CANADIAN ELECTRICITY ASSOCIATION

SUBMISSION TO THE SENATE

STANDING COMMITTEE ON ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES (ENEV)
INTRODUCTION AND CONTEXT

The Canadian Electricity Association (CEA) appreciates the opportunity to provide feedback once again on Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Founded in 1891, CEA represents a broad range of companies that generate, transmit, distribute, and market electricity to industrial, commercial, and residential customers across Canada. CEA member companies are committed to delivering reliable, affordable, and sustainable electricity to support the clean energy transition and advance Canada’s international environmental commitments.

With Bill C-69, including the proposed Impact Assessment Act (IAA), the federal government has expressed an intention to improve the environmental and regulatory system for a competitive resource sector and a strong economy, and to get good projects built. However, as currently drafted, Bill C-69 as currently drafted will instead add significant uncertainty, risk and costs that could discourage new investment in infrastructure and natural resource projects.

CEA believes that without reasonable and constructive amendments, the implementation of the IAA as written will hinder Canada’s economy and competitiveness, and prevent many essential infrastructure projects from being built. If CEA members do not have confidence and a clear line of sight from the beginning to the end of the regulatory process, including a general estimation of the time and money required in the process, they will be significantly less willing to invest the billions of dollars needed in infrastructure that will deliver important economic and environmental benefits to Canada.

Therefore, CEA is bringing forward a limited set of targeted but important amendments, that would better align the IAA with an ambition to advance both economic and environmental objectives.
The following concerns within Bill C-69 merit special consideration:

1. The Minister’s power to designate projects that are not on the Designated Project List must be based on the same criteria used to develop the list and only used in unique and exceptional circumstances.

2. The Bill must ensure that the legislated timelines for review be appropriately bounded and predictable.

3. The Bill must ensure that the scope of application for a designated project is clear and predictable.

4. The federal Impact Assessment Act must focus on major, large-scale projects of national significance to foster inter-jurisdictional collaboration and reduce duplication of provisions.

5. The Bill must contain specific and unambiguous guidance for implementing UNDRIP and other Indigenous related provisions, particularly related to infrastructure project reviews.

TOP AMENDMENTS TO THE IMPACT ASSESSMENT ACT

I. Minister’s Power to Designate Projects

From the outset, proponents must be able to assess a project’s likelihood of being reviewed. Thus, the ability for a Minister to designate a project for review that is not on the Designated Project List regulation must be based on predetermined, publicly available criteria, and only be used in unique or exceptional circumstances. We also recommend that the rationale for each decision be published to improve transparency. Furthermore, the existing Project List must be maintained and publicly released before the Senate Committee finalizes the amendments so industry, provincial governments and the public can understand the full implications of the legislation before it becomes law.

It is imperative that the Designated Project List clearly specifies the projects that proponents would expect to undergo a thorough impact assessment process. However, the inclusion of the vague and unspecific term “direct or incidental effects” in subsection 9(1), as well as other sections, significantly broadens the Minister’s ability to unpredictably refer unlisted projects for review. To
ameliorate this concern and further curtail the Minister’s discretionary allowances, we recommend the following:

In section 9(1), “adverse direct or incidental effects” should be removed and replaced with the following qualifying subsections consistent with the Consultation Paper on the Project List:

(a) there is potential for such effects to be significant;

(b) project type effects within federal jurisdiction are complex and may require a complex set of mitigation measures; or

(c) the project type is novel and the severity of effects within federal jurisdiction, or mitigations are unknown.

Further, to improve the clarity and predictability of the proposed Minister’s discretion on the Designated Project list, we recommend an additional section 9(1.1) which states:

Section 9(1.1) The Minister may only designate a physical activity under subsection (1) if there are unique or exceptional circumstances that warrant designation of the physical activity.

This language will provide basic predictability for the exercise of the Minister’s power under subsection 9(1) and a clear expression that the use of the provision is intended to be the exception, not the rule.

II. Predictability of Timelines

Achieving Canada’s clean energy aspirations will require a competitive business environment and a clearly defined regulatory framework, especially around timelines. Unfortunately, as drafted, Bill C-69 does not adequately address the necessary predictability, clarity and feasibility of scope to maintain investor confidence and build good projects. In fact, Bill C-69 introduces up to twenty-six times on our count whereby the Minister or Governor in Council (GIC) can suspend or delay timelines. Of these, seventeen of the potential pauses lie within the Impact Assessment Act portion of the Bill which is significantly up from roughly nine possible pause points in the previous CEAA 2012 Act. Most concerning is the fact that a variety of the stoppage instances allow the Minister or GIC to suspend the proposed timelines indefinitely, without a direct mention that they need to disclose the reasoning for the ongoing pause. This is extremely worrisome as project timing is
critical to our members, and it can make the difference between a project that gets built and one that gets abandoned.

