

**Expert Panel on National Energy Board Modernization
Public Consultation
Saint John, New Brunswick – March 21-22, 2017**

The Expert Panel for the modernization of the National Energy Board (NEB) met in Saint John New Brunswick, March 21-22, 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, and comment was welcome from all parties on any issue relevant to the renewal of the NEB. Theme areas area as follows:

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

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

THEME: Governance and Structure

Public Session – March 21, 2017

The Panel heard concerns that the NEB as it is presently constituted either is, or appears to be, structured and staffed in a way that favours the perspective of the energy industry and limits consideration of the full range of issues involved in pipeline approval decisions. Specifically, participants spoke about the representativeness of both the Board and staff, the knowledge and experience that Board and staff bring to bear and structural questions around where the NEB is located and who may serve on the NEB Board.

With respect to Board and staff composition, the Panel heard that Canadians expect to see a broader range of people sitting as Board members. There exists a perception today that the Board as presently constituted (particularly the permanent members), over-represents the energy industry. Participants discussed provisions for strong regional representation, representation of Indigenous peoples, and for stronger mechanisms – like exclusion periods – to limit the relationships and flow through of both Board members and staff between industry and the NEB. In addition, participants noted that a representative Board should include a greater diversity of expertise, such as knowledge of Indigenous traditional knowledge, climate science, upstream and downstream cumulative effects, governance, and other areas.

Participants acknowledged, however, that in a country as broad and diverse as Canada no group of 10 or 20 people can directly represent every single experience or interest. The Panel heard discussion of ensuring that training is in place to bridge any skills or competency gaps for Board members and staff. For example, Board members could be given specific training on Indigenous worldviews and how to understand and incorporate traditional knowledge into decision-making processes.

Structurally, many participants pointed to two concerns with the current NEB: its location in Calgary and the requirement that Board members reside in Calgary. With respect to the Board's location, the Panel heard differing views. On the one hand a majority of participants expressed that being headquartered in Calgary creates at the very least a strong appearance of a too-cozy relationship with the regulated industry and allows the sort of incidental closeness that can compromise a regulator's independence without any malice on the part of any party. This view suggests that the NEB headquarters should be moved to Ottawa. However, the Panel also heard the view that if the NEB is to be a truly independent decision-maker – which entails independence not just from industry, but also from political interference – that being located outside of Ottawa makes sense. Moreover, the volume of transactions that the NEB must deal with is such that proximity to industry is efficient for all parties.

Participants discussed the residency requirement for Board members and suggested that this stipulation is out-dated and does not reflect the world of modern work. Moreover, such a requirement limits who may accept an appointment and may further entrench an industry orientation. The Panel heard that regardless of where the NEB is located, if Board members are able to fulfill their duties, their place of residence should not be a limiting factor.

The Panel also heard discussion of the Board Chair as CEO. Participants suggested that this dual role was unusual as a governance model and could create conflicts for the Chair/CEO. A participant noted that municipal governments have a similar dynamic where a mayor chairs Council, but also plays a *de facto* CEO role for the city; this dual role can work if well-designed. For example, the Panel heard that a mayor might be permitted only to cast a tie-breaking vote on an issue.

Indigenous Engagement Session – March 22, 2017

The Panel heard that Indigenous knowledge and experiences are crucial for understanding the Indigenous worldview that underlies so many of the issues that create difficulties between Canadian and Indigenous governments. The Indigenous worldview is based on a view of humanity as part of a natural and spiritual equilibrium. In this view, man's role is to live in balance and to ensure bountiful resources for the next generations. This contrasts with a traditional Western worldview, that sees humanity at the centre of the world. In this view, nature exists to be used by man. These fundamental differences inform very different ways of looking at and solving issues.

Regarding the NEB, the Panel heard that Indigenous people and knowledge must be represented on the Board and within NEB staff to ensure that these views are adequately considered.

