

# PUBLIC HEARING PROCEDURES

Milton Logistics Hub Project

**DRAFT FOR PUBLIC COMMENT**

January 17, 2018

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## Public Hearing Overview

### 1. Introduction

*This document is a draft version of the proposed procedures for the public hearing to be conducted by the Review Panel established for the joint process for the review of the Milton Logistics Hub Project (the Review Panel) proposed by the Canadian National Railway Company (CN). The purpose of the public hearing and the mandate of the Review Panel are described in this document and in the Terms of Reference for the Review Panel.*

*During the public comment period on these procedures the Review Panel invites Indigenous groups, government bodies, the public, the proponent (CN) and other participants to provide input on the draft hearing procedures.*

*To assist participants in reviewing this document, the Review Panel has included some text (in blue font) that is intended as guidance, and will not appear in the final hearing procedures.*

This document sets out the procedures for the public hearing to be conducted by the Review Panel established for the joint process for the review of the Milton Logistics Hub Project (the Review Panel). The Milton Logistics Hub Project is proposed by the Canadian National Railway Company (CN). The Review Panel has been mandated by the federal Minister of the Environment and Climate Change (the Minister) to conduct an environmental assessment of the potential environmental effects of the Milton Logistics Hub Project (the Project). The Review Panel has also been mandated by the Chair of the Canadian Transportation Agency to collect evidence and information to be used by the Canadian Transportation Agency in considering whether to grant the approval under Section 98 of the *Canada Transportation Act* that CN requires to construct aspects of the Project.

The steps and deadlines outlined in this document are important to ensure the public hearing is fair, transparent, and efficient.

Anyone is welcome to attend the hearing sessions and no registration is required to observe the proceedings. However, an individual or group wishing to make a presentation or ask questions must be registered as an “interested party” as defined in the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). An interested party is a person or group directly affected by the carrying out of the designated project or has relevant information or expertise. More information can be found in Section 6 of these procedures.

## 2. What is the purpose of the public hearing?

- 2.1. The public hearing will provide the Review Panel with the opportunity to gather and test the information it requires to prepare its report in a manner consistent with CEAA 2012. It will also allow the Review Panel to gather the evidence and information required for the Canadian Transportation Agency to make a determination, if required, regarding CN's application under Section 98 of the *Canada Transportation Act*.
- 2.2. The public hearing will allow CN to explain its proposed Project and respond to questions.
- 2.3. The public hearing will provide participants with the opportunity to share relevant information with the Review Panel.
- 2.4. The public hearing will also encourage discussion of issues identified during the review.

## The Review Panel

### 3. What is the Review Panel's mandate?

- 3.1. The Review Panel has a joint mandate under two Acts. The Review Panel was established to review the Project in a manner consistent with CEAA 2012 and also to gather the evidence and information required for a decision, if required, regarding CN's application under Section 98 of the *Canada Transportation Act*. A decision on the Project under the *Canada Transportation Act* would only be required if the Minister's decision statement under Section 54 of CEAA 2012 allows the Project to proceed.
- 3.2. The Review Panel must conduct an environmental assessment of the Project in a manner consistent with the requirements of CEAA 2012. In doing so, the Review Panel must hold public hearings in a manner that offers interested parties an opportunity to participate. The Review Panel will then prepare its environmental assessment report that sets out the rationale, conclusions and recommendations of the Review Panel, including any mitigation measures and follow-up programs, and a summary of comments received, and will then submit the report to the Minister. The Review Panel must also ensure that the information it uses when conducting the environmental assessment is made available to the public. Should the Minister's decision statement allow the Project to proceed, the information and evidence gathered by the Review Panel throughout the process will be used by the Canadian Transportation Agency in making its decision under the *Canada Transportation Act*.
- 3.3. Under its Terms of Reference, the Review Panel may receive and take into account information provided by participants with respect to whether any significant adverse environmental effects may be justified in the circumstances. The Review Panel will also receive and take into account

information from participants, and responses by CN, about the location of the railway line, while considering requirements for railway operations and services, as well as the interests of the localities that will be affected by the line.

- 3.4. The Review Panel must conduct its work in a manner that ensures transparency and fairness for all parties involved. As such, the Review Panel will rely only on information on its official record, which is the public registry.
- 3.5. For additional details regarding the joint process for the review of the Project, or the mandate of the Review Panel, please consult the Agreement to Establish a Joint Process for the Milton Logistics Hub Project and the Review Panel Terms of Reference (CEAR #391).