Going forward, ‘stop the clock’ provisions, as well as the criteria for extension or suspension decisions on behalf of the Minister or GIC, must be clearly defined and publicly available, so that proponents can assess risks before projects go for review. Further, we support a firm 730-day limit for review processes to provide certainty and reduce regulatory risk for proponents and investors participating in the process through the following clause:

62.1 Notwithstanding subsections 18(3), 18(4), 28(5), 28(6), 28(7), 65(5), and 66(6) the decision pursuant to paragraph 60(1)(a) or section 62 must be made within 730 days of the notice of commencement being posted pursuant to subsection 18(2)

Further, while it is reasonable that throughout different parts of the regulatory process the Minister, and then the Governor in Council have some flexibility to adjust process timelines to accommodate exceptional requirements, there is no apparent justification as to why there would be an extension of the time limit for a decision to be issued beyond 30 days for a Ministerial decision (per 65(3)) or 90 days for a Governor in Council decision (per 65(4)). Even assuming that there may be exceptional factors, one extension of up to 90 days by the Minister should be more than sufficient and the Governor in Council should not be allowed to postpone further issuance of the decision.

Therefore, CEA suggests that Section 65(6) which allows for further extension be removed.

Lastly, CEA members are pleased with the inclusion of the Planning Phase concept in the Act as member utilities have long participated in advanced consultation with stakeholders. However, given that this process will now be directed via the Act and have extended application to all Canadians, CEA recommends adding provisions to ensure that the early planning process does not undermine the notion of clear timelines. To ensure this provision remains beneficial to those most directly affected and not be used for dilatory purposes by any one party, CEA suggests the following new section in 18(2.1) that states:

• The Agency may proceed to issue a notice under subsection 18 (1) notwithstanding:
(a) a failure by a person or persons to provide comments within the period specified under section 11 or a request from such person or persons to extend the specified period; or

(b) a failure by a jurisdiction or an Indigenous group to respond to the Agency’s offer to consult under section 12, or a request from such a party for certain consultation to be completed under section 12 prior to the issuance of a notice under subsection 18(1).

III. Scope Understanding

Predictability and line of sight throughout the entire assessment process is essential for proponents who invest millions of dollars in to project development. Therefore, it should be expected that proponents receive at an early stage in the process the scope of information and requirements for which the impact assessment will be measured. This would include, setting out at the outset of application the following:

- The scope of the project that will be subject to the impact assessment;
- The factors, among the list included in section 22, that will be taken into account for the project, and their scope;
- The process that the Agency considers appropriate to engage meaningfully with the public and with Indigenous groups for the project.

To do so, CEA suggests the following edits; amend subsection 18(1)(a) as follows:

Notice of commencement

18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with

(a) a notice of the commencement of the impact assessment of the project that sets out:

i. the information or studies that the Agency considers necessary for it to conduct the impact assessment;
ii. **the factors under subsection 22(1) that the Agency has determined will be taken into account in the impact assessment of the designated project;**

iii. **subject to the Minister’s discretion in paragraph 22(2)(b), the scope of the factors to be taken into account in the impact assessment pursuant to paragraph 22(2)(a);**

iv. **the scope of the designated project as described in section 2 that the Agency has determined will be subject to the impact assessment; and**

v. **in addition to the information provided pursuant to paragraph 18(1)(b), the processes that the Agency considers appropriate to engage meaningfully with the public and, in particular, the Indigenous groups that may be affected by the carrying out of the designated project.**

IV. **Jurisdictional Overlap**

To achieve the stated intentions of Bill C-69, it is critical that the Project List focuses on major, large-scale projects of national significance that may have material adverse effects in areas of federal jurisdiction and for which the conduct of an Impact Assessment is likely to add meaningful value. CEA has submitted extensive comments on our Project List concerns in our response to the Consultation Paper on Approach to Revising the Project List, however we assert that certain changes to the legislation itself are needed.

CEA wants to ensure that the right tool or process is used for a project or activity. CEA believes that, in general, existing territorial and provincial roles and permitting processes are already well designed and any additional federal Project List considerations should be reserved only for substantial projects that are of national significance.