A participant shared a photograph which served as a simple and powerful example of how differing worldviews can affect decision-making outcomes. The photograph was of an area cleared for a transmission line (this specific example was not an NEB-regulated project, but the story is illustrative of the issues in question). The local Indigenous community had specified that they trapped marten in the area, and that this practice was very important. As a means of accommodation, the project proponent had left a marten trap intact on a tree stump in an otherwise barren area, an area where no game could reasonably be trapped. This story was used to illustrate how a failure to truly understand another point of view could lead to unintended consequences, in this case a preserved trap, where the actual activity of trapping is impossible.

Participants considered the logistical challenge of representing all of Canada's regions, provinces, Indigenous groups, languages, and perspectives. The Panel heard that no Board could perfectly represent all of the many groups and interests involved in NEB decisions, but that some effort toward representation is very important. In addition, it was suggested that the NEB create regional advisory committees, consisting of Indigenous peoples and others, to guide NEB decision-making and ensure that local interests are brought to the table. It was further suggested that these committees could constitute a roster of potential NEB hearing panel members, and NEB Board members. Sitting on the regional groups would allow non-industry specialists to learn about the industry and processes related to regulation and standards. It would also enable non-industry specialists to build a larger base of knowledge that would allow them to step into governance roles as needed.

In addition, it was suggested that the principles of the UN Declaration on the Rights of Indigenous Peoples, and the Prime Minister's commitment to establishing nation-to-nation relationships with Indigenous peoples should be formally incorporated into the preamble of the NEB Act, if not in specific sections. While a preamble is not binding, it was suggested that this change would further signal and entrench the importance of establishing new relationships with Indigenous peoples in Canada and support reconciliation.

Participants suggested that, regardless of where the NEB is headquartered, regional offices across Canada are important for enabling engagement in NEB processes and for answering inquiries.

The Panel also heard a suggestion that when appointments to the Board are made, they should be explained or justified to make clear why a particular person was chosen and to describe what skills, expertise, or knowledge they bring to the organization.

THEME: Mandate and Future Opportunities

Public Session – March 21, 2017

Participants suggested to the Panel that a broad rethinking of the NEB's mandate is essential, and this is the building block upon which governance, decision-making, and other modernization efforts must be based. In this regard, the Panel heard about a need to bridge the gap between broad public policy and regulatory decisions and the importance of considering energy from a holistic perspective, in spite of existing jurisdictional questions.

Participants expressed the view that the National Energy Board only looks at a small sliver of the overall energy picture in Canada: the transmission of certain types of energy, and then only under certain conditions (crossing jurisdictional boundaries). The Panel heard that participants understand that the current system is the product of incremental adaptation and growth, and that provinces and various government departments have discrete responsibilities. However, there was expressed an overall desire to see some type of pan-Canadian leadership on energy writ large, in spite of the jurisdictional silos. The Panel heard suggestions for a formal national energy strategy of some type, or a new National Energy Act or agency that would organize the various players and unite them in the service of a coordinated approach to energy in Canada. Such a strategy would deal with the big questions like "how will Canada choose to transition to an energy future that is much less reliant on fossil fuels?" Or "should we have a strategic petroleum reserve, and if so how big should it be?" Today, these questions play out in reviews of individual pipeline project applications, which are ill-equipped to consider whether and how Canada will adopt new *sources* of energy for the future.

Similarly, the Panel heard that connecting broad public policy to regulatory decisions is critical. Participants expressed views that the NEB needs either clearer direction, from a policy perspective in rendering its decisions, or that it should clearly limit its role to exclusively that of a licensing body, and guarantor of safe and secure infrastructure. In this view, a modernized NEB would limit its role to a narrower set of criteria relating to the construction, operation, and decommissioning of a pipeline, rather than the upstream and downstream socio-environmental effects of the products transmitted in that pipeline. For example, it was suggested that the NEB, as a regulator, should not be involved in the production of energy information to inform regulatory decisions.

Participants discussed the concept of "public interest" and suggested that a clearer definition be enshrined formally in the NEB Act. Such a definition might include specific reference to the primacy of Indigenous rights, which are not balanced against the general public interest, and for which infringement must be justified separately. In defining public interest, participants suggested that sustainability be at the core of any definition as an over goal, and also that health be noted as a consideration. One participant suggested that the NEB's overall mandate should be to deliver affordable, available, sustainable, and secure energy transmission infrastructure.

