

**Expert Panel on National Energy Board Modernization
Public Consultation
Ottawa, Ontario – February 22-23, 2017**

The Expert Panel for the modernization of the National Energy Board met in Ottawa February 22-23, 2017, for in-person sessions which included public and Indigenous presentations, a public dialogue session and an Indigenous open dialogue session.

The following summary presents the comments and input received throughout these in-person engagement sessions. It is intended to present the views of participants, and not the views of the Panel itself.

The summary is organized using the Panel's review theme areas. Comments were welcome from all parties on any issue relevant to the renewal of the NEB. Theme areas are as follows:

1. Governance and structure
2. Mandate and future opportunities
3. Decision-making roles, including on major projects
4. Compliance, enforcement, and ongoing monitoring
5. Engagement with Indigenous peoples
6. Public participation

The Panel wishes to thank all those who participated for sharing their expertise and experience at these sessions.

THEME: Governance and Structure

Public Session – February 22, 2017

Participants raised questions as to the independence of the NEB. There was significant concern expressed over real or perceived conflicts of interest due to the proximity of NEB board members to the oil and gas industry. Many potential solutions were offered by participants. Of these, the panel heard most often of the need to ensure that Board members can live in locations other than Calgary, as is required in the NEB Act today, and to consider a move of the NEB from Calgary to Ottawa. It was expressed that the NEB's location in the heartland of the energy industry carries with it an inherent bias, though it was recognized that Calgary is home to many with expertise relevant to the board. Another solution offered to the panel was to mandate a minimum wait period between working for the NEB and in private sector or advocacy organizations.

The Panel heard that there is a need clear criteria for board member selection to ensure diversity of perspectives and experience. Participants suggested that appointment requirements should include regional and Indigenous representation, a variety of disciplines of expertise, including the lived experience of non-expert Canadians. Participants also

supported a separation between the roles of NEB Chair and CEO, to reflect their respective orientations vis-à-vis policy vs. operations.

Participants also expressed concern that the NEB receives funding from the industry it is mandated to regulate, which is believed to pose a high risk for biased decision-making. There was also question as to which government body is responsible for overseeing the work of the NEB. The panel heard that sound process and transparency can lead to satisfaction on behalf of all parties in spite of final outcome.

Indigenous Engagement Session – February 23, 2017

Participants brought into question the number of members sitting on the NEB and wondered if it was large enough given the NEB's importance and work volume. One participant posited that a body should be tasked with overseeing the NEB and that it should represent more Indigenous people than the current size of the NEB allows.

Participants also discussed the importance of the NEB's impartiality, voicing a perception that NEB decisions have been skewed in favor of the oil and gas industry.

Participants discussed what might constitute adequate Indigenous representation. One idea was to include a representative from each of the following: Métis, Inuit, Status Indians and Non-status Indians. Another was to have Indigenous representation from each province and territory. Overall, it was suggested that all NEB board members should have a high overall awareness and knowledge of Indigenous issues, acquired either by life experience or training.

Furthermore, one participant specified that, if Indigenous interests and sources of knowledge and evidence were to hold equal footing with those of others, as per the terms of reference, the number of indigenous representatives on the board itself would become less important. Similarly, if the UNDRIP provision of conferring the right of free, prior, and informed consent to Indigenous peoples were to be operationalized by the NEB, there would be less concern about having enough Indigenous board members.

Finally, participants suggested that the expert panel consider whether those deciding on a project should represent the communities most likely to be affected by it.

THEME: Mandate and Future Opportunities

Public Session – February 22, 2017

Participants remarked that the NEB is now operating in the context of the Paris Climate Agreement which will soon be enshrined in Canadian law and that the NEB Act and mandate should reflect government priorities and commitments with respect to climate change, and reconciliation with Indigenous peoples, among others. As such, it is important to expand and

enhance the NEB's mandate to reflect these larger commitments and policy objectives.

The panel heard a call by participants for the development of long-term federal energy strategy from which the NEB would derive its decision-making priorities. Such a strategy should be comprehensive and include policies pertaining to all relevant areas, including but not limited to: transportation, environmental, and economic considerations. It should also link to a national carbon budget that would define specific emissions limits that would inform the context for NEB-reviewed projects.