To ensure that federal resources are properly allocated, the purposes of the Act in section 6(1) might be clarified with the addition of the following sub-clause:

**6(1)(o) to ensure that projects with the greatest potential to cause effects that are within the legislative authority of Parliament are assessed.**

In this way, projects with limited effects will continue to be regulated and assessed by lifecycle regulators and provincial bodies. This will ensure the appropriate context is provided to revisions of the Regulations Designating Physical Activities.

Further, projects on the “Project List” should not require an impact assessment if there is a regional or strategic assessment in place that addresses impacts from such projects or if the effects under federal jurisdiction are otherwise appropriately regulated (eg. Carbon dioxide emissions from gas
fired power plants). Where there is scope for exclusion under defined criteria, there should be an explicit reference in the regulations. We recommend the following language:

Amend subsection 16(2) as follows:

16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.

Factors
(2) In making its decision, the Agency must take into account the following factors:

(6) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency;
(9) exclusion criteria set out in any applicable regulations; and
(h) any other factor that the Agency considers relevant

V. Guidance for implementing UNDRIP and other Indigenous related provisions

Historically, electricity companies have been a leader on local Indigenous engagement, and CEA members are committed to engaging with Indigenous Peoples of Canada to continue to nurture meaningful long-term relationships and enhance mutually beneficial economic and business opportunities. However, despite our members’ commitments and track record on Indigenous engagement, the legal implications of the adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) in Canada are vague and unclear.

The Canadian courts have been clear that the duty to consult does not provide Indigenous groups with a ‘veto’ over final Crown decisions, and the Prime Minister has publicly agreed with this assessment. However, despite the ruling and confirmation, ‘consent’ in the preamble of the Act in reference to the Government of Canada’s commitment to implementation of UNDRIP remains undefined. This lack of clarity may subject positive decision statements on designated projects to legal challenges.
CEA recognizes that while Indigenous groups rightly have a key interest in certain federal decisions, these interests should not override the societal needs of the Canadian public at large. To ensure this understanding is universal, a stipulation should be added following the preamble which clearly addresses that the rights and interests of both the public and Indigenous groups are subject to Ministerial or GIC assessment and the overall interests of Canada’s entire population and economy be considered primarily.

*CEA’s suggests the following in the preamble of the Act after “Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples”:*

*Whereas a commitment to an open and transparent impact assessment process with meaningful public participation and respect for the rights of Indigenous peoples does not override another person or group or amount to a veto over a designated project.*

Another Indigenous related provision in Bill C-69 which requires careful amendments is to section 7(1). This section, as currently drafted, prohibits a proponent from doing any act or thing in connection with a designated project that may cause any change to the health, social or economic conditions of the Indigenous peoples of Canada. This captures a wide range of activities that presumably are not meant to be prohibited by the section (e.g., executing capacity funding agreements with Indigenous groups) and creates considerable uncertainty for proponents in terms of project planning.

To ameliorate this concern, CEA recommends that section (d) be included as a roman numeral under paragraph (c) so that this clause will be appropriately bound and tied to a ‘change in the environment’. This can be done through the following amendments:

*Amend section 7 as follows:*

7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:

... (c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on

(i) physical and cultural heritage,
(ii) the current use of lands and resources for traditional purposes, or
(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; or
(iv) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada;

Delete subsection 7(1)(d).

SUMMARY
Bill C-69 contains several helpful provisions; however, there are still improvements that are necessary to meet the stated intent of the IAA: supporting a competitive economy and resource sector, and getting good projects built. In our opinion, the following improvements should be considered:

• Remove the term ‘direct or incidental effects’ in subsection 9(1) which widens the power of the Minister to bring forward projects not on the Designated Projects list.

• Add direct reference in Section 9(1.1) which stipulates that the Minister may only designate a physical activity not on the Project List in exceptional circumstances.

• To ensure timeline predictability for proponents, apply a time limit of 730 days for the full assessment process including pauses on behalf of the Minister or GIC.

• Add provisions to ensure that the early planning process does not undermine the notion of clear timelines and is not used for dilatory purposes by any one party.

• Amend subsection 18(1)(a) to ensure the scope of the project that will be subject to the impact assessment is clear to the proponent. This should include the factors that will be taken into account and the process that the Agency considers appropriate to meaningful engage with the public and Indigenous groups.

