Office of the Chair and CEO

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Gary Merasty and Hélène Lauzon
Co-Chairs, Expert Panel
NEB Modernization Review
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Dear Mr. Merasty and Ms. Lauzon:

Thank you for your letter of 3 February 2016 on behalf of the Expert Panel conducting the review of the National Energy Board’s (NEB) role, structure and mandate under the National Energy Board Act (NEB Act). I am pleased to provide the NEB’s responses to the questions posed, in the attached Annex 1.

As Canada’s federal energy regulator, the NEB has a vital role to play in Canada’s national energy system. Over the past two years, the NEB has taken numerous steps to transform internally to adjust and improve where possible within the existing mandate and assure Canadians that the NEB is working to protect what matters to them (see Annex 2 for details on how the NEB is Driving Regulatory Excellence). Through these efforts the NEB is seeking to build confidence in the regulatory system, but this work can only take the organization part of the way. A more modern legislative framework would help the NEB to progress further to better meet current and future opportunities in Canada’s energy system, and better serve the Canadian public interest. As an organization dedicated to continual improvement, the NEB is fully supportive of the review the Expert Panel is conducting.

To that end, and for ease of reference, the NEB’s responses to the questions asked have been grouped according to the thematic areas within the Expert Panel’s Terms of Reference. For each response, the NEB has included a description of how the NEB has taken steps to internally transform the organization and evolve its role as Canada’s energy regulator within the existing legislated mandate, as well as some recommendations on areas the Expert Panel may want to consider in the review.

The NEB continues to take its responsibilities seriously and Board Members and staff are talented and dedicated professionals who work hard to help ensure the safety of Canadians and the protection of the environment.
I would be pleased to meet with the Expert Panel to provide further details on any of these topics or respond to any subsequent questions you may have.

Yours sincerely,

C. Peter Watson, P. Eng., FCAE
Chair and CEO
Annex 1 – Responses to Modernization Expert Panel Questions

Table of Contents

DECISION-MAKING ROLES ........................................................................................................ 5

Question 1: Please describe the NEB’s decision making process on a project, and how it sets conditions on a “yes” and a “no” recommendation. ........................................................................... 5

Question 1a: Please explain the process the NEB would follow if the Governor in Council were to ask the NEB to reconsider its recommendation or its conditions. ........................................... 5

GOVERNANCE .................................................................................................................... 8

Question 2: How does the NEB communicate through NRCan to Governor in Council? .................................................. 8

Question 2a: Does the Minister have the ability to influence NEB decisions? .................................................. 9

Question 2b: Is the NEB’s work guided or confined by government policy? .................................................. 9

Question 3: Please describe the roles of NEB Board Members: .................................................. 9

Question 3a: Are there differences in how temporary and permanent Board Members are trained and contribute to the organization? .................................................. 9

Question 3b: Does the dual role of Chair/CEO create a challenge for the NEB? .................................................. 10

Question 3c: Are there currently any Indigenous Board Members? .................................................. 10

Question 4: Is it important for the NEB head office to be located in Calgary? Please elaborate. .................................................. 10

MANDATE ............................................................................................................................ 13

Question 5: How does the NEB deal with changing views on what the “public interest” is? .................................................. 14

Question 5a: Should the public interest determination include cumulative impacts? If so, how? .................................................. 14

Question 5b: Should the definition of the public interest be codified in the NEB Act? If so, how? .................................................. 15

Question 5c: How does the NEB address situations where people wish to discuss impacts beyond the NEB’s mandate, such as downstream impacts of a project related to climate change? .................................................. 15

PUBLIC PARTICIPATION ..................................................................................................... 16

Question 6: Please comment on the 2012 changes to the NEB Act, and the conditions under which they came about .................................................................................................................. 16

Question 6a: Is it challenging to meet legislated time limit for reviewing projects? .................................................. 17
Question 6b: Is it challenging to enforce the standing requirements for hearing participants?  

Question 8: Please describe the NEB’s participant funding program, including strengths and possible areas for improvement.  

INDIGENOUS ENGAGEMENT  

Additional Question 1: Please describe the steps that the NEB takes to support the Crown in discharging its Duty to Consult for major pipeline projects.  

Question 7: Does the NEB have on staff experts on the Crown’s “Duty to Consult”?  

LAND MATTERS  

Question 9: Regarding Right of Entry  

Question 9a: Do companies apply for Right of Entry often?  

Question 9b: Are decisions regarding Right of Entry appealable in court?  

Question 9c: Does the NEB hear many concerns related to Right of Entry?  

LEGISLATIVE TOOLS FOR LIFECYCLE REGULATION  

Question 10: How does the NEB address issues related to confidential or secure information? For example, when companies submit emergency and incident response plans, how does the NEB ensure the public has access to information that they need?  

Question 11: Please elaborate on how safety and environmental protection is assured; in particular:  

Question 11a: What impact did the Pipeline Safety Act have on safety regulation?  

Question 11b: What other changes are underway to modernize life cycle regulation and continuously improve safety outcomes?  

Question 11c: For inspections and verification, what processes and capacity are in place today and what do you see as key changes needed in the future?  

Question 12: Please describe how the NEB ensures safety and environmental protection in situations where responsibility is shared between jurisdictions. For example, in the case of a safety incident on the coast, does NEB jurisdiction end at the water line? How would the NEB work with other organizations to support the response?
Decision-Making Roles

NEB Transformation to Date:
The NEB proposed and received approval from the Government of Canada for its Departmental Results Framework in the fall of 2016. The results framework ensures that the NEB reports transparently on its performance in four key responsibility areas: Energy Project Adjudication, Safety and Environmental Oversight, Energy Information, and Engagement with Canadians. The performance indicators for Energy Project Adjudication and Safety and Environment Oversight assess, among other things, the fairness, transparency and accessibility of our adjudication process and the overall effectiveness of our safety and environmental oversight activities. A copy of the NEB's Departmental Results Framework is attached in Appendix 1.

Considerations for the Expert Panel:
In thinking about decision-making roles, the Expert Panel may want to consider:

- The need for transparency and procedural fairness in the decision-making process including in the reporting of the final decision;
- The purpose and desired outcomes of the decision-making process; and
- The type of decision being made, for example, the technical complexity of the decision; the degree of national significance and level of public concern or involvement associated with the decision; and the level of risk posed by the project that is subject to the decision.

**Question 1:** Please describe the NEB's decision making process on a project, and how it sets conditions on a “yes” and a “no” recommendation.

Decision Making for Smaller Projects¹:
For international and interprovincial pipeline projects 40 kilometres or less and other related facilities captured within the definition of a “pipeline” in the NEB Act, the NEB makes the final decision on whether the project should be approved.

- The NEB reviews applications received and may hold a public hearing. Hearings can be written or oral. The NEB has a wide level of flexibility in setting a hearing process that is appropriate for the size and nature of the project as well as the level of public interest.
- Though not subject to the Canadian Environmental Assessment Act, 2012 (CEAA 2012), the NEB undertakes an environmental assessment of these project proposals. These environmental assessments are based on the same technical considerations as assessments undertaken for larger projects.
- During a hearing, participants have the opportunity to comment on project-specific conditions the NEB is considering. Project-specific conditions are designed, taking into account standards, established requirements, as well as input received from participants, based on the unique aspects of a project. Conditions are designed to protect the public and the environment by reducing potential risks associated with the project.

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¹ Decisions on pipeline projects that are 40 kilometers or less (including related facilities), are made pursuant to s.58 of the NEB Act.
• After considering the information received, the NEB makes the final decision, which includes any terms and conditions required to, among other things, ensure that the project is safe and protects the public and the environment.

Decision Making for Larger Projects:2
For international and interprovincial pipeline projects greater than 40 kilometers in length, the NEB makes a recommendation to the Governor in Council (GIC) and the GIC makes the decision on whether a project should be approved.

• The NEB reviews applications received and must conduct a hearing to allow participants to express their points of view about the proposed project. Hearings can be written or oral.
  o During the hearing, participants have the opportunity to comment on project-specific conditions the NEB is considering.
  o These projects are subject to the CEAA 2012. The NEB’s environmental assessment of these projects meets the relevant requirements of both the NEB Act and the CEAA 2012.

• After considering the information received during the hearing, the NEB prepares and submits a report to the GIC, via the Minister of Natural Resources.
  o The report includes the NEB’s recommendation on whether the project is in the Canadian public interest and if a certificate should be issued.
  o Regardless of whether this is a “yes” or “no” recommendation, the NEB Act requires the report to include all the terms and conditions that the NEB considers necessary or desirable in the public interest that the certificate would be subject to, if GIC were to direct the NEB to issue the certificate.

Once the GIC receives the NEB’s recommendation report, GIC makes the decision. There are three options available to the GIC when making its decision. The GIC can:
1. Direct the NEB to issue a certificate;
2. Direct the NEB to dismiss the application; or
3. Refer the recommendation or any of the terms or conditions in the report back to the NEB for reconsideration.

**Question 1a: Please explain the process the NEB would follow if the Governor in Council were to ask the NEB to reconsider its recommendation or its conditions.**

The GIC has never asked the NEB to reconsider one of its recommendation reports, or any of the related terms and conditions.

If GIC were to refer the NEB’s recommendation, or terms or conditions back to the NEB for reconsideration, it is anticipated that the process would involve the following:

• The reconsideration request may direct the NEB to conduct the reconsideration taking into account any factor specified by the GIC.

