

Review of Environmental Assessment Processes

A fair, predictable, credible, transparent and efficient Environmental Assessment (EA) process

Brief submitted to:

Expert Panel for Review of Environmental Assessment Processes

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Executive Summary

The Canadian Electricity Association (CEA) is the national voice of Canada's electricity generation, transmission, and distribution industry. Founded in 1891, CEA represents a broad range of companies that generate, transmit, distribute, and market electrical energy to industrial, commercial and residential customers across Canada.

Canada's electricity sector is making a critical contribution in the fight against climate change, with more than 80% of our electricity already coming from renewable and low-greenhouse gas emitting sources.

The electricity sector will need to make substantial investments in the coming decades to meet the country's growing energy demands while continuing to reduce Canada's carbon footprint, particularly as a significant portion of the country's electricity system is nearing the end of its lifecycle. According to the Conference Board of Canada, this infrastructure renewal and expansion will require an investment of \$350 billion between 2010 and 2030. A predictable, credible, federal environmental assessment process is necessary if the electricity industry is to achieve these twin objectives.

CEA members believe that some of the fundamentals of CEAA (2012) should be maintained, including a limited number of Responsible Authorities (RAs), a focus on major projects, and set timelines. CEA also believes there are ways in which the CEAA (2012) could be improved to increase its credibility, to better align with the desire for reconciliation with Indigenous groups, and to restore and maintain public trust. Addressing the lack of strategic environmental assessment (SEA) and regional environmental assessment (REA) is central to improving the existing process and providing a venue for addressing broader public policy issues and cumulative effects, as well as for providing authoritative guidance to project specific EAs.

Key Recommendations

The Canadian Electricity Association proposes the following ten recommendations to the Expert Panel on the Review of Environmental Assessment Processes:

1. Maintain the existing designated project list;
2. Maintain the existing timeline requirements;
3. Maintain the existing limited number of Responsible Authorities (RAs);
4. Enable the effective use of Strategic Environmental Assessment (SEA) and regional environmental assessment (REA);
5. Enhance coordination towards implementing the "one project, one review" principle;
6. Provide guidance to better define the roles and responsibilities of Parties during the Indigenous consultation process;
7. Provide better guidance on the follow-up and monitoring, federal permitting/authorization processes following an EA and the federal lands EA process;
8. Establish a comprehensive CEAA public registry;
9. Amend CEAA to clarify that environmental effects include social and economic components; and
10. Amend CEAA to enable the amendment of decision statements.

1. Introduction

CEA is pleased to provide this submission to the Expert Panel reviewing the Canadian Environmental Assessment Act (2012). A fair, predictable, credible, transparent and efficient environmental assessment (EA) process is essential to the electricity sector.

Safe, reliable, and affordable electricity is critical to Canada's economy and Canadians' quality of life. The responsible development of electricity resources is enabling the country to reduce its greenhouse gas (GHG) emissions. More than 80% of the electricity produced in Canada comes from renewable and low GHG emitting sources¹. As the sector invests in new technologies and clean energy sources, electrification also has the potential to transform other industrial sectors such as transportation².

To meet the country's growing energy demands, the electricity sector will need to invest substantially in new projects in the coming decades, as a substantial portion of Canada's electricity system is nearing the end of its lifecycle. The Conference Board of Canada estimates that this electricity infrastructure renewal will require an investment of \$350 billion between 2010 and 2030.

The sector fully supports robust Environmental Assessment (EA) processes that are based on sound science and stakeholder engagement. These are essential in facilitating an improved understanding of the EA decisions and acceptance by Canada's Indigenous communities and the Canadian public.

The original intent of the Canadian Environmental Assessment Act (CEAA) was to ensure that the environmental implications of all federal decisions were understood and managed. Today, the federal, provincial, and territorial governments all have comprehensive EA legislation and regulatory regimes to protect environmental resources including fisheries, migratory birds, and species at risk. In many cases, the same environmental resource is protected by both federal and provincial legislation. Given this complex and expanding regulatory environment, it is important that EAs avoid duplication, provide clear federal guidelines, and enable decisions to be made in a timely manner. EA does not need to be the regulatory regime for all projects. However, there must be a coordinated, transparent process to ensure the public can be engaged in decision-making for projects that are subject to CEAA.

CEA supports many of the elements of the existing CEAA (2012) and believes that it has the right fundamental framework for federal EAs. Building on 40 years of experience at the federal level, the Canadian Environmental Assessment Act (2012) has several strengths worth preserving, including:

1. A simplified trigger mechanism based on a list of project types - focusing federal EA on major projects;
2. A reduced number of Responsible Authorities (RAs); and
3. Additional timeline requirements.

In CEA's opinion, these components are critical to a consistent, predictable, and efficient regulatory system. However, CEA also believes the current review provides an opportunity to strengthen the Act in several areas. CEA's key recommendations for achieving this include:

¹http://www.electricity.ca/media/ReportsPublications/Taking_action_on_climate_change-an_electricity_sector_perspective.pdf

² [Greenhouse Gas Emissions by Economic Sector, 1990-2014](#), Environmental Indicators, Environment and Climate Change Canada, 2016.