## 4. What information will the Review Panel accept for the hearing?

- 4.1. The Review Panel will consider all submissions it receives relevant to its mandate, as described in Section 3, and in accordance with its own procedures, as described in Sections 4 to 16.
- 4.2. The Review Panel will consider the environmental effects of the Project, including those that might result from malfunctions or accidents, and any cumulative environmental effects that are likely to result from the Project in combination with other past or future activities that are certain or are reasonably foreseeable. The Review Panel will consider the significance of those effects.
- 4.3. The Review Panel will consider mitigation measures that are technically and economically feasible and whether they would mitigate any potentially significant adverse environmental effects of the Project. The Review Panel will also consider the requirements for any follow-up program, as defined in CEAA 2012.
- 4.4. The Review Panel will consider the purpose of the Project, alternative means of carrying out the Project that are technically and economically feasible, and any changes that the environment could cause to the Project. The Review Panel will also consider the requirements for railway operations and services as well as the interests of the localities that will be affected by the line.
- 4.5. The Review Panel will accept and take into account information regarding whether any significant adverse environmental effects may be justified in the circumstances. This information may include predicted environmental, economic and social benefits that may arise as a result of the Project, including those for Indigenous groups.
- 4.6. The Review Panel will accept information from Indigenous groups related to the nature and scope of potential or established Aboriginal or Treaty rights in the area of the Project, as well as information on the potential adverse environmental effects that the Project may have on potential or established Aboriginal or Treaty rights. The Review Panel will also accept information regarding any measures proposed to avoid or mitigate the potential adverse effects of the Project on potential or established Aboriginal or Treaty rights. In accordance with its Terms of Reference,

the Review Panel will not make any conclusions as to whether the Project would be an infringement of any potential or established Aboriginal or Treaty rights. As stated in the federal government's consultation plans sent to Indigenous groups early in the environmental assessment (CEAR #440, 441, 442, 443), the federal government intends to rely on the Review Panel process, to the extent possible, to gather information related to the potential impacts of the Project on potential or established Aboriginal or Treaty rights that it may use to fulfill its legal obligations to consult with Aboriginal groups.

## Participation in the hearing

### 5. Who can participate?

- 5.1. The public hearing will be open to the public. Anyone is welcome to attend and no registration is required to observe the proceedings. Anyone may submit a written submission (see Section 7). In addition, anyone who is an interested party (see Section 6) may register to make an oral presentation and ask questions during the public hearing.

### 6. Who is an interested party?

- 6.1. An interested party is a person or group who is directly affected by the carrying out of the designated project or has relevant information or expertise as defined in CEAA 2012. The Review Panel considers that anyone who has previously submitted information or a comment during the review process will automatically be considered an interested party and does not need to reapply.
- 6.2. New participants who wish to make an oral presentation or ask questions at the public hearing should register to be an interested party by the deadline (see Section 15.3). To become an interested party, participants are required to provide the Review Panel with the information requested in the registration form (Appendix A<sup>1</sup>).

### 7. How can I present my information to the Review Panel?

- 7.1. Information may be presented to the Review Panel by means of an oral presentation only, an oral presentation accompanied by a written submission, or a written submission only. All interested parties wishing to make an oral presentation must register with the Review Panel by the deadline stated in Section 15. The Review Panel will give careful consideration to all submissions, whether written or oral.
- 7.2. Only interested parties may make an oral presentation at the hearing (See Section 6) and must register by the deadline (see Section 15.3). Participants wishing to make an oral presentation who

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<sup>1</sup> Appendix A will be provided when the Review Panel issues the final version of the Public Hearing Procedures.

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miss the registration deadline may register at the beginning of any general session and will be scheduled in, if time allows. However, this cannot be guaranteed.

