

Hélène Lauzon: So we'll start now with the questions we have. Any one of you can answer our questions. So the first question would be to explain the NEB's decision-making process on a project and how it sets conditions on a yes or a no recommendation? And for instance, if you can explain the process the NEB would follow if the Governor in Council were to ask the NEB to reconsider its recommendation or its conditions?

Peter Watson: Alright, thanks for your question. I'll answer the question in the context of a pipeline application. And as we mention in our earlier remarks, there is two different areas. For a pipeline that is less than 40 kilometres in length, the NEB makes the final decision on, on that project, and the NEB may hold a public hearing for, for that process. It doesn't have to, but it may hold a public hearing for smaller, for the smaller segments and, and smaller projects.

For, for pipelines that are larger than 40 kilometres in length, the NEB does not make the final decision. The Governor in Council makes the final decision, and the Governor in Council makes that decision on the basis of a report and recommendation that is prepared by the National Energy Board after a public hearing. And the public hearing of course, is intended to ensure that the Board understands all of the issues and the interests relative to the project and the potential issues that arise and then the NEB is able to put their minds to whether this particular application should be considered in the public interest as we described in our earlier materials.

And again, our recommendation and our report giving our reasons for our recommendations, and it's, these reports are very thorough summaries of all of the evidence that came before us, the information that was considered and the reasons for the NEB's recommendation on a particular project, goes to the Governor in Council and the Governor in Council will make a final decision.

Of interest, the NEB is required to establish a set of conditions for the Governor in Council to consider regardless of whether our recommendation is that the project is in the public interest or whether we feel it may not be in the public interest, and that is to ensure that the Governor in Council has the information it needs to make its final decision on whether the project should go or not go. That's one of the reasons why the NEB during its public hearing processes for a large project will always have a specific portion of the hearing devoted to assessing the nature of the conditions that may be, may need to be applied on the project because we need to file those conditions with the Governor in Council.

And so there's a segment of the process that ensures that the type of conditions that the NEB might propose are openly available to all the participants so everybody has an opportunity, the proponent and all of the intervenors that are participating in the hearing have an opportunity to comment on those proposed conditions because we're required by legislation, regardless of our recommendation, to provide a list of conditions in case the Governor in Council decides that the project should proceed.

Now, the Governor in Council can make three decisions. They can endorse the report and recommendation of the National Energy Board and direct that we issue a certificate for the project to proceed. They can deny the approval and cause us to not issue a certificate for the project. And the third option is they can ask us to reconsider the matter or any specific subset of the issues that they see.

So those are the three things that the Governor in Council can do. If they were to ask us to reconsider the matter, the Governor in Council could indicate the nature of the matter that they want reconsidered and provide some indication of the factors that we should be looking at. In that case, this hasn't happened, but if that were to happen and the Governor in Council were to ask us to reconsider the project or a particular aspect of the project, what I would do then as the Chair of the National Energy Board is review that request and would potentially assign a panel of the Board or a quorum of the Board to hear the reconsideration request.

Once that panel or quorum of the Board has been established for the purposes of the reconsideration, those group of members would determine the process that would be followed for the reconsideration matter, and of course, as part of their considerations on the, the entirety of the process, it would depend on the nature of the reconsideration request, how small it is, or is it, you know, quite large in scope.

So I can't really speculate on what the process would be. It would depend on the nature of the, the reconsideration request that came from government. Of course, the process would follow the principles of natural justice and all affected, directly affected parties or people who have relevant information for the scope of that reconsideration would be required to be heard in the proceeding.

Hélène Lauzon: (off microphone) happened?

Peter Watson: This has not happened. At the end of it, it would again follow the same general steps. The Board would complete that process, would complete a further report and reasons and submit it back to the Governor in Council where we would summarize all of the evidence for the reconsideration process, summarize all the information that the applicant and all of the participants brought forward and the views of the Board and the reasons for our recommendation on the reconsideration request. And it would go back to Governor in Council.

The last thing I want to say is those relate to the, the way we make decisions on the facilities of a pipeline. I want to remind the panel that the Board has final decision-making authority on the financial aspects associated with the pipeline on the particular tolls and tariffs for that particular project that may be entailed. And those are final decisions that the Board, that the Board makes itself.

I think that answered your question.

Hélène Lauzon: (off microphone) my question. But I just would like to (off microphone). After, I would like, thank you, I would like to ask a sub question. After reconsideration, if ever it happens, what would do the [sic] Governor in Council? The same thing? There's a possibility to either endorse, deny or reconsider again?

Peter Watson: Yes. Under the —

Hélène Lauzon: How many times —

Peter Watson: — current, under the —

Hélène Lauzon: — he can ask to reconsider?

Peter Watson: — current legislation, the options available to the GIC when receiving a reconsideration report are the same. They can take that report and direct us to issue a certificate for the project. They could take that report and ask us to deny the project, or they could turn around and ask us to reconsider another matter. So there can be as many reconsiderations as GIC thinks is appropriate. But as I say, their options under current legislation are those three options.

Hélène Lauzon: Thank you. David, you have a question?

David Besner: Thank you. I know that you mentioned that you communicate to the GIC through the Minister of Natural Resources, and I'm just wondering does the Minister have the ability to influence NEB decisions? And is the NEB's work either guided or even confined by government policies?

Josée Touchette: So thank you for your question. I want to be very clear that in the adjudicative function, the National Energy Board is independent. So when the Board makes a decision or makes a recommendation to the GIC, that decision will not be transmitted until it is made and the panel report is done. It is transmitted to the department through an established protocol. You asked about the, the policies and how those are the, the interplay, if you wish, with the National Energy Board.

The National Energy Board doesn't set policy. It implements the government policies. It is within the portfolio of the Minister of Natural Resources and therefore, will be applying the policies the way others that are, other agencies that are within that portfolio will, will do. In terms of being an adjudicative and administrative tribunal in that regard, those relationships, if you wish, are very much around that adjudication function and therefore are independent. However, for the rest of the work that we do, we are part, as I said, of that broader portfolio, and those, that interplay, if you wish, is very well described in a document that's called Accountable Government.

