

**Expert Panel on National Energy Board Modernization
Public Consultation
Fort St. John, British Columbia – March 1-2, 2017**

The Expert Panel for the modernization of the National Energy Board met in Fort St. John, March 1st and 2nd 2017, for in-person sessions which included public and Indigenous presentations, a public dialogue session and an Indigenous open dialogue session.

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

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

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

* Landowner issues are included in the "Compliance et al" theme of the Panel's mandate. However, the Fort Saint John session featured such a wealth of quality feedback on this specific subject, that is featured here separately.

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

THEME: Governance and Structure

Public Session – March 1, 2017

The Panel heard suggestions for broader representativeness on the NEB Board itself, include such areas as expertise in agriculture and land issues, Indigenous peoples from treaty and non-treaty lands, and emergency preparedness. It was further suggested that the Board not consist of retired energy executives, as this would threaten the NEB's independence.

Representativeness is a question for the Board in general, but also for hearing panels on specific projects. With respect to project panels, it was suggested that local people from each stakeholder group impacted by a project be part of the project panel.

Participants discussed the issue of accountability for the NEB, as it is appointed and not directly accountable to the electorate. It was suggested that strict record-keeping requirements might bolster accountability, but concern remained among some participants that an independent board isn't subject to democratic accountability in the same way elected officials are. One participant suggested that Board members be appointed based on a vote in parliament.

Participants felt that available technologies and practices have rendered residence requirements obsolete, and that Board members should not be required to live in Calgary. However, the view was also expressed that expecting Board members to live in Calgary is reasonable if that is the centre of where most NEB business is conducted.

The idea of creating an NEB steering committee with regional or national offices to address the rights of landowners was raised, as was the creation of a council of Indigenous representatives.

Indigenous Engagement Session –March 2, 2017

The Panel heard that the NEB and its decision-making Panels must represent the diversity of Indigenous peoples (treaty and non-treaty, Inuit, Métis and First Nations).

THEME: Mandate and Future Opportunities

Public Session – March 1, 2017

Participants discussed the relationship between Government of Canada policies and NEB decision-making. Some felt that it is imperative that the NEB be as politically neutral as possible, and therefore that it should provide independent reports to the government of the day.

The Panel heard that the NEB should determine public interest based on the evidence it receives in hearings rather than a set definition, given that the public interest may depend on the area of the proposed development. Participants suggested that timely and predictable decision-making is critical, and that “public interest” criteria should be explicitly defined for each project in order to limit protracted debate.

To make informed decisions, the NEB's role in data collection and dissemination was underscored as being important. It was also suggested that the energy of the future will be renewable and that if Canada is to be one of the leaders, it must act right away to put renewable energy at the forefront of its strategies, including those implemented by the NEB. One participant suggested that the NEB may focus on different energy sources in different regions according to the natural resources available there.

On the topic of environmental assessments (EAs), the Panel heard that there is a general perception of assessments conducted by industry being inherently biased. They heard support for EAs being either conducted or procured by independent third parties, with the cost charged to the proponents. Today environmental assessments are overwhelmingly procured directly by proponents, and EA service providers may be hesitant to take other business for fear of jeopardizing relationships with industry. In response, it was suggested that the NEB or Canadian Environmental Assessment Agency be the sole authority for procuring all EAs for regulated projects. Project proponents would continue to fund assessments, EA providers would not be seen to be “working for” the proponent. Additionally, the independent sourcing of EAs could ultimately cost industry members less. One participant worried that this approach, mirroring that of the BC government, would take longer by involving a third party.

Participants asked the Panel to consider how to address the cumulative footprint of various projects (not all NEB-regulated) on landowners. More than one participant illustrated the extent to which their farm land or traditional lands are being industrialized by pipelines, wells and other energy infrastructure, to the detriment of how they sustain themselves. In one example, a farmer had lived through twelve expropriations, resulting in a significant patchwork of energy infrastructure across land. This greatly restricted his ability to work his farm, as machinery as wide as 60 feet cannot be manoeuvred in the space remaining. What’s more, in order to drive farm equipment over a right-of-way or other project infrastructure, landowners must ask companies for permission. This is impractical and gets in the way of making a living.