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2 Decisions on pipeline projects that are greater than 40 kilometers (including related facilities), are made pursuant to s.52 of the NEB Act.
• For efficiency, the NEB Chair would likely assign a Panel to conduct the reconsideration. The process established by the Panel would depend on the matter being reconsidered, but the process would likely involve getting input from different parties.
• The Panel/Board would reconsider the matter and submit a reconsideration report to the GIC, via the Minister of Natural Resources.
• The GIC would then consider the reconsideration report and make a decision among the three options noted in question 1 above. There is no limit to the number of reconsiderations that may be submitted.
Governance

NEB Transformation to Date:
The NEB believes that good governance demands that Ministers, Parliament and the public have the necessary information to properly understand, challenge and assess the NEB’s overall organizational performance – even while the Board makes independent quasi-judicial decisions.

While maintaining independence in its adjudicative role is important, independence does not apply to all of the NEB’s functions, nor should it impede good governance of the public institution. A balance must be struck between independence and good governance.

The NEB has put in place a Departmental Results Framework to ensure accountability to the Minister, Parliament and the public. The NEB has also produced internal governance documents, such as our Board Member Operating Model (BMOM), to clarify roles and responsibilities of Board Members, management, and staff within the NEB’s existing legislative structure.³

Considerations for the Expert Panel:
In examining the NEB’s governance structure, the Expert Panel may want to consider:
• The value or continued need for the residency requirement for permanent Board Members;
• Drawing a distinction between the NEB as a quasi-judicial adjudicator and the broader organization that executes regulatory actions over the lifecycle of projects;
• Clarifying the specific roles and responsibilities of the Chair, Chief Executive Officer (CEO), Board Members and staff;⁴
• Proving a transparent mechanism for the Government to provide policy direction to the NEB, or to the Chair/CEO.⁵

Question 2: How does the NEB communicate through NRCan to Governor in Council?
The NEB is independent in its adjudicative functions. The NEB communicates its decision or recommendation on projects to the Minister of Natural Resources, after the decision or recommendation has been made and the report is written. For major pipeline projects, the Minister of Natural Resources passes the NEB’s recommendation report to GIC.

³ Further details on the NEB’s entire Governance Framework are available at: https://www.neb-one.gc.ca/bts/whwr/gvnrc/index-eng.html.
⁴ Role clarity is essential for a well-functioning organization. See the Organization for Economic Cooperation and Development report on The Governance of Regulators: Best Practice Principles for Regulatory Policy, 2014.
⁵ While there is no general mechanism to provide policy direction, subsection 52(8) of the NEB Act does allow the Minister of Natural Resources to issue a directive to the Chair, requiring him or her to ensure that the NEB’s recommendation report for a major pipeline application is prepared and submitted in a timely manner.
The NEB exists within the portfolio of the Minister of Natural Resources and follows an established protocol for communication with Natural Resources Canada (NRCan) for financial and administrative purposes. This includes regular and consistent contact to support an environment for mutual understanding and collaboration, outside the NEB’s adjudicative functions.

**Question 2a: Does the Minister have the ability to influence NEB decisions?**

No. Neither the Minister of Natural Resources nor the GIC can exert any influence on the NEB’s decision or recommendation.

If the Minister or the Department of Natural Resources wishes to make their views known in an adjudicative process, they may apply to participate in the hearing, and put information on the record for the NEB’s consideration. In that case, the Minister (or department) would be treated in the same manner as any other hearing participants.

**Question 2b: Is the NEB’s work guided or confined by government policy?**

It is not the NEB’s role to determine, set or anticipate policy. The NEB’s role is rather to implement and be guided by policies that are affirmed in federal legislation. Should the Government wish to provide the NEB with information on an issue relevant to a specific hearing the Government has the opportunity to participate in the hearing process and place this information on the record for the NEB’s consideration. In its adjudicative role, the NEB cannot consider anything that is not on the public record.

The NEB Act does not have a mechanism for the Government to provide more general policy direction to the NEB, or the Chair/CEO, outside of changes to the legislation. As noted above, the Government may wish to consider the implementation of a transparent mechanism to provide such policy direction.

**Question 3: Please describe the roles of NEB Board Members:**

**Question 3a: Are there differences in how temporary and permanent Board Members are trained and contribute to the organization?**

There are no differences in how permanent and temporary Board Members are trained and they can have similar responsibilities.

Permanent Board Members are full-time, but temporary Board Members can be part-time. Only permanent Board Members have been named as either the Chair or Vice-Chair, in the past.

Pursuant to the NEB Act, the NEB can have up to nine permanent Board Members appointed by the GIC for a term of seven years.

- Permanent members are eligible for reappointment for an additional term of up to seven years.
• Permanent members must reside in, or near, Calgary.

Pursuant to the NEB Act, the GIC can appoint an unlimited number of temporary Board Members, on such terms and conditions as the GIC prescribes.
• There is no specific term for temporary Board Members.
• They are eligible for reappointment for an unlimited number of terms.
• Temporary Board Members are not subject to a residency requirement.

The NEB is currently comprised of eight permanent Board Members, including the Chair and Vice-Chair, and 12 temporary Board Members (as of February 2017).

**Question 3b: Does the dual role of Chair/CEO create a challenge for the NEB?**

Yes, the NEB has identified some challenges in the dual role of Chair/CEO.

The NEB Act as well as other federal legislation, such as the *Financial Administration Act*, outlines the high-level roles and responsibilities for the Chair, the CEO⁶ and the Board Members. At the NEB, the Chair and CEO is the same person, however they have different roles within the organization. For example:
• The Chair is responsible for apportioning work among Members, deciding whether the Board sits as a Panel, and assigning Members to a Panel. The Chair may also sit on a Panel and participate in the adjudicative role of the Board.
• The CEO is accountable, as Deputy Head, for overall performance of the agency, financial and human resources matters.

As described above, the roles of Chair and CEO are quite distinct. The Chair retains adjudicative responsibilities, which requires a high degree of independence and separation from individuals and groups who may appear before the NEB in an active proceeding. The role of CEO, in contrast, involves strategic priority setting and engagement with stakeholders over the lifecycle of the infrastructure that the NEB regulates. Clarity surrounding these distinct roles, and a potential separation of these roles, could assist in ensuring greater transparency and a more manageable governance model for the organization.

**Question 3c: Are there currently any Indigenous Board Members?**

Yes, the NEB currently has Indigenous Board Members.⁷

**Question 4: Is it important for the NEB head office to be located in Calgary? Please elaborate.**

Yes, it is important for the NEB’s head office to be located in Calgary.

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⁶ The Chair/CEO of the National Energy Board is the deputy head of the organization, as set out in the *Financial Administration Act*.
⁷ A biography of all of the NEB’s current Board Members is available at: [https://www.neb-one.gc.ca/bts/whwr/rgnztnidstrctr/brdmmbbr/brdmmbbr-eng.html](https://www.neb-one.gc.ca/bts/whwr/rgnztnidstrctr/brdmmbbr/brdmmbbr-eng.html).
The internationally renowned University of Pennsylvania (UPenn) Regulatory Program has identified three attributes which are foundational to regulatory excellence, namely: stellar competence, utmost integrity and empathetic engagement. All three attributes can be facilitated by the location of the NEB’s head office in Calgary.

UPenn states that stellar competence requires a regulator to have, among other things, technical expertise about the system that it regulates. The NEB’s location in Calgary allows for the recruitment of staff and contractors with the breadth and depth of specialized skills to carry out the NEB’s lifecycle mandate. There is a pool of specialized talent related to the energy industry located in Calgary, such as pipeline engineers, environmental specialists with experience in energy projects, and regulatory lawyers. There are also specialized post-secondary training programs located in Calgary. This technical expertise allows the NEB to participate in and to be recognized as experts in the various pipeline dialogues, for example, through work with the Canadian Standards Association (CSA).

Utmost integrity is described by UPenn to include an appropriate level of autonomy from the regulated industry, in order to avoid regulatory capture. However, UPenn also states that a regulator must not be so isolated from the regulated industry that it cannot learn from and understand it. The NEB agrees. The NEB has found that its Calgary presence allows for improved dialogue and information sharing between the organization and the regulated companies. It also allows the NEB to more easily identify trends and manage industry performance as a whole. This collective learning moves the entire regulated system towards improved safety outcomes both inside the NEB and across the regulated industry.

UPenn’s research also indicates that structural features – such as transparency requirements – may be useful for addressing concerns about the organization’s proximity to regulated industry. As mentioned previously, the NEB values transparency and through its transformation initiative is focused on significantly increasing transparency (as set out in this document and in previous submissions to the Expert Panel). However, additional transparency in all areas, from governance to decision-making, could be further integrated into the NEB Act.

The NEB’s regional presence is example of empathetic engagement, the third key attribute of regulatory excellence described by UPenn. The NEB works across Canada and has opened three regional offices in Vancouver, Yellowknife and Montreal. This regional presence is important both for engagement with stakeholders and for field work (e.g., inspectors).

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9 Hearings and other activities related to tolls and tariffs, another key responsibility of the NEB, are more likely to be held in Calgary given the number of large pipelines companies located in Calgary along with many of the shippers on the pipelines.
10 It is also important to note that all NEB staff and Board Members must comply with the NEB’s Code of Conduct, which aligns with Canada’s Values and Ethics Code of the Public Service. The Code of Conduct sets out, among other things, principles of conduct relating to outside employment offers for former employees, rules for conflict of interest, a process for declaring assets and interests, and expectations for confidentiality and impartiality.
While it is important to have the NEB’s head office located in Calgary for the reasons described above, it is not necessary for all staff and Board Members to be located in Calgary. For example, some NEB staff are located in our regional offices. The NEB also has telework arrangements with other staff.