The 2015 version of that document is available on the Privy Council Office's website, and I believe it's the last annex that describes how administrative tribunals function and how they're independent in their adjudicative function.

Peter Watson: Can I quickly supplement that? I think it's important to know that within the adjudicative review of a particular project, if the government wishes to provide expert evidence or to give us a particular perspective, so for example, we might typically hear from representatives of a government department around expertise that they have and how that expertise might be applied relative to this project within the policy framework.

For example, around species at risk and endangered and threatened species, we might hear from a government agency regarding the policy framework for species at risk and the specific issues relative to that from their management perspective as the accountable bodies for that policy framework.

In those cases, it's really important to know that when government or departments or representatives of government or departments want to provide input regarding a review, they have to do it within the public hearing process, and they have to become a participant in the public hearing process and that's the transparent and open way for government to give us feedback and direction on a particular project when we're dealing with an adjudication process.

So I wanted to make that point clear. We talked earlier about policy clarity on broad policy frameworks. The real important point is it's done openly and transparently by government.

Hélène Lauzon: Thank you.

Gary Merasty: Thanks for your presentations earlier. I just wanted to focus a bit on the roles of the NEB Board members themselves and got a few questions on that, first being are there differences between how permanent and temporary Board members are appointed and trained? And if they undergo training, what type of training do they undertake?

Peter Watson: Thanks for your question. I'm going to just harken back to some of the comments I made in our presentation earlier. The current legislation allows for both permanent and temporary Board members. The current NEB Act specifies the number of permanent Board members that we can have. It specifies that permanent Board members must reside in or near Calgary. It doesn't specify a number on temporary members, but it enables the government to appoint temporary Board members.

As we mentioned earlier, we currently have eight permanent and 12, 12 temporary Board members. There's no difference in the training and the development of competencies for members. When I assign panels to review a particular project or conduct a particular piece of work under the legislation, it's important that those members have the competencies to undertake that work.

So we deliver the same training and development processes for both permanent and temporary members. It just is that the act specifies that some are permanent and they work full-time, some are temporary and they can work part-time. They don't always work part-time but they can work part-time.

There was one other thing. So in essence, there's really no difference between the authority a member can exercise, whether temporary or permanent. There's no difference in their competency, their training and the development that they go through as members and they can be assigned similar kinds of work, whether they are permanent or temporary.

Gary Merasty: You had mentioned that the act itself has largely remained the same for a few decades, but times have changed with increased understanding required around climate change, around indigenous issues, around renewable energy and so on. So in terms of what type of training they get, could you elaborate a bit on, on that?

Peter Watson: So members go through, you know, a very rigorous orientation and onboarding process once they've been appointed and that relates to understanding the role and, of a member under the National Energy Board, understanding the mandate of the National Energy Board, understanding the basic principles and processes of administrative law, natural justice, procedural fairness because they will be sitting as adjudicators on issues.

So there's a very basic and comprehensive form of training so that they understand the role and mandate of an adjudicator. On top of that, we orient and educate them and create awareness on the business of the National Energy Board, not just the adjudication process, but again, broad understanding of the facilities we regulate, the nature of the issues around safety of the facilities we regulate. So again, a broad understanding so that as they enter into adjudication processes, they have background of the scope of issues that they may be dealing with.

In addition, we educate them on things like the rights of indigenous peoples and issues around duty to consult and how we deal with that inside our processes. So all of these things are parts of our onboarding and orientation and training programs and they're kind of building blocks in a member's development. And as issues emerge around particular areas, say, to promote safety; for example, we've done significant work recently around the culture of organizations that protect people and the environment.

We, we step back and we do work with our Board on what does that mean and what does that look like and how do we take that and understand that as it relates to our role on individual applications? We would do that in other areas. For example, if there was a need to – another good example, you mentioned climate change, another, issues like that, issues like species at risk and management of particular cumulative effects issues. For example, we run into caribou protection issues typically in some of the landscapes that we review applications in.

Again, from time to time, we do broad work with our Board to orient them to the broad fallacy frameworks of governments across the country, issues around what is material for these things and then how to think about these issues. Now, this is broad, it's not intended to give them the specifics that they will get on an application. They have to be open minded to understand the issues and the evidence and the particular application, but there's a broad orientation and, and overview process that we give everybody so they can understand the mandate, understand the scope of the issues that they might, they might face as they go forward.

We try to do our best, and of course, new issues are emerging all the time for us.

Gary Merasty: Just, I'm going to double barrel a couple of questions here that sound more like yes, no answer, but I'd like you to elaborate on them, if you could please.

Is it problematic that the permanent Board members have to reside or must reside near Calgary? Question one. Question two, you mentioned earlier in your presentation about the dual role of the Chair and CEO. Again, what kind of challenges does this pose for the organization overall? And again, if you could elaborate, that'd be greatly appreciated.

Peter Watson: Okay. Firstly, with respect to the residency requirements, one of the things that of course is, is very, very important is diversity in, with respect to the group of our members. So what I've observed since I've been there is that the residency requirement may be something that is not necessarily needed in the future because we have ways of working with our members. So our temporary members actually live and work from their home communities right across the country, and we have temporary members that exist from Prince Edward Island to Vancouver Island.

So we utilize technology like videoconferencing and other technologies to ensure that these members are able to do their work seamlessly and in a streamlined way and hold meetings with other members across the country, even though they're not in Calgary. So our view is that residency may not be a necessary requirement.

And another observation I would have is that it sometimes inhibits us from, it sometimes can create an impediment to the right kind of skills set we might be looking for in a permanent member. So for example, I've observed that we have had some challenges in recruiting bilingual members having to reside in Calgary, Alberta. Many of our bilingual members now are temporary members and they reside in their home communities.

So there's an example of an issue that is, has maybe been an impediment in the past. I'm not sure that residency is an issue that we need to worry about as much as we go forward for our members. Of course, for the staff organization, our headquarters remains in Calgary, and, but I think it's a different issue for our members.

