

**Expert Panel on National Energy Board Modernization
Public Consultation
Winnipeg, Manitoba – February 15-16, 2017**

The Expert Panel for the modernization of the National Energy Board met in Winnipeg, MB February 15-16, 2017, for in-person sessions that included public and Indigenous presentations, and a public 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, and comment was 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 15, 2017

The Panel heard discussion on the NEB's Calgary location and the Calgary residency requirement for Board members. It was suggested that these factors contribute to a perception of the NEB working too closely with industry, and that its location creates, at the very least, a perception of a regulator integrated into the practices and culture of the energy industry. Specifically regarding the residency requirement, participants voiced opposition and suggested that this prevents ensuring that the Board is made up of the most qualified members.

The Panel heard that merit-based appointments, and a reflection of Canadian diversity are critical to the Board's composition. Some participants suggested that the Board's industry-heavy makeup creates at least the appearance of a regulator captured by industry. It was suggested that the Board be reformed to ensure members from various backgrounds, regions, and skillsets. "Merit" in this context can mean more than just an engineering background, and includes climate science, indigenous legal traditions, traditional knowledge, public engagement, and many other fields. Participants noted that no individual is without biases or paradigmatic thinking; it is only through diversity and open communication, that such biases can be overcome.

The Panel heard suggestions that groups should be able to select their own representatives on the Board, or that some form of democratic appointment should be employed.

Moreover, the issue of Indigenous representation was noted by many parties. It was suggested that the Board be mandated to include Indigenous representatives, and that training be provided to members to help them understand their obligations with respect to treaty and inherent rights, and the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Panel heard that suggestions that the Manitoba Law Reform Commission and the Northwest Territories Land and Water Boards would serve as useful governance models from which to draw.

Participants suggested that the NEB Chair and CEO roles should not be performed by the same individual; these two roles are most commonly separate in other organizations.

Indigenous Engagement Session – February 16, 2017

The Panel heard concerns about the NEB's ability to act both independently, and in the interest of Indigenous peoples. Participants suggested that the NEB's current Board composition creates an inherent bias toward the interests and perspectives of the energy industry, as its members seem to come exclusively from that background. It was suggested that the current Board composition creates, at the very least, an apparent conflict of interest, and raises questions about whether the NEB can properly consider a holistic set of views about energy issues. It was suggested that the NEB should be required to have Indigenous representation.

The Panel heard views that Indigenous representation on the NEB is not for appearances' sake or for political reasons. Several presenters, including elders, stressed the important difference between traditional Western worldviews and those of Indigenous peoples. There is no single Indigenous viewpoint, but speakers stressed the common themes shared by many Indigenous cultures. A principle idea here is that traditional Western approaches view the natural world as a resource to be controlled and exploited by man. This view posits nature as something different and outside of essential human experience. Speakers at the Winnipeg session contrasted this view with Indigenous thinking, which views humanity as merely one of a universe of living beings, each with its own purpose, goals, and value. According to this point of view, humanity's mission is not to dominate nature, but to achieve reciprocity, balance, and harmony within a world in which all life is connected.

This point of view leads to a fundamentally different approach to issues related to resource development and remediation, and how we interact with the world around us. It is for this reason that many speakers pointed to a need for Indigenous representation within the NEB: this alternative worldview is valuable and has a direct bearing on the decisions that the Board faces.

Further to this point, speakers raised the issue of language, noting that many concepts of Indigenous worldviews are inextricably linked to the languages from which they come. This has implications for Board governance and finding ways to include Indigenous languages.

The Panel heard that merit is important for Board members, but that the concept of merit must be expanded to include a wide range of knowledge and expertise, from traditional knowledge, to climate science, to knowledge of the UN Declaration on the Rights of Indigenous Peoples, to engagement. These and many others are important disciplines that directly relate to the NEB's work; engineering is important, but it is not the only relevant expertise.

The Panel also heard from representatives of the Métis nation, who stressed the importance of acknowledging the variety and diversity within Canada's Indigenous communities. The Panel heard that sometimes Indigenous representation can mean predominantly First Nations representation, but that this does not account for many other peoples.

Finally, participants discussed the challenge of representation on a Board with a finite number of members, and on project review panels that typically feature only three members. It may simply not be logistically possible to represent every nation, people, or field of expertise directly on the Board. For this reason, it was suggested the NEB staff also have diversity of expertise and backgrounds and that other strategies be examined (for example, advisory panels made up of affected groups) to ensure appropriate representation.