1. Enable the effective use of Strategic Environmental Assessment (SEA) and regional environmental assessment (REA) to provide a venue for addressing broader public policy issues;
2. Enhance coordination towards implementing the “one project, one review” principle;
3. Provide guidance to better define the roles and responsibilities of Parties during the Indigenous consultation process;
4. Provide clarity on follow-up and monitoring, the federal permitting/authorization process following an EA, and the timelines for federal lands EA process;
5. Establish a comprehensive public CEAA registry to provide ready access to such materials as follow-up and monitoring reports;
6. Amend CEAA to clarify that environmental effects include social and economic components; and
7. Amend CEAA to enable the amendment of decision statements.

In addition to the above main recommendations, CEA proposes the following to further improve the EA process to increase its credibility and to restore and maintain public trust:

1. **Increase transparency** - Ensure that all key documents are available for the public on the CEAA registry and/or project sites, including follow-up and monitoring reports. Proponents can also improve their methods for informing the public.
2. **Improve consultation** - Proponents already engage early and continuously; however, there is always room for improvement. Proponents can learn from the best practices of others to improve consultation processes.
3. **Integrate sustainability** – It is mandatory for all CEA Corporate Utility Members (generation, transmission and distribution utilities) to participate in the Association’s flagship Sustainable Electricity™ program. The program requires CEA member companies to commit to ISO 14001 consistent Environmental Management Systems to ensure all environmental aspects are considered in company decision-making.
4. **Continuous learning** - Proponents can do better at incorporating all sources of information available for EAs (e.g. Indigenous Traditional Knowledge, community and scientific knowledge) and to design better follow-up and monitoring programs. One of the main principles behind implementing an EMS using the requirements of ISO 14001 is the need for continual improvement.

Through these measures and other proposed changes, CEA is confident that the federal government can create a more effective and transparent regulatory system that enhances environmental outcomes while enabling the investments needed to meet Canada’s growing electricity needs.

2. Environmental Assessment in Context

Over the decades, Canada's environmental assessment regime has evolved to reflect emerging priorities and objectives, including a series of changes made in 2012. CEA supports many of the 2012 amendments, including:

- Altering the triggering mechanism to a regulation that identifies designated projects. The designated projects and triggering thresholds match many provincial requirements closely, a feature that helps coordination;
- Introducing additional timeline requirements; and
- Reducing the number of responsible authorities to three: the Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission. This change has allowed these agencies to enhance their expertise while still enabling expert departments to provide input into EAs.

CEAA (2012) has only been in force for four years, which is too short a time to definitively assess how it would impact projects, including timelines, over the full range of projects to which it applies.³

EA was designed as a planning tool to provide an opportunity early in the process of environmental review to understand the main features of a project, plan, policy, or program and to identify possible positive and negative impacts, ultimately determining whether the initiative should proceed. However, over time, EA has become a mechanism for all concerns and issues related to projects, creating a complex situation from which a satisfactory, implementable decision becomes very difficult, if not impossible. Issues broader than the scope of a project are introduced with no clear way to adequately address them. This is contributing to challenges in achieving EA timelines.

The timelines introduced in CEAA (2012) are a good start towards ensuring process certainty. However, without addressing broader public policy issues through the use of Strategic Environmental Assessments (SEA) and/or Regional Environmental Assessments (REA), these timelines are insufficient. Electricity infrastructure projects which are both necessary to Canada's economy and Canadians' quality of life cannot proceed without process certainty.

CEA believes the CEAA (2012) can achieve the purpose of EA and ensure the consideration of all three pillars of sustainability: environmental, economic, and social. To do so, CEA proposes the following basic design principles:

³ Currently 5 projects from electricity and transmission sector have completed the EA process.

Principles	Recommendations
Apply CEAA to major projects of federal interest as well as major initiatives (policies and programs)	<p>1. Maintain the existing thresholds and focus on major projects within the Regulations Designating Physical Activities (SOR/2012-147): The electricity sector’s major projects are appropriately captured through these Regulations. Therefore, CEA members believe that the project list should be maintained.</p> <p>2. CEA recommends greater use of Strategic EAs and Regional EAs: Currently, the lack of effective SEAs and REAs means that major policy and program decisions that impact EAs are not subject to review and discussion.</p>
Effectively integrate biophysical, social, and economic considerations	<p>1. CEA recommends that s.5 be changed to clarify that environment effects include biophysical, social, and economic components: In CEA members’ experience, CEAA (2012) does not consider all the factors critical to sustainable development, including both the positive and negative aspect of environmental, economic, and social factors. In practice, social and economic factors may be included indirectly through s. 5(1)(c) or otherwise requested in the Terms of Reference; however, CEA members would prefer that these components be included directly.</p>
Establish clear requirements and predictable process expectations	<p>1. CEA recommends that timelines for the process for EA on federal lands be specified, and that inconsistencies in the approach for EA processes on federal lands be addressed: The timelines for the process for federal lands (s.66 and 67) are undefined and there is a lack of consistency in the approach amongst Federal Authorities for projects on federal lands.</p> <p>2. CEA recommends the development of additional guidance on the information request process and “stop clock” mechanisms: CEA members would like more clarity on “stop clock” mechanisms and expectations of study scopes and deliverables.</p>