The absence of such an overarching strategy is one of several public policy gaps that were identified as impeding the NEB's ability to make decisions with clear policy direction, more adequately reflect changing social values and national interests. Participants encouraged the panel to reflect these shifts in its recommendations for modernizing the NEB.

With respect to regulatory policies directly impacting NEB's decision-making, the Panel heard that it may be best to entrust regulatory policy development and regulatory enforcement to two separate entities, or at least to two separate sub-divisions of the NEB to ensure that decisions reflect the intended policy direction of the government.

The Panel heard that it will be essential to better define "Public Interest" as it relates to the NEB's mandate. Public interest is an evolving concept, that changes with shifting norms, technology, and public expectations. Major changes have occurred in Canada since the NEB's inception in 1959 that must be reflected; as one presenter put it, "the horses have left the barn". Participants recognized that a lack of policy coherence and the avoidance by many governments to do the hard work of addressing evolving expectations can make regulators like the NEB "sitting ducks" in terms of credibility and perceived fairness. Fundamentally, the modernization of the NEB in and of itself is an important step, but is unlikely to be sufficient in isolation to fully regain public trust and confidence.

Participants shared with the Panel their concern that industry and economic interests currently hold too much sway relative to other interests in determining public interest, particularly those relating to environmental impacts, public safety, intergenerational justice, Indigenous interests and planning. It was noted by some participants that such a definition will inevitably hinge on a vision that the NEB has of the pursuit of Canada's climate targets embedding the assumption that Canada will meet its targets, rather than a risk of complacency or assumed failure

In light of climate targets and global trends, participants suggested that it is paramount that the NEB expand its focus and mandate to encompass more than oil and gas. Particularly, it should place a strong focus on renewable energy sources, environmental impact assessment, and acquiring adequate scientific and traditional evidence. Some participants urged the NEB to shed light on lesser-known alternative energies including those of biological origin. Several participants suggested an important role for the NEB to guide or manage greater research and studies into energy alternatives and related policy options to accelerate change.

Also supporting climate change initiatives, one participant proposed that the NEB's mandate be expanded to regulate both energy production and expenditure. The example given was that the Board could set, and monitor progress towards, municipal energy expenditure targets.

The importance of the NEB's role and mandate in financial regulation and perhaps eventually in market oversight was also pointed out. Scrutiny and informed cross-examination are crucial to ensure just and reasonable tolls. One participant voiced their overall appreciation of the mandate's focus on consumers.

On the topic of sufficient data, the panel heard two distinct views from participants: one envisions more comprehensive, reliable and readily-accessible scientific data as the purview of the NEB, while the other favours severing this responsibility from the regulatory role of the NEB, and locating data collection and analysis role in a body outside the NEB. Participants characterized the NEB as demonstrating strength in collecting production data and weakness in gathering accurate demand and environmental data.

Participants also shared differing views on the scope of the NEB. One participant suggested that the NEB be limited to regulating energy exports and imports, while allowing the provinces to regulate energy within their borders. Another offered a vision of the NEB as a broker of communication and collaboration among provinces. Yet another felt that the federal government should be involved in provincial negotiations with Indigenous peoples. Another participant felt that all decision-making functions should be returned to the Governor-In-Council, and another told the panel that the NEB of the future may act like the Canadian Nuclear Safety Commission, ensuring the safe stewardship and decommissioning of existing pipelines, without developing new ones.

Finally, a few participants suggested that oversight of dams and fresh water resources that flow over provincial and international borders be included in the NEB's mandate.

Ultimately, participants remarked that the role of determining the NEB's mandate belongs to the federal government and should first and foremost fit within the government's legislative agenda.

Indigenous Engagement Session – February 23, 2017

The panel heard that the NEB's mandate should cover "off-grid" communities, which describes many remote Indigenous communities. This means that the mandate could reflect and support more decentralization of energy systems addressing energy cost, reliability and GHG emissions.

