Committee, Indigenous Monitors, or others identified by the Committee will work to prevent incidents and emergencies, and promote the enhancement of Enbridge’s safety culture related to the L3RP Activities through:
  - i. Assisting and ensuring that Indigenous Nations receive the information and training they require in order to respond to a potential emergency;
  - ii. Identifying potential enhancements to Enbridge’s emergency management program, emergency response plans and procedures

to safely build and operate its facilities, or respond to an incident in a manner that protects people and the environment;

- iii. Working with Enbridge and the NEB to facilitate Indigenous Nations’ preparation for and participation in emergency response exercises;
  - iv. Working with Enbridge and the NEB to identify and facilitate Indigenous Nations’ roles, responsibilities and active participation during an emergency response;
  - v. Working with Enbridge to reinforce and enhance its safety culture; and
  - vi. Reviewing and providing advice on Enbridge’s detailed incident reports filed with the NEB.
- e. **Identifying information gaps.** Identifying and addressing to the extent possible information gaps, including information gaps with respect to the collection of baseline data along the L3RP Corridor throughout the Lifecycle of the Project.
- f. **NEB communications.** Providing input, advice and recommendations on the need for and content of NEB communications and educational materials for the Indigenous Nations.
- g. **Supporting Indigenous Nations.** The Committee can be a forum to assist Indigenous Nations to address issues related to L3RP Activities involving Enbridge by providing facilitation and support, subject to the willingness of the Parties.,

9.3 **Communication with Indigenous Nations.** Informed by a procedural manual to be prepared by the Secretariat in consultation with the Committee in accordance with section 17.7 of these Terms of Reference, the Committee will facilitate ongoing and effective communication with Indigenous Nations related to the Committee’s work, including by:

- a. Sharing and distributing information, reports and input or advice aimed at determining shared priorities and perspectives on a quarterly ; and,
- b. Engaging with and creating accessible means to receive input from the Indigenous Nations.

9.4 **Means of fostering communication.** The Committee will foster open and effective communication with Indigenous Nations appropriate for Indigenous

Nations, and others, regarding L3RP Activities. The Committee will seek to foster this objective by:

- a. Creating a website and other communication and engagement tools;
- b. Creating and distributing information on a regular basis regarding the L3RP Activities, the Committee’s work and efforts that can be undertaken by Indigenous Nations to monitor the L3RP Activities;
- c. Receiving, considering, responding to issues raised by Indigenous Nations, including by attempting to make linkages with ongoing or new government initiatives and sources of information that support the work of the Committee, as well as for those issues that go beyond the scope of the Committee;
- d. Agreeing on spokespeople for the Committee and protocols for media and public communication; and,
- e. Facilitating the sharing of information in Indigenous languages, subject to budgetary and practical constraints. In the event of differences in interpretation between Indigenous and English versions, the English version will be treated as the authoritative version.

## 10. MONITORING AND NATIONAL ENERGY BOARD INSPECTION OFFICERS

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10.1 **Monitoring.** Committee activities may also include monitoring L3RP Activities, including by:

- a. Working with Enbridge and the NEB to address issues or concerns that the Committee may have regarding:
  - i. Enbridge’s Aboriginal Construction Monitoring Program and/or;
  - ii. NEB Compliance Verification Activities.
- b. Identifying Monitors to accompany and advise NEB Inspection Officers, and other staff from the NEB as described in paragraph 33. This would involve assisting in the planning of and providing input in respect of the scope of certain compliance verification activities including inspections. Monitors will also have the opportunity to accompany NEB Inspection Officers during certain compliance verification activities;
- c. Working with NEB Inspection Officers on corrective actions to be taken when non-compliance is identified within the traditional territories; and,

- d. Providing or arranging for training and educational materials to Indigenous Nations to improve their knowledge and capacity surrounding the L3RP Activities, including their ability to detect and respond to any spills or other hazards or emergencies.