• Add a new purpose clause in Section 6 making clear that the intent is that the Act applies to projects that are likely to have significant impacts within federal jurisdiction.
• Amend Section 16 (2) to stipulate that projects on the “Project List” should not require an impact assessment if the effects under federal jurisdiction are otherwise appropriately regulated.

• Add a stipulation following the preamble incorporating UNDRIP which clearly addresses that the rights and interests of both the public and Indigenous groups are subject to Ministerial or GIC assessment and the overall interests of Canada’s entire population and economy be considered primarily.

• Amend section 7(1)(d) to ensure that positive activities such as a capacity funding agreements with Indigenous partners are not unintentionally prohibited.

CONCLUSION
CEA would like to thank the members of the Senate Standing Committee on Energy, the Environment and Natural Resources for the opportunity to provide our comments and specific legal amendments on Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts. We believe that the amendments proposed will help further improve and strengthen Bill C-69, strengthen our economy and ensure that good projects move forward in an inclusive and timely manner.

All Canadians have a stake in the responsible development of our natural resources, growing our economy while also protecting the environment and respecting the rights of Indigenous peoples. Restoring the confidence of the public and investors in review processes will result in new, good jobs, new sources of revenue to support public services and speed our transition to a lower carbon economy.

We trust you will find our feedback useful. CEA and our members stand ready to work with you to ensure a well-functioning environmental and regulatory regime that will serve Canada well today and tomorrow.
### IMPACT ASSESSMENT ACT (the “Act”)

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Wording</th>
<th>Rationale</th>
<th>Suggested Amendment</th>
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<tbody>
<tr>
<td><strong>Minister’s Power to Designate</strong></td>
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</table>
| 9(1)   | **Minister’s power to designate** | The list of designated projects to be included in regulations made under paragraph 109(b) will be developed using clear and objective criteria in order to identify projects that may require impact assessments under the Act. As stated in the federal government’s consultation paper on the “Project List”, the guiding principle is “the potential for adverse effects in an area of federal jurisdiction related to the environment.” In order to provide parties with clarity and predictability in terms of the operation of the Act, physical activities not identified for inclusion in the Project List should only be designated pursuant to subsection 9(1) in exceptional and unique circumstances. | **Amend subsection 9 (1) as follows:**  
**9 (1):** Subject to subsection (1.1), the Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion either the carrying out of that physical activity may cause significant adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation and one of the following applies:  
(a) there is potential for effects within federal jurisdiction to be high;  
(b) project type effects within federal jurisdiction are complex and may require a complex set of mitigation measures; or  
(c) the project type is novel and the severity of effects within federal jurisdiction, or mitigations are unknown.  
Add the following after subsection 9(1):  
**9 (1.1):** The Minister may only designate a physical activity under subsection (1) if there are unique or exceptional... |
| None | No current provision | The Act contains several different opportunities for timeline extensions in the impact assessment process (an unlimited number of extensions in some cases), which creates uncertainty for project proponents in project planning and development. A maximum legislated timeframe on the overall impact assessment process is required to provide greater certainty and discipline of process. | Add the following after section 62: 62.1 Notwithstanding subsections 18(3), 18(4), 28(5), 28(6), 28(7), 65(5), and 66(6) the decision pursuant to paragraph 60(1)(a) or section 62 must be made within 730 days of the notice of commencement being posted pursuant to subsection 18(2).  
Remove Section 65 (6) |
|---|---|---|---|
| None | No current provision | The new impact assessment process will now be directed via the Act and have extended application to all Canadians, therefore, CEA recommends adding provisions to ensure that the early planning process does not undermine the notion of clear timelines. To ensure this provision remains beneficial to those most directly affected and not be used for dilatory purposes by any one party, CEA suggests the following new section in 18(2.1) which places appropriate bounds around the early planning phase timelines. | Add the following section 18(2.1):  
The Agency may proceed to issue a notice under subsection 18 (1) notwithstanding:  
(a) a failure by a person or persons to provide comments within the period specified under section 11 or a request from such person or persons to extend the specified period; or  
(b) a failure by a jurisdiction or an Indigenous group to respond to the Agency’s offer to consult under section 12, or a request from such a party for certain consultation to be completed under section 12 prior to the issuance of a notice under subsection 18(1). |
### Notice of commencement

**18 (1)** If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with:

1. **(a)** a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and

2. The notice of commencement issued under subsection 18(1) effectively kicks off the impact assessment of a designated project under the Act. It is an opportunity to set out at an early stage the scope of information and process requirements against which the impact assessment will be measured. This is similar in nature to a terms of reference commonly used in provincial environmental assessment processes.