One participant shared concerns that alternative forms of decentralized energy, such as energy storage and repurposing human and animal waste, have been overlooked by the NEB

though they may hold the highest potential for bringing lower cost energy to remote Indigenous communities. Participants suggested in general that the NEB's mandate be revised to include a broader focus – beyond a pipeline-centric approach – that would include renewable energy sources.

The panel heard that the NEB should be responsible to increase public confidence in its regulatory processes.

Participants told the panel that the NEB in its current form is ill-suited to carry out section 35 consultations on behalf of the Crown; it is believed to lack expertise on indigenous issues, including how to consider and weigh traditional evidence.

Finally, it was specified that the NEB's mandate should stem from the federal Government's policy initiatives on related topics, especially climate change.

THEME: Decision-making Roles, Including on Major Projects

Public Session – February 22, 2017

Specific comments were made as to the importance of the NEB ensuring the rights of indigenous peoples under section 35 of the Canadian Constitution. Participants suggested that the NEB's mandate include ascertaining whether the Crown has fulfilled its constitutional duty to consult and accommodate Indigenous peoples in coming to its decisions. There was some discussion as to what constituted accommodation. One participant expressed that accommodation so far has felt one-sided, in favor of the Crown. Another noted that industry's efforts to accommodate are always of quantifiable monetary value.

The panel heard from some participants who did not believe that the Crown's duty to consult should be delegated to another body, including the NEB. Others believed that the NEB Act should make explicit the Board's authority and relationship relative to the Crown, in order to determine whether or not it can undertake consultations on behalf of the Crown.

Participants shared a marked interest in evidence-based decision-making, largely understood to mean impartial scientific evidence, though some participants reminded the panel of the importance of considering traditional sources of information and knowledge from Indigenous peoples. One participant noted that there was significant government research investment and a deep scientific knowledge base within the federal public service years ago but that it has since disappeared. The question was raised as to how to best engage with and support scientific research as a foundation for sound decision-making.

The panel heard numerous times of a lack of trust in the current process and that the public perception is that the NEB exists to determine how to develop pipelines, rather than to

decide whether they should be developed. The low number of project refusals was cited in support of this. At the same time, one participant voiced the perspective that such low refusal ratings may reflect the fact that, with so much on the line, companies will screen the compliance of projects before presenting them to the board.

Considering international, national and provincial initiatives and commitments, the Panel heard views that the NEB's decision-making process must include an assessment of carbon emissions and environmental impact throughout project lifecycles, using relevant data benchmarks. The panel also heard that an integrity management program (IMP) and an emergency response plan (ERP) should be made compulsory elements of a complete application.

The Panel heard serious concerns with the definition of standing in NEB hearings and participants expressed that they wish to have their say and not be excluded on the basis that they are not a "directly affected party" or that they do not have "relevant expertise or information". The Panel further heard that Indigenous peoples have an inherent interest over the full extent of all traditional lands and territories and are therefore "affected" by activity anywhere in Canada where they may exercise their rights. The current definition of standing is too restrictive generally, and fundamentally flawed in applying concepts of land ownership and direct interest to Indigenous practices that do not follow such patterns. Practically speaking, larger participation could be handled through townhalls and roundtables; the Ontario Energy Board's engagement process for the Energy East project was identified as a best practice of public participation.

The panel also heard that indigenous and local community participation in the decision-making process is very important (the example of good practice given was of the participatory processes that the Cree Nation put in place as a result of the James Bay and Northern Quebec Agreement).

Participants felt that transparency in decision-making would be beneficial. For example, the data sets used by proponents to produce the calculations found in their applications should be disclosed for cross-examination. Furthermore, the Panel was told that it is advisable to explain how different factors, including public consultation, lead to any given decision for the purposes of accountability and legitimacy.

Participants voiced a need for greater coordination between different levels of government in favor of a single process which would make the regulatory process less redundant, confusing and burdensome.

With regards to municipalities, the Panel heard that there are important considerations of cost for pipelines which run through cities, and that these costs are borne entirely by municipalities, and are not included in the total cost calculation of pipelines. Costs incurred by municipalities that can be related to pipelines may include road work, sewage maintenance, water mains, etc. The Panel heard that municipalities would like some standing

to influence decisions and would like to see the total costs – including costs incurred by cities – accounted for.