The Panel heard support for an NEB that consolidates information and plays a strong

educational role in explaining to Canadians what the issues are, and how to interpret the information available to them.

Indigenous Engagement Session – March 22, 2017

The Panel heard that the Crown, and the Crown alone, bears the duty and authority to consult with and accommodate Indigenous peoples. Today, the *de facto* responsibility for consultation is often delegated to project proponents, and it is proponents who then present Indigenous views to the NEB. This creates clear problems and conflicts, in that proponents are in no way authorized to conduct consultation on behalf of the Crown (though certain procedural elements may be delegated, responsibility cannot). Beyond this, though, the Panel further heard that the NEB itself does not have the authority to conduct consultation and make accommodation decisions. This responsibility is exclusively that of the Crown. In this regard, a proponent offered a definition of the Crown as the government representative with the knowledge and authority to enact appropriate accommodation measures resulting from consultation.

As noted above, participants expressed concerns with the limited mandate of the NEB as it stands today. The Panel heard that the Board's name, "National Energy Board," is a misnomer, because it is not truly national in scope (with so many energy production generation and use under provincial jurisdiction), and it does not deal with "energy" as a whole, but only a small part of the energy system. It was offered that in its current incarnation, the NEB can do little to affect the kind of broad energy policy that many citizens see as an implicit requirement in any energy debate.

In this regard, the Panel heard a vision of the NEB as a convener of a coordinated national approach to energy, and managing the move to more sustainable sources of energy. In this vision the NEB, or whatever government body takes the lead, would provide leadership and guidance, even in the absence of formal control over things which are clearly not within federal jurisdiction.

A participant gave a personal example of talking to the Chair of the NEB about the Board's responsibility for the overall impacts of the oil sands. This discussion revolved around the NEB's limited jurisdiction over the transmission of energy, and not how it is produced. The participant acknowledged that jurisdiction for the many issues involved is split up, and suggested that this arrangement allows all parties to dodge their responsibility for the overall system. For example, if there were a large spill into the Bay of Fundy, all of the parties upstream from the spill would deny responsibility for the overall problem. In this vein, it was suggested that Canada take bolder action to rethink its whole energy system, and look to innovate in adopting new, cleaner technologies.

In addition, with reduced dependence on fossil fuels, participants advised the Panel that transmission lines will be ever more important in the future. Today, transmission lines may attract less attention – even to the point of having sections in the *NEB Act* on transmission

lines simply refer to sections on pipelines – but we can expect greater challenges around coordinated national approaches to the transmission and storage of electricity, particularly in light of Canada’s vast potential to tap renewable energy sources.

On the subject of public interest, participants noted that the Canadian public interest, which is an evolving balance of social, economic, and environmental concerns, does not include Indigenous interests in terms of rights. Indigenous peoples are rights holders under the Constitution, and those rights are not the same as changing social or economic conditions that can be weighed and traded against.

Participants suggested that there is a balance between bringing in new Board members with new approaches, and maintaining an institutional memory for the NEB. It was suggested that NEB staff could bridge institutional knowledge gaps where Board knowledge is lost to succession.

A participant noted that the 2015 NEB Annual Report offered a definition of “public interest” that could guide the Panel.

THEME: Decision-making Roles, Including on Major Projects

Public Session – March 21, 2017

The Panel heard differing views on the role of environmental assessments, and who should have responsibility for their conduct. The Panel heard views that environmental assessments – which are critical for establishing the impact of a project – should be overseen by the Canadian Environmental Assessment Agency (CEAA). Participants suggested that CEAA is better placed to perform this role because it is a centre of expertise for environmental assessments, and because, as a body distinct from the NEB, it does not face any real or apparent conflict in assessing the effects of a given project. In addition, the Panel heard that the CEAA process of environmental assessments is more open and inclusive, and allows intervenors to feel as though their concerns can be heard.