The NEB Act currently requires permanent Board Members to reside in Calgary.¹¹ This requirement could be removed to help facilitate more regional representation and a greater representation from a more diverse range of stakeholders among Board Members.

¹¹ See subsection 3(4).
Mandate

NEB Transformation to Date:
As noted earlier, the NEB’s Departmental Results Framework is a significant improvement in transparency and accountability. It helps to ensure the Minister, Parliament and the public understands whether the NEB is effectively discharging its legislated mandate, which includes an obligation to determine whether proposed projects are in the public interest.

Assessing the public interest involves a balancing of environmental, social, and economic interests that change as society’s values and preferences evolve over time. As noted in greater detail in the questions that follow, this public interest assessment is achieved most efficiently and effectively by having a single regulator consider a comprehensive environmental assessment (EA) alongside integrated factors relating to safety, economic and social issues. A fully integrated public interest assessment is also optimal in addressing concerns raised by Indigenous peoples about their interests (including rights) regarding major energy projects, as these interests are inextricably linked to the environment and the land.

While there can, of course, always be improvements to the existing structures and aspects of the work undertaken by the regulator (in terms of enhanced assessments, efforts at engagement, or otherwise), this does not detract from the benefits of a single, integrated, expert regulatory body conducting assessments at the project-level.

Considerations for the Expert Panel:
There have been significant changes in recent years in the level of public interest and discourse, as well as the resulting policy context, on broad based issues surrounding the energy system; particularly with respect to climate change, cumulative effects issues and Indigenous rights and interests. In light of this altered context, there is an opportunity for the Government to provide additional clarity regarding the NEB’s role and the factors it considers when assessing an application for a project.

In particular, the Expert Panel may want to consider recommending:
- Legislative amendments which provide additional clarity and transparency with respect to the factors the NEB must consider in a public interest determination;
- Additional transparency and policy clarity from the Government on issues such as climate change, Indigenous issues and consultation outside of a specific project, transition to different forms of energy, and areas of shared jurisdiction with the provinces; and
- Additional policy clarity with regard to the treatment of cumulative effects on a regional scale. This may include encouraging the development of land use plans, more baseline data, and national targets and thresholds to facilitate consideration of cumulative environmental effects beyond a specific project, or recommending that the Government take steps to enable the development of more regional and strategic cross-jurisdictional assessments.12

12 Detailed submissions on the need for additional policy clarity with respect to cumulative effects assessment were provided in the NEB’s final submissions to the Expert Panel conducting the review of environmental assessment.
Question 5: How does the NEB deal with changing views on what the “public interest” is?

The definition of “public interest” is not explicitly set out in the NEB Act. The NEB Act does, however, provide direction about certain relevant factors in subsection 52(2). In addition, the NEB Act states that the NEB must have regard to all considerations that appear to be directly related and relevant to the pipeline and that the NEB may also have regard to any public interest that may be affected by the issuance of the certificate or dismissal of the application.

The NEB has stated that assessing the public interest involves balancing environmental, social, and economic interests that change as society’s values and preferences evolve over time. The flexibility with this approach and with the NEB Act gives the NEB an adaptable mechanism to deal with changing views on what the “public interest” is. The NEB is able to receive evidence on, and therefore consider what the public interest is, on a project-specific basis.

Question 5a: Should the public interest determination include cumulative impacts? If so, how?

The NEB’s public interest determination should, and currently does, include an assessment of cumulative impacts. As noted above, the flexibility the NEB has with respect to its public interest determination allows it to consider any matter that is directly related and relevant to the pipeline, including cumulative impacts. The NEB uses a detailed and rigorous cumulative effects methodology which is set out in the NEB Filing Manual.13

The NEB requires applicants to include in their applications information about the interactions between predicted residual environmental and socio-economic effects of the project and effects from other projects or activities that have been or will be carried out. This information must provide enough detail to:

- Identify and analyze predicted cumulative environmental and socio-economic effects;
- Identify proposed mitigation measures to protect the environment and address socio-economic effects, and to analyze their effectiveness; and
- Evaluate the significance of any predicted cumulative effects.

The NEB’s cumulative effects assessment, together with the larger environmental assessment, is carried out in tandem with the NEB’s assessment of other public interest factors related to safety.

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13 The NEB requires applicants to include in their applications information about the interactions between predicted residual environmental and socio-economic effects of the project and effects from other projects or activities that have been or will be carried out. This information must provide enough detail to: identify and analyze predicted cumulative environmental and socio-economic effects; identify proposed mitigation measures to protect the environment and address socio-economic effects, and to analyze their effectiveness; and evaluate the significance of any predicted cumulative effects.
technical, societal and economic interests. For example, in the North Montney Mainline Project proceeding, the NEB required the proponent to assess the potential cumulative environmental effects of developing the upstream resource basin based on engineering design and market supply assumptions that were submitted by the proponent as part of the economic justification for the project. The NEB then imposed conditions requiring the company to develop a caribou habitat offset plan, and to develop a program to monitor and verify the effectiveness of the offsets.

**Question 5b: Should the definition of the public interest be codified in the NEB Act? If so, how?**

It would be helpful to have a more comprehensive definition of the public interest set out in legislation. This clarity could help to improve transparency, and focus the hearing process on the public interest to be considered in a specific project-based assessment. This could be accomplished by expanding the list of relevant factors in subsection 52(2), or the addition of a purpose statement in the NEB Act.

While some additional clarity would be helpful, attempting to anticipate and effectively codify all of the factors that may need to be considered in a public interest determination will not be possible as the circumstances surrounding each individual project are different. Retaining some flexibility to allow the NEB to interpret the public interest, given the unique circumstances of each project before it, will be important.

**Question 5c: How does the NEB address situations where people wish to discuss impacts beyond the NEB's mandate, such as downstream impacts of a project related to climate change?**

For a major project, the NEB always develops a “List of Issues”. The List of Issues sets out what will be considered by the NEB and is based on the NEB’s mandate and the specific facts of the project. It may also contain a description of the matters that will not be considered.

The NEB must be careful to stay within the confines of the mandate it has been given by Parliament. It is clear, however, that it is timely for the Government to review the NEB’s mandate, and consider adjustments to the factors the NEB must consider in a public interest determination.

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14 Under subsection 52(2) of the NEB Act, the NEB can only consider matters that are relevant and directly related to the project and relevant.

15 For example, in the Trans Mountain Expansion project, the List of Issues stated that the NEB Panel reviewing the project did not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by the pipeline. In its Recommendation Report, the Panel focused its assessment on the direct greenhouse gas (GHG) emissions generated from project construction and operations as opposed to assessing the global climate effects of GHG emissions or the GHG emissions associated with upstream and downstream activities.
Public Participation

NEB Transformation to Date:
The NEB has adopted new and innovative approaches to provide more meaningful opportunities for public participation in hearings, such as:

- Increased public input into NEB processes (e.g., broadcasting oral hearings, providing web-ex information sessions, and increasing social media presence to share information); and
- Improved hearing communications (e.g., making more information about hearing processes available and easier to locate on the NEB website).

Considerations for the Expert Panel:
There are a number of challenges that the NEB faces with the hearing process, including:

- Expectations of some participants to be heard on policy or system-level issues, such as climate change, that are currently outside of the NEB’s project-specific mandate;
- Concerns that legislative changes to the NEB Act in 2012, regarding time limits and participation in hearings, diminished the opportunities to allow meaningful participation;
- The modest level of participant funding allowed to support hearing participants.

The Expert Panel may want to consider how wide or narrow the opportunities for public participation should be in hearings. In that consideration, the following principles are relevant:

- Whether 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 hearing participants.
- Whether time limits should be relaxed.
- Whether current limits for participant funding should be increased (or whether a new mechanism allowing for capacity funding should be developed).

**Question 6: Please comment on the 2012 changes to the NEB Act, and the conditions under which they came about:**

In 2012, the NEB Act was amended and the Canadian Environmental Assessment Act was repealed and replaced with the CEAA 2012.

The NEB’s role is to implement policy that is passed into legislation. However, the NEB acknowledges that some of these changes were controversial. This includes time limits and the “standing test” for participation for major projects.

Key changes included:

- The GIC makes the final go/no-go decision on all major pipeline projects.\(^{16}\)
- Eighteen month time limits for major project reviews (NEB: 15 months, GIC: three months).

\(^{16}\) Prior to the 2012 changes, the NEB’s decision to issue a certificate for a project was subject to the approval of the GIC. A decision of the NEB to deny a certificate was final and therefore was not be approved by GIC.
Chair’s powers: Among other things, the Chair may:
  - Take any measure to ensure that the time limit for major project reviews are met, including removing members from a panel authorized to deal with the review; and
  - To ensure timeliness, issue to Board Members reviewing a project directives regarding the manner in which they are to deal with the review;
- The NEB’s enforcement and compliance tools were enhanced (e.g. new administrative monetary penalties).
- The “standing test” for participation in NEB project reviews was changed. The NEB now must hear from persons that it determines to be “directly affected” and may hear from those it determines to have “relevant information or expertise”.
- The responsibility for carrying out CEAA 2012 environmental assessments was consolidated with three responsible authorities: the NEB, the Canadian Nuclear Safety Commission and the Canadian Environmental Assessment Agency.