With respect to the dual role of the Chair and CEO, that's always been the case, and as we noted in our earlier comments, the authority of the Chair is laid out in the National Energy Board Act. The authority of the CEO or the deputy head is not only laid out in the National Energy Board Act, it's also laid out in many, many other pieces of federal legislation that I as the CEO am accountable for as the deputy head of the organization. And that relates to the overall performance of the institution and its reporting to Parliament.

The financial controls and processes for appropriate financial management, etc., under the Financial Administration Act, the management of our human resources and our procurement processes and so on as a government agency, my mandate as CEO is derived from many specific pieces of federal legislation as a deputy head.

In the interest of good governance, I think we are all understanding that there are some important principles around the separation of roles and it's not just relative to this particular context, but generally, and we now understand that better than I think we did decades ago as, as you know, in the private sector as well as in the public sector.

And one of the things that I've experienced is having the title of Chair and CEO leads to confusion around the role that I'm playing at any particular point in time. And role clarity in an organization and writ large I think is really, really important. People need to know who is that individual, what role are they discharging and, and again, it creates confusion around roles. So that's why in our earlier remarks, we said we think it's a good idea for you to be looking at that and understanding the separation between the adjudication roles, between the governance roles and the management roles inside our organization so that we don't have confusion and misperceptions about what's occurring on issues, and I think it's just consistent with good governance principles, going forward.

Hélène Lauzon: I will just complete these questions by asking you would, the fact that you're having, you have your head office in Calgary, is it a requirement today considering the perception of the public?

Peter Watson: The legislation actually requires that the head office be in Calgary, so that's written right into the current National Energy Board Act. I would remind the panel that we've taken steps recently to open offices in other parts of the country, and we have offices now in Vancouver and in Montreal. We've done that specifically because we felt that as Dr. Steedman pointed out, that we need a place-based presence to interact and work with communities that are affected by infrastructure in different parts of the country.

So I, we also have an office in Yellowknife. So we have Yellowknife, Vancouver and Montreal. To me, the location of the headquarters makes sense because of the nature of the activities and the industry that we regulate. However, it's really and critically important that we have appropriate footprint throughout the country and appropriate placed-based facilities and personnel to do a better job of establishing relationships and

interaction with people regarding the infrastructure in their community. And that's why we've been opening those offices and we anticipate we may do more of that.

We also have many, many workers that telework from different parts of the country. Again, partly because of the location of our infrastructure, we wanted some people with certain skills in certain areas of the country because of the nature of the inspections they would do in remote areas or something like that. So it's a balance. I think the issue of – we certainly don't agree that all of our operations should be in Calgary. The operations should be distributed and we're actually in the process of creating that distribution.

Josée Touchette: And if I may add briefly, two points. The first is that when you're looking at a specialized organization like ours, you have some distinct expertise that you need to be able to access. And Calgary is a place where there's a very high concentration of engineers. So when it comes to recruitment and we're recruiting very specialized types of engineers, there is a bigger pool of those that's available in a place like Calgary as opposed to elsewhere in Canada. So that's a consideration that I think goes back to the general point that Peter was making that, you know, there is a logic to having a National Energy Board located in Calgary.

The second point that I'd like to make is that when you're looking at an organization that's relatively small, you need a critical mass somewhere. So if you're going to have satellite offices, which is what we have with our regional offices, by definition, those are going to be smaller and they're going, you're going to have a criticality, a critical mass of functions that is going to have to be located in your head offices. Otherwise, if you have a lot of regional offices or if your regional offices are larger, you end up having to duplicate certain corporate functions. So that means that you have a cost structure that becomes different.

So currently, I think we've found a very good balance and we're still refining that balance as we're looking at our offices in Vancouver and in Montreal. And you know, we'll tweak that, but by and large, we've got a pretty good balance that we've achieved because we're not duplicating, we are complementing. And the fact that they're located in those areas really gives us a pulse as to what's happening in those regions. Thank you.

Hélène Lauzon: Thank you. The next question, oh, the next question was for you, I think.

David Bresner: Thank you. I know, several of you mentioned the public interest and to some extent, defined it. And I'd be interested in knowing whether the public interest, in quotation marks, should be codified defined in legislation and I guess that means subject to certain changes, but in a broad sense. And also the public interest in cumulative effects, and I noted that you mentioned, for instance, government policies which affect obviously your thinking and, because you're part of the broad government,

in a sense, and I, you mentioned one example was climate change and there were several. I'm just picking that because I remember that.

But at the same time, you said that at a public hearing, somebody might ask it a pipeline question about climate change, but that's not, I don't remember the words that were used, but within your mandate. And I'm, I'm just not clear on the difference.

Peter Watson: Okay. I'm going to make some very brief comments at the front end and, cause your question talked about the application and environmental assessments and cumulative effects assessments and so on, I'm going to ask Dr. Steedman to supplement.

I think if you recall Ms. Lapointe's presentation, she referenced the particular section of the act that specified in the current language regarding the framework that Parliament has laid out for our assessment of the public interest. As I noted in my opening comments, I think it's just our observation that there are some different things occurring around energy systems today that were different than when that legislative construct was created. And so, we think it's one of the things your panel should have consideration for and the government should have consideration for, whether they believe there are other factors that they wish to be explicit, that we should be considering as we go forward into the future.

Having said that, I want to remind you that as they identify other factors for us to consider, it is important to identify them in the right way so that it's not so specific that we can't look at them in the context of a unique project that's interacting with unique individuals and unique communities, and we want to be able to understand and take into account the unique interest of that project and its intersection with other things.

So, so again, we think there's room and opportunity to provide some more clarity on some of those factors, but at an appropriate level so that it can be interpreted in an appropriately unique way for the nature of the application at hand.

Now, I'm going to ask Dr. Steedman to supplement it on some of the issues around cumulative effects and environmental assessment.

Dr. Rob Steedman: Thank you Peter, and thank you for that question.