A participant articulated a distinction to guide where and how environmental assessments are done: EAs are about planning, not regulating – and it is in this context that participants expect to see broad assessments that include social factors as well. The NEB is a regulator, and, as such, is not responsible for overall plans affecting the environment or a specific ecosystem. Therefore, it should not conduct environmental assessments which, at their core, are planning exercises, not regulatory exercises.

However, the Panel also heard views, that environmental assessments of NEB-regulated projects should be overseen by the NEB. It was suggested that the NEB is a unique centre of knowledge and expertise on pipeline and transmission line issues, and most critically, that its experience allows it to best understand the full lifecycle effects and implications of a project and to oversee the follow through on issues that have arisen.

Overall, there is an expectation that the NEB make science-based regulatory decisions. In order to do so, credible changes will be required.

The Panel heard discussion of the NEB's role as a quasi-judicial body. Here again, views were mixed, looking at questions of who makes decisions, but also how those decisions are made. Participants expressed the view that the NEB should be independent of political interference, and that, therefore, it should wield full decision-making powers for all matters before the Board. Countering this perspective, it was also suggested that Cabinet should retain a role in overseeing decisions, so that accountability is maintained at the political level. Going even further, it was suggested that in Norway major projects are voted on in parliament directly, and that Canada could look to this as a model. Another participant mentioned that Canada could hold a national plebiscite on major projects to ensure full public debate and accountability.

Related to the question of who makes ultimate decisions is the process by which those decisions are made. The Panel heard that participants expect a clear, predictable, and accessible process, as well as transparency around why a decision is made. NEB hearings of today may be difficult to navigate for some parties, partially due to how the quasi-judicial role is carried out, as compared to the more accessible (but less decisive) administrative proceedings used by other organizations. With respect to transparency, participants acknowledged that Cabinet confidence represents a significant challenge; even those who believe that Cabinet should be the ultimate decision-maker suggest that the opacity of Cabinet decisions is a barrier for all parties in understanding why and how a decision was made, which serves to erode confidence in the decision-making process. Similarly, it was noted that cross examination of proponents should be allowed in all hearings.

The Panel heard suggestions that the government adopt a two-phased approach to decision-making. The first phase would look at the big picture, and whether or not a particular project should proceed, in principle, based on a consideration of broad public policy and weighing of the Canadian public interest. Mechanically, this might include a strategic-level environmental assessment, or other type of higher level review. It was suggested that the NEB not be responsible for the conduct of this phase of a review, and that the strategic level assessment be the responsibility of Cabinet, or the Major Projects Management Office, or another such body.

Assuming a positive outcome to phase I ("Yes"), the NEB would focus its efforts on the second phase of decision-making: how an approved-in-principle project should proceed, to ensure that is conducted safely, securely, in partnership with affected communities, and with as minimal as possible effect on the environment. A modernized NEB's role in such a two-phased process would relate directly to its mandate (above). It was further suggested that, even if the NEB were to have sole decision-making authority over projects, its decisions should be appealable (likely to Cabinet).

The Panel heard a concern that projects might be "approved" but with dozens of associated

conditions. Participants expressed views that this can feel like a project is approved with many of the crucial details left to be figured out later, which raises questions about the monitoring of compliance with conditions on an ongoing basis.

Participants suggested the creation of technical panels to help interested parties understand technical or engineering issues, and also to help manage the logistical challenges inherent in processes with potentially hundreds of parties looking to be involved to some extent. There was also a suggestion that there be an NEB ombudsman to oversee the Board's conduct and report to the public on a regular basis.

Indigenous Engagement Session – March 22, 2017

The Panel heard suggestions that the NEB should not conduct environmental assessments, but that this task should be assigned to the Canadian Environmental Assessment Agency or some other body. Participants explained that the CEAA process is more open, that CEAA is a natural centre of expertise for environmental assessments. Moreover, participants cited the current lack of trust between many communities and the NEB is serious enough to warrant a change in order to restore credibility to the process.