THEME: Mandate and Future Opportunities

Public Session – February 15, 2017

The Panel heard much discussion about the need for an overarching energy policy to guide NEB decision-making. Participants suggested that the NEB of today is in a difficult bind as it is expected to make energy decisions in the absence of a clearly expressed energy policy. Canada is a signatory to the Paris Agreement, and the government has made high level commitments, however, Governments needs to provide clearer direction to the NEB so that the regulator can reflect these commitments when assessing projects. As an example, some scenarios suggest that for Canada to meet its stated emissions reduction goals it would require the virtual elimination of all fossil fuels by 2065, or perhaps 2050. Additionally, some demand projections suggest that Canada should have no need to explore for or exploit any further fossil fuels, as existing supplies will be sufficient. Participants expressed their view that these planning assumptions play a major role in guiding NEB action, and there is no consensus on how to align policy with longer-term climate goals.

In addition, participants suggested Canada should create a carbon budget, against which to evaluate its progress and allowable emissions within those limits. Such a budget would define the amount of carbon permitted in a region or province, and would guide regulators like the NEB (and others) in making decisions. Similarly, the idea of Strategic Environmental

Assessments was raised as another tool to bridge the policy gap on energy and the environment. Strategic Environmental Assessments would take a holistic look at an ecosystem or area, and provide further information on that area's ability to bear further development, and under what conditions. It is not necessarily the case that the NEB should create or operate these enabling frameworks. Rather, it would serve as a mechanism for enabling the NEB and Government to make informed decisions related to project approvals.

With respect to environmental assessment, the Panel heard the view that the NEB should not be involved in environmental assessments. Rather, this work should be left to the Canadian Environmental Assessment Agency (CEAA), for two reasons: first, that CEAA is a centre of federal expertise for this type of work, and second, that performing this function creates a conflict for the NEB, as both a licensing body and environmental monitor.

In this vein, the Panel was encouraged to work in close collaboration with the Expert Panel on the federal review of environmental assessments, as the mandates of the two panels are complementary in many respects.

The Panel heard a suggestion that the government establish a national, public forum on energy policy. Such a forum would allow for public input at the strategic level around energy policy, and would help build consensus about energy goals and coordination with environmental objectives. In this way NEB hearings could focus on regulatory issues, and not the larger policy universe.

Participants suggested that energy information should be enhanced, and that forecasts should reflect a wider range of planned or possible outcomes (specifically a future reflecting decarbonisation efforts and goals). This includes a greater role in public education about both the energy industry and the NEB and its processes. In addition, it was suggested that an independent body be responsible for producing energy information, not the NEB, as this creates a conflict or tension with its regulatory role.

The Panel heard discussion related to defining public interest. Participants suggested that the current standard is far too vague, and is wanting with respect to environmental protection and climate change. Some suggested codifying a clearer definition in the NEB Act, while others suggested that processes like Strategic Environmental Assessments would better define public interest.

It was suggested that the NEB Act be amended to formally acknowledge climate goals and the international agreements, as a component of the definition of public interest. This could also include any provincial policy, such as emissions caps. It was also suggested that the NEB mandate be reframed to that of managing the decarbonisation of the energy industry.

The Panel heard that the NEB should formally recognize the principles of the UNDRIP in the NEB's mandate and enabling legislation.

The Panel also heard interest in expanding the NEB role with respect to transmission lines. As the future will likely see declining fossil fuel use, and greater electrification, the NEB could play a role in coordinating provincial approach to electricity, and enabling more efficient transmission between provinces. As an example, one participant observed that Manitoba, with its hydro energy resources, could assist Saskatchewan in accelerating its move away from coal power.

Indigenous Engagement Session – February 16, 2017

The Panel heard discussions regarding the concept of public interest which currently underlies the NEB's decision making process. Speakers raised two major points: first, that Indigenous rights are Constitutionally protected rights that cannot be balanced against social or economic concerns; and second, that the NEB requires a much clearer definition of public interest which explicitly acknowledges environmental protection.

Participants noted that "public interest" is an evolving balancing act of many factors: social, economic, environmental, etc. across many regions. Some may view Indigenous issues to be one of those many concerns to be balanced in NEB decisions. However, the Panel heard that Indigenous interests are enshrined as Constitutional and Treaty rights, and that infringement of acknowledged and protected rights cannot simply be justified by the creation of jobs in another region of the country. To this end, participants suggested that the NEB Act be amended to formally recognize Indigenous rights and the principles espoused in the UNDRIP, and that these rights supersede any concept of public interest.