- 7.3. Interested parties may present information to the Review Panel individually or as a group. Interested parties with similar views should consider making a joint presentation and identifying a spokesperson or spokespeople to receive questions for the group when registering. The Review Panel may require interested parties with similar views to present together in the interests of making efficient use of hearing time and resources.
- 7.4. Presentations made by interested parties at the general hearing sessions should be completed in 10 minutes. Technical presentations at the technical sessions should be completed within 30 minutes. In exceptional circumstances, and at its discretion, the Review Panel may allow presentations to extend past these limits. When registering, interested parties may request additional time from the Review Panel.
- 7.5. Interested parties may wish to prepare an electronic presentation or other visual aids to accompany their oral presentation. This information must be filed with the Review Panel by the appropriate deadlines (see Section 15.3). When submitting presentation materials, interested parties should inform the Review Panel Secretariat (Secretariat) of any specific audio-visual requirements. Preferred electronic file formats are Microsoft PowerPoint and Adobe Portable Document Format (PDF).
- 7.6. Appearance before the Review Panel during the public hearing is not required for participation in the process. Participants who choose not to make oral presentations during the public hearing may still participate in the review by filing a written submission. All submissions provided to the Review Panel after the issuance of the Hearing Notice will be considered hearing submissions. Participants should be aware that if they choose to present only a written submission, in certain circumstances (for instance in the cases where the submission contains new information or detailed technical information that may require clarification) they may be required to make themselves available to be questioned as part of the hearing. If so required, the participants should be prepared to respond to questions about their written submission in person and via video or audio conference or electronically.
- 7.7. Written submissions must be filed by the appropriate deadlines (see Section 15.3) in order for the Review Panel and participants to have sufficient time to properly consider this information as part of the hearing process. In exceptional circumstances, and at its discretion, the Review Panel may allow late submissions.
- 7.8. Participants are expected to follow the Review Panel's submission procedure (CEAR #523). The Review Panel, at its discretion, may refuse to accept submissions that significantly deviate from the recommended submission procedure.

## 8. Will questions be allowed?

- 8.1. The Review Panel may ask questions of CN and participants throughout the duration of the public hearing.
- 8.2. With the permission of the Review Panel, CN and interested parties may ask questions of anyone who makes an oral presentation at the public hearing. In some cases, questions may also be asked of participants who only provide a written submission (see Section 7.6).
- 8.3. The purpose of questioning should be to clarify or test information in order to help the Review Panel better understand the factors to be considered as described in its Terms of Reference.
- 8.4. Interested parties and CN must be courteous and respectful when asking questions. Questioning should not be confrontational in nature. The Review Panel Chair may refuse to permit further questioning from an individual who is being discourteous or disrespectful. The Review Panel encourages clarity and brevity in questions and responses.
- 8.5. Questions should be directed through the Review Panel Chair who may subsequently allow CN or an interested party to put questions directly to the presenter. Where CN or an interested party does not adhere to these procedures or to a direction of the Review Panel Chair, the Review Panel Chair may refuse to permit further questioning by that individual.
- 8.6. If a participant is unable to respond to a question when asked, the Review Panel Chair may ask the presenter for an undertaking to provide the answer to the question later. An undertaking is a commitment to submit a response to the Review Panel at a later time. Undertakings must be submitted to the Review Panel as directed by the Review Panel Chair and no later than the end of the general or technical hearing sessions, as defined in Section 15.3, to ensure CN and interested parties have the opportunity to respond in the closing remarks sessions.
- 8.7. The Review Panel Chair will determine the order in which CN or interested parties may question presenters. The Review Panel members may ask questions at any time.
- 8.8. The Review Panel may limit or exclude questions or comments that fall outside its mandate, or are repetitive, irrelevant, or immaterial. The Review Panel may also limit questions if it feels it already has sufficient information on the topic that is the subject of the questioning.
- 8.9. Questioning shall not be used as an opportunity for CN or interested parties to make a comment, argument or statement.

## 9. What if I require translation or interpretation?

- 9.1. All written submissions to the Review Panel and all oral presentations must use one of Canada's two official languages (English or French) unless they are accompanied by a translation of the



submission in at least one official language and a statement from the translator attesting to the accuracy of the translation.

- 9.2. The Review Panel will consider requests from participants for simultaneous translation in French or English. Participants may also request other interpretation services, which the Review Panel will consider on a case-by-case basis. Participants requiring interpretation services must advise the Secretariat at least 30 days before the start of the public hearing. The Secretariat will make every effort to accommodate requests for interpretation.

### **10. Are the media welcome at the hearing?**

- 10.1. Members of the media are welcome to attend the public hearing. Media interviews or reporting will not be allowed in the room while the public hearing is underway.
- 10.2. Filming, photography and audio recordings are prohibited in the room while the public hearing is underway. In certain circumstances, the Review Panel Chair may approve filming or photography that does not disrupt the proceedings. Requests for filming or photography should be forwarded to the Secretariat in advance of the hearing session.
- 10.3. Media inquiries regarding the Review Panel's activities should be directed to the Review Panel's spokesperson at the contact information provided at the end of this document.