It was shared that involving landowners and Indigenous peoples in setting the strategy and plan for future energy infrastructure would be a good way to better understand cumulative impacts. The Panel heard that looking at macro and micro data can help all parties to get on the same page when planning for the future.

In addition, it was suggested that the NEB could raise awareness about industry best practices, as most people only hear of energy projects in the context of poor practices and conflict. For example, there is a positive work being done to remediate sites.

In acknowledgement of the necessary shift to a low carbon economy, it was suggested that the NEB oversee the shift from fossil fuel-based energy to more sustainable sources.

It was also discussed that the federal government should be the one to grant licenses for the selling of oil companies to foreign entities.

Indigenous Engagement Session – March 2, 2017

The Panel heard that the NEB's mandate should include the timely reporting of projects' effects on the ground to the Governor-In-Council.

It was also said that Indigenous interests should not be considered as a subset of the Canadian public interest as Indigenous peoples deserve much more integrated and extensive engagement beyond the project decision-making process.

THEME: Decision-making Roles, Including on Major Projects

Public Session – March 1, 2017

It was proposed by some participants that the NEB have decision-making authority for all projects, rather than recommending some to Cabinet. The Panel also heard that projects approved with some 200 conditions don't appear to be "approved" in the true sense of the word.

One participant suggested that the NEB needn't be involved if two provinces are in agreement over an interprovincial project. Another underlined the importance of interprovincial and international projects being brought to Cabinet for a decision, in order to ensure better relations with Indigenous peoples on both sides of a border, and contemplate international trade. Overall, the Panel heard that they need to consider the overlap between national and provincial processes in their recommendations, with one participant suggesting it adopt the role of synchronizing provincial processes.

The Panel heard that, from the point of view of landowners with existing or proposed energy infrastructure running through their property, NEB processes are more efficient and provide more satisfactory outcomes than those of its provincial counterpart. In fact, participants believe that the NEB sets the bar for integrity, influencing provincial regulators and industry, despite its lack of jurisdiction over many projects.

One participant suggested the creation of an NEB decision-making matrix to help ensure that all important factors are considered and to keep the process moving. Others doubted whether such a standardized approach would be applicable to the uniqueness of every situation.

Participants warned against the most vocal parties getting the most consideration. To avoid this, a reliance on facts and merits over "interests" was recommended. Additionally, participants raised the responsibility of project opponents to articulate tangible reasons for their objections.

The Panel heard much concern surrounding the timing, meaningfulness and extent of consultation with stakeholders as part of the decision-making process.

What's more, those deemed to not be directly affected by a project have limited opportunity to have their views heard and responded to. Participants suggested that the NEB should consider proximity to one's property and repercussions on air quality and water supply when expanding the scope of who is deemed to be concerned by a project.

Some participants stated that, as provincially regulated energy development and associated infrastructure projects eventually feed into NEB regulated ones, the NEB should have some influence over them. Many more supported the general idea that the NEB study the upstream and downstream effects of a project, whether on communities, the economy or green house gas emissions, when rendering a decision.

Participants discussed so-called "sausage links", the term given to an interprovincial pipeline with the border crossing portion made smaller and/or managed by a separate entity to avoid the main pipeline on either side of the border being subject to NEB jurisdiction. Participants felt this practice is deceptive and that the NEB should be on the look out for such applications. Participants felt similarly about powerlines. In both cases participants preferred to see federal regulation for infrastructure crossing borders.

A participant highlighted the importance of having the NEB consider the international trade implications of energy decisions.

Given differing views on the role of the Governor-In-Council in decision-making, the idea of an established threshold beneath which the NEB could come to a decision independently, was raised. Participants also discussed the time limits placed on decision-making. Some believe the established limits are too short and others too long. Longer timelines, one participant argued, encourages proponents to do some work prematurely and attempt to "divide and conquer" resistant communities. It was concluded that a service standards approach would be preferable to a hard limit as there is a need to balance flexibility and predictability.

Indigenous Engagement Session – March 2, 2017

The Panel heard that the NEB's view of what constitutes a major project and what is assessed needs to be expanded. The EA is just one piece of a larger regional EA and land management plan. Such a regional snapshot should be seen as precursors to EAs as they would allow project specific reviews to measure proposals against a baseline.