**Question 6a: Is it challenging to meet legislated time limit for reviewing projects?**

**Question 6b: Is it challenging to enforce the standing requirements for hearing participants?**

The NEB has been able to meet time limits and to apply standing requirements while carrying out robust project assessments.

Time limits provide regulatory certainty, but some Canadians believe that they result in processes that are not inclusive enough or procedurally appropriate. It is important to note that the NEB Act provides mechanisms for the Chair, the Minister, or GIC to extend the time limits, depending on the circumstances. Notwithstanding this ability, consideration could be given to broadening the NEB’s ability to take extensions or to making the time limit longer.

Similar concerns have been expressed by some Canadians regarding standing. As mentioned, the Expert Panel may want to consider how wide or narrow the opportunities for public participation should be in hearings, taking into account that participation should allow for and enable diverse views to be expressed, and serve the purpose of informing the NEB of the facts and circumstances necessary to make a public interest determination or recommendation about a specific project.

**Question 8: Please describe the NEB’s participant funding program, including strengths and possible areas for improvement.**

The NEB Act was amended in 2010 to allow the NEB to establish a Participant Funding Program (PFP) for facilities proceedings, but not for toll and tariff or other types of proceedings. The CEAA 2012, when it came into force, also required the NEB to have a participant funding

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17 The Minister of Natural Resources has the ability to give direction on timeliness in certain circumstances.
18 For further information on the 2012 changes to the NEB Act, see the NEB’s frequently asked questions available at: [https://www.neb-one.gc.ca/bts/ctrp/et/jbgrwthprspft/jbgrwthprspftq-eng.html](https://www.neb-one.gc.ca/bts/ctrp/et/jbgrwthprspft/jbgrwthprspftq-eng.html).
program. The NEB Participant Funding Program Terms and Conditions (Terms and Conditions) set out the basic parameters for the program.\(^\text{19}\)

The NEB PFP is a transfer payment program intended to reduce the financial burden of participating in certain NEB public hearings and environmental assessments of designated projects. The program is not intended to cover the full cost of participation, but rather to assist participants by covering a portion of their costs. Eligible applicants for the NEB’s PFP include Indigenous groups, landowners or individuals living on or near the proposed project area, not-for-profit groups or organizations, or other groups or individuals directly affected by a proposed project.

The NEB’s participant funding covers specific activities and costs related to preparing for and participating in an NEB hearing and should be incremental to a group or individual’s day-to-day or ongoing activities. Examples of eligible costs are legal fees, expert fees, travel expenses, rental of office space or meeting rooms, honoraria and ceremonial costs, collection or purchase of information, translation of materials and other appropriate costs necessary for the proposed participation.

The total amount of available participant funding varies per project and is based on the project’s size, location, possible effects, range of issues, the number of Indigenous groups and landowners affected, the anticipated level of public interest, and the funding approved by Parliament.

- The maximum amount that any single group may receive is $80,000 per project hearing.
- The maximum amount for individuals is $12,000.
- These amounts are reviewed annually based on the NEB’s annual PFP budget and the anticipated demand for funding.

For large projects, such as the Trans Mountain Expansion hearing or the Energy East and Eastern Mainline Projects, the NEB must request incremental funding through the budget appropriations process.

- The funding envelope for the Trans Mountain Expansion hearing was $3 million, which was distributed to 69 groups and 3 individuals.
- The anticipated funding envelope for the Energy East and Eastern Mainline hearing is $10 million. Due to anticipated high demand for participant funding the funding maximum for groups was set at $40,000 and $12,000 for individuals. 13% of groups have submitted letters stating that funding is not adequate for consultation.

Although the program does facilitate some increase in participation by the public and Indigenous groups, in public hearings, participants consistently express their view that the funding envelopes are inadequate to allow them to participate effectively.

\(^\text{19}\) For further information on the PFP, see the PFP Program Guide available at: [http://www.neb-one.gc.ca/prtcptn/hrng/pfp/prgrmgl-eng.html](http://www.neb-one.gc.ca/prtcptn/hrng/pfp/prgrmgl-eng.html).
Participant funding is a cost-recovered activity, meaning the NEB recovers these costs from the companies it regulates. The money recovered from companies through cost recovery is deposited into the Government of Canada’s consolidated revenue fund.
Indigenous Engagement

NEB Transformation to Date:
In the decision report for the Enbridge Line 3 Replacement Project, the NEB recommended that more be done to support Indigenous monitoring of pipeline projects, and that a new approach be developed to support this. The NEB was pleased to see the Government move forward with the development of Indigenous Advisory and Monitoring Committees for both the Trans Mountain Expansion and the Line 3 Replacement projects. The NEB is fully committed to this initiative and sees this as a fundamental and positive change for the involvement of Indigenous peoples in the safety and environmental oversight of pipelines.

The NEB has established organizational units to better support the engagement of Indigenous peoples and has also established programs through its new Departmental Results Framework for the same purpose.

More generally the NEB believes that a better, consistent and more sustained approach to Indigenous engagement can contribute to the Government’s objective of reconciliation with Indigenous peoples.

The concerns that Indigenous peoples raise with respect to their rights and interests in the context of major energy projects are inextricably linked to the land and the environment. The NEB must consider environmental impacts on Indigenous people in order to determine how they can be avoided or mitigated and whether that project is in the overall public interest. The complete integration of environmental assessment and environmental considerations with the NEB’s lifecycle regulation of energy projects allows the NEB to use its multi-disciplinary expertise to address project-specific concerns as they arise.

The NEB strongly believes that it must contribute in a more meaningful way to positive, sustainable relationships between the Crown and Indigenous peoples. Maintaining an integrated approach to project assessment and oversight – where the NEB is working meaningfully with Indigenous peoples – is the best way to accomplish this. This is a work in progress, but one that the NEB is committed to.

Considerations for the Expert Panel:
The Crown relies on the NEB process to the extent possible to meet its duty to consult. While NEB processes and initiatives effectively support the Crown in discharging its duty, it would be beneficial to have further 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 within this larger approach.

- Initiatives could be explored that would streamline and remove duplication for Indigenous peoples across the broader whole-of-government approach to the review of major resource projects, while making sure that the concerns of Indigenous peoples can be addressed by the party or organization best placed to do so.

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20 Federal departments are then able to undertake any additional consultation necessary on matters outside of the NEB’s mandate.
• Removing duplication and streamlining the process could also help address issues raised in the past by Indigenous peoples surrounding consultation fatigue and a lack of clarity and transparency surrounding the overarching consultation process.

Additional Question 1: Please describe the steps that the NEB takes to support the Crown in discharging its Duty to Consult for major pipeline projects.

Aspects of the NEB process that are considered or relied on by the Crown for proposed major pipeline projects requiring a hearing include the following:

• The NEB requires the proponent to undertake consultation with Indigenous groups early in the design phase, providing information and opportunities to discuss the project, and identify concerns, potential impacts and mitigation measures.
• The NEB collaborates with federal departments to identify Indigenous groups whose rights and interests may be impacted by the proposed project.
• Through the NEB’s Enhanced Aboriginal Engagement, the NEB proactively contacts potentially impacted Indigenous groups that may be affected to provide information about the NEB and how to participate in the hearing.
• The NEB provides participant funding to support Indigenous involvement in the hearing process.
• The NEB’s process is an open and transparent forum designed to obtain as much relevant evidence as possible on Indigenous concerns about the project, potential impacts on Indigenous interests, and possible mitigation measures. Efforts are made to make hearing processes accessible to Indigenous peoples. For example, by providing Indigenous groups with the opportunity to give oral traditional evidence.
• The NEB assesses all of the information provided to it, including information on the consultation undertaken with Indigenous groups, the views of Indigenous groups, project impacts on Indigenous interests and proposed mitigation measures.
• The NEB applies its technical expertise and regulatory experience to determine the residual impacts on Indigenous interests and balances those with the other societal interests at play when assessing a project. This is documented in the NEB recommendation report, which is provided to the public.
• The NEB develops enforceable measures to reduce potential impacts to Indigenous rights and interests (via proponent commitments, mandatory conditions and legislative requirements).
• If a project is approved, the proponent must comply with conditions and other regulatory requirements (e.g., NEB Onshore Pipeline Regulations, NEB Pipeline Damage Prevention Regulations).
• The NEB requires proponents’ consultation programs with Indigenous groups to continue throughout the life cycle of a project.
• The NEB verifies and strictly enforces compliance with conditions and regulatory requirements through the use of different tools.
• Those who have continuing concerns about potential impacts of projects can make those concerns known to the NEB, and the NEB can take remedial actions, as necessary.
The NEB process is shaped by Indigenous consultation requirements in federal legislation including, for example, the Constitution Act 1982 (section 35(1)), NEB Act (e.g., s.55.2 standing test, ss. 52(2) consideration of all relevant issues and the public interest), CEAA 2012 (e.g., s. 5 definition of environmental effects, s. 19 factors to be considered), and the NEB’s Filing Manual (e.g., expectations for consultation by the proponent).

**Question 7: Does the NEB have on staff experts on the Crown’s “Duty to Consult”?**

Yes, the NEB does have staff experts in the areas of Indigenous law and engagement, which includes expertise on the Crown’s duty to consult. This expertise can be found, for example, within the following areas:

- Legal Counsel who specialize in this area of the law;
- Socio-Economic Specialists; and
- Engagement and Indigenous Relations teams.