When an applicant designs a pipeline system, we require them, under the, things like the onshore pipeline regulations, to anticipate all of the hazards and risks that that project may pose to public safety, to the environment and to any other aspect. We require them to talk to the neighbours and we require them to design out and mitigate and avoid as many of those impacts as possible. A lot of those impacts may be local, they may be transient, associated with construction activities, for example, and they may essentially be fully mitigated or mitigated to the extent that society's comfortable and we're comfortable with it.

There are other kinds of impacts, the cumulative effects that are different, and they accumulate through human activity, typically on landscapes, typically through landscape development and disturbance. We've been talking a bit about caribou, so any fragmentation or linear disturbances of the boreal forest cumulatively reduces or degrades caribou habitat, for example.

And that's, that comes from all forms of human activity: roads, pipelines, forest management, urban development, all forms of human activity, and those things are perhaps manageable on a landscape. And then there's the global scale of cumulative effects. Greenhouse gases have effect on climate only at the scale of the globe, and that's a challenge that human society globally faces.

And so our role in the adjudication of pipeline applications and then the life cycle regulation is to ensure companies are anticipating and managing the risks and hazards and impacts as far as can reasonably be done and in a way that improves. So cumulative effects assessment is just part of good environmental assessment. And I actually find the use and focus on the term cumulative effects to be kind of confusing and misleading because any good environmental assessment must identify and deal with cumulative effects.

However, those are a lot harder to deal with. So the National Energy Board is kind of a, a bit player on the Canadian player, and particularly in Western Canada, we have maybe 10% of the pipeline right away that we regulate federally. The rest is provincially regulated. And as I mentioned, a lot of this activity's in a landscape context that includes multiple use of Crown land, broadly defined for all activities: hunting, fishing, forestry, etc., etc.

So we can require from the project basis of our legislation anything that we think is going to be effective at avoiding, minimizing or mitigating both transient effects as well as cumulative effects. However, a lot of the decisions about how disturbed the boreal forest may become are, reside in provincial or territorial land use plans. And in some cases like caribou, we're beginning to see thresholds that are beginning to have impact. They're surprisingly rare. Land use plans that democratic institutions stick with and actually use to limit development are quite rare. But 35% disturbance of the boreal forest to protect caribou is something that's beginning to have some traction, but that's primarily a provincial role under the Canadian constitution.

So we, our role, as I find in our public hearings and in the things we're doing in an increasingly proactive way, is to highlight, even though we have maybe 10% of the impact that we can regulate, we make a big deal about it. We're requiring companies to do caribou offset planning, which is scientifically and technically difficult, and practically difficult to implement on the landscape, but we're doing that in the context of all the work that, in this case, Alberta and British Columbia are doing and we're holding companies, we've been doing that in a systematic way since 2011 in the case of mountain caribou. We're holding them to doing beyond the legislative requirements to offset and try and

have no net loss of caribou habitat because of the pipeline that we're approving. So that's one example.

The, in the case of climate, we are, we do regulate greenhouse gas emissions from the construction and operation of pipelines and we have conditions on that. We historically back 15 or 20 years have been requiring tracking of it, and more recently, we're requiring measures to minimize and offset it. Now, 70% of greenhouse gas emissions from hydrocarbon fuels is when people use it, when they burn it downstream. We don't regulate that and the energy system's particularly complex that way.

Canada, in the interim measures in the last several large pipeline projects that we've been involved with has asked Environment and Climate Change Canada to quantify and do a little bit of modeling on the effects of upstream greenhouse gases associated with the exploration and production of hydrocarbons that may subsequently be moved in a pipeline that we're considering. And so that is a step and so if we have maybe 10% associated with the pipeline and 20% associated with upstream production, processing, etc., that's a great start. That's the part that's in Canada that we can actually deal with from a policy and a regulatory perspective. The other 70% goes up in the atmosphere and it's everybody's problem.

And so, however it's that last concern that has everyone concerned and that's why it is an issue for Canada about doing a better job, not wasting as much fuel, being as efficient as we can in the production and transportation and use. So we hear about that.

David Bresner: Yeah. Thank you. I, just to follow up then on that line of thought. The downstream issue, and I'll suppose it's out of the country, and I, and I'm really picking on this as an example, not, not, it's not all about global warming, but so is it, is it something somebody may raise at a pipeline hearing that will be responded to or is it something that says we can't deal with downstream?

Dr. Rob Steedman: It's been handled in a variety of ways. The NEB has tried to be as precise as it can be about what we regulate and what we can control through conditions, and that has tended to be construction, operation missions. So that's the kind of response the panels have, NEB panels have used in terms of the list of issues and particularly the scope of the environmental assessment because every environmental assessment can't be a global assessment. The CEAA Act is very, very clear about useful EA. EA that's useful for society has to be carefully constrained, otherwise it gets completely out of control, becomes irrelevant.

So we've tended to do that. The NEB has lots of expertise on the analysis of greenhouse gas emissions from the Canadian energy system, and we, in fact, we were directly involved in the environment climate change methodology development and the analyses that are showing up as part of the interim measure. So, and that is part of our energy futures reporting greenhouse gas emissions.

So I think that answers some of the questions Canadians have, but it doesn't answer all of them and it doesn't deal with the, Peter mentioned the transition away from carbon-based fuels, as long as Canada runs on, includes hydrocarbons as part of its energy mix, we're going to have to have some infrastructure for it. So when that changes, I think that will be pretty clear and our job would be different. But at the moment, our job is to make sure that Canada has the pipelines that it needs and that they're safe.

Brenda Kenny: The question I wanted to explore has to do with the, the NEB Act changes that occurred in 2012. You referred, several of you in previous comments, to the impact of those changes. And firstly, can you share perspectives with respect to the conditions under which those changes came about reflecting upon what the objective was perhaps of, of those changes from a policy point of view? And then, I have a few more detailed follow-ups after that.

Peter Watson: Okay. I'm not sure that I can give you a precise answer because I actually wasn't at the NEB in 2012, and of course, those changes were brought forward by government, so some of the, you know, the underlying issues and intent and the policy intent of Natural Resources Canada at that time.