Considering the attraction of investment to Canada and significant uncertainty to financial decisions, some participants advocated for a tiered approval system. An early stage (one year) determination of public interest and need for the project, likely involving a strategic NEB hearing, would conclude with a decision at the political level. Following that early stage decision, if approved, detailed determination of project parameters would then be decided by the NEB. The Panel heard that such a system is intended to minimize the risks posed to investors who currently face regulatory review costs of over \$500 Million for large projects which could be halted or overturned by political decisions much later in the process. Others expressed disagreement with limiting such considerations to the beginning of the process.

One participant expressed support for the government of Canada's interim measures for pipeline reviews. Another suggested that the province of Ontario's Pipeline Principles could serve as an example in modernizing the NEB's own decision-making.

With respect to land acquisition, the panel was offered the idea of establishing a single government body to manage land acquisition processes for all major projects deemed to be in the public interest including energy, mining and transportation. It was noted that the rules governing land acquisition (from non-Indigenous private citizens) for mining projects differ greatly from those pertaining to energy projects.

One participant shared the following "10 principles for decision-making" with the panel, to inspire their work in modernizing the NEB:

1. Think about a new role for the National Energy Board and abandon a large part of its decision-making role. From now on, the Board could be considered a forum for reflection and consultation. Given the changing values in society, the decision-making power could be restored to the political authorities, who are accountable to the public.
2. Develop a long-term culture to link projects to public policies. Tools such as strategic environmental assessments could be used, because they could allow integration of different horizontal issues, such as transportation and agriculture.
3. Review the principle of appointment of decision-makers so that they integrate representation of the regions and expertise, as well as environmental and consumer interests.
4. Apply the principle of "co-construction" by initiating a reflection process upstream, i.e. before the projects are decided and designed.
5. Think about diversity of consultation processes. In addition to public hearings of the judicial-administrative tribunal type, other, more local and diversified consultation mechanisms and spaces should be provided, open to all. The current process is completely outmoded and kills debate.

6. Answer the question of social acceptability, which has been present for 15 years; it is incumbent on the elected representatives to resolve this.
7. Funding the participation of groups in the review process is important to enable civil society to have the means.
8. Explain the decisions and how the public's contribution must be taken into consideration in the decision (traceability principle).
9. Create a multi-level governance space where all the different governments sit down and agree on a common harmonized process for reasons of efficiency and legitimacy.
10. Ensure that the participation and consultation eventually ends. For this purpose, there must be a known schedule; this principle is fundamental and must remain.

Indigenous Engagement Session – February 23, 2017

Participants acknowledged that integrating Indigenous traditional knowledge and contemporary scientific knowledge has so far faced challenges. Some participants shared views that Indigenous forms of knowledge and evidence have been greatly undervalued in the NEB's decision-making processes.

The Panel heard that Indigenous knowledge of ecosystems provides key insights on the risks posed by an oil pipeline spill or other emergency affecting water and wildlife, and that these should be considered by the NEB. The Indigenous understanding of how different natural systems work together is particularly valuable to those assessing the risks of a proposed project.

It was recommended to the panel that the NEB consider an overarching Indigenous principle when coming to a decision. This principle is that of restoring nature to how it was before a human intervention. Another Indigenous value of potential importance for the NEB's modernization is the pursuit of consensus, rather than adopting an adversarial approach to proceedings.

The panel heard of one practical way of integrating traditional knowledge into the NEB's decision-making process: the NEB should involve elders and those who live off the land at various stages of development and place them on equal footing with other experts.

The panel heard that greater harmonization or cooperation between provincial and federal regulatory bodies may help to prevent redundancy and make the NEB's decision-making process faster and easier. It was expressed that these should not contradict one another at the very least. One clear set of rules requiring cross-government dialogue would be best.

Participants offered their views on what should be key decision-making criteria for the NEB. Chief among them were the consideration of constitutional rights under section 35 of the Constitution (regarding the rights of Indigenous peoples) and the aforementioned environmental assessment, a climate impact assessment including an upstream and

downstream estimate of carbon emissions and the consideration of impacts on the health of waterways, and ultimately, of those who consume products from affected watersheds.

