

DRAFT TERMS OF REFERENCE FOR A CO-LED INDIGENOUS CLEAN ENERGY OPPORTUNITIES (ICEO) ENGAGEMENT

**PREPARED FOR DECISION BY THE MINISTER OF ENERGY, MINES AND LOW CARBON
INNOVATION AND THE EXECUTIVE MEMBERS OF THE FIRST NATIONS LEADERSHIP COUNCIL**

A. CONTEXT

The Ministry of Energy, Mines and Low Carbon Innovation (“EMLI”) is committed to advancing reconciliation with Indigenous Nations and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). The November 2019 passing of the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) provides a legislative requirement for the Province to align the laws of British Columbia with the UN Declaration, and support the affirmation of, and develop relationships with, Indigenous governing bodies. This renewed relationship with Indigenous governing bodies is based upon recognition of Indigenous rights and title using the UN Declaration as a framework for reconciliation.

Through the ICEO process, EMLI is seeking to collaborate with Indigenous leadership, Nations and organizations in a dialogue to position Indigenous Nations to fully participate in current and future opportunities in British Columbia’s clean energy sector to improve the economic, environmental, social and cultural outcomes for Indigenous peoples in British Columbia.

With BC Hydro’s long-term electricity surplus forecast and restored oversight of BC Hydro by the BC Utilities Commission (BCUC), BC Hydro will not need to construct or purchase incremental energy or capacity resources for approximately 8-10 years, at a minimum, see BC Hydro’s draft [Integrated Resource Plan](#) (IRP), which is BC Hydro’s 20-year plan to decisions on how to meet future customer needs for electricity. However, under [CleanBC](#), the Province has set a plan for reducing emissions based on energy efficiency, electrification and fuel switching to clean sources, including in remote communities, that is expected to give rise to a broader range of clean energy and clean technology economic opportunities that could benefit all Indigenous communities.

CleanBC is the Province’s strategy for fighting climate change and building a green economy in British Columbia. The British Columbia Utilities Commission (“BCUC”), through its 2019 Inquiry on the Regulation of Indigenous Utilities, has provided preliminary recommendations to inform a regulatory framework to align economic oversight of Indigenous-led utilities with the UN Declaration and utility regulation best practices.

A jointly designed and co-led Indigenous Clean Energy Opportunities (ICEO) engagement process presents the opportunity to explore what some of these economic opportunities might look like for Indigenous participation in order to benefit the broadest possible range of Indigenous communities and meet Indigenous Nations’ interests around clean energy, including around economic development, energy security, self-governance, and electricity affordability. EMLI would also like to collaborate with Indigenous Nations to define “clean energy” for the

purpose of these discussions, and meaningfully explore and develop policy, regulatory and program support to enable Indigenous participation in the new opportunities of the diverse clean energy sector.

An ICEO engagement is an opportunity to enhance the relationship between Indigenous peoples and the Province by inviting the parties to engage in open thinking and transparent dialogue with a view to:

- align Indigenous and Provincial government decision-making on the policy program options;
- improve the economic, environmental, social and cultural outcomes for Indigenous peoples in British Columbia;
- engage on shared objectives of affordable BC Hydro rates; and
- jointly develop effective climate action strategies for British Columbia.

On May 26, 2021, the Minister of EMLI met with First Nations Leadership Council (FNLC) Executive and the First Nations Energy and Mining Council (FNEMC), to propose co-designing and co-leading an ICEO engagement process, open to all Indigenous Nations and Indigenous organizations in BC. The joint approach on this initiative would occur within the framework of the overarching Relationship Protocol that the FNLC and EMLI have recently concluded (“the Relationship Protocol”) (see page 5).

Following that very positive meeting, the parties agreed to initiate discussion on a terms of reference, budget, and workplan for the ICEO, for review and approval by the Minister of EMLI and FNLC Executive. Subsequently, the commitment to establish the ICEO was also captured in the Province’s DRIPA Draft Action Plan, released for Indigenous feedback on June 11, 2021.

This Draft Terms of Reference has co-developed through collaboration between EMLI and FNEMC staff for the approval of the Minister of EMLI and FNLC Executive. On approval, EMLI and FNEMC will engage with rights holders as part of implementing the terms of reference, including on adding and prioritizing topics under the engagement.