I'm not sure that I'm the best person to speak to it, however what I do know is that the discussion that was occurring at the time and, and of course, the 2012 changes were embedded in the Jobs Prosperity and, and Economic Growth legislation, so again, I think, what I'm aware of is that those discussions and those opportunities were around how do we ensure that we maintain an appropriate regulatory framework that achieves the outcomes that Parliament wants, but in a way that improves the effectiveness and efficiency of the processes that are being utilized.

So I think that was what I'm aware of is regarding some of the intent. But to be more specific than that, I think you may need to ask Natural Resources Canada.

Brenda Kenny: Thank you. So, so those have been in place now for a few years and can you share with us your perspectives on whether or not it has been challenging to meet the legislative time limits for reviewing projects? And also any challenges in enforcing the standing requirements for hearing participants or related issues of interest from, from your perspective?

Peter Watson: Sure. So you referenced two of the specific changes that were made in the 2012 amendments where time limits were established: 15 months for the NEB to complete an application and report and recommendation, and then three months for the Governor in Council to make its decision based on our report and recommendation. The panel should know that prior to 2012, essentially all of our reviews were done within, within that time limit. So it's not necessarily a challenge to meet that time limit.

However, what we are seeing is a large increase in the numbers of participants and intervenors in our process that we wouldn't have seen historically in years gone by. And so with larger numbers of participants and intervenors in process to ensure that we

have procedural fairness and natural justice to all of the people, it will take us longer to, to conduct our reviews.

And in the case of the recent TransMountain expansion, that review took longer than 15 months, but there were two excluded periods that were authorized during that review. One for the company to, to undertake specific explorations regarding a particular routing option and the other to replace some evidence that was struck from the hearing. So that, that review took longer than 15 months, but it, but it met the requirements of the legislation because of the way these excluded periods were applied.

Again, I would note that we're now seeing on major projects hundreds of intervenors come forward in a process, which is not something that the NEB would have experienced, you know, even a decade ago.

I think your second comment was around standing and the nature of participation. And in those cases, as I said in my comments, we've been, we've faithfully implementing [sic] the requirements of the legislation to ensure that we allow anyone who is directly affected an opportunity to participate and we ensure that we offer an opportunity to participate for anyone who has relevant information or expertise.

The challenge that that has created for us is public expectations in that regard versus, you know, meeting the requirements laid out in the act. So one of the things that the NEB did, which was new, and created some discussion in the public where we asked people to apply to participate in our process. The reason for that was quite simple. When they submitted their application, we asked them to tell us why they feel they're directly affected so that we could properly determine that that individual is directly affected and has a right to participate in their hearing.

When they weren't directly affected, and on projects we receive applications from people all over the country, regardless of whether the project is in the western region or in Alberta, we might receive applications to participate from Eastern Canada or the Atlantic provinces as an example. So again, we've asked people provide us information, what is it, what relevant information or expertise do you have that will be of value to this hearing? And so the challenge for us is we had to put in place a process that created some concern with the public because we were administering a test now for standing, which we didn't do before.

And sometimes people felt that they had relevant expertise, but the Board either felt that that relevant expertise was already available to our hearing or it actually wasn't relevant. So we applied as we were obligated to do under the legislation a test for standing. I would note that it's very infrequently that we actually deny participation, but in some cases, participation has been denied where it's quite obvious that the person is not directly affected and also quite obvious that they don't have something relevant that can contribute to the hearing that isn't already being contributed.

And as another example, I would just say we've had intervenors apply from countries internationally, as an example, and again, we would examine is there specific expertise there or is it a perspective and an opinion that those people want to bring into the hearing and sometimes, our panels have determined it's not relevant, we won't.

So we, a longwinded answer to we have had challenges in applying the standing test around the public expectations for their ability to participate, but we're trying to find the best way to understand and really appreciate these individuals, these groups are directly affected and they should have, you know, they should, they should be allowed to participate. And these individuals have expertise that the Board needs to hear.

So we're just trying to do our best in that regard.

Wendy Grant-John: Thank you. First, let me give my appreciation to each and every one of you for coming and presenting in such a thorough way for an average Canadian citizen like myself who is struggling with the amount of information coming forward on your, what your responsibility is as a quasi judicial body.

I want to address the issue with regard to what are making the headlines right now, and the number of court cases the First Nations are taking with regard to the duty to consult and where NEB fits in. I heard the Chair say that the duty to consult has been discharged and that the Crown by the, and the request to have where does NEB actually fit in. And then, when we hear from the doctor that the Crown relies on NEB to consult. So those are a couple of areas that we really need to drill down in. And the question I have is with this changing environment, do you actually have someone on staff that addresses the duty to consult particularly? That's one. The other one that I have is as I listen to you talk about the panel members and the required expertise as you see it, and how you look to a skills set for individuals to sit on the board, is there an indigenous member and is there something that is being prepared now to ensure, based on the changing law and based on the changing environment of Canada, for that to be taken into consideration?

Peter Watson: Sure. I'm going to just offer just a couple of things to answer kind of the tail end of your question, then I'm going to ask Josée to speak to our staff and our staff expertise.

We currently have two aboriginal members on our Board today out of, out of the complement of members. So I wanted to answer that directly. And as I said, as we train our members and continue with ongoing development of our members and their understanding of their adjudicative roles and their mandate, a big part of that is understanding the law.

And so there's significant effort to orient them to the law as they come in and they become onboarded and oriented in their new roles, but also to do that on an ongoing basis because as you said, the law is evolving. And so we have – what Josée will speak to is some of the expertise that we have in legal matters, including aboriginal

legal matters and we make it a point to continue to update our members on the evolving state of the law that's occurring relative to our mandate.

Josée Touchette: Thank you. In terms of expertise of the staff, obviously given that indigenous issues are extremely important when we're either considering an application or that we're doing life cycle oversight, we have staff who have expertise and in some cases, whose primary expertise is in indigenous issues. And largely, you find those staff in three groups. First are socioeconomic specialists. So they will be advising on applications and will be part of a project working group or they will be working on life cycle issues and will provide their expertise there.