Additionally, it was suggested that the decision-making criteria used by the NEB be customized to each affected Indigenous community based on factors such as their land use and practices.

Some participants requested that the NEB follow consultation and decision-making procedures, and insert themselves in established Indigenous or treaty processes rather than asking first nations to insert themselves within NEB-specific processes.

Moreover, decision-making timelines were discussed, with a preference expressed for allowing more time for study and consultation within Indigenous nations, prior to providing contributions to the NEB's decision-making process.

The Panel heard from participants in favor of eliminating the seemingly arbitrary classification of who makes the final decision on pipelines based on their length (with 40km being the current threshold for a "Section 58" NEB final decision, or "Section 52" Governor-In-Council final decision). The Panel was invited to consider what other screening mechanisms could be used to determine the decision-making process, such as potential impacts to Indigenous rights.

Finally, the Panel heard a call for integrating community consultation into the application stage of a project rather than simply regarding it as a compliance issue down the road.

THEME: Compliance, Enforcement, and Ongoing Monitoring

Public Session – February 22, 2017

The panel heard that the NEB's enforcement and monitoring functions should be informed by more than industry data and that the supporting models should be vetted independently of industry interest.

Participants voiced concerns over the conversion of existing pipelines, outlining the need for greater regulation and enforcement surrounding the proof of safety and of adequate response in case of leakage or other incidents. For example, if an existing pipeline's materials would not pass the current test for a new pipeline, it should be required to replace them with compliant materials. It was suggested that the NEB raises its standards for infrastructure specifically to mitigate spill risks, through requiring double-walled pipes for new projects and concrete troughs under existing pipes to better contain spills.

Regarding emergency response, participants asserted that response and repair times by pipeline operators must be shortened. It was suggested that penalizing non-compliance at a rate of 10,000 dollars per barrel spilled, for example, would add incentive for more urgent action in the event of a spill.

The Panel heard grave concern over the proximity of certain pipelines to “high-consequence” sites and a lack of awareness of the attendant risks, on the part of those managing such sites or those tasked with local emergency services. Such sites identified in southern Ontario include seniors’ residences, schools, a subway station and highly populated multi-story buildings.

Participants voiced their belief that all those exposed to a risk should be informed. As it stands, there does not appear to be a database or map of pipeline locations. Collecting such information in one place and making it accessible would greatly assist in communicating with affected parties. One idea for doing this is to develop a mobile application that would show all pipelines (both operational and out-of-commission) in the area shown on the screen.

Participants offered the idea of mandatory emergency simulations and dry runs in communities exposed to risk. These would serve a dual purpose of testing emergency response procedures and of raising awareness among residents.

The Panel heard that participants believe that existing legislative and regulatory tools are adequate on paper, but that the greatest challenges lie in how the NEB oversees and enforces compliance. Some participants shared stories of having made a complaint of non-compliance to the NEB and not having received any response.

The Panel heard allegations of proponents making misleading assertions to members of the public, and a request that the NEB consider how best to identify and penalize this behavior. The idea of auditing industry presentations to the public to verify the veracity of claims was raised as part of an overall preference for third party verification of claims and data presented by industry actors.

The Panel heard that the bar for what constitutes “industry best practices” must be raised as the industry’s current safety and compliance measures are inadequate, as exemplified by past incidents.

Indigenous Engagement Session – February 23, 2017

Participants asked the Panel to consider how the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) might be enshrined in Canadian legislation – particularly its provisions respecting free, prior, and informed consent.

A question was raised as to the relationship between findings born from monitoring activities and future projects to be considered. Participants cautioned against using baseline data collected as part of monitoring in one community or situation and applying it to others. The distinct ecological knowledge in each territory, and the diversity of views and positions within first nations, complicates this prospect greatly.

The Panel heard that, as part of ensuring compliance and involving Indigenous peoples in monitoring activities on their lands, the NEB must build long-term relationships founded on trust. One participant suggested that demonstrating humility and deferring to first nations as experts on their land would contribute to this trust-building.