<p>Facilitate public and Indigenous engagement</p>	<p>1.CEA recommends defining the roles and responsibilities of the parties with respect to the consultation process: CEA members often engage Indigenous Peoples and local communities prior to the commencement of the EA process and believe that engagement is critical to the process. However, CEA believes that further clarity on the roles and responsibilities of all parties will be needed if the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> is incorporated into Canadian law.</p> <p>2.CEA recommends the development of guidance materials to encourage broader use and consideration of Indigenous Traditional Knowledge (ITK) and other data sources: CEA members routinely incorporate ITK, information from local communities, in addition to existing scientific sources. Their experience indicates that the key is that each situation is different and requires a different approach to best reflect the knowledge and the wishes of the knowledge holders. Further guidance would be helpful to ensure that the best available information is incorporated.</p>
<p>Improve decision-making consistency, impartiality, transparency, and accountability</p>	<p>1. CEA recommends the establishment or implementation of a comprehensive registry: Transparency is crucial to improving public confidence in the regime. The current CEAA registry is challenging to navigate and does not have all the materials relevant to project decisions. For example, follow-up and monitoring reports should be available through the registry. There should be more transparency of the analysis, considerations, and other criteria applied to make EA decisions.</p>
<p>Integrate with other objectives and processes</p>	<p>1. CEA recommends more clarity on the process for granting authorizations post-EA: There needs to be a clear process for the granting of federal authorizations after the EA has been completed.⁴ There should be clear direction on the scope of review for federal authorizations and a requirement that authorizations be consistent with the decision statement.</p> <p>2.CEA recommends that the federal and provincial governments consider the renewal of bilateral cooperation agreements for EAs: CEA has consistently advocated for a “one project, one review” principle whereby there is a coordinated, non-duplicative process while still allowing each jurisdiction to make their own decisions. The integration with provincial EA processes continues to be challenging and requires further efforts to ensure that there is not duplication and overlap.</p>

<p>Ensure adaptive management through effectiveness and compliance monitoring and an ability to adjust conditions.</p>	<p>1. CEA recommends enabling the amendment of decision statements. CEA recommends the development of guidance materials on follow-up and monitoring: Currently, there is no process for amending decision statements to reflect updated knowledge. There needs to be better follow-up and monitoring guidance materials to ensure adaptive management is occurring effectively and monitoring is focused appropriately on a limited number of factors where real change is predicted or observable or where there is uncertainty in the predicted effects.</p>
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3. Planning Environmental Assessment

CEA supports the current thresholds for generation and transmission projects found in the Regulations Designating Physical Activities (SOR/2012-147), which appropriately identifies projects of a scale and scope that warrant scrutiny from a federal perspective. This is the appropriate threshold whereby other initiatives are dealt with through provincial EAs, permitting processes, other regulatory processes, best management practices (BMPs) or codes of practice, and other fit-for-purpose approaches to environmental review and protection. CEA cautions against returning to the CEAA (1992) process under which nearly all large projects were subject to both a provincial and federal EA. Doing so would lead to duplication and overlap without necessarily increasing environmental protection.

Academics who have analyzed Canada’s approach to SEAs have identified several areas for improvement.⁵ A review commissioned by the Agency in 2009, for instance, found that SEAs have had little demonstrable impact to date in contributing to the federal government’s environmental priorities and needs.⁶ This is not a reflection on the value of SEAs, but rather a reflection on poor execution to date.

The main advantage of SEAs and REAs is the ability to deal with broader issues outside the scope of specific projects, including issues such as climate change, cumulative effects, biodiversity, and species at risk. Rigorous and transparent strategic or regional level assessments can provide a credible base for authoritative guidance and greater efficiencies for assessments at the project level.⁷

To enhance the use of SEAs, the following recommendations should be considered:

⁴ Some federal authorizations such as Species at Risk Act permits have existing timeline regulations; however, how this timeline coordinates with the CEAA process is unclear. Efficiencies are possible as decisions made (e.g. conditions around mitigation measures) and information gathered at the EA stage can inform the permitting.

⁵ White, Lisa, and Bram F. Noble. "Strategic environmental assessment for sustainability: A review of a decade of academic research." *Environmental Impact Assessment Review* 42 (2013): 60-66.

⁶ *Evaluation of the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, prepared by Stratos consultants. 2009. Available at:

https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjm4ITO-rrQAhUC5IMKHTmrCMkQFggiMAE&url=http%3A%2F%2Fwww.ceaa.gc.ca%2FContent%2F5%2FD%2F1%2F5D1C8F32-9457-4C5C-9589-541753A446E7%2FSEA_Evaluation_Summary_Report-eng.pdf&usq=AFQjCNEt3YINUGzZrBu46jgLMnZCdsYhNA&sig2=y3cUao0dLCO9qBKcljctQ

⁷ Benevides, H., Kirchhoff, D., Gibson, R. and Doelle, D., 2009. Law and policy options for strategic environmental assessment in Canada, Report commissioned by the Canadian Environmental Assessment Agency, September 2008, revised October 2009 [online]. Available from: <http://ssrn.com/abstract=1660403>

- The requirements for SEAs need to be set carefully to capture the most significant initiatives
- SEA criteria and triggers should be defined in legislation
- The process and results of SEAs need to be transparent
- SEA decisions should carry consequences for non-compliance
- The process should require a degree of independence and impartiality

A similar approach would be helpful for REAs.