It also heard that projects should be decided based on a thorough risk assessment that takes into account the cumulative effects of development. Indigenous peoples in the area have witnessed dwindling numbers of caribou, moose and other sources of food and feel that more of their land must be off-limits.

Participants asked for greater transparency throughout the NEB decision process, including information on which Indigenous groups have or have not given their consent to a project as well as an explanation of its decisions to approve or deny a project.

THEME: Compliance, Enforcement, and Ongoing Monitoring

Public Session – March 1, 2017

Participants had mixed experiences with NEB representatives, with some finding them to be quite helpful and respectful in discussing and resolving issues and another feeling the need to fight for every bit of help received. It was noted that while new rules are needed, they will only matter in the context of proper enforcement, which has so far been a weak point of the NEB.

Participants shared their opinion that the NEB has a role to play in ensuring that pipelines get removed from the ground at the end of their lifecycle. The Panel heard that as it stands, some right-of-way agreements state that they will be removed, but they have not. The Panel heard that often at the end of a project's lifecycle, companies decommission instead of abandoning a pipe, to avoid triggering their obligation to remove the pipe from the ground.

The Panel heard that there must be a higher minimum safety threshold for lines going through populated areas.

The Panel heard that the NEB cannot expect people to trust in the development of new projects if proponents aren't being proactive in dealing with what they've left behind from past projects. Trust must be built through proper compliance throughout the project lifecycle.

There was a question raised as to the adequacy of emergency management and risk mitigation plans and practices. Specifically, one participant made a call for the NEB to require deeper digging and burial of pipelines, recognizing that the current 1.3m is too shallow if one considers the weight of the heavy farming equipment that will be driving over it.

Further, it was also suggested that proponents need to identify the thickness of pipe at which leaks and ruptures are likely and be mandated to replace pipe before it reaches that point. There were also concerns about the need to improve cathodes on power lines.

While participants acknowledged that pipelines are preferable to other methods of transporting oil and gas, they called on the NEB to develop stricter safety requirements.

The need to protect waterways was raised as being crucial by many participants and the damage to the environment must be strictly monitored and penalized. One participant

wondered if mandating the offset of a pipeline's impacts by purchasing and protecting another piece of land would be helpful.

Indigenous Engagement Session – March 2, 2017

The Panel heard that it is advisable that the NEB Act provide some legislative support to the adoption of an approach that considers upstream and downstream effects of all kinds (greenhouse gas emissions, s.35 rights, land and habitat impacts). Participants voiced their dissatisfaction with the NEB recommending rather than requiring that concerned parties following certain guidelines.

Participants recommended that the Panel look beyond Canada's borders for examples of approaches to legislation, compliance, and enforcement.

THEME: Landowner agreements, Compensation and Disputes

Public Session – March 1, 2017

Participants discussed their dissatisfaction with the land acquisition and compensation process. While many examples pertained to NEB-regulated pipelines, there were also many examples related to upstream development under provincial jurisdiction. The intensity of development in the region was also a concern, in that landowners may have several projects, under different jurisdiction, on their land..

Regarding land acquisition, the Panel heard grave concerns over the knowledge, professionalism, ethics and integrity of proponents' land agents, sometimes referred to as "land men". Participants supported the idea of the NEB creating a training and licensing program for land agents, requiring land agents to provide better information on the rights of landowners, or even the NEB acting as a neutral third party land agent itself. Participants shared stories of disrespect and of intimidation by land agents.

Negotiations between companies and landowners, usually mediated by a land agent, were raised as a big problem area. The Panel heard of intimidation tactics, secrecy, divisive tactics and high staff turnover as getting in the way of the collaborative pursuit of win-win outcomes. They also heard of proponents not following through on their obligations as laid out in their contracts with landowners, leaving landowners feeling betrayed.

To illustrate the practical realities of dealing with proponents, one participant shared the story a land agent calling them at 10 pm wanting to visit the next day. At the visit, they tried to rush the farmer for an immediate signature. When it wasn't instantly provided, they returned in 2-3 days. The landowner got the impression that the visits wouldn't stop until they sign the agreement.