The Panel also heard that the current definition of public interest guiding NEB decisions is vague and open to interpretation (interpretation that many feel is inherently biased in favour of industry), and should be more clearly spelled out. In particular, participants suggested that the notion of environmental protection should be noted in any definition of public interest. Social and economic interests are naturally represented by affected constituencies, but the "Mother Earth" does not always have a voice and should therefore be recognized.

Participants also talked about cumulative effects of projects on the environment, and that considering each project in and of itself masks the overall impact of NEB-regulated activity.

The Panel heard discussion of the Environmental Assessment process, and it was suggested that the NEB should not be responsible for conducting these assessments. Instead, participants suggested that this responsibility should lie with the Canadian Environmental Assessment Agency (CEAA). CEAA is the centre of expertise for environmental assessment within the federal government, and participants expressed views that NEB-conducted environmental assessments may inherently favour project proponents, especially in that they rely on proponent-supplied information and analysis.

Broadly, the Panel was encouraged to coordinate its work and recommendations with those of the concurrent reviews of the Environmental Assessment processes, *Navigation Protection Act*, and *Fisheries Protection Act*. All of these acts and processes are interconnected and

participants urged the Panel to take a holistic view of the issues at play.

The Panel also heard suggestions that the NEB should not be responsible for conducting consultation with Indigenous peoples (as this is a duty borne by the Crown, exclusively), but instead should limit its role to certifying that adequate consultation with Indigenous peoples had taken place during a project review.

The Panel heard views that the NEB mandate be expanded and strengthened to enable a more effective pan-Canadian electrical transmission grid. In light of increasing electrification, and given the various barriers to moving electricity across provincial boundaries, this was seen as a potential area of opportunity for the future.

THEME: Decision-making Roles, Including on Major Projects

Public Session – February 15, 2017

The Panel heard that transparency and evidence-based criteria are paramount for a trustworthy decision-making process. Participants expressed frustration with the current system of Governor-in-Council decisions, based on NEB recommendations, because of the practice of Cabinet confidence, which limits information about why a decision was taken, and what factors influenced the outcome. It was suggested that the NEB develop a decision-making matrix that clearly defines the criteria to be considered in making project approval decisions.

Opinions were mixed as to who should make project approval decisions, with issues of transparency notwithstanding. Some participants suggested that only an independent body with full decision-making authority could play an impartial, evidence-driven role. Others suggested that the Cabinet role in decision-making is important as it adds an important element of political accountability.

In addition, it was stressed that room must be made in the decision-making model should include the consent of Indigenous peoples, who have an important, but still not clearly defined, role in decision-making, in the spirit of free, prior, and informed consent.

Related to questions of mandate, above, participants suggested that NEB decision-making be taken in a broader context overall energy policy, carbon budgets, and strategic environmental assessment. Participants pointed out that the NEB faces a difficult task as regulator, if its decisions cannot be grounded in higher-order direction on climate policy, and understanding of the environments that will bear the impact of projects. Furthermore, it was suggested that strategic environmental assessment is of particular importance in providing a lens through which to consider the cumulative effects of many projects. The Panel heard that the current focus of assessing projects individually is problematic. At this level no individual project can be held accountable for the larger environmental and economic costs which are the sum of many projects.

One participant suggested that the principle feature of a well-functioning decision-making process is the extent to which proponents are willing to redesign projects based on feedback, and the extent to which proponents will accept “no” from other parties. This is emblematic of a decision-making relationship, more so than any specific process.

Participants also highlighted the mandatory process timelines as a point of interest. It was suggested that, for major projects, the current 15-month timeline is far too brief, as it may take parties a long time just to read an applicant’s proposal, let alone develop an evidence-based position on it.

The Panel heard that the current process operates as though information provided by proponents is accepted by default, and that is the burden of other parties to a hearing to disprove the science offered by proponents. Whereas independent studies offered by intervenors are not afforded the same level of authority.

Participants expressed the view that the NEB exercises too much discretionary authority throughout a project review, and not just at the final decision-making step. The NEB can choose who can or cannot participate and how, what the scope of a project is, whether processes will be oral or written, and whether or not to allow cross-examination. All of these decisions have an effect on the eventual outcome of a project review.

The Panel heard a desire to better integrate NEB decisions with provincial policy and decision-making process. There is significant complementarity between federal and provincial roles with respect to pipelines and transmission lines.

The Panel heard concerns that applications are not complete at the time of decision-making. Missing elements could include emergency preparedness plans, or monitoring plans, which inform the risk of a project.