In order to provide increased certainty to participants in an impact assessment, the content of a notice of commencement should be expanded to include the Agency’s determination of the factors under subsection 22(1) that will be considered, the scope of those factors, the scope of the designated project to be assessed and the process for public participation and consultation of Indigenous groups that may be affected by the carrying out of the designated project.

The purpose of subsection 18(1.1) is effectively achieved and clarified through the proposed amendment to subsection 18(1) and proposed amendment to subsection 22(1), below. Accordingly, subsection 18(1.1) should be deleted.

### Amend subsection 18(1)(a) as follows:

**Notice of commencement**

1. **18 (1)** If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with:

   1. **(a)** a notice of the commencement of the impact assessment of the project that sets out:

      1. **(i)** the information or studies that the Agency considers necessary for it to conduct the impact assessment;
      2. **(ii)** the factors under subsection 22(1) that the Agency has determined will be taken into account in the impact assessment of the designated project;
      3. **(iii)** subject to the Minister’s discretion in paragraph 22(2)(b), the scope of the factors to be taken into account in the impact assessment pursuant to paragraph 22(2)(a);
      4. **(iv)** the scope of the designated project as described in section 2 that the Agency has.
determined will be subject to the impact assessment; and
(v) in addition to the information provided pursuant to paragraph 18(1)(b), the processes that the Agency considers appropriate to engage meaningfully with the public and, in particular, the Indigenous groups that may be affected by the carrying out of the designated project.

... Delete subsection 18(1.1).

<table>
<thead>
<tr>
<th>Reduce Jurisdictional Overlap</th>
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<tr>
<td>6(1) Purposes</td>
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</table>
| 6 (1) The purposes of this Act are | Revise subsection 6(1) by adding paragraph 6(1)(o):
6 (1) The purposes of this Act are ...
(o) to improve investor confidence, strengthen the Canadian economy, encourage prosperity and improve the competitiveness of the Canadian energy and resource sectors; |
<table>
<thead>
<tr>
<th>16</th>
<th>Decision</th>
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<tr>
<td><strong>16 (1)</strong> After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.</td>
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</table>

**Factors**  
(2) In making its decision, the Agency must take into account the following factors:  
...  
(f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; and  
(g) any other factor that the Agency considers relevant

| Projects on the “Project List” should not require an impact assessment if there is a regional or strategic assessment in place that addresses impacts from such projects or if the effects under federal jurisdiction are otherwise appropriately regulated (e.g., GHG emissions for gas-fired power plants). Where there is scope for such exclusion under defined criteria, there should be an explicit reference in the regulations. Further, when making a determination as to whether an impact assessment is required, the Agency should take into account any such exclusion criteria. |

| Amend subsection 16(2) as follows:  
**16 (1)** After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.  
**Factors**  
(2) In making its decision, the Agency must take into account the following factors:  
...  
(f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; and  
(g) any other factor that the Agency considers relevant. |

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**Guidance for Implementing UNDRIP and other Indigenous Provisions**

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<tr>
<th>Preamble</th>
<th>Currently no provision.</th>
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The legal implications of the adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) in Canada have been subject to wide-ranging debate. In particular, some argue that UNDRIP, once implemented, will provide Indigenous groups with a *de facto* veto over Crown decisions in their territories.

| Add the following in the preamble to the Act after “Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples”:  
Whereas a commitment to an open and transparent impact assessment process with meaningful public participation and respect for the rights of Indigenous peoples does not amount to a veto over a |
To date, Canadian courts have been clear that the duty to consult does not provide Indigenous groups with a “veto” over final Crown decisions, including in relation to infrastructure and resource developments. Prime Minister Trudeau has publicly agreed with this assessment, noting that, “Ottawa doesn’t recognize the unconditional right of First Nations to unilaterally block projects.” While Indigenous groups may have a “special public interest” in Crown decisions, those interests must be balanced against other competing societal needs.

