

Opening Remarks

Peter Watson, Chair and CEO

----- (30 minutes for opening remarks) -----

1. Introduction

- Good morning Panelists. We are pleased to be here today.
- My name is Peter Watson. I am the Chair and CEO of the National Energy Board (NEB). I am joined today by my senior management team and some of our professional leaders. These executives bring to the table a range of diverse experiences and knowledge on areas specific to your review.
- At the NEB, we understand the critical importance of public trust. We fully support the Government of Canada's review to modernize the NEB and are committed to helping the Government achieve its objectives.
- We are also supportive of the complementary mandates to review the environmental and regulatory processes as well as the Interim Principles.
- On behalf of everyone here today, and the entire NEB, I would like to convey appreciation for this opportunity.

2. Purpose

- We understand that the Panel Members may have varying levels of familiarity with the NEB. We will use the time provided as there is plenty of information to go through.

- I would like to start our briefing by setting the context in terms of the strong foundation the NEB has established within our existing mandate and highlighting what is working well and where we see some challenges.
- After which, the executive team will elaborate on the NEB's internal transformation and explain our current role, structure and mandate. I trust this will help establish a baseline for the Panel as you engage with the public and Indigenous peoples in the NEB modernization review.

3. Context

- As you may be aware, the NEB was established in 1959 to move the decision-making power over pipelines to an independent quasi-judicial regulator whose decisions would not be based on politics. It was built on the recommendations from two Royal Commissions, the Borden Commission and the Gordon Commission.¹ At this time, economic growth was a key focus. Since the 1950s, the NEB has evolved to balance environmental, social and economic considerations.
- While the NEB Act has been amended from time to time to address specific issues, including the 2012 *Jobs, Growth and Long-term Prosperity Act* and the 2015 *Pipeline Safety Act*, there has never been a holistic review of the NEB's governing legislation.
- Your review marks the first time the NEB Act has been looked at in a holistic way to determine where there is room for improvement.

¹ The Royal Commission on Canada's Economic Prospects (Gorden Commission) and the Royal Commission on Energy (Borden Commission).

4. Setting the Foundation

- When I joined the NEB as Chair and CEO in August 2014, it was clear that the NEB, as well as Canada's entire energy system, was entering a new context defined by global issues like climate change and transition to cleaner forms of energy, reconciliation with Indigenous peoples, and overall increased interest and concern about safety and environmental protection at local, regional and national levels.
- As Canada's federal energy regulator, the NEB has a vital role to play in this system. Over the past two years, we have taken numerous steps to transform internally to adjust and improve where possible within our existing mandate and assure Canadians that we are working to protect what matters to them. Through these efforts we are seeking to build confidence in the regulatory system.
- The NEB currently finds itself in the spotlight in terms of our hearing processes, which have become controversial, headline-grabbing and focal points for energy policy debates across North America. They are however very important processes, in which the NEB has a defined and legally prescribed role in accordance with our statutory mandate.
- We know we cannot satisfy everyone in this role. The energy policy debates are currently too polarized. And we also know that these hearing processes are not the sum total of the role we play as a regulator. They are only one

element of the Board's overall mandate to promote pipeline safety and environmental protection.

- Regardless of the attention on project hearings, the NEB is still active and accountable for making sure that the 73,000 kilometres of pipelines under our jurisdiction are being maintained and in-service safely, with minimal disruption or risk to the people who live and work around them every day. It is this public assurance role, also referred to as our lifecycle oversight role, where we must clearly demonstrate our performance to Canadians.
- In the past year we have taken a more deliberate approach to building public confidence. For starters, the NEB is actively changing the way we assess our performance and competence internally, and putting structures in place to recalibrate our thinking towards a more critical and focused cycle of continual improvement.
- We are actively striving for regulatory excellence, as defined most recently in the body of work led by the Alberta Energy Regulator and the University of Pennsylvania. The attributes of regulatory excellence – utmost integrity, stellar competence and empathic engagement – are the foundation for our work: our programs, the activities we undertake, and the managerial approach we use to achieve results.
- We have established an NEB Management System that defines and describes how we will fulfill our role, and that will allow us to drive continual improvement in the way we work. With that focus in place, we are updating our Performance Framework. We see this Performance

Framework as an opportunity to better report to Parliament, and to all Canadians, regarding our public assurance role, and the results we are expected to deliver.