In addition, it was suggested that traditional knowledge must be incorporated into any future environmental assessments to provide a complete picture of the risks and effects of a project. It was noted that proponent studies often do not include traditional knowledge, and this can leave the impression that Western and traditional approaches are not on an even playing field.

As noted in the "Governance" section, participants suggested a range of advisory-type boards with varying degrees of decision-making authority. The Panel heard suggestions for creating an Indigenous advisory committee to better represent and incorporate Indigenous concerns to the NEB. It was also suggested that each region could maintain such a committee, or a committee with a broad group of stakeholders (nationally or regionally) that would review both projects and ongoing management issues. It was further imagined that future hearing panels might contain both NEB Board members and regional or local representatives. In general, participants urged Panel members not to feel obliged to "colour within the lines" and to be creative in recommending new ways of doing things, including how to make NEB decisions.

The Panel heard that future decision-making models must account for the UNDRIP affirmation – which Canada has endorsed without qualification – of the obligation of governments to seek in good faith the free, prior, and informed consent of Indigenous people in any decision affecting their rights. There remains debate about what free, prior, and informed consent really means. Most crucially, some participants suggested that this amounts to a veto – i.e., that without the express consent of affected Indigenous peoples, a project cannot be approved.

In this regard, the Panel heard that the NEB should include in its decision-making processes

an assessment of whether adequate consultation and accommodation with Indigenous peoples have taken place. However, these participants emphasized that it remains the responsibility of the Crown to actually conduct consultation and authorize accommodation measures.

The Panel heard that the current decision-making model is hierarchical, flowing from the Crown, to the NEB, to proponents, and lastly to Indigenous groups and civil society. It was suggested that in the future this model would not be a hierarchy, but rather a network of parties with relationships with each other, working together to resolve issues and make decisions.

Participants suggested that no further evaluation of a project should occur until the environmental assessment is complete.

With respect to timelines, the Panel heard that the NEB Act today allows the NEB some discretion in extending timelines of a project review where warranted, and that this is a good practice which should be employed more frequently.

THEME: Compliance, Enforcement, and Ongoing Monitoring

Public Session – March 21, 2017

The Panel heard about the importance of safety and preparedness, which is especially pertinent in Saint John, as it is a very industrialized city, with numerous overlapping industrial activities and risks. Participants suggested that many of the tools necessary to ensure safety, security, and compliance are in place and available to government, however, how they are used and coordinated are major concerns.

For example, Saint John is a port, which means that jurisdiction for many activities is shared between agencies, divided by where the sea begins. Practically speaking, this means that the NEB, for example, might regulate pipeline safety measures and emergency plans on land, but would not be responsible for a spill into the harbour from a tanker. For this reason, it is imperative that regulators and emergency responders collaborate openly and in advance to ensure that emergency measures are in place and adequate. The Panel heard that preparation is critical, and learning from best practices, including clear protocols on who is responsible for what, what infrastructure is required, lines of communication in the event of emergency, and so forth.

The Panel heard concerns that measures are not planned or publicized to guarantee the safety of local populations in the event of a catastrophic emergency. Participants expressed a desire to see and input into emergency response plans, both in the early stages of project approvals, but also throughout the lifecycle of a project.

Participants suggested that projects should not be permitted to proceed until emergency response plans are approved. To achieve approved emergency response plans, it was

suggested that consultation and collaboration on these plans be made mandatory under the *NEB Act*. This would include better defining what constitutes adequate emergency planning, which should include clear lines of accountability for who will do what in an emergency.

Participants expressed a desire for clearer information channels, like hotlines, to report incidents and ensure that action is taken.

In addition, participants expressed concerns that enforcement is not sufficient to ensure compliance on the part of industry. This includes both the scope and volume of compliance monitoring activity, and penalties for non-compliance, which must be large enough to change behaviour. Participants also suggested that the bond required of proponents is not large enough to cover the enormous cost of a major incident.