We have several lawyers who are, who have a lot of experience and expertise, and I think it's fair to say who are experts in aboriginal law. And we also have engagement specialists who are specialized in indigenous matters. So in those various streams, what you do is you make sure that you're giving the best advice possible to a project, through a project working group to Board members who are sitting on a panel looking at an application, considering an application, or in the case of life cycle oversight in those activities.

Now, you asked the question with respect to the duty to consult and it's a very important question. It's also a very live question. So the situation we're in now is that the Crown relies on the National Energy Board to the extent that it can. So what does that mean? That means that when we are conducting a review for an application, we are going to ask for oral traditional evidence. And usually how that is done is that the panel will travel to communities or the community may meet the panel. It's happened on occasions that they've come to Calgary, but usually, the panel will go to the community and will hear oral traditional evidence.

That is consigned in a record and that is provided as part of the package that goes to the GIC. Now, they, the MPMO, the Major Projects Management Office, will do consultations as well and that will form part of the broader package. So if you have questions on their role, I recommend that you direct those questions to Natural Resources.

Now, I say it's a live question in terms of the role of NEB because it's a question that's currently before the Supreme Court of Canada. And therefore, given that we appeared in that proceeding, which is the Chippewas of the Thames and the Clyde River First Nation, I'm afraid I can't go beyond that because it is a live issue. Thank you.

Peter Watson: I want to add one, one thing and that is that as you look at our mandate and how we discharge our mandate in reviewing a project application and adjudicating a project application, and if a project proceeds, we transition into the life cycle construction, operation, maintenance for many, many decades, in some cases, for these projects, ultimately to abandonment.

We have strived to develop an understanding and the expertise to allow us to inform our adjudication processes and understand the nature of the law so we can make an appropriate decision in an adjudication context. One area that I, I think someone noted in my remarks and it came out of my engagement initiative that I undertook and we published it in our report that we produced, is that we feel we are weak in our relationship with communities throughout the life cycle of infrastructure that is in the ground for many decades.

And where we need to get better and where we might even, and you might even think about how this applies, or how our enabling legislation helps us in some of that is, is we're weak in our relationship and our ongoing work there because so much in the past has been focused on individual adjudication processes, which are very quasi judicial and where we're sitting as a court essentially.

When we're in a, when there's infrastructure in the ground, this is tied to regional offices and so on, we want to be better able and not as constrained about building long-term relationships with people so that we can work more proactively with them on assuring them of the safety and the protection in the environment in their community. I think a very, a positive thing that we will have to see how it works out is the government's recent announcement tied to two projects that they approved regarding aboriginal monitoring and oversight committees.

So I think that's a tremendous opportunity for us to figure out how to do some things differently during the life cycle that works much more effectively for aboriginal communities. And we're looking forward to participating in that work.

Josée Touchette: And may I add just a last point on that. In our new departmental results framework, we have a core responsibility for engagement, and under that, one of the programs that we are currently developing is around indigenous engagement. Precisely to Peter's point, which is that we have been weak and we have to get better and we want to be able to actually measure our performance there so that we have an ability to say and here is where we need to improve specifically. So we are taking all of those measures to try and improve our performance in that regard.

Wendy Grant-John: Thank you, and I am considering time. I had a number of other questions, but we'll, we'll return to those later in our discussion.

We talk about, you've mentioned many times transparency and I like the word face-placed offices, which to me implies access for the general public to participate. So when you look at that, can you describe for us the NEB's participation funding program, including what you see as the strengths and possible areas for improvement?

Peter Watson: I'm going to ask Sandy Lapointe to answer that one.

Sandy Lapointe: Yeah, I'll speak to the framework that we have in place and I'll ask Dr. Steedman. He has more experience working in the operationalization of that program.

The, so we do have a participant funding program. It is based on the same program that the Canadian Environmental Assessment Agency has and the Canadian Nuclear Safety Commission has as well. So they're similar programs.

The National Energy Board of course, by its nature, has linear facilities which then, you know, results in a lot of participants. So the funding is, we receive funding. It's a grants and contributions funding that the NEB receives. We receive a set amount of funding and it is awarded through that program. This funding is separate and apart from the National Energy Board's specific appropriations dollars, so it's kept separate. It can't be used for anything else, but the participant funding.

The program has, we have, the program is set out on our website so it's very thorough. We have criteria in which we assess the, the applications that come in. The vast majority of the money is awarded through indigenous participants. That's the majority. We've had some environmental groups that have applied as well. And, and land owners, sorry – thanks, Rob – land owners as well. So that, that is the vast majority though is indigenous people.

The program itself has evolved. When the program was first put in place, we were dealing with not as many participants in our hearings and the money was awarded in a way that it was assessed by a funding review committee when, when an application came in. With the bigger projects that we have seen lately, there's a lot more participants and we have, we now have a, a cap kind of system where we award a specific amount of money when an applicant comes in. We review it against the criteria and then we award a specific amount of money. And that has been a necessity so that you don't run out of money quickly when you're looking at the applications that have come in.

So that's the, that's the program that we have in place. And I'll let Rob speak more to some of the challenges that we've had.

Dr. Rob Steedman: Thank you, Sandy. The program's awarded about \$18 million since it came in, I think, in 2010. Sandy mentioned about 80% of that to indigenous, usually communities or groups. So our customers aren't necessarily happy with the program and as the big projects can have hundreds of participants, and even if we're up to 3 to 5 million dollars per project, and you start dividing that up amongst hundreds of groups, the amounts get small.

And the projects are complex and we're doing the best we can with that program, but I, you know, to be quite frank, our customers are not happy and we hear about that. We're quite aware of that. So we're trying to simplify the administration, the application, but we must comply with the Financial Administration Act and there are various things that must be done before we hand public money over to anyone. And that is, that's absolutely driving a lot of our kind of remaining procedural complexity. We must do that.