It was suggested that the NEB designed a hierarchy of decision-making tools and gates, beginning with land use studies, proceeding to environmental assessment, then to social impact studies, and finally to a project review itself.

Indigenous Engagement Session – February 16, 2017

The Panel heard extensive comments about issues related to consultation and decision-making, not just within the context of NEB projects, but as part of relationships between Indigenous people and Canada dating back to the earliest Treaties. It is vital to note that the NEB does not exist in a structural or historical vacuum, and that past history and relationships must be acknowledged and understood in order to achieve progress. Speakers expressed a clear expectation to have a real voice in decisions affecting their communities and practices, and not just to be “consulted” as a means to check a box as part of a project application.

The Panel heard views that the NEB does not have any legitimacy to make decisions affecting treaty lands, and Indigenous rights and title. According to participants, these are systems and processes imposed upon Indigenous peoples without their involvement or consent, which is the antithesis of how things might work in relationships guided by nation-to-nation relationships.

Participants suggested that Indigenous decision-making processes and legal orders based on natural law are fundamentally different than those of Canada. Speakers expressed frustration with actions designed to fit Indigenous practices within Canadian models, rather than treating them as equally valuable decision-making models.

As an example, a speaker described the process of meeting to discuss and make decisions in the Turtle Lodge. This gathering features important protocols and ceremonies, sacred objects, allows everyone to be heard, gathers knowledge from Elders in their languages, and is designed to achieve a consensus. It was stressed that the ceremony and content of these processes are inextricably linked. There is no bullet-point version without the ceremony and protocols. It was further suggested that the NEB participate in these types of decision-making processes, in sacred spaces, with Indigenous peoples.

One participant suggested that the NEB should submit its recommendations to the Governor-in-Council and affected Indigenous nations simultaneously.

The Panel heard concerns that there are no clear guidelines regarding Indigenous roles in decision-making. Participants stressed that they expect the principle of free, prior and informed consent (as enshrined in the UNDRIP) to be the guiding principle at play and that this should not be obscured by unclear processes designed to inform Indigenous peoples of already-taken decisions that will affect them.

Participants also suggested that NEB hearings should always allow cross-examination of proponents' evidence.

THEME: Compliance, Enforcement, and Ongoing Monitoring

Public Session – February 15, 2017

The Panel heard considerable discussion about the risks of oil spills and participants' uncertainty regarding the part of participants as to adequacy of emergency response plans and preparedness measures. Participants spoke at length about potential hazardous consequences of pipeline ruptures, with a particular focus on the dangers of drinking water contamination. Concerns were expressed that NEB conditions require only that emergency response plans be created by companies, but that the NEB exercises little qualitative oversight over those plans. Moreover, it was suggested that emergency preparedness plans and evacuation plans in the event of catastrophic failures should be prepared as part of project applications, not after projects are approved, as the feasibility of such plans should

have some bearing on project approvals. The group discussed the practical and far reaching implications of disaster planning at this scale, suggesting that water contamination for a city like Winnipeg would require the emergency import of water for hundreds of thousands of people for weeks, and that this is not something for which any party is seriously prepared. In addition, the Panel heard concerns about various chemicals, like hydrogen sulphide, which may have potential effects for which companies and governments are unprepared.

The Panel heard a desire for more and better information about ongoing monitoring activities and results, as well as compliance outcomes. Furthermore, it was suggested that this information be made public and accessible.

Participants expressed concern that existing infrastructure may not be adequate, for example double-walled pipes for water crossings, or that new substances may be more corrosive than the substances for which existing infrastructure was originally designed. It was further suggested that new bitumen products may be significantly different than the original substances for which pipelines were intended, necessitating a review of whether original permits and approvals apply to new activities.

It was suggested that the current practice of surety bonds established by proponents to guarantee resources required to clean up and remediate damages in the face of a release is insufficient. First, because these bonds are not indexed for inflation over the several-decade life of a project, and second because this practice offers little protection for taxpayers in the event that the company goes out of business, there is a possibility that the public will be responsible for any remaining issues. Participants expressed concern that remediation may not be possible, not for want of resources, but because techniques do not exist to – for example – to recover diluted bitumen that has sunk into a body of water.

The Panel heard that on the ground inspections are limited in number and in scope (relying on above-ground visual observation), with some ~200 inspections annually, against 73,000 km of federally regulated pipelines. It was suggested that the 2015 Commission of the Environment and Sustainable Development report on Oversight of Federally Regulated Pipelines should be examined for an overview of some of the issues and challenges associated with compliance monitoring.