At other times, the company will approach a landowner, then disappear and return unexpectedly in several months. This inconsiderate approach does not treat landowners as

valued partners and does not provide them with the information needed to make decisions and plan. As one participant put it, she feels that the company and herself are sharing joint custody of a pipeline and should therefore be working closely together to ensure a win-win for all.

Specifically, participants felt the modus operandi of many land agents (representing energy companies) was to get a signature from community members or Indigenous communities as quickly as possible “at any cost”. With fewer resources, individuals and communities feel much less respected, unable to make their views heard, and often give in just to make interactions with a proponent stop. One mitigation tactic proposed was to hire land agents among the local population, rather than flying them in from Calgary when they want a signature.

The Panel heard that the NEB could develop a protocol for proponents’ interactions with landowners. Such a protocol would include requiring sufficient notice before showing up on a landowner’s property, requiring that an accurate and comprehensive information package be provided prior to an in-person meeting with enough time to respond and to seek professional advice. Protocols should cover the entire lifecycle of a project. The example of BC’s regulations requiring evidence justifying the compensation offered to landowners was offered. Participants said that compensation should be equitable amongst landowners and transparent.

Agreements are a further area of concern. As is, landowners are asked to sign agreements before learning of the full extent of a project, which compromises their negotiation ability. Some information is routinely shared after-the-fact, or as a result of new regulatory requirements including the extent of safety zones surrounding rights-of-way placed on one’s property, adding several meters to the encumbered land. Many people do not know what is on their land, which poses serious safety risks and prevents them from disclosing such risks to prospective buyers.

One participant proposed a grace period of 24-48 hours in which an individual signatory to an agreement can revoke their consent without penalty. This would be intended to counter the aggressive approach of land agents and proponents to, in the words of one participant “wear them down”.

The Panel heard that the average person does not know who has jurisdiction over a project and who they can turn to if they have questions or need advice. They heard that the NEB is ideally positioned to educate landowners and others on their rights as they pertain to energy projects. Lack of awareness or understanding was raised repeatedly as an impediment to land owners and Indigenous peoples exercising their rights.

The Panel also heard that legislation must protect signatories from agreements signed under false pretenses. Participants shared that this has happened many times and that they have grown frustrated by the fact that proponents do not appear to be penalized for it. It was

recommended that provisions exist to render signed documents void if a signatory can prove misrepresentation to the NEB.

Some private property owners suggested that industry seems to be wary of dealing with more organized Indigenous groups, and that pipeline route designs may favour going through private land where possible, as this is perceived as “the path of least resistance”.

With respect to landowner compensation, some participants stated that if the NEB approves a project, it should be accountable to ensure that landowners and other concerned parties are awarded appropriate compensation. They shared a desire to see this reflected in legislation. They also suggested that payment upfront should be mandatory, due to cases of companies being acquired or going bankrupt and not paying. In the same vein, participants suggested that section 86 of the NEB Act, on rent paid to landowners, be made more specific, as it is believed that companies are presently working their way around the intent of the law. Participants suggested that this section of the Act should be revised to require annual payments to landowners with mandatory reviews every five years.

The pipeline arbitration process managed by Natural Resources Canada (NRCan) for NEB-regulated projects was discussed. Many felt that the process is allowed to continue for too long, with outcomes partially determined by the individual party giving up after exhausting all their time and resources. Contributing to the long duration of arbitration is the fact that current rules require that the process start over whenever one arbitrator leaves a specific case. It was noted that farmers and other aggrieved parties do not get paid for all the time spent in proceedings and that depending on timing, they may be sacrificing future income to be present, as is the case when hearings conflict with seeding season. Participants supported the idea of a set timetable after which disputes should be escalated, and with additional steps for alternative dispute resolution begin explicit prior to binding arbitrations.

The Panel heard that the process of resolving compensation disputes should be more transparent. Participants lamented the fact that the decisions flowing from the pipeline arbitration process managed by NRCan are not made public. Complainants are without the ability to study precedent. The only way to get some idea is if there is an appeal the arbitrator’s decision to the Federal Court of Appeal, which *does* make its decisions public.

The Panel heard of the need to create an intermediate appeal process whereby landowners can bring something to an NEB appeal board (quasi-judicial tribunal) prior to getting to the Federal Court of Appeal.