10.2 ***NEB Inspection Officers’ engagement with Committee.*** NEB Inspection Officers’ primary role, as set out in the *NEB Act*, is to ensure the safety and security of people and pipelines, and the protection of property and the environment. NEB Inspection Officers inspecting the L3RP Activities will exercise their powers independently and in accordance with the regulatory framework and their professional judgement. NEB Inspection Officers or other NEB staff will also seek to:

- a. Keep the Committee informed of their activities, including any issues of concern in relation to the L3RP Activities;
- b. Facilitate the involvement of and respond to concerns of any Monitors regarding the L3RP Activities;
- c. Receive and consider any information or input from the Committee (including its sub-committees);
- d. Where the NEB Inspection Officer is of the view that the grounds for making an Order under s. 51.1 of the *NEB Act* may exist, they can consider, as is appropriate and practicable in the circumstances, the views of the Committee and/or any Monitors regarding the potential grounds for making an Order and the potential terms under which an Order should be made, as well as whether there are additional considerations that should be taken into account in relation to the terms of the Order; and,
- e. As appropriate and practicable, receive input from the Committee and/or Monitor with respect to whether a hazardous or detrimental situation has been remedied satisfactorily, whether an Order should be lifted, and whether other measures to address the situation should be put in place.

## 11. INDIGENOUS COMMITTEE MEMBERS

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11.1 ***Representing Indigenous Nations’ interests.*** In order for the Committee to fulfill its goals and purposes, the Indigenous Committee Members are appointed to represent the interests of the Indigenous Nations at the Committee. In order to fulfill this mandate, the Committee will regularly engage with the Indigenous Nations to discern priorities, perspectives and approaches, to advance a shared

understanding within the Committee where possible. Indigenous Nations may opt-in or opt-out of having their interests represented by the Committee.

- 11.2 **Indigenous Committee Members.** It is understood that Indigenous Committee Members may need to discuss issues among themselves. Opportunities for Indigenous Members to meet on their own (i.e. ‘in camera’) will be provided and resourced appropriately, subject to the overall budget and work plan as agreed to by consensus of the Committee. Within the Committee, each Indigenous Committee Member will strive to advance the interests of Indigenous Nations as a whole.
- 11.3 **Membership.** The Indigenous Committee Members will be comprised as follows:
- a. Representing Indigenous Nations in Alberta
    - i. 3 First Nations representatives
    - ii. 1 Métis Nation representative
  - b. Representing Indigenous Nations in Saskatchewan
    - i. 6 First Nations representatives
    - ii. 2 Métis Nation representatives
  - c. Representing Indigenous Nations in Manitoba
    - i. 3 First Nations representatives
    - ii. 1 Metis Nation representative

## 12. GOVERNMENT AND NEB COMMITTEE MEMBERS

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- 12.1 **Representatives.** The NRCan Member will be designated by the Deputy Minister of NRCan. The NEB Committee Member will be designated by the Chief Executive Officer of the NEB.
- 12.2 **Committee meeting participation.** NRCan and NEB Committee Members will attend Committee meetings in order to seek an understanding of Indigenous worldviews, share information to build an understanding about the role of the NEB, and collaborate on solutions to issues in a timely manner.
- 12.3 **Engagement within Government.** NRCan and the NEB will establish such practices, procedures and protocols within their organizations as are deemed

necessary to promote these Terms of Reference and to ensure they will be effectively implemented throughout their respective organizations.

### 13. INFORMED DELIBERATIONS AND DECISIONS

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- 13.1 ***Dealings with the Committee.*** The Government and the NEB will be open, accessible and transparent in their dealings with the Committee and sub-committees.
- 13.2 ***Information sharing.*** Subject to common law privileges or other restrictions as may be found in federal legislation, the Government and NEB will share information openly with the Committee. When information cannot be shared, reasons will be provided. Circumstances where information sharing may be restricted may include:
- a. restrictions pursuant federal legislation, including the *Access to Information Act* and *Privacy Act*;
  - b. the NEB is deliberating on a decision and the request relates to that decision; or
  - c. where it is determined, acting reasonably, that procedural fairness prohibits disclosure.
- 13.3 ***Accessible Information.*** In order to inform its deliberations, the Committee will maintain an information database that may be comprised of western knowledge, Traditional Knowledge and historical information. Such information shall be accessible by all members of the Committee.
- 13.4 ***Traditional Knowledge.*** The Committee will develop procedures regarding the management of Traditional Knowledge, including knowledge of traditional and cultural protocols, sacred sites, heritage resources, repatriation of sacred and culturally sensitive objects and artifacts. The Committee will respect the confidentiality of Indigenous intellectual and traditional ecological knowledge provided by or to Committee members through their work on the IAMC.

### 14. ENGAGEMENT WITH ENBRIDGE

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- 14.1 The Committee will seek proactive and productive engagement with Enbridge over the Project Lifecycle with the aim of promoting continuous improvement and due diligence of its safety and environmental performance, and its relations and engagement with Indigenous Nations. In order to facilitate this objective Enbridge will be invited to Committee meetings on a regular basis, and in particular,



whenever the Committee determines that doing so will enable more informed deliberations of the Committee.