As noted above, many of Indigenous peoples’ concerns are inextricably linked to the land and the environment, and can be addressed by the NEB throughout its lifecycle regulation of a project. The NEB also has staff expertise in land matters and the environment, among other areas to address these issues.

The NEB is committed to ensuring that the interests, including rights, of Indigenous peoples potentially affected by NEB-regulated projects and activities are respected.
Land Matters

NEB Transformation to Date:
The NEB recently revitalized the Land Matters Group (LMG) through active engagement to recruit new members. The LMG provides, among other things, constructive dialogue on key land topics and consensus-based discussions on regulatory and policy matters relating to land issues and energy infrastructure development.¹¹

Considerations for the Expert Panel:
The NEB is supportive of measures to modernize the land matters scheme in the NEB Act to better reflect current land matters issues and concerns. In examining land matter issues in the NEB Act, the Expert Panel may want to consider the following:

- Landowners have often stated that 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. Municipalities have similarly noted an imbalance of power in terms of planning and siting of infrastructure.
- Consideration could be given to allow for the designation of a formal land owner advocate in the NEB Act, akin to that of a consumer advocate.²² This role could facilitate direct representation of landowners’ concerns and interests (including through the creation of submissions and evidence) to the NEB.

Question 9: Regarding Right of Entry:

Question 9a: Do companies apply for Right of Entry often?

No. In recent years the NEB has been seeing fewer applications for right of entry. This may suggest that companies are working with landowners to resolve issues before applying for a right of entry. Applications for right of entry may be filed in cases where there are strained relationships or agreements cannot otherwise be reached.

The NEB expects companies to start consulting and building relationships with landowners at the planning stage of a project and continue this relationship until a pipeline or facility is removed. The NEB process is designed to ideally avoid the need for right of entry applications to be filed. This includes, for example:

- Opportunities for land owners who are directly affected to participate in the hearing process;
- The requirement for land acquisition agreements; and,
- Provisions for notices of objection and detailed route hearings.

¹¹ The LMG terms of reference is available at: https://www.neb-one.gc.ca/pricpta/ndmttrs/ndmttrsgrp/stragcmmttrmrfrnc-eng.html.
²² Consumer advocates often represent residential customers, and in some cases, small business customers, by intervening in utility rate cases filed with public utility commissions. An example of a consumer advocate process authorized by legislation in Canada is section 4 and 4.4.1 of the Ontario Energy Board Act. These sections allow the Ontario Energy Board to establish one or more processes by which the interests of consumers may be represented in proceedings before the Board, among other things.
In the event that a company and a landowner are unable to reach an agreement about land acquisition, and the landowner(s) refuses the company entry onto their lands for pipeline-related purposes, the company can apply to the NEB for a right of entry order.

- Right of entry applications must include a summary of the land negotiation process between the company and landowner, a discussion of outstanding issues and the reasons that a voluntary agreement could not be reached.
- If the NEB grants the application, the company will be given an immediate right to enter the lands. The NEB can attach terms and conditions to the right of entry order.

**Question 9b: Are decisions regarding Right of Entry appealable in court?**

Yes. A right of entry order issued by the NEB can be:

- Reviewed by the NEB (as set out in subsection 21(1) of the NEB Act); or,
- Appealed to the Federal Court of Appeal (as set out in subsection 22(1) of the NEB Act).

**Question 9c: Does the NEB hear many concerns related to Right of Entry?**

The NEB has heard a number of concerns related to right of entry. For example, two frequent concerns raised are:

- Concerns around how to appropriately compensate the landowner. The NEB does not have the authority to address compensation matters as this is under the purview of the Minister of Natural Resources.
- Some landowners have voiced a concern that the availability of the right of entry process does not motivate companies to make a genuine effort to negotiate. The concern is that there is “not a level playing field” between landowners and companies.
Legislative Tools for Lifecycle Regulation

NEB Transformation to Date:
The NEB’s role as a full lifecycle regulator is one of its strengths; the NEB integrates socio-economic, safety and environmental considerations into its processes. This allows for an effective transition between the application, construction, operation, and abandonment stages, and also allows the NEB to use a combination of project-specific requirements and regulatory requirements of general application to help ensure safety, environmental protection, respect for Indigenous rights and interests, and protection of landowner interests.

The Pipeline Safety Act (PSA), which amended the NEB Act came into force in June 2016, providing significant additional lifecycle oversight tools, including financial requirements for pipelines and the ability of the Board to ‘take over’ the response to a pipeline incident in certain circumstances.

Transparency regarding company compliance and the NEB’s enforcement measures is an important part of building Canadians’ trust, and this is an area the NEB is focusing on as part of its internal transformation initiative.

Considerations for the Expert Panel:
The Expert Panel may want to consider the following potential amendments, which would better define roles and responsibilities and provide clarity of accountabilities:

- A modern inspection officer scheme so that there is consistency with compliance and enforcement schemes found in environmental protection legislation. Examples of more modern schemes are found in the Fisheries Act and the Canadian Environmental Protection Act.
- Clarity regarding the role of Board Members and staff during the lifecycle, such as compliance, oversight and engagement. This could include delegating highly technical lifecycle oversight matters to staff experts.

Question 10: How does the NEB address issues related to confidential or secure information? For example, when companies submit emergency and incident response plans, how does the NEB ensure the public has access to information that they need?

The NEB is continually working to increase transparency and share information in accessible formats in the areas of pipeline safety, emergency management, energy trade and development, industry performance, and the NEB’s activities as a regulator. This starts with our Management System Framework and Departmental Results Framework (Appendix 1), which promotes greater transparency in all the NEB’s core responsibilities. Improved transparency can be observed in the following actions taken by the NEB:

- Requiring companies to make emergency response plans public;
- Posting an interactive pipeline incident map online;
- Posting field inspection reports online;
- Posting condition-compliance information online;
- Making enforcement actions public;
Introducing project-specific condition-compliance portals; and
Modernizing the NEB website and social media strategies to facilitate easier access to information.

The NEB treats all filings made by companies during the lifecycle of a project as public by default, with a very few exceptions:

- Sections 16.1 and 16.2 of the NEB Act. The NEB may decide to treat a filing as confidential at the request of a person or group. The NEB may only treat a filing as confidential if it prejudices a person’s competitive position; is financial, commercial, scientific or technical information supplied to the Board and has been consistently treated as confidential; or it impairs the security of a facility.
- Sensitive information under the NEB’s control in accordance with the Government of Canada Security Organization and Administration Standard (e.g., information that could reasonably be expected to cause injury outside the national interests such as loss of life or reputation).
- Under the exemptions to disclosure and exclusions set out in the Access Information Act and the Privacy Act (e.g., the NEB may refuse access to records that could reasonably be expected to threaten the safety of individuals).

The NEB strives to maintain the usefulness of information that is protected under the above legislation and standards, and may aggregate data or remove specific sensitive information as a result. For example, the NEB aggregates export and import data so that individual companies cannot be identified.

**Question 11: Please elaborate on how safety and environmental protection is assured; in particular:**

**Question 11a: What impact did the Pipeline Safety Act have on safety regulation?**

**Question 11b: What other changes are underway to modernize life cycle regulation and continuously improve safety outcomes?**

**Question 11c: For inspections and verification, what processes and capacity are in place today and what do you see as key changes needed in the future?**

The NEB’s public assurance role is of utmost importance, and safety and environmental oversight is one of the NEB’s core responsibilities. In the past year the NEB has taken a more deliberate approach to building public confidence in its oversight role.

The NEB has established a Management System that defines and describes how it will fulfill its role, and that will allow the NEB to drive continual improvement in the way it works. At the centre of this is the NEB Departmental Results Framework. The Framework describes to the public exactly what the NEB is doing to fulfill its mandate, and the performance indicators that will be used to measure effectiveness.
By clearly articulating and publishing the NEB’s core responsibilities, desired results and performance indicators, the Framework gives the public the tools they need to evaluate the NEB’s performance. It also allows the NEB to more clearly report to Parliament, through the Minister of Natural Resources. It is only with increased transparency that the public will be assured that the NEB is fulfilling its safety and environmental protection responsibilities.

**Pipeline Safety Act (PSA):**
The PSA enhanced and strengthened the NEB’s mandate to provide lifecycle oversight of federally-regulated pipelines. The main elements of the PSA include damage prevention, abandonment, absolute liability, and broad powers to assume control of a pipeline release under certain circumstances.

The NEB developed new NEB Pipeline Damage Prevention Regulations and related guidance which provides details as to the obligations of those planning construction, ground disturbance activities or crossings in the area of an NEB-regulated pipeline as well as the obligations of pipeline companies. Regulations regarding financial requirements are also being developed by NRCan.

**Continuous Improvement of Safety Outcomes:**
The NEB has taken numerous steps to transform internally to adjust and improve where possible within the existing mandate and assure Canadians that the Board is working to protect what matters to them. Through these efforts the NEB is seeking to build confidence in the regulatory system, and continuously improve safety outcomes. This includes, for example:

- Holding a public consultation process on the availability of emergency response plans that resulted in companies providing Canadians access to emergency procedure manuals as a result of Board Order MO-006-2016;\(^{23}\)
- Improving data collection and analysis systems to learn from past incidents and regulate against future incidents;
- Publicly releasing the Safety Culture Indicators, to build on the Safety Culture Framework;\(^ {24} \) and
- Working with industry associations on issues such as safety management systems, safety culture initiatives, and audit work (e.g., Canadian Energy Pipeline Association).