With respect to land acquisition, the Panel heard views that landowners should be able to decline consent for the use of their lands for pipelines or transmission lines. In addition, it was suggested that the NEB could play a bigger role in informing landowners of their rights and processes; as opposed to having project proponents play the primary role in educating landowners, as they have an inherent conflict in doing so.

The question of protection of transboundary waters also arose, as many watersheds, lakes, and river systems are connected to the United States, and are affected by regulatory policy and action there. It was suggested that a member of the International Joint Commission (IJC) could sit on the NEB, or at the very least that coordination between the IJC and the NEB be

strengthened.

Indigenous Engagement Session – February 16, 2017

The Panel heard many views on compliance and monitoring, but it should be noted that an overarching theme of the day was the protection of the environment, and the protection of water in particular. It was stressed that clean water is the lynchpin of all ecosystems on earth, without which virtually all life would be impossible. NEB-regulated activities present risks to rivers, lakes, watersheds, and drinking water sources for millions of Canadians, and the Panel was urged to consider the seriousness of these risks and consequences in its deliberations.

Speakers noted the importance of ongoing monitoring for all NEB-regulated projects, and suggested that too much focus is being placed on initial project reviews and approvals, while existing projects – which are in place for decades – are subject to much less scrutiny.

The Panel heard that the current approach to project approvals appears to view monitoring as a secondary consideration, with proponents promising to develop monitoring systems and emergency response plans as part of project implementation. Participants suggested that this practice makes it impossible to understand or comment on the full impacts of a project, and this has an important bearing on whether a project should be approved in the first place.

In addition, the Panel heard serious concerns over the reliability of monitoring equipment – which has failed to observe releases that have only been discovered by direct observation by people on the land – and the feasibility of recovery plans. It was suggested that Indigenous peoples should be more engaged in monitoring processes.

With respect to compliance it was suggested that some communities have established their Land Codes, that govern impacts on their lands, and that these codes should be incorporated into compliance monitoring.

The Panel also heard that companies may use “upgrades and maintenance” of existing projects, improperly, when in fact those maintenance projects may have major impacts akin to new projects. For example, integrity digs – to physically inspect the integrity of *in situ* pipelines – may be minor, but the cumulative effect of hundreds of such digs, and the infrastructure required to support them, is not insignificant.

Participants noted that Indigenous communities bear a large share of the risk of NEB-regulated projects, as they affect traditional and treaty lands across the country. It was noted that Indigenous peoples should benefit from projects to the same extent that they bear project risks.

The Panel heard that traditional knowledge is not limited to First Nations. Métis traditional knowledge is also a distinct and important input for decision-making.

THEME: Engagement With Indigenous Peoples

Public Session – February 15, 2017

The Panel heard strong support for taking real steps to establish nation-to-nation relationships between Canada and Indigenous peoples, and that the Prime Minister has made clear that the nation-to-nation relationship is the most important relationship for Canada. This means moving past the limited consultation models of the past. Participants suggested that consultation with Indigenous peoples to date has been largely perfunctory, designed primarily to do that which is necessary to receive a permit. Some participants shared their experience of being consulted on issues when decisions had already been made, and the community in question had no realistic opportunity to influence the outcome.

The Panel heard that Indigenous people frequently bear the risk associated with projects (as they are situated on traditional territories), but do not share in the benefits of those projects, which largely accrue to urban centres or even foreign markets. In this sense, Indigenous engagement can be seen to include the goal of ensuring that those who assume risk have a say in projects, and receive a share of the benefits.

Participants also mentioned the variety of Indigenous communities across Canada, and the important implications this has for engaging these communities. The NEB must be knowledgeable and attuned to the fact that different communities have different ceremonies, different legal traditions, and different expectations. There is no single “Indigenous viewpoint” or practice, and the NEB cannot be guided in its relationships by a one-size-fits-all model.

The Panel also heard that existing Indigenous governance models – some a product of colonialism – may not speak for or represent all Indigenous peoples.

More broadly, the Panel heard an urgent call to action to begin to address the destructive legacy of Canada’s past relationships with Indigenous people. NEB regulated activities represent only a small portion of the many issues at play, but nonetheless success here can set a positive example and establish a precedent for tackling the challenge of reconciliation with Indigenous peoples.