Participants shared their desire to work *with* industry and acknowledged the energy industry’s importance to the economy, but would like to see a climate of mutual respect. One farmer summarized his views of how the NEB could contribute to this climate as follows:

1. Take away the power of expropriation from companies, reserving it for the provision of publicly owned utilities like water and sewer lines.

2. Include a study of meaningful social license in the review process.
3. Recognize the free market value of land to compensate for the industrialization of farmland. If the NEB can grant proponents access to someone's land, they too should intervene to ensure appropriate compensation.
4. Recognize the contributions of rural communities to city-states.
5. Sanctify and prioritize stewardship of water over all industrial demands.
6. Emphasize the importance of preserving productive farmland above industrial uses.
7. Create a national farmer's advocate "with teeth" to balance the interests of impacted individuals against those of industry.
8. Take into account the negative cumulative effects of projects on water.

NEB intervenors/negotiators that have been trained by Indigenous peoples were particularly applauded. Alternative dispute resolution (ADR) appears to be promising and the NEB should be willing to listen to what landowners say and concentrate more on trying to understand their interests, impacts and positions.

Many easement agreements are decades old. Participants voiced frustration with the treatment they received when communicating with company headquarters and when seeking to modernize very old agreements. The landowners present shared that they are met with much resistance when wishing to bring outdated agreements into compliance with twenty first century standards. As such, they feel that regulations should be in place preventing the application of outdated agreements without amendment for long periods of time.

An overall desire was shared for greater respect and continuity in companies' and higher management's dealings with private land owners, First Nations communities and municipalities.

The Panel heard of the need to regulate the outcomes of mergers and acquisitions of industry members. Instances of damages caused to private property either due to information withheld at the time of signing an agreement or violations of the provisions of a signed agreement were noted.

Participants repeatedly raised the concern of companies going bankrupt or being bought and their obligations to clean up toxic waste or remove pipelines from the ground are not fulfilled. In instances of unrepaired damage, the stewards of the land suffer from diminished income and income-generation potential.

There were also concerns raised about responsiveness by companies in addressing issues that may arise during operations. However, there was one very positive example shared

where an NEB-regulated company immediately took action to right a wrong, pay all costs, and ensure all parties affected were satisfied before considering the problem solved. That was shared as an example of what should be expected by all companies.

The Panel heard that the concept of land stewardship and providing for future generations does not appear to carry enough weight in NEB considerations. For example, fracking carries great risks for current and future generations. Participants told the Panel that they would like to see provisions in the NEB Act that protect farmland from over-industrialization.

In summary, many frustrations and concerns, but also lack of respect, regarding land acquisition and compensation were shared. While many examples pertained to provincially regulated energy developments and associated pipelines, some were certainly under NEB regulation. Furthermore, the general conduct of land agents and processes are of high concern and landowners are looking to the NEB to provide an avenue to advance best practice and improved rules for all.

THEME: Engagement With Indigenous Peoples

Public Session – March 1, 2017

Landowners shared their perception that there's been increased pressure on private land in recent years, as obtaining access to them is deemed to be quicker and more cost-effective than engaging with Indigenous communities.

One participant asked that the NEB publish what companies are doing to address the toxic waste and land degradation left behind on First Nations reserves to begin rebuilding trust.

It was noted that treaty rights have been violated continuously since Treaty 8 was signed. As such, there is concern that any recommendations will be disregarded and result in more unmet promises. The Panel heard that elders feel disillusioned by past betrayals. It also heard that moving forward, Indigenous peoples should be engaged from the earliest stages of project conception.

The Panel heard that the Indigenous communities affected by a project should be engaged in monitoring it, particularly the effects on wildlife and waterways. The knowledge they have about their lands is unparalleled and they have been sounding the alarm for some time.

One participant shared their annoyance at being segregated from other parties on account of being Indigenous. They feel that everyone should be participating in decision-making together. Yet, their perception is that companies run away from engaging with Indigenous peoples.

The Panel heard that there are Indigenous businesses that specialize in EAs. However companies have their own EA companies, which raises the concern of conflict of interest.