## **Hearing events, steps, and deadlines**

### **11. Hearing details**

- 11.1. The Review Panel will announce the public hearing once it has determined that the Environmental Impact Statement and subsequent documentation contain sufficient information to support meaningful discussion of the issues.
- 11.2. At any time throughout the public hearing process, the Review Panel may modify these procedures at its discretion, and may also issue updates that provide further description of or modification to these procedures and the public hearing schedule.

### **12. When is the public hearing?**

- 12.1. *At this time, the Review Panel cannot predict when the public hearing will occur, however, the Review Panel will provide a minimum of 60-days notice in advance of the start of the public hearing. The Review Panel will consider the timing of traditional and seasonal activities in Indigenous and local communities when setting the time and location of the public hearing.*

12.2. *Participants are invited to provide the Review Panel with information on the timing of traditional and seasonal activities that it should consider when scheduling the public hearing.*

12.3. A detailed schedule will be released prior to the start of the public hearing. The Secretariat will try to accommodate requests for specific presentation times.

## 13. Where will the hearing be held?

13.1. The Review Panel intends to hold the majority of its public hearing in or near Milton, Ontario, depending on the availability of venues. The specific location(s) will be announced when the Notice of Hearing is issued.

13.2. *The Review Panel is seeking input from participants on suitable locations where the hearing should be held, including potentially affected Indigenous communities and local communities.*

## 14. What types of sessions will the Review Panel hold?

14.1. The Review Panel will hold two types of sessions during the hearing – general and technical (topic-specific). All sessions will be open to the public with transcripts prepared and made available on the public registry. CN is expected to participate in all public hearing sessions and to make presentations at the different types of sessions as appropriate to provide an overview of the relevant information about its Project.

### General Sessions

14.2. General hearing sessions will allow participants to provide their views and information directly to the Review Panel. The purpose of the general hearing sessions is to:

- facilitate participation by local residents in the hearing process by holding hearing sessions in local communities;
- allow CN to present the overall conclusions of its Environmental Impact Statement;
- allow interested parties and the Review Panel to ask questions of CN regarding information presented;
- allow CN to ask questions of and respond to comments made by participants; and,
- allow CN and interested parties to present their overall conclusions regarding the information provided in the Environmental Impact Statement.

14.3. When general hearing sessions are held in Indigenous communities, they are also intended to:

- facilitate participation by Indigenous people in the hearing process;
- allow CN to present an overview of aspects of the Project of particular interest to Indigenous communities;
- allow Indigenous people to share their ideas, interests, positions and concerns associated with the Project; and,

- allow CN, interested parties and the Review Panel to ask questions of clarification regarding the information, interests, positions and concerns raised by Indigenous people.

## Technical Sessions (Topic-specific)

- 14.4. Technical sessions will allow technical experts, including holders of Aboriginal traditional knowledge, to provide their views and analysis directly to the Review Panel and allow questioning from others with expertise or knowledge in the subject area.
- 14.5. To allow the review Panel, CN, and other interested parties sufficient time to review relevant documents, all submissions for the purpose of the technical sessions must be provided by the deadline established in Section 15.3.
- 14.6. With the exception of holders of Aboriginal traditional knowledge, who may choose to participate by way of oral presentation only, interested parties for the technical (topic-specific) hearing sessions must provide a written submission to support their oral presentation to the Review Panel.
- 14.7. *At this time, the Review Panel proposes to hold technical sessions for the following topics:*
- *Air Quality, Noise, Vibration, and Human Health;*
  - *Hydrology and Water Quality, and Fish & Fish Habitat;*
  - *Socio-economic conditions (including truck traffic concerns); and,*
  - *Wildlife (including migratory birds and species at risk).*

### *Participants may comment on whether additional technical sessions are required*

- 14.8. If an interested party's submission is based in whole or in part on the advice of an expert, it is the responsibility of that interested party to ensure the expert is available to answer questions by the Review Panel, CN and other interested parties at the hearing session where the submission is being presented to the Review Panel.
- 14.9. With the exception of holders of Aboriginal traditional knowledge, technical experts who will present expert information or specialized knowledge to the Review Panel must include a short (two-page maximum) written statement of their relevant qualifications and experience as part of their written submission. The Review Panel may ask experts about their qualifications during the hearing.

## Closing Remarks Session

- 14.10. After the completion of the general and technical (topic-specific) sessions, the Review Panel will hold a session for CN and interested parties to present closing remarks. The Review Panel will confirm the timing of this session after the completion of the other sessions. The Review Panel expects to adjourn for a few days before the start of the closing remarks session, as time permits.