B. PROGRESS TO DATE:

- 1. EMLI and the FNEMC have develop this proposed Terms of Reference** for a co-designed and co-led ICEO, including a draft governance structure, workplan, a preliminary set of topics for engagement, and proposed budget in time for the FNLC to seek endorsement from all Chiefs by Fall 2021;
- 2. Co-designed the initial stages of a process to engage Indigenous Nations and organizations.** As a first step, this process will focus on seeking views on the range of topics to be included within the ICEO, and the priorities of rightsholders; and

3. **Developed a preliminary, high-level budget for the first stage of the ICEO (i.e., to March 31, 2021).** Capacity funding is required to support the meaningful participation of rightsholders, the FNEMC, and other Indigenous organizations in the ICEO. Further refinements to the budget, including funding available for subsequent stages will be based upon final ICEO terms of reference, a jointly developed and evolving work plan.

C. GOVERNANCE, SCOPE AND LINKAGES

1. Governance

The ICEO would be carried out under the broad umbrella of the Relationship Protocol and would leverage some of the governance elements under that agreement and would be aligned with the *UN Declaration on the Rights of Indigenous Peoples*. An ICEO Primary Working Group (ICEO PWG) and ICEO Task Groups, separate and distinct from the Relationship Protocol PWG and Task Group, could be established to design and implement the ICEO under the direction of the Relationship Protocol's Leadership and Senior Management Groups.

The ICEO PWG would design and carry out engagement dialogue through the work of task groups or other structures that are:

- as broadly representative as possible; and
- include Indigenous Nations, representative groups, experts and technical advisors that have interest in energy-related matters.

The ICEO PWG and its task groups would provide a mechanism for Indigenous representatives and the Province to collaborate and explore opportunities that have been identified as part of the FNEMC Discussion Paper; Provincial Indigenous Engagement on CleanBC, BC Hydro's engagement in its Integrated Resource Plan, and/or the BCUC's Inquiry into the Regulation of Indigenous Utilities; and/or other means.

The ICEO PWG would:

- build a relationship based on trust and respect for each other's perspectives and rooted in recognition and respect for the Parties' authorities, responsibilities, and internal structures and processes,
- apply a "solution-oriented" approach to all work to implement this engagement process,
- set timelines, and
- work with due consideration for timelines and share all relevant information in a timely manner.

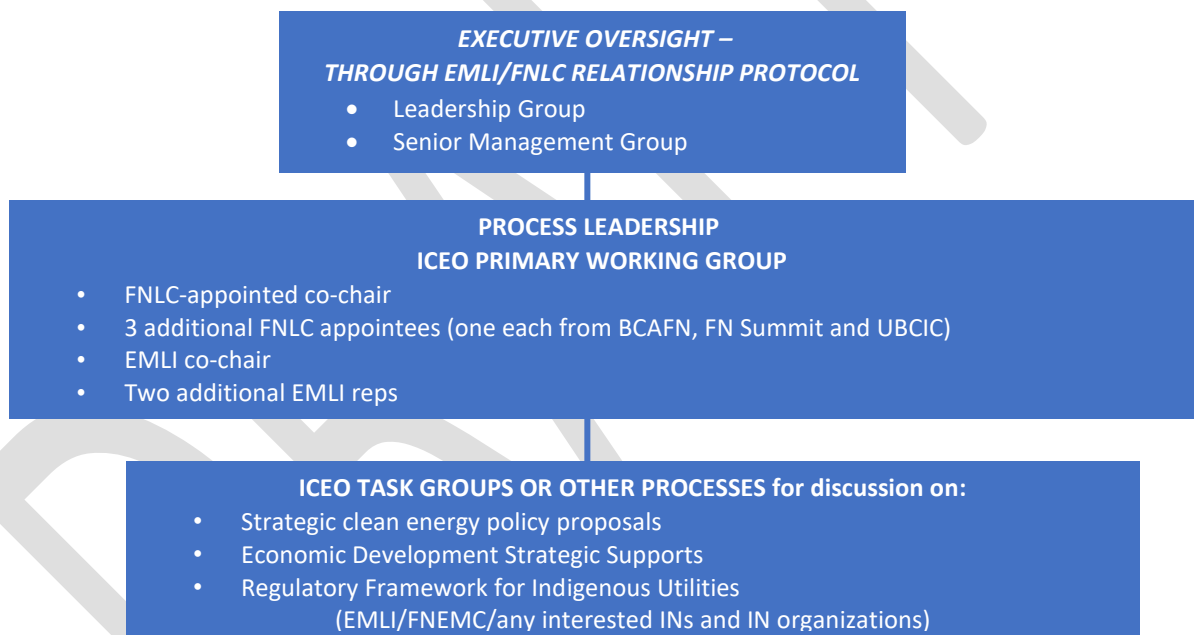
The proposed composition of the ICEO PWG would include:

Indigenous Representatives (Co-Chair): FNLC would appoint a co-chair, supported by one representative from each the three Indigenous leadership bodies that collectively form the FNLC, and the FNEMC. The FNLC would be asked to nominate or suggest additional Indigenous representatives having knowledge of the energy industry, to include both members and non-members of the FNLC, for the ICEO task groups.