## 15. NATIONAL ENERGY BOARD RESPONSES TO ADVICE

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- 15.1 **Advice from a majority of the Committee.** The Committee will use its best efforts to ensure that advice provided to a Regulator or the Government reflects a consensus among Committee members. After making best efforts to reach consensus, advice supported by a majority of members may be put forward on behalf of the Committee for consideration by the NEB or the Government, provided that the Committee members putting forward the advice first:
- a. Ensure that the advice has been provided to all Committee members in final written form, with due respect paid to oral tradition; and
  - b. Provide all Committee members with an opportunity to explain, in writing, why they cannot support the advice in whole or in part and those reasons will be conveyed to the NEB or the Government for consideration along with the advice.
- 15.2 **Advice to the NEB or Government.** When the Committee provides advice to the NEB or the Government in writing, the NEB or Government will consider the advice of the Committee with due respect to oral tradition, and, to the extent permitted by the legislative and regulatory framework and applicable principles of law, including procedural fairness, either:
- a. Agrees with and adopts the advice; or,
  - b. After engaging with the Committee, adopt the advice with modifications, or reject it, in which case the Regulator or the Government will provide written reasons for why the advice was modified or rejected, and whether or how the interests or concerns underlying the advice have been or will be addressed.
- 15.3 **Advice to NEB in quasi-judicial role.** Where the Committee provides advice to the NEB in a situation where an NEB member or members are authorized by legislation to make a binding decision, the NEB member(s) will consider the advice and, to the extent required under the principles of administrative law, provides written reasons, including how the advice was treated in the decision. This may include providing specific reasons for how and why the advice was adopted, accepted in a modified format or rejected.

- 15.4 ***Duties also owed to Indigenous Nations.*** While sections 15.1 and 15.2 of these Terms of Reference applies only to advice from the Committee, the duty of the NEB to respond to that advice as set out in those sections will be for the benefit not only of the Committee as well as the Indigenous Nations.

## 16. REACHING CONSENSUS

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- 16.1 ***Consensus model.*** The Committee and the sub-committees will deal with issues and resolve disputes using a consensus model. A single voice reflecting a consensus will speak more persuasively than advice based on separate voices. Everyone has an equal voice and will have an opportunity to be heard.
- 16.2 ***Conduct.*** Members of the Committee, and sub-committees will:
- a. Treat each other and all members’ organizations or Nations with respect and good faith;
  - b. Listen to one another with open minds in an effort to understand each other’s concerns and perspectives; and,
  - c. Strive to find ways to address all concerns and to incorporate different perspectives.
- 16.3 ***Meaning of consensus.*** Consensus means the general agreement of all Committee members on a course of action. Consensus does not require concurrence on every point, but rather broad agreement on the general approach to decisions or courses of action. As part of consensus decision making, points of disagreement may be identified along with an explanation as to why agreement on those points has not been possible. All suggestions for Committee decisions or courses of action are considered tentative until a consensus is achieved.
- 16.4 ***Dispute resolution.*** To assist in reaching consensus on particularly contentious or difficult issues, the Committee may retain the services of a facilitator or seek the advice of an independent expert. The Committee may use structured dispute resolution processes where required, keeping with the following principles:
- a. Committee members have an obligation to fully explore issues and search for mutually acceptable solutions, articulate interests, propose alternatives, listen to proposals and endeavor to build agreements;
  - b. Committee members can expect adequate time and opportunity to become informed, discuss issues and articulate areas of agreement and disagreement; and

- c. When unable to support a consensus, Committee members have an obligation to explain their concerns and suggest alternative solutions.