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14.11. Participation in the Closing Remarks session is not mandatory. Closing remarks must be presented orally. They should summarize the views and previous statements of interested parties and should not contain new information. The Review Panel expects that only those parties that have made complex presentations on a variety of topics will need to make closing remarks.

14.12. Those interested parties who wish to present closing remarks should register with the Secretariat by the deadline (see Section 15.3).

14.13. The Review Panel will allocate five to ten minutes for interested parties to make closing remarks based on the breadth of the issues to be presented and the time available. CN will present its closing remarks last.

## 15. What are the key dates and deadlines for the hearing?

15.1. The Minister established a timeline of 430 days for the Review Panel to conduct its environmental assessment. This does not include the time needed by CN to respond to Information Requests. After the public hearing, the Review Panel must prepare and submit its report to the Minister within the established timeframe, subject to any modifications allowed under CEAA 2012.

15.2. *The Review Panel will estimate the number of days to complete the public hearing at the time it finalizes the hearing procedures. The Review Panel will base its estimate on the number of hearing days it believes are required to enable it to hear all of the necessary information and views from CN and interested parties.*

15.3. The deadlines below are critical to allow the Review Panel to complete the environmental assessment within the legislated time limit.

Hearing Event	Deadline
Issuance of Notice of Hearing	<i>Minimum 60 days before the start of the hearing</i>
Registration to make a presentation at hearing (including application for interested party status as needed)(oral presentation, questioning)	<i>40 days before the hearing</i>
Requests for interpretation	<i>30 days before hearing</i>
Technical Session – written submissions	<i>21 days before hearing</i>
Other written submissions	<i>Last day of general and technical sessions</i>
Presentation material	<i>3 days before the hearing</i>
Closing remarks registration	<i>Last day of general and technical sessions</i>
Closing remarks	<i>Close of hearing</i>
Close of the Registry and Review Panel record	<i>Close of hearing</i>

## 16. Hearing Decorum

16.1. The Review Panel Chair will maintain order and ensure efficiency in accordance with the procedures outlined in this document and the principles of procedural fairness. The Review Panel

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Chair may, at any time, ask an individual or group attending the public hearing to leave should their behavior be deemed inappropriate.

16.2. The Review Panel will not receive information off the record or engage in private conversations related to the Project, therefore the Review Panel members should not be approached during breaks or outside of the public hearing.

16.3. Filming, photography, audio recordings and the use of any devices (e.g. cell phone, camera, and tablet) that may be distracting to the proceedings should be prohibited in the room while the public hearing is underway.

### **17. Will transcripts of the public hearing be available?**

17.1. Transcripts of the public hearing will be prepared and made available on the public registry in a timely manner.

### **18. Who can I contact for help?**

18.1. The Review Panel Secretariat is prepared to provide procedural and logistical assistance to all participants preparing for the hearing. Please contact the secretariat by email at [MiltonHubPanel@ceaa.gc.ca](mailto:MiltonHubPanel@ceaa.gc.ca) or contact the Review Panel Manager, Joseph Ronzio, at 613-415-8497.

18.2. Media may contact Shelley Rolland-Poruks at [shelley.rolland-poruks@ceaa-acee.gc.ca](mailto:shelley.rolland-poruks@ceaa-acee.gc.ca) or 613-948-1357.

### What is CN's proposed Project?

CN has proposed to construct and operate a logistics hub located in Milton, Ontario, and designed to transfer 450,000 containers per year between trucks and railcars. The Project would include a railway yard and supporting infrastructure and facilities. The description of the Project for the purpose of the environmental assessment is the construction and operation of Project components and physical activities, including mitigation measures that are proposed to mitigate the predicted environmental effects of the Project.

### Where can I see information on the proposed Project?

Information, including the hearing procedures, detailed scheduling information, and all other relevant information, will be available on the public registry for the Project at [ceaa.gc.ca](http://ceaa.gc.ca), reference number [80100](#).

A detailed description of the Project is provided in CN's Environmental Impact Statement (CEAR #[57](#)), and in the responses to a number of supplementary questions from the Canadian Environmental Assessment Agency and the Review Panel. This information is available on the public registry for the environmental assessment. Key filings from CN, including its application for approval of aspects of the Project under Section 98 of the Canada Transportation Act may be found as document numbers [72](#), [81](#), [375](#), [395](#), [453](#), [561](#), [574](#), and [592](#).