The reference in the preamble of the Act to the Government of Canada’s commitment to implementation of UNDRIP, will open any positive decision statement on a designated project to legal challenge where the consent of an Indigenous group has not been obtained. This results in uncertainty which could be addressed with a statement in the preamble that notes that the rights and interests of both the public and Indigenous groups do not result in or provide a veto over a designated project.

| 7(1)(d) | 7 (1) Subject to subsection (3), the proponent of a designated project must | As currently drafted, paragraph 7(1)(d) would prohibit pre-approval activities | Amend section 7 as follows: designated project for any person or group. |
not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:

... (c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on

(i) physical and cultural heritage,
(ii) the current use of lands and resources for traditional purposes, or
(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;

(d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; or that could have a positive impact on health, social or economic conditions of Indigenous groups. For instance, paragraph 7(1)(d) could be interpreted to prohibit a proponent from signing capacity building or impact benefit agreements with Indigenous groups regarding a designated project, as such agreements could change the economic conditions for Indigenous peoples of Canada.

In order to address this uncertainty, paragraph (d) should be included as roman numeral (iv) in paragraph (c), as the effects listed in paragraph (c) are tied to a “change to the environment”.

<table>
<thead>
<tr>
<th>Privative Clause</th>
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<tr>
<td>None</td>
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Timelines that may be established and applied in law will be of no benefit if there is open-ended opportunity for parties to challenge the process and the judgement and decisions of authorities in court. Absent some privative clause, this bill creates a wide new range of opportunities to challenge the completeness and robustness of the regulatory process.

Add the following in the Act:

**Section [X]** Except as provided for in this Act, every decision of the Agency, a review panel, the Minister or the Governor in Council made under this Act is final and conclusive.

**Section [Y (1)]** An appeal from a decision of the Agency, a review panel, the Minister...
The government will have taken the time to establish an expert Agency as well as a roster of persons who may be appointed to a review panel that will have specific expertise in relation to the projects under review. In light of this specific expertise, decisions made under the Act should be afforded a level of deference in order to protect an expert process and provide a level of certainty to parties that participate in the process. Challenges to the courts should be narrowly focused on matters of law and jurisdiction and not create an opportunity to re-litigate matters of fact and the judgement that will have been applied reasonably by the Agency, a review panel, the Minister, or the Governor in Council.

The proposed provision is analogous to the one proposed in section 70 of the Canadian Energy Regulator Act, and other examples are found in governing statutes of federal agencies and tribunals, such as the National Energy Board Act.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>Y (1)</td>
<td>The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Proponents that have received a positive decision statement must have the confidence that they may proceed and build their project with reasonable certainty about the conditions that they must meet and the corresponding costs.</td>
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<td>Y (2)</td>
<td>Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.</td>
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<td>Y (3)</td>
<td>An appeal must be brought within 60 days after the day on which leave to appeal is granted.</td>
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<td>Y (4)</td>
<td>For greater certainty, a report submitted by the Agency under subsections 28(2) or 59(1) or by a review panel under 51(1)(e) is not a decision or order for the purposes of this section and neither is any part of the report.</td>
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<td>Y (5)</td>
<td>The filing of a notice of appeal under section Y (1) does not suspend the operation of a decision made under this Act.</td>
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<tr>
<td>68 (1)</td>
<td>Revise subsection 68 (2) as follows:</td>
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<td>68 (2)</td>
<td>The Minister may add, remove or amend a condition only if he or she is of the opinion that doing so:</td>
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Minister is not permitted to amend the decision statement to change the decision included in it.

**Limitation — condition**

(2) The Minister may add, remove or amend a condition only if he or she is of the opinion that doing so will not increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse.

Subsection 68(1) introduces a power for the Minister to amend a decision statement, on the condition specified in 68(2) that this not make effects of the project more adverse. However, there is no economic constraint on the use of this power, introducing an unquantifiable contingent liability for the proponent outside its control. Section 68(2) could appropriately be re-cast to require that the use of the power by the Minister not unreasonably affect the technical and economic feasibility, or timeline of implementation, of the project.

(a) will not increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse, and

(b) will not unreasonably affect the technical or economic feasibility of the designated project or the timeline of implementation of the designated project.
Bill C-69 – Impact Assessment Act
Ministerial Timeline Extension or Suspension Periods