The Panel heard that a timeline of three years to work with Indigenous peoples before coming to a decision on a project would be needed to properly study and consider its impacts and that the knowledge of grassroots groups should hold greater weight.

The use of interpreters in dealing with Indigenous peoples was raised as being crucial, not only as a sign of respect but to ensure that community members fully understand what they are being presented with.

Indigenous Engagement Session – March 2, 2017

It was stated that Indigenous peoples want to work with industry and government, that they are constantly renewing their optimism despite past transgressions. The Panel heard that the land is so important to them that they feel it is their duty to defend it. Land in this context is understood to include land, water, trees, air and wildlife.

Participants stressed the importance of working together to protect the land, not only as First Nations, but as Indigenous peoples and all Canadians, as equals. Everyone's descendants will need water to drink and jobs to sustain their families.

The Panel heard that "participation" and "consultation" are insufficient, and that there must be meaningful engagement with Indigenous peoples throughout the project lifecycle and beyond. Participants have felt used by companies and governments who perceive them as being in the way. The Panel also heard of the need to obtain consent from all tribal councils affected by a project. Proponents should not stop considering which Indigenous peoples may be affected once they get one "yes".

One participant suggested that the NEB could adopt the model of Synergy Alberta, which has been successful at supporting synergy groups within the province that bring together stakeholders, Indigenous groups and companies on issues that affect their interests. Participants expressed alarm over the provincial regulator's ability to take water from creeks without Indigenous involvement. It recommended that the NEB adopt a system similar to that of the Northwest Territories, in which Indigenous peoples must be directly involved in any interventions concerning water and marshes. Some participants said that this should be expedited faster than the remainder of the NEB modernization process.

One participant shared that the First Nations in the area have formed their own environmental assessment companies, informed by Indigenous knowledge of the land, waters, hunting grounds, and sensitive areas. They believe that companies should engage such Indigenous businesses and avoid the appearance or existence of conflicts of interest inherent in hiring companies of their own.

The Panel was invited to consider the ownership and confidentiality of Indigenous knowledge

as it is often sacred and has been improperly exploited in the past. Indigenous knowledge and values should be integrated at the highest levels of regulation. The Panel was also asked to consider whether Indigenous peoples' knowledge should carry a bit more weight than Western science, as the former is informed by the daily experience of what is happening on the land, versus the latter's reliance on theory and limited visits to the sites concerned.

Language was also identified as an issue, with Indigenous peoples and elders not feeling as though their knowledge is adequately translated into the English language.

Participants shared a sense of urgency surrounding NEB modernization, as Indigenous peoples see decisions being made based on legislation created in 1959 rather than the dire situation of the land today. As such, participants felt that the NEB should expedite the creation of a committee representing Indigenous peoples and another representing landowners and that sufficient funding should be put aside to do so. It was also suggested that these bodies share the responsibility of determining the changes that will result from the present expert Panel's recommendations with the Government of Canada.

The Panel also heard that the NEB should mandate companies to share the exact locations of projects with the Indigenous peoples whose lands they are operating on. Part of this requirement should include ample signage, so that community members may keep an eye on how the project is proceeding and ask questions as needed.

The Panel heard of how shale gas exploration and exploitation has affected the Fort Nelson First Nation's rights to their land. This community's perception of the NEB is that it is not designed to be, capable of, or interested in meaningfully assessing, avoiding or mitigating impacts on Indigenous peoples' rights, culture or land. Based on significant experience with resource extraction, a representative shared the following recommendations with the expert Panel:

Major Structural Changes Required to Modernize the NEB

1. Conflicting Mandates: The NEB should not be tasked with promoting shale gas development alongside the province on one hand, while meaningfully assessing the impacts on the community's rights on the other. The NEB's mandate should remove it from the environmental assessment process altogether (leaving this to CEAA). The NEB is best suited to:
2. Collect and disseminate energy information
3. Provide energy advice to federal government
4. Regulate federal pipelines once EAs are complete
5. Ensure the enforcement of regulations and conditions
6. Report on pipeline technology and safety
7. Assess the fairness of proposed tolling structures
8. Canada's public interest should be determined by a federal public Minister, not the NEB
9. The NEB should no longer have a role in assessing the adequacy of a proponent or the