The Panel heard concerns about how land acquisition is conducted in the context of NEB-regulated projects. Participants described how land agents will pressure land owners, and attempt to get agreements as quickly as possible, without necessarily informing land owners of all of their rights. In addition, it was suggested that current practice heavily favours one-time payments (instead of ongoing leases), and landowners may not understand the liability they have assumed in making such agreements. Also, landowners have been subject to confidentiality clauses that bar them from disclosing conditions of sale agreements, which depresses prices and creates difficulty as they feel barred from discussing financial details with family, or even accountants or realtors.

It was suggested that landowner rights should be better and formally protected, and that agreements should not be signed before compensation is determined. There may be tax implications of which landowners are unaware at the time of signing. The Panel also heard that landowners bear all liability for damage to pipelines on their land, even if said damage was caused by hunters or others trespassing on the land. It was further suggested that land agents should be in the employ of the NEB, not proponents, in order to eliminate some of the incentives for the conduct that landowners experience today. Moreover, the dispute resolution process is too long, and should be clearer. In general, participants described a system that feels stacked against small players.

The Panel heard a desire for better science on new products within existing pipelines, as new substances may exceed the limits for which existing infrastructure were designed. It was also suggested that all transmission infrastructure have an “expiry date” beyond which it must be retired or overhauled.

Indigenous Engagement Session – March 22, 2017

The Panel heard discussion around the land expropriation powers of the NEB. A participant suggested that criteria for expropriation of land where Indigenous rights and title are infringed may be difficult, if not prohibited by the most recent jurisprudence.

Moreover, participants expressed skepticism regarding the current state of readiness to respond to spills or other incidents. The Panel heard concerns that some ecosystems or other areas may simply be too fragile to bear any risk of a spill, and that projects in such areas belie a mistaken belief that we have the capacity to remediate potential damage.

The Panel heard a desire on the part of Indigenous communities to be much more involved in monitoring activities. This includes seeking better arrangements with proponents for funding for meaningful employment and capacity building in order to play a greater role in ensuring the safety and security of both new and existing pipelines.

A participant mentioned an example of having convened an Indigenous monitoring committee for a project, but with the stipulation that monitors could not hinder or obstruct the project proponent, and that monitors were advisors only, with no authority to take any action to ensure greater safety.

THEME: Engagement With Indigenous Peoples

Indigenous Engagement Session – March 22, 2017

The Panel heard that the NEB and the Crown need clearer protocols for early engagement, consultation, and accommodation. This includes both formal legal obligations and better enshrining best practices to guide activities.

Participants expressed the view that engagement with Indigenous peoples must occur under the auspices of nation-to-nation relationships, and that early engagement is critical. The courts have stated that Indigenous peoples must be engaged and consulted as soon as the Crown believes their rights may be affected, and not after many of the details of a project have already been worked out. Indigenous people may feel that their input is not sought in good faith, if the dialogue begins after major decisions appear to have already been made.

Also, the NEB and the Crown need to define clearer guidelines for how engagement and consultation unfold in practice. Without such guidelines, individuals are left to start from the beginning and may make the same mistakes repeatedly without benefiting from the experiences of the past.

Overall, the Panel heard that the government must understand that Indigenous peoples are rights holders, not just stakeholders. This distinction entails a different relationship, and different processes, because Indigenous rights are fundamentally different in law than the interests of other parties. Moreover, it was suggested that Indigenous peoples should automatically be deemed to have standing in any project affecting their rights, and not have to justify this standing repeatedly.

Funding and funding sources were raised as issues. First, funding must be adequate and commensurate with the depth and complexity of the issue at hand. It was suggested that funding under CEAA processes is more adequate than those of the NEB. In addition, the Panel heard that communities who oppose a project but accept proponent funding to support their intervention in a project review may feel inherently conflicted. This points to a larger issue that one participant described as “damned if you do, and damned if you don’t” with respect to Indigenous engagement. On the one hand, Indigenous engagement may be perceived as tacit approval for a project, even if a community engages in an effort to alter or oppose a project. Conversely, a dissenting community which chooses not to join engagement processes may be seen to have approved of a plan by virtue of its silence.