**Inspections and Verifications:**
With respect to processes and capacity in place for inspections and verifications, the NEB has a suite of tools available to verify a company’s ongoing compliance with the NEB Act, regulations, relevant codes and standards, conditions and commitments. These tools include, for example:

- Inspections;
- Remediation plan approvals;
- Post-construction monitoring reviews;


• Emergency exercise evaluations;
• Management system audits;
• Compliance meetings; and
• Review of key company manuals such as emergency procedures manuals.

The NEB focuses resources on priority areas. The NEB identifies these areas by applying a risk model that prioritizes action based on probability and consequence. This means that the NEB evaluates regulated companies, their facilities and activities on an ongoing basis to determine the appropriate level of compliance oversight for each company.

The NEB conducts approximately 140 to 200 inspections per year and an average of 335 compliance verification activities per year.\textsuperscript{25} Information on the NEB’s compliance and enforcement actions are proactively posted to the NEB website, including inspection reports and condition compliance.

The NEB is committed to demonstrating diligence and transparency when conducting condition compliance, inspection reports, enforcement actions and incident data. Going beyond compliance and looking at improvements in company management systems is essential in preventing future non-compliances and incidents. This is done through a variety of regulatory tools such as further audits, investigations and/or safety orders.

The NEB also pushes beyond company level performance in order to influence at an industry level. The NEB moves companies from minimum standards to best practices and encourages a focus on sector-wide outcomes and safety culture (in addition to company-specific activities).

The next horizon of regulatory excellence in safety and environmental protection includes the development and piloting of safety culture indicators to better understand how safety culture works and how it can be measured. This effort should eventually lead to safety culture assessment tools for modern regulators to fulfill the public assurance role that is so central to the NEB’s core responsibilities.

The NEB looks forward to the adoption and evolution of the Indigenous Advisory and Monitoring Committees for pipeline corridors, to allow for the full and sustained involvement of Indigenous peoples in the lifecycle oversight of safety and environmental protection.

\textbf{Question 12: Please describe how the NEB ensures safety and environmental protection in situations where responsibility is shared between jurisdictions. For example, in the case of a safety incident on the coast, does NEB jurisdiction end at the water line? How would the NEB work with other organizations to support the response?}

Safety and protection of the environment requires a system-wide approach to be effective. Because the NEB plays a stewardship role in Canada’s energy system, it is investing time and

\textsuperscript{25} Based on averages since 2013.
resources to build and improve system capacity across jurisdictions, particularly in the area of regional emergency preparedness and response.

The NEB encourages multi-stakeholder and multi-jurisdictional consultation and collaboration. For example, the NEB plays various roles in emergency response exercises and regularly develops, participates in and evaluates multi-stakeholder and multi-jurisdictional exercises. This work continues to enhance the understanding of the roles of various agencies, identify areas of strength and improvement, and identify situations where a Memorandum of Understanding can enhance response efforts. The NEB held two recent full-scale emergency response exercises on the west coast with the Canadian Coast Guard (CCG) and the BC Ministry of Environment.

The NEB can also integrate into the Unified Command of a response on a facility where it has shared jurisdiction with other response agencies.

- Unified command is a management concept of the Incident Command System where multiple agencies with jurisdiction over the same incident integrate into a single team.
- Each agency with jurisdiction will share the responsibility of Command and appoint an Incident Commander.
- The composition of Unified Command is not limited, but typically has an Incident Commander from: the company, the federal agency with primary jurisdiction, the provincial agency with primary jurisdiction, the municipal agency with primary jurisdiction and, depending on the location of the incident, an affected Indigenous group.

The NEB’s roles and responsibilities in response to an incident are different depending on whether it occurs at an NEB regulated facility or not. The NEB is generally the lead federal regulatory agency for all incidents that occur on NEB-regulated facilities or activities. Regardless of who is the lead federal agency, the NEB works closely with federal, provincial, and municipal counterparts to make sure that all applicable incident response systems are coordinated, tested and ready for any potential incident involving NEB-regulated energy infrastructure.

The NEB’s public stewardship role is not limited to emergency management and response. The NEB is increasingly raising issues in areas such as management of critical caribou habitat and Southern resident killer whales that require system-wide responses to address. Issues such as these require leadership that transcends and overcomes jurisdictional boundaries, and the NEB is fully prepared to support and assist broader multi-jurisdictional efforts, and to take a leadership role in these efforts as appropriate.

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26 Consultation and collaboration beyond the requirements of the NEB Onshore Pipeline Regulations are encouraged. Among other things, these regulations require companies to establish and maintain liaison with the agencies that may be involved in an emergency response on the pipeline and to consult with them in developing and updating the emergency procedures manual.

27 The NEB has several Memorandums of Understanding in place and continues to develop formal working agreements with government partners, these are available at: https://www.neb-one.gc.ca/bts/cfrg/mmrdm/index-eng.html.

28 For example, for an incident on the coast where a vessel is loading product at a marine terminal regulated by the NEB, the NEB would be the lead federal agency for a spill originating from the pipeline or terminal and the CCG would be the lead federal agency for a spill originating from the vessel.
Annex 2:

Driving Regulatory Excellence

The National Energy Board regulates pipelines, power lines, energy development and trade and is operating in a rapidly changing context defined by increased interest from Canadians in Canada’s energy system. This system is broad and interconnected; it is influenced by federal, provincial and international policies and commitments, regulatory actions, company behaviors, financial markets and public perception. It touches the lives of Canadians every day and affects what matters to them: their lands, water, environment, jobs, communities, safety, and wellbeing.

As Canada’s federal energy regulator, the NEB knows it has a vital role to play in this system. What Canadians need is a credible regulator that provides assurance that it is doing its part to protect what matters to them. Our success in this new context demands that we demonstrate the greatest diligence in our operations in our pursuit of regulatory excellence.

Defining Regulatory Excellence

The NEB’s first step towards defining regulatory excellence started in 2015. We turned to renowned thought leaders and their research. We joined the Alberta Energy Regulator to discuss their work in this regard, commissioned to the University of Pennsylvania’s (UPenn) Regulatory Program (Listening, Learning, Leading – A Framework for Regulatory Excellence). We also wanted to validate these findings by comparing them to other bodies of research and testing them through our expert networks.

We joined the Organisation for Economic Cooperation and Development’s (OECD) Network of Economic Regulators in late 2015, and we also partnered with other energy regulators through the Public Policy Forum to convene three expert summits on regulatory excellence in early 2016. These channels offered an invaluable wealth of best practices formed by a cross section of agencies from Canada and around the world. We listened to their approaches, shared our own, and tested our real world experience against the research.

What we found is that regulatory excellence is not a single action or a series of individual inputs. Rather, it is the sum of multiple, connected attributes that inspire and influence our staff and Board Members every day, at every level, in a systematic way. The three attributes commonly found in excellent regulators as defined by UPenn are: utmost integrity, empathic engagement and stellar competence. We are confident that these three attributes, consistent with the public service values we have already internalized, can help the NEB build trust with Canadians, especially in times of change.

A Framework for Implementing Regulatory Excellence

The NEB’s framework for implementing Regulatory Excellence takes a systemic approach to embedding utmost integrity, stellar competency and empathic engagement into our work. The attributes are integrated into our core responsibilities and our progress in pursuit of regulatory excellence is measured in the outcomes listed in our Departmental Results Framework.

The NEB’s Management System provides the necessary business planning, risk and data management and governance to enable the organization to deliver the outcomes described in our Departmental Results Framework. Relentless focus on organizational improvement is imbedded throughout our Management System by continually enforcing the “Plan, Do, Check and Adjust” cycle.

Our Departmental Results Framework sets a clear direction for the NEB. It illustrates exactly what we do and what we aim to achieve through our four core responsibilities: Energy Adjudication, Safety and Environment Oversight, Energy Information and Engagement. These four core responsibilities deliver tangible and meaningful outcomes for Canadians. With help from our Management System, we will continually monitor our progress on delivering these outcomes through the development and use of performance indicators. These performance indicators are focused on the external environment; they track our performance and how effective we are at influencing and improving industry performance. These performance indicators keep us on the right path and help us continually improve our internal actions and decisions so we can deliver results for Canadians.

In order to be meaningful for Canadians, these performance indicators need to reflect the information stakeholders want to see. We reached out to stakeholders across Canada to understand what information they would like to see about our performance and developed performance indicators that reflect the interests we serve.

Each and every day, our 490 dedicated staff and Board Members contribute to achieving these outcomes and thus, Regulatory Excellence. Our staff delivers energy adjudication processes that are fair, timely, transparent and accessible; prevent harm to people or the environment throughout the lifecycle of energy-related activities; provide Canadians energy information for knowledge, research or decision-making; and engage meaningfully with stakeholders and Indigenous Peoples to hear their perspectives and provide feedback regarding the NEB and our role.