## 17. GENERAL

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- 17.1 ***Participation is without prejudice.*** It is understood and accepted that Indigenous Nations have varied opinions on the L3RP Activities, and that some communities support the L3RP Activities and others oppose the L3RP Activities. Participating in the work of the Committee, including by an Indigenous Nation member acting as a member of the Committee or a subcommittee, does not indicate that an Indigenous Nation supports or does not oppose the L3RP Activities. Participation in this process is entirely “without prejudice” to the Government’s, the NEB’s and the Indigenous Nations’ positions with respect to existing or prospective litigation. In plain terms, the Government undertakes not to argue or adduce evidence in any current or future legal proceeding that argues, based on an Indigenous Nation’s participation in either or both of these processes: (i) the Indigenous Nation agrees with or otherwise acquiesces to Canada’s position that the Committee is a form of accommodation; (ii) the Indigenous Nation has accepted that it is being accommodated in relation to the Project through its participation in the Committee; and/or (iii) the Indigenous Nation has agreed that the Committee responds to any of the concerns and objections to the Project.
- 17.2 ***No diminishment of duty to consult.*** The Committee will be an additional forum for engagement between the NEB and the Indigenous Nations and will not replace or diminish any right of individual Indigenous Nations to be consulted and accommodated by the Government in respect of L3RP.
- 17.3 ***Not to replace or substitute for engagement or consultation.*** The Committee will not be used as a forum for the Government to replace or substitute any direct engagement or consultation owed to, or desired by, Indigenous Nations.
- 17.4 ***No diminishment of Enbridge’s obligations.*** Any advice or input provided to Enbridge by the Committee is intended to help Enbridge achieve or remain in compliance with legal requirements. This advice does not relieve Enbridge from its responsibility to comply with all applicable legal and regulatory requirements, as determined by the NEB or the Government.
- 17.5 ***Non-derogation clause.*** Nothing in this Terms of Reference, or the deliberations and operations of the Committee, shall be construed so as to abrogate or derogate from any Aboriginal or treaty rights of any Indigenous Nation or Nations.

- 17.6 **Honouraria.** Honouraria will be provided for Indigenous Committee Members and Elders and may be provided to others. The amounts of such honouaraia will be determined by the Committee through its budgetary process.
- 17.7 **Procedures and Guidelines:** The Secretariat established within NRCan will develop procedures and guidelines for the Committee’s work which will be considered by the Committee for approval.

## 18. ANNUAL REPORT

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- 18.1 The Committee will submit an Annual Report to the Minister of NRCan, the Chief Executive Officer of the NEB and the Indigenous Nations, highlighting achievements and lessons learned. Subject to the provisions of these Terms of Reference, the report will be made publicly available.

## 19. REVIEW, AMENDMENT AND TERMINATION

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- 19.1 **Review.** The Committee will review the effectiveness of these Terms of Reference, including the structure of the Committee, on an annual basis during the construction phase of the Project and at least every three years thereafter. The Committee may invite the participation of senior representatives of the Government and the NEB as part of this process. The first review will be completed one year after the Committee is established, and will include at least the following:
- a. An assessment of whether and how the Committee has enhanced Indigenous participation in monitoring the L3RP Activities;
  - b. An evaluation of opportunities to align the Committee with any new environmental processes or changes to the NEB or other Government legislative or regulatory framework; and
  - c. A consolidation of early learnings from the Committee operations.
- 19.2 **Amendment.** These Terms of Reference may be amended by agreement in writing of NRCan, the NEB and the Indigenous Committee Members.
- 19.3 **Termination.** These Terms of Reference will terminate at the end of the lifecycle of the L3RP Activities, or at some other date, upon the agreement of the NRCan, the NEB and the Indigenous Committee Members.

ANNEX A : INDIGENOUS NATIONS

Nation	Region
Alexander First Nation	Alberta
Alexis Nakota Sioux Nation	Alberta
Blood Tribe (Kainai First Nation)	Alberta
Enoch Cree Nation	Alberta
Ermineskin Cree Nation	Alberta
Frog Lake First Nation	Alberta
Louis Bull Tribe	Alberta
Métis Nation of Alberta - Region 2	Alberta
Métis Nation of Alberta - Region 3	Alberta
Michel First Nation	Alberta
Montana First Nation	Alberta
Paul First Nation	Alberta
Piikani (Peigan) Nation	Alberta
Whitefish (Goodfish) Lake First Nation / Saddle Lake Cree Nation	Alberta
Samson Cree Nation	Alberta
Siksika First Nation	Alberta
Stoney Nakoda Nations	Alberta
Tsuu T'ina Nation	Alberta
Ahtahkakoop First Nation (Shell Lake)	Saskatchewan
Beardy's and Okemasis	Saskatchewan
Big Island Lake First Nation	Saskatchewan
Carry the Kettle First Nation	Saskatchewan
Central Urban Métis Federation Inc	Saskatchewan
Chacachas First Nation	Saskatchewan
Cote First Nation	Saskatchewan
Cowessess First Nation	Saskatchewan
Day Star First Nation	Saskatchewan
Fishing Lake First Nation	Saskatchewan
Flying Dust First Nation	Saskatchewan
George Gordon First Nation	Saskatchewan
Kahkewistahaw First Nation	Saskatchewan
Kawacatoose First Nation	Saskatchewan
Keeseekoose First Nation	Saskatchewan
Kinistin Saulteaux Nation	Saskatchewan
Little Black Bear First Nation	Saskatchewan
Little Pine First Nation	Saskatchewan
Lucky Man First Nation	Saskatchewan
Métis Nation of Saskatchewan - Western Region III	Saskatchewan
Métis Nation of Saskatchewan - Eastern Region III	Saskatchewan
Moosomin First Nation	Saskatchewan
Mosquito, Grizzly Bear's Head, Lean Man First Nation	Saskatchewan
Muscowpetung First Nation	Saskatchewan
Muskowekwan First Nation	Saskatchewan
Nekaneet First Nation	Saskatchewan
Ocean Man First Nation	Saskatchewan
Ochapowace First Nation	Saskatchewan
Okanese First Nation	Saskatchewan