Participants also mentioned that the NEB website is difficult to navigate for computer savvy people, much less average citizens who wish to access information. Specifically, the Panel heard that full text searching is difficult to do efficiently, and large document files should be available as one single file, but also with the major sections broken down separately. As it stands today, some large files are only available broken down into their constituent parts, so accessing fifty pages of a report might require one to open dozens of separate files.

THEME: Public Participation

Public Session – March 21, 2017

Participants raised the 2012 legislative changes, which affected NEB decision-making and public participation processes. These changes have, for many, eroded confidence in the NEB, and in the ability of the public to meaningfully input into NEB decision-making.

The Panel heard that standing is a major barrier to meaningful public participation. Many individuals and groups have been deemed not to be “directly affected” by a project, and therefore feel as though they have little opportunity to input into NEB decision-making. At the very least, participants found it difficult to accept that they were barred from submitting letters of comment if they did not have standing.

Participants feel as though they are at a significant disadvantage during hearings as compared to the vast resources available to project proponents. It was suggested that the NEB could create a committee or some form of public intervenor, which would allow stakeholders to identify concerns and have their interests represented during formal proceedings. Such a body could also prioritize and fund scientific or legal research that would benefit a larger class of stakeholders. Today, in contrast, intervening parties may receive funding individually, but lack the ability to commission large scale studies, or even the capacity to navigate the many legal, engineering, scientific, and other issues at play. The solution to this issue is not just allotting more and more money to intervenors, but establishing processes that ensure that the voices of intervenors are effectively represented and heard by the NEB.

The Panel heard that NEB hearings are intimidating to participants, with confusing procedures, and often revert to a formal “people vs. suits” dynamic, that does not promote discussion and mutual understanding, and where the greater resources of proponents can make processes feel imbalanced.

Also, participants talked about proponents hosting open houses to share information. While these practices are useful, the Panel heard that citizens would also like open houses or informal public meetings with the NEB itself along with proponents available to publicly answer questions in a public forum. Similarly, there was an interest in seeking more open discussion rather than presentations that push certain information without genuine engagement on the issues.

Project timelines were also raised as problematic. It was suggested that project timelines be scaled to the complexity of the project in question, so as to allow adequate preparation time for intervenors. For complex projects, it may take considerable time to marshal resources and commission relevant studies. Broadly speaking, participants expressed a desire to be more involved in project scoping, so that all parties could work together to agree on what is in and out of scope during a particular review, in an iterative process.

The Panel heard that the information provided by proponents can limit the depth and quality of public participation. For example, if a map of a proposed pipeline route is developed, but at a level so abstract that its specific effect on the area cannot be determined, then the public is at a loss for how to contribute meaningfully and assess the risks of a project.

Participants expressed a strong desire to see greater engagement with Atlantic Canada in NEB business. It was noted that the Expert Panel itself made only one stop in Atlantic Canada, and that more generally people expect better access to the NEB in the future. To this point, it was suggested that the NEB establish more regional offices, which would be responsible for ongoing engagement with citizens, and could help interested parties understand and navigate the processes by which they could input into decision-making, help landowners understand their rights, and other functions.

One participant provided the example of the New Brunswick Clean Air Act, and the public participation regulations under that act, as examples of best practices to be looked to. Under this act, the Minister announces projects for review, takes questions, and answers those questions publicly. The same act also features a regulation creating an independent panel which works on issues in the public interest and acts as a sort of public intervenor.

Finally, a participant asked about the NEB’s funding model. Specifically, how fees from proponents are handled, and what percentage of the NEB’s overall budget is sourced from the recovery of costs from proponents. It was suggested that this scheme could create an inherent conflict, if the regulator is dependent on industry for funding.

The participants' questions, which are described below, will be sent to the NEB to prepare a response.

Could you please provide an overview of the NEB's funding model? In particular,

- a) What are the sources of NEB funding?*
- b) What percentage of the NEB's budget is derived from industry? How is this funding used?*

Once it is ready, the response will be posted on the Panel's website and sent to the participant who posed the questions.