- The Framework describes to the public exactly what we are doing to fulfill our mandate, and the performance indicators that we will use to measure our effectiveness. Through the Framework, we are capturing the purpose and intent of our work. It will allow us to clearly and credibly demonstrate that we are serious about our public assurance role on behalf of Canadians. It will also allow us to more clearly report to Parliament, through the Minister of Natural Resources.

5. Challenges and Opportunities

- Before we get into the presentations, I would like to highlight some examples of what is working well and where we see some challenges in energy regulation in Canada specific to the areas that you have been asked to examine.

Defining and Measuring 'Public Interest' and the Role of Government Policy in NEB Processes

- The public interest is at the heart of the NEB's mandate. Assessing the public interest involves balancing of environmental, social and economic interests that change as society's values and preference evolve over time.
- Through the hearing process, the Board is able to consider socio-economic, safety *and* environmental factors and integrate them into its overall

recommendation as to whether a particular project is in the public interest. This integrated review process, that includes environmental assessments, allows for a public interest determination which includes a comprehensive assessment of safety, technical, environmental, societal and economic interests. Public interest decisions cannot be made in the absence of an environmental assessment.

- While having the flexibility to determine the public interest, based on society's evolving values, is important, policy clarity from the Government would be helpful in certain areas. This includes, for example, additional clarity on issues such as climate change, Indigenous issues and consultation outside of a specific project, marine shipping, transition to different forms of energy, areas of shared jurisdiction with the provinces, and the treatment of cumulative effects on a regional scale.
- These are broad system-based policy issues, outside the scope of any specific project, which the NEB cannot consider properly, without additional guidance and direction from Government. Transparency and clarity from the Government can help us focus our processes and increase the effectiveness of them, minimizing frustration and dissatisfaction of those participating and wanting to deal with these large policy issues. It would also help to provide clarity as to how real or perceived regulatory or jurisdictional 'gaps' are being addressed outside of the NEB process.
- In addition, clarity from Government on the intended purpose and objectives of the NEB could also help inform the Board's public interest

assessment, and may help address the varying assumptions held by the public regarding the scope of the NEB's mandate and purpose of its public processes.

- Policy clarity can be provided in different ways, some of which involve legislative change and others which do not. Regardless, it is important to preserve the NEB's independence for its adjudicative functions; therefore, any policy clarity or directions from Government should be transparent, general, and at a higher level. The NEB needs to retain flexibility to determine how to apply policy in the unique circumstances of any given case.

Independence and Governance

- It is important for Panelists to understand that existing governance mechanisms in place - requirements for the NEB to file plans and performance reports to Parliament - appear to be neither understood by the public, nor particularly transparent to the public (as the processes occur within the broader system of reporting for all Government departments and agencies).
- Another challenge is the perception that Ministers should not have much interaction with us because we are independent in our quasi-judicial adjudication processes. However, while Government cannot and should not interfere with our decision and recommendation making processes, we submit that there must be robust, transparent, and easily understandable,

governance mechanisms clearly laid out in the NEB Act, to dispel the myth that we are not accountable to Government for our overall performance.

- I also want to highlight our results framework again here - we took the step of proposing substantial improvements to our reporting framework for Government, Parliament and the public over past NEB efforts, precisely because we believe good governance demands that Ministers, Parliament and the public have the necessary information to properly challenge and assess our overall performance - even while we make independent quasi-judicial decisions.
- So, to reiterate, in terms of governance, maintaining the independence of the NEB in its adjudicative role is critically important to the integrity of the Board's regulatory processes. However, independence does not apply to all of our functions, nor should it impede good governance of a public institution like ours. A balance must be struck between independence and governance.
- Your review could clarify changes needed to the NEB Act, to ensure transparent and clear governance mechanisms are in place and are easily understood by the public. This is one area of improvement we feel is foundational to regaining public trust.
- Currently, the NEB Act does not draw a distinction between the NEB as a quasi-judicial adjudicator, meaning a quorum of Members adjudicating an application, and the broader organization. The broader organization has a variety of roles and responsibilities throughout the lifecycle of energy

infrastructure, such as provision of energy information, engagement, and oversight. Some of which are exercised by Members and others by Staff.