The *Pan-Canadian Framework on Clean Growth and Climate Change* is a good example of a SEA. In fact, the lessons learned from its finalization and implementation may provide important learning that could be applied to SEA/REA adjustments to federal EAs.

CEA also supports the inclusion of both positive and negative environmental biophysical, social and economic factors that would lead to an informed decision on a project. While some projects currently comprehensively evaluate potential effects, the current definition of environment effects in section 5 is limiting and should be changed to specifically include social and economic components. Additionally, clarity could be provided to ensure that projects are assessed for their contributions to the environment, not just the potential negative impacts.

4. Conduct of Environmental Assessment

CEA's experience with the CEAA (1992) was that it lacked clarity over roles, responsibilities, and accountabilities of federal authorities. This led to challenges in commencing an EA in a timely manner, coordinating participation of various departments, and issuing post-EA authorizations. CEA supports and recommends maintaining a limited number of RAs, as this approach means that capacity and expertise is developed within those organizations to conduct robust EAs.

5. Decision and Follow-Up

One of the goals of this review process is the identification of measures to improve public confidence in EAs. A frequent criticism of the process is the lack of readily available, complete information. A mandatory, more comprehensive registry for such information would go a long way toward alleviating such concerns. A more comprehensive registry that includes follow-up and monitoring reports would create a more trustworthy, transparent process.

The best available information should be incorporated into the decision-making process for EAs. While CEA members already incorporate information from Indigenous Traditional Knowledge (ITK), local communities, and existing scientific sources; CEA believes that there should be more focus on identifying when there is existing information that can be used for EAs and where new data is required for more complete assessments.

As relatively few projects have completed the CEAA (2012) process, CEA members have limited experience with decision statements and the accompanying enforceable conditions. Enforceable conditions could be the right tool; however, conditions must be properly drafted to be enforceable and effective as well as amendable where appropriate. RAs should be authorized under CEAA to change conditions associated with project design or project mitigation measures.

Furthermore, many EA processes result in a long list of terms and conditions that cover all areas of review and provide compliance requirements for basic monitoring associated with the project. However,

there continue to be challenges in the development of meaningful monitoring requirements that address cumulative effects.

It is also recommended that EA study design measure parameters focused on real potential change or impacts. Furthermore, depending on the success of greater use of SEA/REA, it may be possible to link requirements from regional cumulative effects studies to compliance monitoring. Further guidance on how to incorporate adaptive management and designing follow-up and monitoring requirements is also needed.

6. Coordination

CEA has consistently supported a “one project, one review” principle for a coordinated, non-duplicative process that still allows jurisdictions to make their own decisions. Inadequate coordination is a burden on all stakeholders, including project proponents, the public, and Indigenous Peoples, and undermines the achievement of environmental protection and species recovery. Implementing a “one project, one review” principle including robust public and Aboriginal engagement, and constructive interplay between federal and provincial legislation such as the *Fisheries Act* and the *Species at Risk Act* and permitting processes, would promote coordination.

It is still early to determine whether substitution and equivalency under CEAA (2012) are effective, since only the province of British Columbia has taken steps towards this. Ideally, there should be a single comprehensive assessment for each project; however, if more than an environmental assessment of a project is unavoidable, there needs to be close alignment between assessment guidelines and the main steps in the process. It is recommended that the federal and provincial governments consider the renewal of bilateral cooperation agreements on Environmental Assessments, as these agreements have previously assisted in strengthening cooperation.

After receiving an EA decision, some electricity sector project proponents have been compelled by other federal departments to implement mitigating measures that are not always fully consistent with the EA decision or that are additional to those agreed upon at the time of the EA. CEA believes that there is a need for consistency between conditions set out in decision statements related to permits and the conditions included in subsequent permits and authorizations under different legislation. Furthermore, CEA believes that statutory approvals received after an EA decision should be consistent and supportive of the intended environmental outcomes in the EA decision. This can be done by enabling concurrent processes or providing clear guidance on the federal authorization process post-EA.

Federal Departments previously aimed to incorporate the early stages of their permitting processes and their consultation obligations in environmental assessments, but they now appear reluctant to begin their permitting processes until after all environmental assessment is complete. The result has been to extend the overall regulatory process by a year or more and to fragment consultations. This could be addressed partially by ensuring that other agencies or departments that are likely to participate in the EA process or permitting processes are identified and involved from the beginning of the process.

7. Indigenous Considerations

Under constitutional and statutory requirements, the federal government, the provinces, and proponents are all required to consult Indigenous Peoples. These multiple and repeated consultations lead to overlap, delays, confusion, and consultation fatigue, especially on the part of Indigenous Peoples. A more coordinated, clearly defined process is necessary. The consultation requirements can

be reviewed specially if the *United National Declaration on the Rights of Indigenous Peoples* (UNDRIP) gets incorporated into Canadian law.