- crown's consultation with Indigenous nations; instead the NEB could assume the role of expert advice provider to the whichever government body assesses this
10. An "Independent Reconciliation Unit" should be created to oversee the crown's consultations from the pre-EA process forward; this unit should have option of recommending to the Minister that a project EA be referred to an independent Panel for review
 11. Should the NEB remain the lead assessment agency, add two new options to the NEB Act for the Ministers to consider when assessing the NEB's recommendations:
 - 1) Referral to an Independent Panel Review
 - 2) Adoption of the recommendation with additional conditions added by the Ministers following consultation with the Reconciliation Unit
 - 3) Convene expert Panels similar to the CEEA Panel Review process
 12. Establish standing regional aboriginal advisory Panels
 13. Increase community capacity
 14. Increase internal capacity
 15. Conduct regional strategic assessments of shale gas basins in BC (adopt a shale-to-ship assessment approach)

Incremental Improvements to NEB

1. Establish Reconciliation Unit that works closely with affected Indigenous communities. Responsibilities:
 - a. Determination of Indigenous groups to be engaged and how;
 - b. Scoping information requirements for Indigenous cultural, socio-economic, land use and rights assessments for EAs;
 - c. Adequacy of Application materials related to these subjects;
 - d. Stopping the EA "clock" if information is not provided by a Proponent;
 - e. Adequacy of Proponent engagement with Indigenous groups;
 - f. Effects (and their significance) on Indigenous culture, Traditional Use, and s.35 rights; and
 - g. Post-EA consultation and accommodation for Aboriginal rights not subject to EA Conditions. Presently, companies may or may not have to talk to community again after their initial consultation. If community members are expected to grapple with a project for its long lifespan there will need to be ongoing dialog from project start to project end.
2. Mandatory conditions for Indigenous engagement in life cycle monitoring and adaptive management
3. Place traditional knowledge on par with Western Science –scientists are paid huge amounts by oil and gas companies making decisions every day that affect Indigenous rights forever
4. Modernize hearing processes to be more respectful of community participants
5. Assess all upstream implications
6. Remove s.58 exemption clause from the NEB Act, so that all physical works and activities are subject to EA;

7. Shift from public interest mandate to “reconciliation”; rights are too often subsumed to public interest
8. NEB Act needs to include explicit reference to UNDRIP – Free, prior and informed consent especially
9. Impact equity – concept of people most likely to bear the brunt of adverse effects also sharing in benefits to offset those effects. Right now, benefits are concentrated down and mid stream and impacts concentrated upstream.
10. Intergenerational equity – responsibility to people coming after us to ensure they enjoy the same opportunities, clean water, clean air, moose and berries

A representative of the Spuzzum First Nation added the following recommendations, many in support of those listed above:

1. To fulfill its constitutional obligation, the Crown must meaningfully consult and accommodate Indigenous peoples about potential effects on aboriginal titles and rights and *attempt to justify any infringement of rights*.
2. To properly assess potential impact on aboriginal rights and title, regulatory review processes must be informed by Indigenous knowledge, laws, perspectives, cultures and traditions
3. A process of consent-based decision-making must be consistent with Canadian case law and the UN Declaration on the Rights of Indigenous Peoples
4. To fully and meaningfully participate Indigenous people must be provided with adequate funding

The Panel heard that a Nation-to-Nation relationship will be imperative in improving the relationship with Indigenous peoples as will adopting a “reconciliation mindset”. Ensuring that Indigenous voices are heard throughout the lifecycle of a process and that s.35 rights are upheld is important. Presently, Indigenous communities have had to resort to invoking the *Species at Risk Act (SARA)* to slow down developments. To ensure that Indigenous voices are heard, funding will be required. It was proposed that the NEB or federal government provide funding to Indigenous communities to help them assess the cumulative effects of energy developments.

Participants told the Panel that *all Canadians are treaty signatories* and that such treaties have allowed the Canada we know today. Treaty rights have been repeatedly upheld by the Supreme Court of Canada and their fulfillment concerns us all.