An alternative thing that we hear a lot about is that parts of Canada have concentrations of federal pipelines and other pipelines, either because it's a production area or because the areas that connect the production areas to markets tend to have concentrations of pipelines. And traditional lands in particular, which we invest heavily in identifying, along with the Crown and the applicant, to identify whose traditional lands may be affected by a project.

These communities just get hit over and over and over again with multiple applications from us and certainly from the province and other kinds of land use as well. So it's, the kind of feedback we're hearing is very much that if there could be a more strategic capacity-based support for these communities, they would not be chasing individual project-driven small pots and, and having a high overhead for them and for us to deal with the money, but a more strategic approach even in the federal regime could help them have more predictable, longer term support that would allow them to build the analytical capacity and relationships to deal with ongoing infrastructure development.

And I think I like that approach. It's more consistent with our place-based relationships that we're trying to build and when everyone's chasing projects, no one ever catches up. And as Peter mentioned, they go on for decades. And a more strategic approach could be an alternative. We do have the obligation to deliver the program we have and of course, we will do that, but there may be other ways to get a better outcome.

Hélène Lauzon: So we'll move to the next question regarding the right of entry. Could you confirm if the companies often apply for a right of entry?

Dr. Rob Steedman: Thanks for that question. We see it becoming less and less often. There is a barrier, they must make the case before us. We certainly encourage companies, and we know the company programs are designed to avoid, wherever possible, requiring a right of entry. But it can be in the, in the best interest of safety and certainly the public interest in the case of a new line for that tool to be used in the small number of cases where agreements can't be reached in a reasonable time.

So they do occur, but I would not say they are common. But it's very much an important part of the legislation that allows infrastructure to be built across a confederation with lots of land owners.

Hélène Lauzon: Okay. And can you also confirm if these decisions regarding the right of entry are appealable in court?

Dr. Rob Steedman: Yes, they can be, the NEB can be asked to review its own decision, so that is always a possibility, but also it can be reviewed in court as well.

Hélène Lauzon: Okay. And my last sub question on that was does NEB hear many concerns related to this right of entry?

Dr. Rob Steedman: It is, the concept of right of entry to land owners is often offensive, so it is very much something we hear about, and we, an outcome we're after is to help companies get to the point and companies have their own programs where they're developing better relationships with people affected by their projects, and maintenance activities are an important part as well. And the better the relationship, the less often that approach is used. And there's huge opportunities to improve on everybody's part.

Hélène Lauzon: Okay. And Brenda.

Brenda Kenny: Yes. Thank you. I have a question related to how the NEB ensures that the public has access to the information that they need, and in particular, the question relates to where there might be confidential or secure information. For example, if a company submits an emergency response or incident plan, how do you make sure people have the information they need and there's still confidentiality and security issues addressed?

Sandy Lapointe: I'll speak to that one. Thank you for the question.

The information that the National Energy Board receives is public unless it is requested to be handled otherwise. And so it's on application or request. Now, the Board also could treat it as confidential if they felt that the information was of a nature that it was, con-, privacy concerns or commercial or proprietary concerns. So companies will request, there is a section in the act under Section 16 in which a company can request for information to be, to be considered as confidential information and to be treated as such, and the Board has some practices in place in which it will do that. They do, it does have to meet certain criteria in order for that to be requested. So, and then there's also access to information where information can be requested under that act as well, and the NEB obviously has a process to release the information in that way as well, where it's able to redact information that is personal or sensitive information that meets of course the requirements that are set out. So that's, that's, you know, the information for the, the vast majority of information we get is public information and treated public when it comes in to us.

Brenda Kenny: Can you just provide a brief example, Ms. Lapointe, on where or why you might say something is confidential and can't be released? Just to give a sense as to the boundaries?

Peter Watson: I, I was just going to supplement Ms. Lapointe's answer and give the example of emergency response plans where an issue arose where the public was concerned that they didn't feel they had access to the information in a company's emergency response plan, and we initiated the process to ensure that all plans are made publicly available. Not only that, we asked that the companies post the information about their emergency response programs inside their companies on their public websites.

However, there is some very small amounts of information in that instance that deals with very specific security-related concerns regarding some critical aspects of that critical infrastructure from a public security perspective and in that case, the Board allowed that those small amounts of information could be kept confidential. But really, our view was that the public wanted to know has a good plan been prepared? What's the parameters of the plan? Who will be consulted in the event of an emergency? How will incident command be established?

These are all things the public wants to know is in place and we need to get out there. Those small bits of critical infrastructure security pieces is not, you know, it's very appropriate that they be kept confidential and that wasn't what was driving the transparency. So as part of our broader drive to be more transparent with everything we do, we'll still protect some of those critical secure pieces of information, but we're becoming much better and the companies are becoming much better at getting the generally available information out for people who need it.

Gary Merasty: Certainly top of mind to most Canadians are safety and environmental protection and I guess there's a few questions there that I'll just roll out right now and then you can respond as best you can.

One specifically around the Pipeline Safety Act of 2016 and how that has impacted safety and regulation and oversight and, and that, if you can share with us your thoughts on that? Are there any other changes currently contemplated to modernize life cycle regulation and continuously striving to improve? Anything on that front? And then just finally, for inspections and verifications, any processes and capacity in place today that you see as key changes needed in the future?

Peter Watson: I'm just going to, again, deal with some of them at a, at a high level. I'm going to ask Sandy to walk you through some of the key elements in the Pipeline Safety Act. That was a very good amendment to our legislation and introduced a number of new key factors that help with safety.

I want to remind the panel that we have a mix of prescriptive requirements in our regulatory framework, so when we review a project, we may apply very specific prescriptive conditions to reduce a risk or to mitigate something from occurring. We also have very outcome oriented regulations that companies must follow and we have a mix of those requirements and those, those regulations, like our onshore pipeline regulations, point to the nature of the management systems and processes that a company must employ to meet our regulatory framework, but those processes drive them to be continually better at identifying hazards and risks and then taking steps to mitigate them.

And that's where we audit their processes to understand that their processes are working effectively. So there's this mix and it works extremely well.