**Regulatory Excellence in Action**

Our *Energy Adjudication* responsibility requires that we deliver processes that are fair, timely, transparent, and accessible. The NEB has seen an unprecedented number of participants in its hearings recently who come with varying levels of resources to navigate the NEB’s regulatory process. We believe that all participants, regardless of resources, should be able to meaningfully participate. NEB staff should engage professionally throughout all of our interactions with stakeholders. Even if a stakeholder does not agree with a decision or recommendation, they should feel as though they were able to meaningfully participate in our review process and their concerns were listened to and respectfully considered.
If a project is approved, our job is just beginning and we need to assure Canadians that we are holding companies accountable throughout the entire lifecycle. This means clearly demonstrating the actions and decisions we take every day to prevent harm to people, the environment and property. When carrying out our Safety and Environment Oversight over the life of an energy infrastructure project, we perform ongoing assessments of company performance, including their management systems and emergency preparedness and perform careful analysis of trends, emerging technologies and the root-cause of non-compliances and incidents. This internal work must be shared with Canadians. We must demonstrate the greatest diligence and transparency with gathering all condition compliances, inspection reports, enforcement actions and incident data. This information is critical in assuring Canadians that we are protecting what matters to them and holding companies accountable.

Determining compliance through tools such as inspections and audits is an essential part of what the NEB does and it does not stop there. Going beyond compliance and looking at improvements in company management systems is essential in preventing future non-compliances and incidents. This is done through a variety of regulatory tools such as further audits, investigations and/or safety orders. We also push beyond company level performance in order to influence at an industry level. This is moving the bar on prevention through improved safety and environment performance from minimum standards to best practice and examining our data and trending to focus from company specific activities to sector-wide outcomes and safety culture.

The NEB’s Framework for Safety Culture, Safety Culture Indicators, and future safety culture initiatives facilitate the advancement of a robust safety culture across the regulated industry.

As we seek to positively influence industry’s safety culture, we must also consider how our own deeply-held organizational values affect decision-making and behaviors in the regulatory system. For this reason, the NEB has begun efforts to understand and evaluate our own internal culture. We are developing a regulator safety (oversight) culture assessment tool to begin to measure and improve as a Regulator.

We strive to provide accurate, neutral and trustworthy Energy Information to Canadians. We want our energy information to play an active role in helping Canadians knowledgeably participate in discussions on energy systems and pipeline safety. To this end, we are also doing more to report on topics like emerging technologies and renewable energy as well as new ways to convey information in simpler, more intuitive ways. In response to what the NEB heard in a variety of engagement settings, the NEB is committed to enhancing its pipeline information on safety and environmental matters to enable it to be accessed by regions and communities.

We believe Canadians should have the opportunity to remain engaged throughout the lifecycle so that both our regulatory processes and the regulatory framework are informed by, and improved as a result of, engagement with landowners, regions, communities and Indigenous Peoples. Through our Engagement responsibility, the NEB is committed to engaging meaningfully with a regional and community approach. Our regional offices in Vancouver, Montréal and
Yellowknife will help us proactively engage at the regional level and use a sustained, cooperative approach to addressing communities’ concerns and interests.

Our regulatory framework – the requirements we set out in regulations and other regulatory tools - evolves as we incorporate lessons learned through all of our core responsibility work. We also learn from other expert regulators within the oil and gas industry and other high hazard industries, and the ongoing technical training we prioritize for our expert staff. The NEB has a program to systematically and strategically review, update and develop its regulations over time. We provide information on our website on planned regulatory improvement initiatives that we expect to bring forward over the next two years.

Moving Forward

Regulatory Excellence is not a one-time exercise. The NEB will have to continually assess itself through use of our Management System and Departmental Results Framework in order to seize unrecognized opportunities and take proactive action against potential weaknesses and risks.

Regulatory Excellence is not only reputational, or about saying we are excellent. Performance indicators that provide Canadians with meaningful proxies for utmost integrity, empathic engagement and stellar competence are necessary to give evidence to our claim. The NEB deliberately selected the term “Regulatory Excellence”, as opposed to “best-in-class” or “world-class”. For us, excellence is not merely a position among peers.

Lastly, Regulatory Excellence is not about perfection nor does it happen by chance - it is a perpetual pursuit. We will never “complete” our goal of being excellent but will continue to set higher performance targets for ourselves over time. We have the humility required to take an honest assessment of where we can improve and we welcome Canadians to help us in driving this pursuit.
## Appendix 1: National Energy Board's Departmental Results Framework

<table>
<thead>
<tr>
<th>Core Responsibility Description</th>
<th>Energy Adjudication</th>
<th>Safety and Environment Oversight</th>
<th>Energy Information</th>
<th>Engagement</th>
<th>Internal Services</th>
</tr>
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<tbody>
<tr>
<td>Core Responsibility</td>
<td>Making decisions or recommendations to the Governor in Council on applications, which include environmental assessments, using processes that are fair, transparent, timely and accessible. These applications pertain to pipelines and related facilities, international power lines, tolls and tariffs, energy exports and imports, and oil and gas exploration and drilling in certain northern and offshore areas of Canada.</td>
<td>Setting and enforcing regulatory expectations for National Energy Board-regulated companies over the full lifecycle—construction, operation and abandonment—of energy-related activities. These activities pertain to pipelines and related facilities, international power lines, tolls and tariffs, energy exports and imports, and oil and gas exploration and drilling in certain northern and offshore areas of Canada.</td>
<td>Collecting, monitoring, analyzing and publishing information on energy markets and supply, sources of energy, and the safety and security of pipelines and international power lines.</td>
<td>Engaging with stakeholders and Indigenous Peoples on topics within the National Energy Board’s mandate and role, beyond engagement on specific projects.</td>
<td>Internal Services refer to the activities and resources of the ten distinct services that support program delivery in the organization: 1. Management and Oversight 2. Human Resources 3. Financial Management 4. Information Management 5. Information Technology 6. Communications 7. Real Property Services 8. Material Services 9. Acquisition Services 10. Legal Services</td>
</tr>
<tr>
<td>Departmental Result</td>
<td>Energy adjudication processes are fair.</td>
<td>Harm to people or the environment, throughout the lifecycle of energy-related activities, is prevented.</td>
<td>Canadians access and use energy information for knowledge, research or decision-making. Canadians have access to community-specific National Energy Board-regulated infrastructure information. Canadians have opportunities to collaborate and provide feedback on National Energy Board information products.</td>
<td>Stakeholders and Indigenous Peoples share their perspectives and provide feedback regarding the National Energy Board mandate and role. National Energy Board engagement activities with stakeholders and Indigenous Peoples are meaningful.</td>
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<tr>
<td></td>
<td>Energy adjudication processes are timely.</td>
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<tr>
<td></td>
<td>Energy adjudication processes are transparent.</td>
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<tr>
<td></td>
<td>Energy adjudication processes are accessible.</td>
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*Internal Services are those groups of related activities and resources that the Federal Government considers to be services in support of programs and/or required to meet corporate obligations of an organization as per Section 6.2 of the Guide on Recording and Reporting of Internal Services Expenditures.*
<table>
<thead>
<tr>
<th>Result Indicators</th>
<th>Number of incidents related to National Energy Board-regulated infrastructure that harm people or the environment.</th>
<th>Number of times the energy information is accessed. Percentage of surveyed web users who agree that energy information is useful for knowledge, research or decision-making. Increased information specific to National Energy Board-regulated infrastructure in communities. Number of opportunities that Canadians have to collaborate and provide feedback on energy information products.</th>
<th>Number of participants in National Energy Board engagement programs. Percentage of surveyed stakeholders who engaged with the National Energy Board who indicate that the engagement was meaningful. Percentage of surveyed Indigenous Peoples who engaged with the National Energy Board who indicate that the engagement was meaningful.</th>
</tr>
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<tbody>
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<tr>
<td>Programs and Program Performance Indicators</td>
<td>Infrastructure, Tolls and Export Applications</td>
<td></td>
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<td>------------------------------------------</td>
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<tr>
<td>The National Energy Board (NEB) makes decisions and recommendations, which include environmental assessments, on applications to construct, operate, decommission, and abandon pipelines and international and designated interprovincial power lines. The NEB also makes decisions on applications for pipeline tolls and tariffs so that they are just and reasonable, applications related to oil and gas exploration and drilling activities and infrastructure in certain northern and offshore areas of Canada, and applications for the export of oil, natural gas liquids, electricity and the export and import of natural gas. Participants in program processes include the applicant, interveners and commenters, or in the case of formal complaints received by the NEB, all parties to the complaint.</td>
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<table>
<thead>
<tr>
<th>Company Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>The National Energy Board (NEB) holds its regulated companies accountable for meeting regulatory requirements and project-specific conditions to prevent incidents and provide for the safety of Canadians and the protection of the environment during the construction, operation and abandonment phases of a project lifecycle. This includes requirements for companies to have adequate funds for abandonment. The NED undertakes risk-based Compliance Verification Activities to determine company compliance with regulatory requirements in the technical areas of security, environmental protection, pipeline integrity, safety management, damage prevention, rights and interests, and financial regulation.</td>
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</table>