Indigenous Engagement Session – February 16, 2017

The Panel heard that adequate funding and realistic timelines are critical for enabling real and meaningful engagement with Indigenous peoples. On funding, the Panel heard that the amounts available are often so low that communities have to choose between hiring experts or lawyers, and further have to reduce the scope of what they can examine. In some cases the amounts available will be reduced if many applicants apply, and as funding is allocated on a cost-recovery basis, groups without large amounts of resources on hand may be excluded.

Timelines can be challenging, as organizing the resources required to review project proposals, vetting reports, and working through community governance structures can take far longer than the formal time allotted.

Project scoping was raised by several speakers, who observed that the NEB has taken decisions to limit or expand the scope of what is considered in projects, without any apparent input from affected parties. This includes upstream and downstream effects as well as transmission lines required to power pipeline infrastructure.

The Panel heard that current practices present barriers for ensuring the real participation of Indigenous peoples. Formal hearings are not designed to respect or accommodate Elders and their knowledge, and the Panel heard emphatically that traditional knowledge equals Western science and should not bear the burden of being proven with Western techniques to be considered valid. Engagement in this sense can include everything from ceremony and protocol, to language, to the physical location of hearings.

Speakers also suggested that more effective forms of communication be employed to engage Indigenous peoples and explain activities and impacts in terms familiar to them. This can include local languages and using visual aides to depict the terms in question, as opposed to volumes of scientific information designed by and for experts in those fields. The Panel heard of examples of success in this regard using factsheets in local dialects, and with clear layman's language. This applies especially to engaging Indigenous youth, who may have lower levels of knowledge and awareness of issues. Youth engagement is particularly important, as it represents investment in the next generation of leaders.

The Panel heard serious concerns with the definition of standing in NEB hearings applying only to those "directly affected" as this can be a limited definition. Participants stressed that traditional land use is not limited to reserves or dwelling areas, and that Indigenous peoples have an inherent interest over the full extent of all traditional lands and territories. Indigenous peoples 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.

The Panel heard that the NEB must do more to actively engage affected parties, and not rely on proponents to do so, nor on Indigenous peoples to find out about projects themselves. As an example, a recent project affected a widely acknowledged ceremonial ground inside a Manitoba Provincial Park. This area is used by many nations, and the question was asked: why can the NEB not reach out actively to inform those nations?

THEME: Public Participation

Public Session – February 15, 2017

The Panel heard that participants see some significant flaws in the current public engagement practices of the NEB, and would like to find new ways to ensure that members of the public can be heard and influence NEB decision-making.

The issue of standing was discussed at length. The current limitation of standing to those “directly affected” by a project or those with “relevant information and expertise” is seen as overly limiting by some. Participants spoke about their own experiences attempting to take part in NEB processes, and found that their roles were very limited if they were not able to gain formal intervenor status. Participants acknowledged that it is not practical for thousands of people to make formal presentations to NEB panels, but in many cases interested parties wish only to have a venue to make their concerns known. The Panel heard that today members of the public must fill out a ten-page form to be permitted to be an intervenor or commenter.

Also with respect to standing, it was suggested overlapping representation can be problematic. One participant characterized an experience of being denied intervenor status, as a Winnipeg resident, because the City of Winnipeg was an intervenor and its citizens were therefore already represented.

The Panel also heard that participant funding is critical for meaningful participation from the public, but that in many cases the participant funding amounts are so low that funded groups can only conduct a portion of the work they had planned.

Timing can also be problematic for participating groups, as it can take considerable time to review applications, procure experts, and review results. This leaves commenting parties feeling as though they are playing catch up and fighting a ticking clock.

It was suggested that criteria for permitting oral or written testimony in hearings is arbitrary or unclear, and that all hearings should require oral testimony and cross examination. The process for written questions and responses was characterized as slow and insufficient and fail to enable an appropriate review of proponents’ proposals.

The Panel heard discussion on how to enable real participation for large numbers of people. Many participants may wish to simply add written comment to the record of a project, and there should be avenues by which to do so. However, some matters required face to face communication and participation. Overall, the group determined that work must be done to enhance and expand participation opportunities for the public. More broadly, it was noted that “participation” is a one-stop event, whereas quality engagement is reflective of a positive, ongoing relationship.

It was suggested that the Ontario Energy Board public engagement process for the Energy East project be looked to as a best practice.

The Panel heard expressions of frustration with the NEB website. Proponents' project information is not indexed or searchable, and there are file-size limits on uploads which make it difficult to provide information. In addition, the application process for funding and intervenor status was described as difficult to navigate, with little resources or assistance.