You asked what might be on the horizon in terms of new requirements. The framework is pretty robust and gives us the tools and the opportunities to respond. An area that we're pushing out into and working with the companies and the industry associations on is a push towards a safety culture and helping facilitate companies understand, companies being aware of the cultural influences around the operation of their business as it relates to safety.

And so this is not something that we think of necessarily as a regulatory requirement, but we're very active at doing research ourselves, working with the Canadian Energy Pipeline Association and its member companies as well as working with other regulators internationally around how can we introduce and better influence the cultural, the human factors that come into a place where, I think we all know it and we have learnings from other sectors like the aviation sector or the nuclear sector around how to manage the threats and defences that arise through the culture of an organization. Right?

And so that's a very significant push for us right now which we think will lead to more performance improvements and safety over time.

I'm going to turn it to Sandy to talk about the Pipeline Safety Act.

Sandy Lapointe: So the Pipeline Safety Act, there's four main areas that I will touch on. So abandonment is a change that was made that allows for the abandoned pipeline to continue under federal jurisdiction, the National Energy Board jurisdiction. And that has resolved some concerns that land owners had as to what would happen with abandoned pipelines on their properties. So the NED continues its regulation with respect to abandoned pipelines.

Damage prevention is another area for which the Pipeline Safety Act addressed, and it strengthened the requirements around damage prevention. And we have released a new Damage Prevention Regulations and there is a safety zone and, and more clarity around protecting the pipeline.

The other area is the ability for us to, for the National Energy Board, if the circumstances warrant, to take control of an incident. So if, if the National Energy Board determines that a company is unable or is not effectively addressing an incident, whether it's a release of some sort and if they aren't addressing it appropriately, the National Energy Board can take control of that situation.

The third area is the financial response-, sorry, the fourth area is financial responsibility, financial liability. And it has sets the limits associated with what companies are liable for in the case of the, the absolute liability with respect to incidents. This has resolved and alleviated concerns around who's on the hook with damage associated with any type of incident. So this has provided that clarity. And what it's done is it doesn't have to be a hearing-specific issue. It's now something that is broadly applied to all of the companies that we regulate, and clarity on what is required with respect to financial liability.

The, I will now touch on the, the third part of the question which related to what we do in terms of our oversight. And so, the National Energy Board has a risk informed approach to the way it carries out its compliance oversight. And in doing that, we look at a number of things to determine risk. So consequence of the facilities that are regulated, we look at consequence. We look at probability, and probability includes the company's performance as well.

So we do trending and analysis with respect to the incidents that have occurred. We do that on a company-specific basis. We do it on a broader basis. We look at all of that information and we have, as I say, a risk informed approach so that we are applying our resources to the highest risk areas. And in doing so, we focus on company performance and company performance is through inspections. We can do audits. We push for changes to company management systems. So we don't just stop at compliance. We ensure that changes have been made to a company management system in order to improve the performance as a company.

We then further look at trends and we determine are there areas that we can influence from an industry perspective. That could be through a safety advisory, that could be through a workshop, that could be through providing certain kind of data and analysis in order for all companies to look at their own management systems and review their systems as well.

So we are pushing beyond compliance and we're looking for performance of the entire industry that we regulate. And as Peter talked about safety culture is a key part of that. Influencing by providing data around safety culture allows for companies to be looking at their own systems and their performance in that regard as well. So that's the approach we take on, on compliance.

Hélène Lauzon: Wendy.

Wendy Grant-John: I have the pleasure of the last question, but it kind of follows through with Gary's, and I'd like you to describe how the NEB ensures safety and environmental protection in situations where responsibility is shared between jurisdictions. And just as an example, in the case of a safety incident on the coast, how would the NEB work with the other organizations to support a timely response?

Sandy Lapointe: The, so the National Energy Board is the lead agency in an incident that occurs in our jurisdiction. So under, if it's a company that the NEB regulates, we are the lead agency. We work very closely with provincial regulators. We, we work with them not only related to a specific incident but throughout the year on a number of things where we share practices and we, in many cases, we have memorandums of understanding in place with other regulators in how we will support each other.

So I can use an example, in BC, we have an MOU with the BC Oil and Gas Commission whereby if an incident happens under NEB jurisdiction, if they can get to

that incident faster than we can, they will provide the first boots on the ground and they will represent the National Energy Board in that way, and then we will follow up and have, have our responders work with them. So jurisdiction is, it would either be a federal jurisdiction or a provincial jurisdiction in the case of an incident.

Wendy Grant-John: (off microphone) sorry, but sub, sub. Does that go beyond the shoreline for NEB? Does your jurisdiction stop at the shoreline and then someone else kick in for the waterways once they get into (off microphone)? Sorry. I think you got the idea of the question.

Peter Watson: Yes, yes I did. Our jurisdiction would end at the loading point with the tanker and once the, the tanker has been loaded and is on water, the jurisdiction would transfer to the Coast Guard for emergency response and to Transport Canada for the broad regulatory requirements for marine and shipping safety. And that's another area where we collaborate with Transport Canada and the Coast Guard and we have memorandums of understanding already in place because we know it's not always a simple thing and we want to ensure that we are connected and sharing information and helping each other continually improve our systems, even though we specialize on the land side of it and they specialize on the water side of it.

I want to add one other thing. We require companies to exercise incident command and emergency response on a regular basis as part of their emergency management program and that allows them to exercise the relationships with local municipalities, with First Nations, with people who may be affected and may need to participate in incident command if an actual incident occurs. So that's another feature of our regulatory oversight. We require companies to prepare for these things, to practise them. And what we do is we show up and we evaluate their exercises.

And one of the things we've done recently for transparency is we will post our regulatory evaluation of every company's exercise as well so that the public in the area can understand. But the exercise is really important because it allows municipal governments, First Nations, that's where people get a chance to practise working together in an incident command scenario before an actual incident.

Gary Merasty: Thank you very much for your time, your presentations today. Thank you to our, my colleagues on the panel. And all the presentations made today will be posted on our National Energy Board Modernization Panel website. So thank you everyone.

Peter Watson: Thank you very much.