The consultation process with Indigenous Peoples, flows from the honour of the Crown and is aimed at achieving reconciliation. Proponents' role in reconciliation however, is through the early and continuous engagement of Indigenous Peoples and their governments, as well as through providing business opportunities, economic relationships and employment opportunities. Neither proponents nor the EA process alone is sufficient to address all matters related to reconciliation.

CEA is supportive of improvements to the EA process that provide fair and constitutionally guaranteed consultation with Indigenous people. Specific recommendations for improvement are:

- 1. Define the roles and responsibilities of the parties, regulatory agency, proponent, and affected Indigenous People, with respect to the consultation process.**
- 2. Include consideration of how Indigenous Rights should be assessed and the degree of Indigenous participation in the process.**
- 3. Include a mandate for RAs to conduct and assess the adequacy of consultation, with appropriate remedial powers.**
- 4. Include an express delegation to proponents to conduct procedural aspects of consultation, coupled with direction on the scope of consultation required.**

8. Public Participation

Public participation in the EA process must be fair, transparent, and meaningful. The public must have access to relevant information in a timely manner and in a form and format that facilitates their participation.

However, the extent of public involvement should be commensurate with the stage of the process and the magnitude of the project's potential impacts. Therefore, it is proposed for public involvement to be low or not required for straightforward activities, and much more involved for major projects.

In addition, there is a need to provide better access to information, funding, and opportunities for the public to be heard and to facilitate a balanced public engagement.

Appendix A – Answers to Panel Questions

1. Environmental Assessment in Context

Q1 - To what extent do current federal environmental assessment processes enable development in Canada that considers the environment, social matters and the economy?

CEA members are committed to sustainable development whereby their activities are evaluated for impacts and benefits to the environment, social matters and the economy. While some projects currently consider the impacts of the project on more than just biophysical environment, the definition of the environment in section 5 should include biophysical, social, and economic components. Furthermore, for projects that are found to have likely significant adverse effects, the Governor in Council must decide whether they are justifiable. That decision presumably includes social and economic considerations, but the information underpinning that consideration is not an integral part of the CEAA (2012) assessment, nor is it transparent.

CEA believes that EAs contribute to sustainable development through the careful consideration of the project and its impacts. Projects are not the same as the projects that are initially proposed by proponents and in some cases, the process results in projects that are cancelled or refused.⁸

Q2 - What outcomes do you want federal environmental assessment processes to achieve in the future?

EA was designed as a planning tool to provide an opportunity early in the process of environmental review to understand the main features of a project, plan, policy, or program and to identify possible positive and negative impacts, ultimately determining whether the project should proceed. Over time, EA has become a mechanism where all the concerns and issues in any way related to a project are brought into the process, creating a complex situation from which a satisfactory, implementable decision becomes very difficult, if not impossible. Issues broader than the scope of a project are introduced and there is no clear way under that circumstance to adequately address them. Without addressing broader public policy issues through the effective use of Strategic Environmental Assessment (SEA) and/or Regional Environmental Assessment (REA), project-specific EAs are burdened by broader public policy considerations.

⁸ Fifteen percent of projects that have entered the BC environmental assessment process have been withdrawn, terminated, or refused. BC submission in 2011 to the Parliamentary Committee reviewing CEAA. Available at: https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiNr-tttt3QAhXsyVQKHeXiBY4QFggmMAI&url=http%3A%2F%2Fwww.eao.gov.bc.ca%2Fpdf%2FBC_Submission_5Yr_Review_Nov_28_2011.pdf&usg=AFQjCNH-bDa09u70Yl3GezWidDMOpF5Myg&bvm=bv.139782543,d.cGc

Q3 - How can federal environmental assessments support investor certainty, community and environmental wellbeing, the use of best available technology, certainty with respect to the protection of Aboriginal and treaty rights and timely decision making?

Investor certainty requires regulatory process certainty and timely decisions. The timelines that are currently part of CEAA 2012 are essential to making timely decisions; however, there should be further guidance on the “stopping the clock” mechanism and the information request process. Timelines and information requirements for each stage of the process should be clear from the start.

Q4 - How should federal environmental assessment processes address the Government of Canada's international and national environmental and social commitments, such as sustainable economic growth and addressing climate change?

A modern EA process should be expected to require projects to be consistent with developments in current federal and provincial policies relevant to the project. Those policies facilitate the integration of international and national commitments into Canada’s regulatory framework. Projects proponents get information requests on federal policies relevant to the project already. For example, project proponents are sometimes requested to inform how their projects will comply with Canada’s climate change plan, wetland policy, or biodiversity targets.

2. Planning Environmental Assessment

Q1 - Under what circumstances should federal environmental assessment be required?

CEA supports the current thresholds for generation and transmission projects found in the Regulations Designating Physical Activities (SOR/2012-147), which appropriately identifies projects of a scale and scope that warrant scrutiny from a federal perspective. The Minister, furthermore, retains discretion to designate other projects under s.14(2).

CEA cautions against returning to the CEAA (1992) process under which nearly all large projects were subject to both provincial and federal EAs. Doing this would lead to duplication and overlap without necessarily increasing environmental protection. By way of comparison, in the late 1990s, Australia, a comparable jurisdiction and competitor in key economic sectors, decided to limit the conduct of environmental assessment to projects with potential impacts of national environmental significance, to reduce inefficiencies.