EMLI Representatives: Three Electricity and Alternative Energy Division (EAED) staff representatives, including a Co-chair of the PWG.

Ex-Officio Representatives: For time to time, and with the agreement of all members of the ICEO PWC, representatives of other organizations (e.g., BC Hydro) may be invited to participate on the PWC on an ongoing or time-limited basis to provide advice on proposed engagement plans or other activities the PWC would undertake.

Proposed ICEO Governance Structure



2. ICEO and the Relationship Protocol

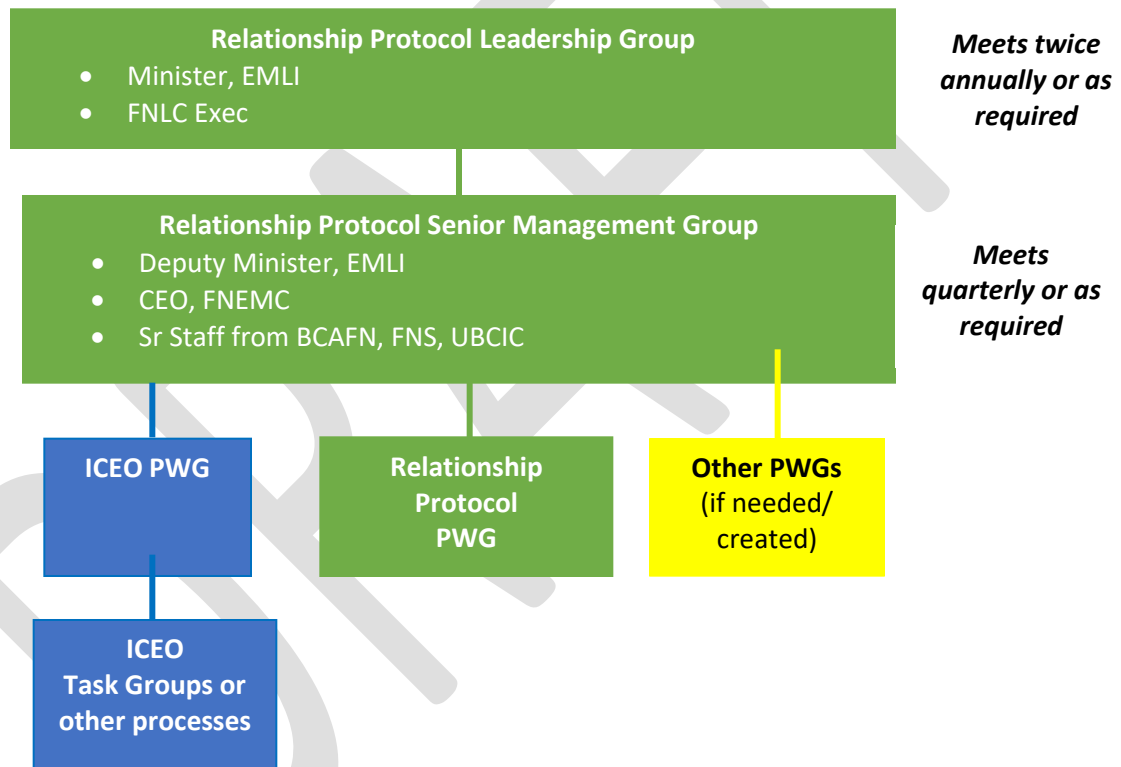
As noted above, the ICEO will be overseen by EMLI and FNLC leadership, and EMLI and FNEMC senior management, within the broader framework of the Relationship Protocol.

Consistent with the Relationship Protocol, the Leadership and Senior Management Groups will:

- provide approval of the Terms of Reference, workplan, proposals, and initiatives related to, and supportive of, the implementation of the ICEO, including any modifications and amendments that may arise from time to time

- receive reports from the ICEO PWG to ensure oversight of progress on the workplan and accountability for funding,
- receive recommendations and reports on current or new work to ensure direction on shared clean interests and priorities are confirmed by political leadership, and
- articulate key priorities and provide strategic direction for the joint work of the ICEO PWG and/or task groups or other discussion bodies that may be formed under the ICEO.