The example of the Naskapi people was given by a participant. They want to operate the monitoring functions themselves but will require appropriate capacity development to do so. It was proposed that once the capacity is there, the same people could conduct monitoring activities under multiple government acts, regulating fisheries and transportation among others. It was suggested that other first nations may prefer this model as well.

Other participants spoke more generally of ensuring the involvement of Indigenous peoples throughout the lifecycle of a project. It was suggested that monitoring be done in collaboration with the people who are living on the land and benefitting from it. The agreement between the Cree nation and the province of Québec on the conditions under which projects can operate was raised as an example of good practice, noting that the Canadian government provided input to it.

Participants impressed upon the Panel the importance of building the capacity and resources of First Nations in participating actively in monitoring and emergency response activities.

The panel heard concerns over section 58 of the NEB act allowing companies to minimize their responsibility vis-à-vis public safety and the environment. A review of this legislation as well as of section 52 was recommended to the panel.

Participants noted that the NEB should align its regulations with aboriginal title-related laws that warrant that if a developer moves ahead knowing that there exists a title issue on the lands concerned, large reparations can be sought.

Various concerns relating to safety and compliance were also voiced by participants, including the need to enforce preventative maintenance, the safe decommissioning of infrastructure (including fracking wells) and the extent and application of penalties for violating regulations.

The Panel was invited to consider the possibility of instituting mandatory notification, consultation and accommodation of Indigenous peoples for any operations, maintenance work and spills occurring within their traditional lands.

THEME: Engagement With Indigenous Peoples

Public Session – February 22, 2017

Participants spoke of the need to marry modern-day scientific knowledge with traditional knowledge. Additionally, participants reminded the panel of the Crown's duty to consult and of Indigenous communities' expectation of dealing directly with the Crown rather than a delegated body. Participants also noted that relationships with indigenous peoples should be in accordance with UNDRIP.

The Panel heard concerns surrounding the capacity of First Nations communities to respond to requests for input in an informed manner within the timelines prescribed by the NEB or the proponent for providing a response. Indigenous voices are not being heard simply because deadlines to provide comment are insufficient; concern was raised that proponents generally equate a lack of response from a community with consent. One participant proposed that First Nations communities be allowed to see what the proponent has written about them to confirm their understanding, before becoming part of the record.

A participant also voiced concern over the fact that when an Indigenous community voices its disapproval of a project, it ceases to be consulted on how this project goes forward. Approval of a project should not be a prerequisite for being consulted about or involved in a project, should it proceed. Meaningful engagement was the term used by participants to denote a deeper participation than being consulted in early stages. Such deeper collaboration may touch on emergency response, effective communication and other local interests.

The Panel heard that further clarification on the status and respective roles of the NEB and regulated proponents and operators regarding the "duty to consult" would be welcome.

Indigenous Engagement Session – February 23, 2017

In line with Indigenous traditions, participants underscored the importance of hearing the voices of people from various age groups, particularly those of elders. The Panel also heard concern over the voices of Indigenous peoples either not being heard, or not being given enough weight in decision-making.

The Panel heard that consultation surrounding issues regulated by the NEB should span multiple governments, ensuring the continuity of dialogue. Under the current government there is a very high volume of requests for consultation with Indigenous communities. Numerous participants shared concern over limited capacity to handle such a high volume of requests within the timeframe allotted to them and their fear that this be interpreted as an unwillingness or lack of interest to participate. From a practical point of view on substantive issues, community representatives spoke to how a 30 day comment period is almost impossible to meet.

A potential solution offered was to coordinate consultations by different government bodies, which would simplify consultations and enhance solutions by ensuring that a given proposal was handled in one joint consultation. The example of a joint Indigenous and Northern Affairs Canada and Public Safety and Preparedness consultation was presented.

Regarding the establishment of nation-to-nation relationships between Indigenous peoples and Canada, participants expressed faith in the current government's sincerity. However, there were concerns raised about the time it will take them to develop and share their strategy and the exclusion of some bodies representing Indigenous peoples from conversation, such as the Congress of Aboriginal Peoples. Additionally, participants took issue with the Indigenous peoples' nation-to-nation relationship with the government of Canada not being reflected in the NEB act, processes and documentation.