<table>
<thead>
<tr>
<th>Outcomes:</th>
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</thead>
<tbody>
<tr>
<td>1. (O6) Regulated companies operate facilities in compliance with regulatory requirements and project specific conditions throughout the full lifecycle.</td>
</tr>
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<table>
<thead>
<tr>
<th>Measured by:</th>
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<tbody>
<tr>
<td>(N7)Percentage compliance with conditions attached to facility authorizations.</td>
</tr>
<tr>
<td>(N8)Percentage of non-compliances and corrective actions addressed within timelines.</td>
</tr>
<tr>
<td>(N9)Percentage of financial compliance audit findings addressed within timelines.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Energy System Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>The National Energy Board (NEB) studies energy systems to inform its regulatory decisions and share energy market information with the public. The scope of NEB energy market reporting is diverse and includes traditional oil, gas and electricity information, as well as renewable energy, the role of emerging technologies, and the links between energy, economic, social, and environmental issues.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Outcomes:</th>
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</thead>
<tbody>
<tr>
<td>1. (O16) Energy system information is useful, accurate, neutral, and reflects the diversity of relevant energy issues in Canada.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Measured by:</th>
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</thead>
<tbody>
<tr>
<td>(N33)Percentage of stakeholders and website users surveyed who agree that NEB energy system information is useful, accurate, neutral, and</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Stakeholder Engagement</th>
</tr>
</thead>
<tbody>
<tr>
<td>The National Energy Board (NEB) uses a regional and community approach to engage with stakeholders to build awareness, confidence and responsiveness in the NEB and NEB regulatory processes. The NEB engages with landowners, municipalities and other orders of government, industry, non-governmental organizations, and others. The views and insights gained inform improvements to NEB regulatory practices, processes, and information materials.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Outcome:</th>
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<tbody>
<tr>
<td>(O20) Regional engagement reflects and responds to the diversity of views and interests of stakeholders.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Measured by:</th>
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<tbody>
<tr>
<td>(N44)Number of engagement activities by region.</td>
</tr>
</tbody>
</table>
### Outcomes:

1. **(O1) Adjudication processes are supported by outreach activities.**
   
   *Measured by:* (N1) Numbers of adjudication-related outreach activities, Enhanced Indigenous Engagement opportunities, and Oral Traditional Evidence sessions and interactions by program and per facility adjudication process.

2. **(O2) Landowner complaints are resolved in a timely manner.**
   
   *Measured by:* (N2) Percentage of landowner complaints resolved within established service standards.

3. **(O3) Shippers receive pipeline services that meet their needs.**
   
   *Measured by:* (N3) Percentage of shipper complaints resolved within established service standards.

### Modelling.

*Measured by:* (N10) Number of incident and investigation close-outs completed within timelines.

*Measured by:* (N11) Reduction of repeat non-compliances based on a three year rolling average.

*Measured by:* (N12) Percentage of compliance verification activities targeted towards key incident trends.

### (O8) Regulated companies have adequate funds to pay for pipeline abandonment.

*Measured by:* (N13) For companies using a trust, weighted average percentage of actual funds set aside compared to Abandonment Cost Estimate.

*Measured by:* (N14) For companies using a letter of credit or surety bond, percentage of companies maintaining a letter of credit or surety bond that covers Abandonment Cost Estimate.

### Management System and Industry Performance

The performance of the regulated industry results in energy infrastructure that is systematically reliable and safe for people, the environment, and property. The National Energy Board (NEB) requires companies to continually evaluate and improve the effectiveness of their management system and to implement corrective actions to prevent incidents. Where required, the NEB investigates and enforces regulatory requirements to prevent harm and acts to compel learnings for further system improvements. The NEB requires companies to promote a positive safety culture.

### Cost Estimate.

*Measured by:* (N36) Percentage change over previous years of energy information website indicators.

*Measured by:* (N37) Percentage change in social media interactions related to NEB energy system information.

### Measured by:

*Measured by:* (N45) Number of meetings by the Land Matters Group Steering Committee.

*Measured by:* (N46) Percentage of participants in NEB regional engagement activities that indicate that they had the opportunity to adequately share their views and perspectives.
<table>
<thead>
<tr>
<th>Participant Funding</th>
<th>Measured by: (N38) Increased amount of NEB energy system data and information published each fiscal year conveyed through interactive visualizations.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Participant Funding</strong></td>
<td><strong>Indigenous Engagement</strong> The National Energy Board (NEB) uses a cooperative and respectful approach to engage with Indigenous Peoples to build and enhance relationships, build NEB knowledge in Indigenous communities and of Indigenous matters, and improve NEB regulatory practices, processes, and information materials.</td>
</tr>
<tr>
<td>The National Energy Board’s (NEB) Participant Funding Program provides funding to facilitate the participation of interveners in hearings with respect to new or abandonment projects for pipelines or power lines and Environmental Assessments of designated projects.</td>
<td>Outcome: (O) The interests of Indigenous Peoples are reflected in the NEB’s processes and lifecycle oversight.</td>
</tr>
<tr>
<td><strong>Outcomes:</strong></td>
<td><strong>Outcomes:</strong></td>
</tr>
<tr>
<td>1. (O4) Participant funding enables the participation of eligible applicants.</td>
<td>1. (O18) Pipeline information is useful and up to date.</td>
</tr>
<tr>
<td>Measured by: (N4) Percentage of Participant Funding Program recipients that culture to effectively manage threats to worker health and safety, and process safety. Information acquired from this work is used by the NEB to continually improve its regulations and practices.</td>
<td>Measured by: (N39) Increased amount of pipeline information posted on the NEB website.</td>
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<tr>
<td><strong>Measures by:</strong></td>
<td><strong>Measures by:</strong></td>
</tr>
<tr>
<td>(N15) Percentage of management system non-compliances and corrective actions addressed within timelines.</td>
<td>(N40) Percentage of pipeline information users surveyed who agreed that the information is useful and up to date.</td>
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<tr>
<td><strong>Measures by:</strong></td>
<td><strong>Measures by:</strong></td>
</tr>
<tr>
<td>(N16) Reduction of repeat management system non-compliances based on a three year rolling average.</td>
<td>(N18) Downward trend of releases by cause (corrosion, third party damage, material defects, etc.) that impact people or the environment is linked to NEB regulatory actions.</td>
</tr>
<tr>
<td><strong>Measures by:</strong></td>
<td><strong>Measures by:</strong></td>
</tr>
<tr>
<td>(N17) Percentage of incidents where improvements to a company management system were made based on NEB’s follow-up on all incidents.</td>
<td>(N19) Downward trend of releases by severity</td>
</tr>
<tr>
<td><strong>Measures by:</strong></td>
<td><strong>Outcomes:</strong></td>
</tr>
<tr>
<td>(O10) NEB regulatory actions are management system focused and are informed by results of incident root cause, trending and analysis of pipeline performance information, and leading indicators, research, technology and industry best practices.</td>
<td>(N47) Milestones are met on the development of an approach for the</td>
</tr>
</tbody>
</table>
2. **(OS) Program delivery is timely and efficiently managed.**

*Measured by:* (N5) Percentage of Participant Funding Program service standards met.

3. **(O11) NEB-regulated companies demonstrate an improved commitment to mitigating human and organizational threats, including those related to safety culture.**

*Measured by:* (N21) Percentage of NEB-regulated companies that have allocated resources to promote safety culture advancement.

*Measured by:* (N22) Percentage of compliance verification activities where safety culture data is collected.

### Emergency Management

Through its Emergency Management program, the National Energy Board (NEB) holds its regulated companies responsible for anticipating, preventing, managing and mitigating conditions during an emergency and for cleaning up and remediating contamination to NEB requirements and expectations. This also includes requirements for companies to have financial resources to pay for spill costs and damages. The NEB promotes the effectiveness of the broader response through mutual agreements and information sharing with all levels of government, including municipalities and First Responders.

### Outcomes:

1. **(O12) Regulated companies are prepared for emergencies.**

2. **(O19) Pipeline maps, visualizations, social media, and other tools are used to make pipeline information accessible and interactive.**

*Measured by:* (N41) Percentage change over previous years of pipeline information website indicators.

*Measured by:* (N42) Percentage change in interactions on social media related to NEB pipeline information.

*Measured by:* (N43) Increased amount of NEB energy pipeline data and information published each fiscal year conveyed through interactive tools.

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39
Measured by: (N23)Percentage of companies’ emergency procedures manuals in compliance with NEB regulatory requirements on emergency management.

Measured by: (N24)Number of incidents where the NEB takes over the company emergency response.

Measured by: (N25)Percentage of regulated companies that are in compliance with the form and amount of financial responsibility ordered by the Board as required by the polluter pays principle.

Measured by: (N26)Percentage of companies that have emergency procedures manuals publicly available.

Measured by: (N27)Percentage of companies that have Emergency Management Program information publicly available.

2.  (O13) Spills are cleaned up and contamination remediation is conducted in an efficient and effective manner.

Measured by: (N28)Percentage of spills cleaned-up in accordance with the requirements, including timelines, of the NEB Remediation Process Guide.

Measured by: (N29)Percentage of releases where monetary impacts are tracked and reported by the NEB.

3.  (O14) First Responders and municipalities have the information they need to respond to emergencies.

Measured by: (N30)Percentage of companies with effective liaison activities and continuing education programs (s.34
and 35 Onshore Pipeline Regulations).

Regulatory Framework
The National Energy Board’s (NEB) regulatory framework applies to all core responsibilities and is comprised of applicable Acts, regulations, guidance materials, documents, as well as certificates, orders and other regulatory instruments used to regulate the industry. The NEB develops and communicates regulations, guidance materials, and related processes to regulated companies and the public. The NEB adopts a continual improvement approach and updates elements of its framework based on policy shifts, best practices, and input from stakeholders.

Outcome:

(O15) NEB’s regulatory framework is robust, current and regulatory requirements and expectations are clear and publicly available.

Measured by: (N31) Percentage of recommendations following the program effectiveness review implemented within timelines.

Measured by: (N32) Stakeholders agree that regulatory requirements and expectations are clear and publicly available.