The proposed timelines within Bill C-69, which includes the proposed Impact Assessment Act (IAA), Canadian Energy Regulator Act (CERA) and Canadian Navigable Waters Act (CNWA) are greatly concerning to the Canadian Electricity Association (CEA) and its members. Ultimately, the electricity sector is uniquely positioned to contribute to a cleaner and greener low carbon future, however, for us to do so our business environment must be competitive and the regulatory framework must be timely. To achieve intended outcomes while sustaining an incentive to locate new investment in Canada, Bill C-69 must establish greater predictability, clarity and feasibility of the scope of application and timelines for review. Unfortunately, as Bill C-69 is currently written, there are a multitude of instances whereby the Minister or Governor in Council (GIC) can pause or extend the proposed timelines, with some instances allowing the timeline to be suspended indefinitely. To CEA members, project timing is of critical value and it can make the difference between a project getting built and a project getting abandoned. We accept that there must be some flexibility, however the objectives of instilling investor confidence in the assessment process are greatly diminished through the multitude of opportunities for stoppages. Moving forward, CEA urges the government to provide transparency and certainty, and ensure that the total time for extensions or suspensions must be proportionately bounded and supported by published reasons on behalf of the Minister.

To support CEA’s concern, we have compiled a comprehensive list of the instances whereby there is a mention of Ministerial or GIC extensions within the IAA below accompanied by our suggested revisions to each individual section.

Designation of Physical Activity
The designation of physical activity section refers to the time period whereby the Minister, on their own request, may designate a physical activity that is not prescribed by the Designated Project List regulations. The clause below showcases that the Minister has the ability to suspend all work related to the Project while they consider its designation.

**Relevant Sections**

**Suspending time limit**
9 (5) The Minister may suspend the time limit for responding to the request until any activity that is prescribed by regulations made under paragraph 112(2) is completed. If the Minister suspends the time limit, her or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

**CEA’s Suggested Revision:** There should be rigorous and publicly accessible criteria as to what kinds of projects the Minister may designate. Further, the extension of time related to the decision must be appropriately bounded.
Information Gathering

The information gathering section refers to the period of time after which there is a notice of commencement of the impact assessment where the Agency sets out the information or studies that it considers necessary to conduct the impact assessment. The clauses outlined below showcase that the time limit to provide the proponent a notice of commencement to begin the formal assessment process can be lengthened well beyond the suggested maximum of 90 days. The GIC or Minister have the ability to extend or suspend the notice period an unlimited amount of times, causing significant delays.

Relevant Sections

**Extension of time limit by Minister**
18 (3) The Minister may extend the time limit within which the Agency must provide the notice by any period up to a maximum of 90 days.

**CEA’s Suggested Revision:** The criteria for extension should be rigorous.

**Extension of time limit by Governor in Council**
18 (4) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (3) any number of times.

**CEA’s Suggested Revision:** This allows for abuse of the process and should be appropriately bounded (for example, the GIC can extend up to three times)

**Suspending time limit**
18 (6) The Minister may suspend the time limit within which the Agency must provide the notice of the commencement of the impact assessment until any activity that is prescribed by regulations made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

**CEA’s Suggested Revision:** This clause should be amended to indicate that the notice would be posted “X” days after action is complete. Barring that, the clause should be removed.

General Rules on Assessments of Designated Projects

This section refers to the time between when an impact assessment of a designated project is conducted and the final reported outcome of the assessment decision. The clauses below indicate that the timing of the assessment is subject to the coordination and cooperation with other relevant jurisdictions which could mean arbitrary timelines. Further, similar to the last section, the Governor in Council, with recommendation from the Minister has the ability to extend or suspend the time limits an unlimited amount of times.

Relevant Sections

**Time limit established by Minister- designated project**
28 (5) Before the commencement of the impact assessment, the Minister may, by order, establish
a) a longer time limit than the time limit referred to in subsection (2) to allow the Agency to cooperate with a jurisdiction referred to in section 21 with respect to the impact assessment of the designated project or to take into account circumstances that are specific to that project;
b) a shorter time limit than the time limit referred to in subsection (2), for any reason that the Minister considers appropriate. The order must include the Minister’s reasons for making the order.

CEA’s Suggested Revision: The criteria for extension should be rigorous.

Extension of time limit by Minister
28 (6) The Minister may extend the time limit referred to in subsection (2) or any time limit established under subsection (5) by any period — up to a maximum of 90 days — that is necessary to permit the Agency to cooperate with a jurisdiction referred to in section 21 or to take into account circumstances that are specific to the designated project.

CEA’s Suggested Revision: Any extensions should be bounded by rigorous criteria.

Extension of time limit by Governor in Council
28 (7) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (6) any number of times.