Q2 - For project environmental assessments, do you think the current scope and factors considered are adequate?

There are still efficiencies to be found at the project level by more effectively scoping and focusing on factors with opportunities for improvement. For example, there is the potential to remove certain aspects from consideration for a specific project if there are pre-existing effective mitigation methods (e.g. watercourse crossings following DFO or provincially approved methods).

Q3 - Are there other things (effects, factors, etc.) that should be scoped into an environmental assessment?

See Q1 of **Environmental Assessment in Context**.

Q4 - Under which circumstances should environmental assessment be undertaken at the regional, strategic or project-level?

Academics who have analyzed Canada's approach to SEAs have identified several areas for improvement.⁹ A review commissioned by the Agency in 2009, for instance, found that SEAs have had little demonstrable impact to date in contributing to the federal government's environmental priorities and needs.¹⁰ CEA believes that effectively executed SEAs could allow for a more coherent approach to public policy. To enhance the use of SEAs, the following factors should be considered:

- The requirements for SEAs need to be set carefully to capture the most significant initiatives (policies and programs)
- SEA criteria and triggers should be defined in legislation
- The process and results of SEAs need to be transparent
- SEA decisions should carry consequences for non-compliance
- The process should require a degree of independence and impartiality

A similar approach would be helpful for REAs.

The main advantage of SEAs and REAs is the ability to deal with broader issues outside the scope of specific projects, including issues such as climate change, cumulative effects, biodiversity, and species at risk. The rigorous and open strategic or regional level assessments can provide a credible base for authoritative guidance and greater efficiencies at the project assessment level.¹¹

3. Conduct of Environmental Assessment

Q1 - Who should be responsible for conducting federal environmental assessments? Why?

CEA's experience with the CEAA (1992) was that a lack of clarity over roles, responsibilities, and accountabilities of federal authorities led to challenges in starting EAs in a timely manner, coordinating participation of various departments, and issuing post-EA in authorizations. The change in CEAA (2012) to limit the number of Responsible Authorities (RAs) to only three was positive. CEA recommends maintaining a limited number of RAs with the capacity and expertise to conduct EAs. Furthermore,

⁹ White, Lisa, and Bram F. Noble. "Strategic environmental assessment for sustainability: A review of a decade of academic research." *Environmental Impact Assessment Review* 42 (2013): 60-66.

¹⁰ *Evaluation of the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, prepared by Stratos consultants. 2009. Available at:

https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwim4ITOrQAhUC5IMKHTMrCMkQFggjMAE&url=http%3A%2F%2Fwww.ceaa.gc.ca%2FContent%2F5%2FD%2F1%2F5D1C8F32-9457-4C5C-9589-541753A446E7%2FSEA_Evaluation_Summary_Report-eng.pdf&usq=AFQjCNET3YINUgZZrBu46jgLMnZCdsYhNA&sig2=y3cUao0dLCO9qBKcljctQ

¹¹ Benevides, H., Kirchoff, D., Gibson, R. and Doelle, D., 2009. Law and policy options for strategic environmental assessment in Canada, Report commissioned by the Canadian Environmental Assessment Agency, September 2008, revised October 2009 [online]. Available from: <http://srrn.com/abstract = 1660403>

changes to facilitate such coordination, streamlining the administrative part of the process, allowing resources to be directed at identifying and mitigating impacts are also recommended.

Q2 - What should be the role(s) of the proponent, Indigenous Peoples, the public, environmental organizations, experts, the government and others in the planning of, collection, analysis and review of environmental assessment-related science including community and Indigenous traditional knowledge?

CEA supports the current assessment process as it enables proponents to plan, collect, and analyze data to reach significance determinations. This approach is also the most common practice worldwide, is the best way to increase the awareness of the proponents vis-à-vis the impacts of their projects, and tends to lead to better project optimization because the initial results of the environmental studies can feed back into the engineering of the project. Proponents rely on qualified environmental specialists to make the significance determinations as key part of the Environmental Impact Statement (EIS), at times reviewed by or conducted by independent third parties. These determinations, therefore, are made by experts relying upon scientific, local and Indigenous information. Indigenous Peoples, the public, environmental organizations, experts and government can test the proponent's evidence via information requests as well as provide their own evidence. Greater clarity on the information request process would assist all parties in understanding their roles and timelines in this process.

Q3 - How can environmental assessment processes be improved to ensure a timely, yet thorough process has been conducted?

Central to improving the existing process is addressing the lack of strategic environmental assessment (SEA) and regional environmental assessment (REA) to provide a venue for addressing broader public policy issues and cumulative effects; as well as providing authoritative guidance to project specific EA. This would address many of the broader public policy issues prior to conducting project-specific EA resulting in a more timely, robust process.

4. Decision and Follow-Up

Q1 - What types of information should inform environmental assessment decisions?

CEA members already incorporate information from Indigenous Traditional Knowledge (ITK), local communities, and existing scientific sources in their EA process. There should be more focus on identifying when there is additional existing information and where new data is required. The panel

should recommend broader consideration and use of Indigenous Traditional Knowledge and other data sources in the EA process.