**“WITHOUT PREJUDICE”**

One Arrow First Nation	Saskatchewan
Onion Lake Cree Nation	Saskatchewan
Pasqua First Nation	Saskatchewan
Peeppeekisis First Nation	Saskatchewan
Pheasant Rump Nakota Nation	Saskatchewan
Piapot First Nation	Saskatchewan
Poundmaker Cree Nation	Saskatchewan
Red Pheasant First Nation	Saskatchewan
Sakimay First Nation	Saskatchewan
Saulteaux First Nation	Saskatchewan
Standing Buffalo Dakota Nation	Saskatchewan
Star Blanket Cree Nation	Saskatchewan
Sweetgrass First Nation	Saskatchewan
The Key First Nation	Saskatchewan
Thunderchild First Nation	Saskatchewan
Wahpeton Dakota Nation	Saskatchewan
White Bear First Nation	Saskatchewan
Whitecap Dakota First Nation	Saskatchewan
Wood Mountain Lakota Nation	Saskatchewan
Yellow Quill First Nation	Saskatchewan
Birdtail Sioux First Nation	Manitoba
Brokenhead Ojibway First Nation	Manitoba
Buffalo Point First Nation	Manitoba
Canupawakpa Dakota Nation	Manitoba
Dakota Plains First Nation	Manitoba
Dakota Tipi First Nation	Manitoba
Ebb and Flow First Nation	Manitoba
Gamblers First Nation	Manitoba
Keeseekoowenin First Nation	Manitoba
Lake Manitoba First Nation	Manitoba
Long Plain First Nation	Manitoba
O-Chi-Chak-ko-Sipi (Crane River) First Nation	Manitoba
Peguis First Nation	Manitoba
Pinaymootang (Fairford) Anishinabe First Nation	Manitoba
Pine Creek First Nation	Manitoba
Rolling River First Nation	Manitoba
Roseau River Anishinabe First Nation	Manitoba
Sandy Bay First Nation	Manitoba
Sapotaweyak Cree Nation	Manitoba
Sioux Valley Dakota Nation	Manitoba
Skownan (Waterhen) First Nation	Manitoba
Swan Lake First Nation	Manitoba
Tootinaowaziibeeng Treaty Reserve (Valley River)	Manitoba
Waywayseecappo First Nation	Manitoba
Wuskwi Sipiik (Indian Birch) First Nation	Manitoba
Manitoba Metis Federation - Southeast	Manitoba
Manitoba Metis Federation - Southwest	Manitoba
Manitoba Metis Federation - Winnipeg	Manitoba

## ANNEX B: HYPERLINKS

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1. Treaty Texts, Indigenous and Northern Affairs Canada Website:  
<https://www.aadnc-aandc.gc.ca/eng/1370373165583/1370373202340>
2. Constitution Acts, 1867-1982, Justice Laws Website:  
<http://laws-lois.justice.gc.ca/eng/Const/>
3. United Nations Declaration on the Rights of Indigenous Peoples, Division for Social Policy and Development (DSPD), United Nations Website:  
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
4. Principles respecting the Government of Canada’s Relationship with Indigenous peoples, Justice Canada Website:  
<http://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>
5. Truth and Reconciliation Commission of Canada, Website:  
<http://www.trc.ca/websites/trcinstitution/index.php?p=3>