CEA’s Suggested Revision: This allows for abuse of the process and should be appropriately bounded (for example, the GIC can extend up to three times)

Suspending time limit
28 (9) The Minister may suspend the time limit within which the Agency must submit the report until any activity that is prescribed by a regulation made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

CEA’s Suggested Revision: This clause should be amended to indicate that the report would be posted “X” days after action is complete. Barring that, the clause should be removed.

General rules on Assessment of Designated Project Referred to Review Panels
This section refers to the normal process whereby an impact assessment of a designated project is referred to a review panel by the Minister. The clauses below indicate that the timing of the assessment is subject to the coordination and cooperation with other relevant jurisdictions as well as to incorporate public concerns which could mean significant delays and arbitrary timelines. Further, similar to the last section, the Governor in Council, with recommendation from the Minister has the ability to extend or suspend the time limits an unlimited amount of times.

Relevant Sections
Suspending time limit
36 (3) The Minister may suspend the time limit within which he or she may refer an impact assessment to a review panel until any activity that is prescribed by regulations made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

CEA’s Suggested Revision: This clause should be amended to indicate that the referral to a review panel would be done “X” days after action is complete.

Time limit established by Minister — designated project
37 (2) Before the Minister refers the impact assessment to a review panel, he or she may, by order, establish
   a) a longer time limit than the time limit referred to in subsection (1) to allow the review panel to cooperate with a jurisdiction referred to in section 21 with respect to the impact assessment of the designated project or to take into account circumstances that are specific to that project;
   b) a shorter time limit than the time limit referred to in subsection (1), for any reason that the Minister considers appropriate. The order must include the Minister’s reasons for making the order.

CEA’s Suggested Revision: The criteria for extension should be rigorous.

Extension of time limit by Minister
37 (3) The Minister may extend the time limit referred to in subsection (1) or any time limit established by the Minister under subsection (2) by any period — up to a maximum of 90 days — that is necessary to permit the review panel to cooperate with a jurisdiction referred to in section 21 or to take into account circumstances that are specific to the designated project.

CEA’s Suggested Revision: Any extensions should be bounded by rigorous criteria.

Suspending time limit
37 (6) The Minister may suspend the time limit within which the review panel must submit the report until any activity that is prescribed by regulations made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

CEA’s Suggested Revision: Any suspensions should be bounded by rigorous criteria.

Extension of time limit by Governor in Council
37 (4) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (3) any number of times.

CEA’s Suggested Revision: This allows for abuse of the process and should be appropriately bounded (for example, the GIC can extend up to three times)
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**Suspending time limit**

37 (6) The Minister may suspend the time limit within which the review panel must submit the report until any activity that is prescribed by regulations made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

**CEA’s Suggested Revision:** This clause should be amended to indicate that the report would be submitted “X” days after action is complete.

**Minister’s power**

37.1 (2) The Minister may, at any time before the Agency posts a copy of the notice of commencement of the impact assessment on the Internet site, by order, establish a time limit that is longer than the time limit referred to in subsection (1) but is no more than 600 days. The order must include the Minister’s reasons for making it.

**CEA’s Suggested Revision:** Any extensions should be bounded by rigorous criteria.

**Decision Statement**

This refers to the period of time whereby the Minister must issue a decision statement to the proponent of a designated project. However, as seen in the clauses below the Minister may extend the time limit for delivering a decision for any reason that he or she considers necessary. Further, as is the case for the other sections, the GIC may extend the time limit of a decision, any number of times.

**Relevant Sections**

**Extension of time limit by Minister**

65 (5) The Minister may extend the time limit referred to in subsection (3) or (4) by any period — up to a maximum of 90 days — for any reason that the Minister considers necessary.

**CEA’s Suggested Revision:** This allows for abuse of the process and should be available only under strict criteria.

**Extension of time limit by Governor in Council**

65 (6) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (5) any number of times.

**CEA’s Suggested Revision:** This allows for abuse of the process and should be appropriately bounded (for example, the GIC can extend up to three times)

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**By the Numbers**

- Total areas for extension/suspension of time limit within by Minister or GIC within Bill C-69’s *Impact Assessment Act* Section: **17**
- Total areas for extension/suspension of time limit by Minister or GIC within Bill C-69’s *Canadian Energy Regulator Act*: **7**
- Total areas for extension/suspension of time limit by Minister of GIC within Bill C-69’s *Canadian Water Navigation Act*: **2**
- Total areas for extension/suspension within Bill C-69: **26**. *Many of these pauses are for an unlimited amount of time.*
- Total areas for extension/suspension of time limits within the previous *CEAA 2012*: **9**