Q2 - What would a fair, transparent and trustworthy decision-making process look like?

CEA's key recommended principles for the federal EA process are found in the chart in section 2 of the brief.

Q4 - Are enforceable conditions the right tool to ensure that the Government of Canada is meeting its environmental assessment objectives and, if so, who should have a role in compliance and enforcement?

There are sufficient means of enforcement within CEAA (2012), rather the Agency needs to get more experience with this. Life-cycle regulators, such as NEB and CNSC have a wider range of powers to assure compliance as well as more experience.

For provincially regulated activities, any federal assessment must consider that future regulatory decisions taken by a province will be based on information that is not available at the time of the assessment. For example, decisions by a province on how a site should be reclaimed will be made years after the federal assessment. CEAA (2012) decision statements thus have the impact of imposing conditions not only on the proponent, but also on the provincial regulator by handcuffing future decisions.

Responsible Authorities should be authorized to change conditions associated with project design or project mitigation measures when changes are requested by the proponent if there are no additional adverse environmental impacts or changes to the environmental outcomes of the project.

Q5 - Given that environmental assessment decisions are made in the planning phase of proposed actions, how should these decisions manage scientific uncertainty?

According to recent analyses, there is room for improvement.¹² CEA recommends that the Agency provide better guidance through precaution and adaptive management, including follow-up and monitoring programs. These programs should target areas with high degrees of uncertainty in effects of

¹² [Analysis of uncertainty consideration in environmental assessment: an empirical study of Canadian EA practice](#) Juliette Lees, Jochen A.G. Jaeger, Jill A.E. Gunn, and Bram F. Noble [Journal of Environmental Planning and Management](#) Vol. 59 , Iss. 11, 2016. Horvath, C.L. 2013. Confidence, Uncertainty, and Risk in Environmental Assessment. Paper presented at the International Association for Impact Assessment annual conference, Calgary, Alberta, May 2013.

a specific interaction rather than all areas of potential impacts. There is a continued need for compliance monitoring, separate from monitoring for the purposes of confirming effectiveness.

5. Coordination

Q1 - To what extent can the Government of Canada coordinate with other jurisdictions (e.g. provincial and/or Indigenous governments) while maintaining process integrity in the conduct of federal environmental assessments?

CEA has consistently advocated for a “one project, one review” principle so that there is one coordinated, non-duplicative process that still allows each jurisdiction to make their own decisions.

Inadequate coordination is a burden on the public, Indigenous Peoples, and project proponents, and undermines the achievement of environmental protection. Multiple consultations on the same subject are confusing and burdensome. They also undermine the credibility of the EA process, as it can appear that the project design decisions considered in the assessment are being reconsidered in subsequent approval processes.

The level of complexity means that it is highly unlikely that there is a permanent, single answer to the question of coordination. The practical approach is most likely to be one of flexibility, enabling mechanisms and incentives that allow and encourage better coordination and effective and timely processes. This panel has a chance to make further progress on this important issue by enhancing coordination, substitution, and equivalency provisions, as well as ensuring there is adequate capacity, resources, and skills to manage the interplay between federal and provincial processes and associated federal permitting legislation such as the Fisheries Act and the Species at Risk Act. It is also recommended that the federal and provincial governments consider the renewal of bilateral cooperation agreements regarding EA.

Q2 - To what extent is the current approach to substitution and equivalency effective?

It is still early to determine whether the current approach is potentially effective as only one province (British Columbia) has pursued substitution for some of the projects subject to CEAA 2012 in the province and no provinces have attempted to use equivalency.

Q3 - Do you think duplication between the federal environmental assessment process and the environmental assessment process of other jurisdictions exists? If yes, what are ways in which duplication could most effectively be reduced while maintaining process integrity?

It is premature to determine the extent of duplication post 2012 changes; however, it is recommended that the federal and provincial governments consider renewing bilateral cooperation agreements on EA.

6. Public Involvement

Q1 - What information do you need during an environmental assessment to allow you to effectively participate? What capacity support should be provided and at what stage in the process would that support enable meaningful engagement?

CEA supports enhanced transparency and public engagement, especially through changes to the CEAA or the establishment of a more comprehensive registry.

7. Overarching Indigenous Considerations

Q1 - How can federal environmental assessment processes better reflect and incorporate the multiple ways in which Indigenous Peoples may interact with federal environmental assessment, including as potentially affected rights holders, proponents of development, self-governing regulators, and partners?

There are a few areas for improvement for consultation with Indigenous Peoples:

- Define roles and responsibilities of the parties, that of the regulatory agency, the proponent, and the affected Indigenous People with respect to the consultation process.
- The lens through which impacts of Indigenous rights should be assessed and the degree of Indigenous participation in the process should include consideration of the principles of the *United Declaration on the Rights of Indigenous Peoples*.
- CEAA should include a mandate for RAs to conduct and assess the adequacy of consultation, with appropriate remedial powers.
- CEAA should include a delegation to proponents to conduct procedural aspects of consultation, coupled with direction as to the scope of consultation required.

Q2 - How is the need to address potential impacts to potential and established Aboriginal and treaty rights best incorporated into the federal environmental assessment process?