The Panel heard that training programs preparing youth to work on energy developments are sometimes offered to Indigenous peoples by proponents. Though community members will accept out of concern for their children’s futures, this should not be automatically construed as consent for a project. What’s more, companies only hire the minimum mandated number of Indigenous people to work on their projects, most often in the lowest paid positions.

Métis participants voiced their concern that companies sometimes hide behind legislative

minimums to exclude them from such employment, or consideration as a whole. They remarked that since the Daniels decision governments have been recognizing the Métis, but that companies still aren't.

The Panel heard that the NEB could contribute to educating companies and the Canadian public on the value that Indigenous peoples have brought to their lands. It is believed that this will help to change the attitudes of those who feel they are not entitled to special considerations, including on-the-ground laborers who have been known to make racist remarks. Participants also stressed that disputes are not all about money, as money cannot replace land.

Other participants shared that some racism is likely to stem from differences in communication style, with Indigenous peoples more likely to want to take a step back from a question and carefully consider it before responding, whereas many non-Indigenous people expect to ask a question and receive an answer almost instantly. What's more, a lot of the information valued in Indigenous communities is passed down orally from generation to generation. Often, information on paper does not carry as much weight as it does in non-Indigenous communities. Understanding such cultural differences and values is key to working together. For example, the current format of NEB hearings is very intimidating and adversarial in the eyes of many Indigenous peoples and needs to be modified to include Indigenous cultural values and oral history as evidence.

A participant shared the lessons learned from their experience consulting with Indigenous communities on behalf of industry. They told the Panel that NEB processes need to be more clearly defined and better explained to Indigenous communities. To do so, the NEB needs to understand the differing worldview and mindset shared by many Indigenous peoples.

The respect of a community must be earned before coming in to discuss a project. Part of demonstrating respect involves starting from a position of acknowledging Indigenous peoples' rights to their land. So far it has been the other way around and elders and community members feel insulted by the repeated requests to prove their ties to the land.

Participants suggested that Indigenous groups should establish a protocol for engaging with them to be followed by government and industry.

The Panel heard that there is a strong baseline of evidence that already exists on Indigenous rights –treaty rights exist, inherent rights exist, titles, SCC decisions, UNDRIP, Duty to Consult. Communities should not have to prove that their rights to the land exist.

THEME: Public Participation

Public Session – March 1, 2017

The Panel heard that the NEB's current website is difficult to navigate and comprehend, even for someone with deep experience in a directly related field. Participants also expressed their desire to see the NEB make more information public. Participants wished to have access to previous decisions (both in-favor and against projects), compensation rates for landowners, a repertoire of infrastructure and rights of surface and a map of the precise location of active and decommissioned pipelines and wells.

Several participants shared that they have so often voiced concerns in the past with no outcome that they approach public consultations with skepticism – only engaging when their personal livelihood is at direct risk.

The Panel heard from a member of the NEB's Land Matters Group that it is a good forum for dialogue and providing feedback to the NEB. They heard that there used to be a North East Energy and Mines Advisory Committee (NEEMAC) which was also a good forum for bringing issues forward to the NEB.

Lastly, one participant reminded the Panel of the need to consider the voices of young people and labourers who have moved to the area for jobs in the energy sector and whose precarious employment depends on the good conduct of proponents. The question was raised as to how foreign companies taking over projects may be compelled to employ local people versus bringing in foreign workers.

GENERAL COMMENTS

In addition, the following general remarks were made:

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

Concerns were raised as to how quickly the expert Panel's recommendations would be acted on, as it was believed that when faced with changing regulations, industry will rush to get projects approved under the 1959 rules.

It was also stated that provisions should be made to revise the NEB Act more frequently than it has been so far.

Additionally some questions remained unanswered but the answers will eventually be posted on the website:

1. What do NEB regulations say about archeological findings on sites in their jurisdiction?
Concerns were raised regarding the Site C dam project and participants want to know how the NEB handles it.
2. Does the NEB take into consideration greenhouse gas emissions, including upstream and downstream emissions, during project reviews? Do they take into consideration the Paris agreement?
3. Does the NEB examine macro data analytics to determine where there may be issues in the pipeline system?
4. Does the NEB have the power or jurisdiction to actually set up a rental program, that is, can they require that a company enter into annual rent agreements with landowners with review clauses every few years?