Extensive discussion was held on the topic of the Crown's duty to consult, much of which was previously summarized in this document. It was noted that The duty to consult is triggered when: The Crown has knowledge of a potential aboriginal claim on the lands concerned; The Crown is contemplating a course of conduct or decision; the contemplated conduct or decision have the potential to affect treaty rights.

A presenter proposed the following course of action by the Crown once The Duty to Consult is triggered. While their presentation pertained to the Métis nation, it may serve as a helpful guide for the NEB overall:

- 1) Provide notice to the potentially affected communities
- 2) Provide capacity funding to Indigenous communities concerned to enable consultation.
- 3) Recognize the unique impacts on each region affected and grant them intervenor status (with corresponding cost coverage)
- 3) Exchange information with the Indigenous communities concerned
- 4) Assess the effects on the communities concerned, and
- 5) Provide appropriate accommodation

However, some participants asked the Panel to consider if a shift from consultation to consent of Indigenous peoples is warranted in light of UNDRIP. They specified that such powers would not be used to categorically veto projects, but rather to ensure that enough time is allotted to the careful study of important considerations, some of which are seasonal (eg. wildlife and vegetation).

Discussion also explored the concept of "meaningful consultation". This term is understood as the degree to which aboriginal peoples can influence the process the Crown uses to make its decisions and how well the Crown protects treaty rights. As such, the Panel heard dissatisfaction from some participants who asserted that currently, the only way to have Indigenous voices not only heard, but truly addressed, is by taking cases to the Supreme Court of Canada. It was also noted that of the Supreme Court accepts oral evidence, so should the NEB.

Participants shared the view that if the scope of consultation with Indigenous peoples on NEB-approved projects were to be expanded to the project's entire lifecycle –from application to decommissioning – Indigenous viewpoints and positions would be more likely to be addressed outside of the Supreme Court.

THEME: Public Participation

Public Session – February 22, 2017

The Panel heard that it is important to engage with the public throughout a project's lifecycle. Participants advocated for a variety of forums in which to do this, both in-person and digital, and both formal and informal. The Canadian Radio-television and Telecommunications Commission (CRTC) was identified as a best practice for public participation in policy and regulatory processes; it was said that the CRTC holds specific hearings to review policies, which are more idea-based than evidence-based, and include participation from the public. These policy discussion forums do not become part of the record, but are useful for public discussion.

Participants raised the importance of the NEB providing funds to cover the cost of participation by individual intervenors and of civil society organizations in the decision-making process.

The panel heard from many participants that to facilitate active participation by the public, civil society, and concerned stakeholders, the NEB must ensure that complete, easily navigable and easily understood data is made available online in a timely manner. It is also important to be creative in how to better engage youth.

Due to a previously cited concern over the integrity of claims made by proponents, it was suggested that the NEB provide a regulatory framework for public consultation by the private sector. This would ensure that claims are on record and can be cross-examined.

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Participants voiced what they consider to be important elements of the public's participation in the NEB's work. Firstly, funding should be provided to cover the cost of full participation by Indigenous peoples and other concerned communities, as budget scarcity has been known to get in the way of smaller communities in the past. Full participation is understood to mean research, analysis, consultation and the hiring of subject matter specialists in addition to participation in NEB hearings.

One participant stated that it is important the NEB website be user-friendly and fully accessible to those with disabilities. They also expressed a desire for greater transparency regarding the selection of intervenors in specific processes.

In general, the panel heard a recurring theme that the cultural shift in NEB decision making and across participants is important. To truly respect rights, already well established through numerous court cases, and the stated agreement on the desire and need for reconciliation, the NEB processes, weighting of evidence and ease of participation must modernize.

GENERAL COMMENTS

In addition, the following general remarks were made:

It is important to acknowledge the very real economic and energy security challenges as energy systems adapt. Those considerations are part of the fabric of public interest in both social and economic considerations.

The procedure of public consultation being used by the NEB modernization panel is laudable and participants are grateful for the opportunity to provide input.