CEAA 2012 includes section 5 that requires an assessment of potential project impacts that result in environmental changes that may have an impact to Aboriginal peoples' health and socio-economic conditions, physical and cultural heritage, the current use of lands and resources for traditional purposes, or any structure, site or artifact that is of historical, archaeological, paleontological or architectural significance.

CEA believes that this direct statement on the need to examine the impacts on Indigenous peoples lives and environment is a good approach. However, additional guidance on the methodologies used to assess the impact may be needed.

Q3 - What role should Indigenous traditional knowledge play in federal environmental assessments and what are some international best practices?

CEA members have extensive experience incorporating ITK into assessments and EIS. However, each situation is different and requires a different approach to best reflect the knowledge and the goals of the knowledge holders.

Q4 - How can the practices and procedures associated with federal environmental assessments, as well as the process itself, support the Government of Canada's goal of renewing the nation-to-nation relationship with Indigenous Peoples and moving towards reconciliation?

Project-specific environmental assessment can contribute to the Crown's duty to consult and accommodate, or to the government's reconciliation goal. However, the duty to consult and accommodate rests with the Crown, whether provincial or federal. CEA supports exploring new processes that enhance Indigenous participation in decision making.

Appendix B – CEA Members

Corporate Utility Members

1. Algonquin Power and Utility Corp.
2. AltaLink
3. ATCO Electric
4. ATCO Power
5. BC Hydro and Power Authority
6. Brookfield Renewable
7. Capital Power
8. City of Medicine Hat Electric Utility
9. Columbia Power Corporation
10. Emera Inc.
11. ENMAX Corporation
12. EnWin Utilities Ltd.
13. EPCOR Utilities Inc.
14. FortisAlberta Inc.
15. FortisBC Inc.
16. Horizon Utilities Corporation
17. Hydro One Brampton Networks Inc.
18. Hydro One Inc.
19. Hydro Ottawa
20. Hydro Quebec
21. Kingston Utilities
22. Manitoba Hydro
23. Maritime Electric Company, Limited
24. Nalcor Energy
25. New Brunswick Power Corporation
26. Newfoundland Power Inc.
27. Northwest Territories Power Corporation

28. Nova Scotia Power Inc.
29. Oakville Enterprises Corporation
30. Ontario Power Generation
31. PowerStream Inc.
32. Saint John Energy
33. Saskatoon Light & Power
34. SaskPower
35. Toronto Hydro Corporation
36. TransAlta Corporation
37. TransCanada
38. Yukon Energy Corporation

Corporate Partner Members

1. ABB Inc.
2. Accenture
3. Ackland Grainger Inc.
4. Alberta Electric System Operator
5. Allteck Line Contractors Inc.
6. Alstom Grid Canada ULC
7. Altus Group Limited
8. Amec Foster Wheeler
9. Andritz Hydro Canada Inc.
10. Armtec LP
11. Awz Ventures Inc.
12. Babcock & Wilcox PGG Canada
13. Bennett Jones LLP
14. Black & Veatch Canada Company

15. Burns & McDonnell
16. Cam Tran Co. Ltd.
17. CEATI International Inc.
18. CLEAResult
19. Cogent Power Inc.
20. Davies Consulting LLC
21. Deloitte
22. Digital Boundary Group
23. Elster Solutions
24. EnerNOC
25. EY
26. Esri Canada
27. G&W Canada
28. GE Canada
29. Golder Associates Ltd.
30. Hatch Ltd.
31. Hubbell Power Systems Inc.
32. IBM Canada Ltd.
33. iFactor
34. Independent Electricity System Operator (IESO)
35. Itron, Inc.
36. KPMG LLP
37. Landis+Gyr
38. Lawson Lundell LLP
39. MNP LLP
40. Navigant
41. Nexans Canada Inc.
42. OMICRON electronics Canada Corp.
43. Optima Communications International Inc

44. Oracle Corporation
45. Partner Technologies Incorporated
46. Plastiq
47. PowerAdvocate
48. PowerPlan, Inc.
49. Renewable Energy Systems Canada Inc.
50. SAP
51. SAS Institute (Canada) Inc.
52. S&C Electric Canada Ltd.
53. Schneider Electric Canada Inc.
54. Sensus Metering Systems Inc.
55. Shell Energy North America
56. Shermco Industries Canada Inc.
57. Siemens Canada.
58. SNC-Lavalin Inc.
59. Southwire Canada
60. STARK International
61. Star Telecom / NuVoxx Communications
62. Stella-Jones Inc.
63. Stratejm Ltd.
64. Tantalus Systems, Inc.
65. TELUS
66. Thomas & Betts Limited

Associate Members

1. Bermuda Electric Light Company Limited
2. Caribbean Electric Utility Services Corporation (CARILEC)
3. Caribbean Utilities Company, Ltd.

4. City of Lethbridge
5. City of New Westminster
6. City of Penticton
7. City of Red Deer Electric Light and Power
8. City of Swift Current Light & Power
9. CSA Group
10. EQUUS REA Ltd.
11. Hammond Power Solutions
12. Orillia Power Corporation
13. St. Thomas Energy Inc.
14. Stantec Consulting