- Good governance that is transparent and protects independence in the adjudicative role could be enhanced in many ways, including clarifying the role of Members and staff, and by separating the roles of Chair and CEO. The distinct roles of the Chair and CEO could be clarified in the NEB Act, along with the roles of others in the organization.
- A modernized model for the structure of the NEB could focus these roles so as to provide clarity of accountabilities for adjudication, where a high degree of independence is required, management, where a lower degree of independence is required, and governance, which involves strategic priority setting, a challenge function for management, and requires engagement with stakeholders.

Decision-Making Roles

- In regards to decision making roles, the NEB is well positioned to remain an expert project-level regulator. Regardless of whether the NEB's role is to make a recommendation or a final decision on projects, our expertise, assessments and reports will be equally robust. The NEB's independence in its adjudicative role should be preserved and the purpose and desired outcomes of our process should be clear.

- As you look at the various decision-making roles set out in the NEB Act, you may choose to recommend a retention of the status quo or an adjustment to both the decision-making roles of the NEB and the Government.
- As you consider these issues, factors you may wish to consider could include technical complexity, need for transparency and procedural fairness, project size, degree of national significance, level of public concern or involvement, level of risk posed by the project, or proximity of the project to communities.

Public Participation, Engagement and Hearing Procedure

- We engage with Canadians through the NEB's hearing processes and throughout the lifecycle of NEB-regulated infrastructure. NEB hearing processes are flexible to allow for different methods of participation, and different types of hearings. We utilize technology and a variety of tools, such as process advisors, information sessions, and participant workshops to accommodate and assist hearing participants.
- A challenge we regularly face with respect to public participation in pipeline hearings is the frequent difference between the expectations of participants and our legislated mandate reflecting changes in the NEB Act in 2012. Many participants expect to be heard on policy or system-level issues, such as climate change, that are outside of our project-specific mandate.

- Following legislative changes to the NEB Act in 2012, some stakeholders and members of the public have expressed concern that NEB hearings do not enable meaningful participation due to, for example, the newly mandated rules on standing and time limits. The NEB is faithfully implementing these legislative amendments, however, we acknowledge these public concerns.
- Regardless of one's view on how wide or narrow the opportunities for public participation should be in hearings, it is important that effective, evidence-based participation in NEB hearings should be focused on issues relevant to our mandate and should be meaningful, recognizing that 'meaningful' can mean something different depending on one's expectations and perspective.
- When considering modernization efforts in the area of public participation in NEB hearings, the following principles should be taken into account:
 - Participation should allow for and enable diverse views to be expressed. There is a need to hear from those who are directly affected by a proposed pipeline, from the broader public, and from experts, including federal departments.
 - Participation should serve the purpose of informing the NEB of the facts and circumstances necessary to make a public interest determination or recommendation regarding a specific project. Project-based hearings are not the best place to debate matters of broad energy policy.

- Clarifying the NEB's purpose, mandate and role may assist in managing the expectations of Canadians regarding the purpose of NEB hearings and the role of participants.
- It is important for the NEB to maintain procedural flexibility, given that all pipeline projects are unique and different processes may be necessary to accommodate meaningful participation. Imposing additional procedural requirements on the NEB's hearing processes may not contribute to effective decision-making or efficiency in NEB hearings.
- We recognize that through all stages of the project lifecycle, early, sustained and effective engagement is important for instilling confidence and earning Canadians' trust.

Legislative Tools for Lifecycle Regulation

- Our role as a full lifecycle regulator is one of our strengths; we integrate socio-economic, safety and environmental considerations into our processes. This allows for an effective transition between the application, construction, operation, and abandonment stages, and also allows us to use a combination of project-specific requirements and regulatory requirements of general application to help ensure safety and environmental protection.
- The NEB Act provides us with broad powers to set and enforce regulatory requirements, and oversee company compliance. It also provides us with

an important degree of flexibility and adaptability in carrying out our oversight role. The *Pipeline Safety Act*, which came into force in June 2016, provided significant additional lifecycle oversight tools, including financial requirements for pipelines and the ability of the Board to ‘take over’ the response to a pipeline release in certain circumstances.