Wherever possible, discussion and decision making on ICEO-related items will happen within the scope of the meeting procedures and timing, communications and confidentiality, and other terms of the Relationship Protocol.



3. Preliminary topics for ICEO engagement

Further topics to be included within the ICEO engagement could include, but are not limited to, the following. Additional topics may be added following engagement with Indigenous Nations and organizations during the initial stage of the ICEO, or at any other time during the ICEO process. These topics represent areas for common exploration under the ICEO. Either or both parties would have to seek mandates on any, some or all of the topics before commitments or agreements can be made.

- a) Resource revenue sharing on BC Hydro projects,

- b) Compensation from the impacts of past infringements,
- c) Ownership in:
 - Transmission lines
 - Independent power projects
 - Other utilities such as the local distribution system,
- d) Participation in governance, employment, and contracting with BC Hydro,
- e) Transition from diesel to renewable power generation in remote First Nations communities in BC,
- f) Strategic policy ideas flowing from the Comprehensive Review of BC Hydro, CleanBC or any other Provincial clean energy-related initiatives. These strategic policy ideas include, but not limited to:
 - Implementation of a 100% clean standard (requiring that all electricity supplied to BC Hydro customers comes from clean/renewable sources, including how “clean energy” is defined)
 - Regulatory frameworks to incent the production of clean and renewable gases to displace fossil fuel natural gas consumption within BC
- g) Co-development of strategic analyses to inform economic development planning by Indigenous Nations and organizations and recommendations to Cabinet to support Indigenous participation in clean energy and/or clean technology opportunities such as ownership in transmission lines, biofuels, renewable natural gas, green hydrogen, EV charging stations, building retrofits, and/or cleantech innovation,
- h) Jointly developing recommendations for the Provincial Cabinet on a proposed regulatory framework for Indigenous utilities, including:
 - examining what may be defined as an “Indigenous utility;”
 - the obligations and authorities of regulatory body(ies) empowered to oversee the activities and finances of Indigenous utilities; and
 - the regulatory requirements these utilities must meet to protect the interests of their customers while enabling their owners to earn a reasonable return on their investment.

This work would consider the recommendations made by the BCUC following their Inquiry on the Regulation of Indigenous Utilities, and the Indigenous interests presented under that process,
- i) Legislative, regulatory and policies amendments to achieve the above, and
- j) Other issues as determined by the parties.

D. LINKAGES TO OTHER INDIGENOUS ENGAGEMENTS

While the ICEO is intended to focus on key priorities for both Indigenous people and the Province, efforts will be made to leverage other Indigenous engagement processes, where appropriate, to maximize capacity resources and avoid process duplication.

EMLI proposes that as part of the ICEO engagement, the PWG and/or EMLI would provide information and pathfinding services to ICEO participants seeking a deeper or different engagement on clean energy-related issues and priorities than the co-designed ICEO can provide. The Province's and BC Hydro's separate but parallel collaboration processes with Indigenous Nations, include, but are not limited to:

- [BC Hydro's Clean Power 2040 engagement on the development of its 20-year IRP](#); and the BCUC's proceeding to review/approve that plan.
- BC Hydro's planned and ongoing engagements with individual rights holders, including on increasing opportunities for Indigenous Nations to participate in BC Hydro's planning decisions at a regional level, including co-designing approaches to minimize impacts on the land base.
- EMLI (Community Clean Energy Branch) and BC Hydro's ongoing Remote Community Energy Strategy engagement with 11 Indigenous communities/rights holders on strategies to reduce of diesel consumption in remote communities by 75% by 2030; and/or
- Any other engagements carried out by EMLI's Electricity and Alternative Energy Division, on development and implementation of CleanBC legislation, policies, programs, or initiatives related to mitigation of climate change, including incenting the uptake of zero emission vehicles, incenting or requiring energy efficiency measures for buildings, and reducing emissions related to consumption of natural gas.

For greater certainty, the ICEO is not a substitute for direct engagement with First Nations as the title holders, and/or Indigenous organizations who seek to meet bilaterally with the Province.

E. The ICEO Terms of Reference is a Living Document

The ICEO is intended as a continuing process and conversation between Indigenous people and EMLI to support continued growth for Indigenous Nations within the clean energy sector. Therefore, with the approval of the Relationship Protocol Leadership Group, this Terms of Reference can be amended or modified at any time.