- Recognizing that the NEB Act already provides comprehensive and robust enforcement and compliance tools, there is always room for continual improvement and we support legislative changes that will enhance the efficiency and effectiveness of our lifecycle oversight role.
- As mentioned, a modernized model for the structure of the NEB should focus roles to provide clarity of accountabilities. This could include clarity regarding the role of Members and Staff during the lifecycle, such as compliance, oversight, engagement.
- Transparency regarding company compliance and our enforcement measures is an important part of building Canadians’ trust, and this is an area we are focusing on as part of our internal transformation efforts.

Indigenous Engagement

- Our hearings are flexible and provide meaningful opportunities for Indigenous peoples to participate through, for example, the collection of oral traditional evidence.

- We provide the vast majority of available participant funding to Indigenous groups; however, concerns are frequently raised about the adequacy of funding.
- It would be beneficial to have clarity on how the duty to consult and accommodate Indigenous peoples is discharged by the Crown in the context of a whole-of-government approach, and where the NEB fits.
 - While we play an important role in supporting the Crown in discharging its duty to consult and accommodate Indigenous peoples, there are limits on the types of remedial measures we can impose given the Board's project-specific legislative mandate.
 - Initiatives could be explored that would streamline and remove duplication for Indigenous peoples across the broader government approach to the review of major resource projects.
- Through the Review, it would also be helpful to better understand how traditional Indigenous knowledge can be best considered in project-specific assessments.
 - Concerns raised by Indigenous peoples in our hearings sometimes relate to matters that are outside of our legislative ability to address, such as cumulative effects unrelated to the project. Our inability to address these concerns, combined with an absence of other processes to address them, can lead to frustration and dissatisfaction with our hearing process.

Emergency Management

- We have well-trained and qualified emergency management staff with the necessary technical expertise. We recognize the importance of emergency management, support the improvement of emergency management programs and systems, and are responding to public interest in this area by significantly increasing transparency and engagement.
- A key challenge to effective emergency management involves achieving coordination amongst federal, provincial and municipal governments, companies, first responders, and stakeholders. We are committed to taking a leadership role in this area.

Land Matters

- In terms of land matters, we are supportive of initiatives that will facilitate landowner participation in our processes, such as the Land Matters Group, as well as measures to modernize the land matters scheme in the NEB Act to better reflect current land matters issues and concerns.
 - For example, there can be an imbalance of power between individual landowners and pipeline companies, and the land matters scheme in the NEB Act can contribute to this imbalance. This imbalance of power is also an issue that applies to municipalities in terms of planning and siting of infrastructure.
 - While often closely aligned, it is important that land matters are distinguished from environmental factors. It is also important to

distinguish between land owner issues, which are property based issues, and land issues, which is about how the land is treated or protected.

Energy Information Program

- We conduct a robust energy information program under Parts II and, largely, Part VI of the NEB Act. The language of the NEB Act is general and allows for a broad and comprehensive energy information program.
- Given that market monitoring is relevant to the entirety of our mandate, not just Part VI, clarity of, and a greater focus on expanding our mandate, powers and flexibility under Part II may be warranted.
- Our energy information program can play an important role into the future, to present the interconnectivity of energy systems from a unique angle, be predictive and sensitive to emerging trends, and provide objective and neutral information to policy makers.

6. Concluding Remarks

- In conclusion, I hope you take away from my opening remarks the strong foundation the NEB has set within our existing mandate and highlights of what is working well and where we see some challenges in terms of energy regulation in Canada.
- Thank you for allowing me to discuss these important issues. You will be hearing a range of views throughout your engagement process and we would be happy to respond to any questions you might have and elaborate

on the key issues, challenges and lessons learned from our experience as the Canada's national energy regulator.

- The NEB's Chief Operating Officer, Maître Josée Touchette, will now provide a presentation on the NEB's internal transformation and our Executive Vice President of Regulatory, Sandy Lapointe; our Vice President of Integrated Energy Information and Analysis, Jim Fox; our Chief Environment Officer, Dr. Robert Steedman, as well as Shelley Militunovic, our Chief Economist will follow with a presentation about our current role and mandate under the NEB Act.