

**Hélène Lauzon** : Ladies and gentlemen, good day and welcome to the briefing on the National Energy Board.

My name is Hélène Lauzon, I am the co-chair of the independent expert panel entrusted with the modernization of the National Energy Board Act.

I am accompanied by my co-chair, whose flight was delayed this morning, Mr. Gary Merasty, and our fellow panelists Wendy John, to my left, Mrs. Brenda Kenny to my right and Mr. David Besner to my left.

My colleagues and I are independent members. We are not employees of the Department of Natural Resources or the National Energy Board. We therefore approach our mandate independently without prejudice or favouritism, with the sole purpose of seeking a fair and equitable mechanism to regulate pipelines, power transmission lines and energy exports in the best interest of the citizens of Canada as a whole.

Throughout our consultation process, we will ensure that our consultations are credible, transparent and efficient.

Our, we are subject to the values and ethics code with, that you will find on the panel's website. We are also subject to the conflict of interest rules of the federal public service and cannot be lobbied by anyone.

Our mandate is to conduct a target review of the NEB structure, role and mandate pursuant to the Energy, National Energy Board Act.

It is in this context that we are today holding a webinar which will allow panel members and participants to the consultation to have a clear understanding of the governance structure, mandate, decision-making role, decision-making process, regulatory process of the NEB pipeline or power line.

I now invite Mr. Peter Watson, NEB President and Chief Executive Officer, to address you.

**Peter Watson** : Thank you very much, madam Chair and good morning panelists. First, I want to say that we're very pleased to be here today and to present in front of the panel. My name is Peter Watson, I'm the Chair and CEO of the National Energy Board and I'm joined today by some of my senior management team and professional leaders. Together, these executives bring to the table a range of diverse experiences and knowledge on areas specific to your review.

At the NEB, we understand the critical importance of public trust. We fully support the Government of Canada's review to modernize the NEB and we are very committed to helping the government achieve its objectives. We are also supportive of the complementary mandates to review other environmental and regulatory processes, as well as the interim principles that the government has put in place for the review of projects. On behalf of all of my staff here today and on behalf of the entire National Energy Board, I'd like to convey appreciation for this opportunity.

Now, we understand that the panel members may have varying levels of familiarity with the NEB. We want to use the time period effectively as there's plenty of information to go through and I'd like to start our briefing by setting the context in terms of the strong foundation that the NEB has established within our existing mandate and highlighting what is working well, but also where we see some challenges, after which my folks here will elaborate on the NEB's internal transformation and explain our current role, structure and mandate and I trust that this will help establish a baseline for the panel as you engage with the public and with indigenous peoples throughout the modernization review.

So a bit about context. As you may be aware, the NEB was established in 1959 to move the decision-making power over pipelines and energy infrastructure to an independent quasi judicial regulator whose decisions would not be based on politics. It was built on the recommendations from two royal commissions: the Borden Commission and the Gordon Commission.

At this time, economic growth was a key focus for the country but since the 1950s, the NEB has evolved to balance environmental, social and economic considerations into its decisions. While the NEB Act has been amended from time to time to address specific issues, including the 2012 Jobs Growth and Long-Term Prosperity Act, and the 2015 Pipeline Safety Act, there's never been a holistic review of our governing legislation. Your review marks the first time the NEB Act has been looked at in a holistic way to determine where there's room for improvement.

When I joined the NEB as Chair and CEO in August of 2014, it was clear that the NEB, as well as Canada's entire energy system, was entering a new context defined by global issues like climate change and transition to cleaner forms of energy, reconciliation with indigenous peoples and overall increased interest and concern about safety and environmental protection at local, regional and national levels.

As Canada's federal energy regulator, the NEB has a vital role to play in this system. Over the past two years, we have taken numerous steps to transform internally to adjust and improve, where possible, within our existing mandate and assure Canadians that we are working to protect what matters to them. Through these efforts, we are seeking to build confidence in the regulatory system.

We do however find ourselves in the spotlight in terms of our hearing processes, which has become very controversial, headline grabbing and focal points for energy policy

debates across North America. They are however very important processes in which the NEB has a defined and legally prescribed role in accordance with our statutory mandate. We know we cannot satisfy every voice in this role.

The energy policy debates are currently very polarized, but we also know that these hearing processes are not the sum total of the role that we play as a regulator. They are only one element of the Board's overall mandate to promote pipeline safety and environmental protection and safety associated with energy infrastructure.

Regardless of the attention on project hearings, the NEB is very active and accountable for making sure that the infrastructure we regulate throughout its life cycle and in the case of pipelines, this involves more than 73,000 kilometres of pipelines under our jurisdiction, we ensure that they're being maintained and in service safely, with minimal disruption or risk to the people who live or work around them every day. And we work to provide oversight of the company and the industry that provides that safety and environmental protection to people.

It is this public assurance role that Canadians expect, also referred to as our life site oversight role where we clearly must demonstrate our performance to Canadians. It is also important to note the role of the Board regarding economic and financial regulation of pipelines under our jurisdiction. The Board plays a fundamental role in setting the rates paid by users of a pipeline. The role of the NEB is to ensure that these rates are just and reasonable and not unjustly discriminatory. Our decisions in these regards have material impacts on defining the economic framework in which energy infrastructure is developed and operated in Canada.

In the past year, we have taken a very deliberate approach to building public confidence. For starters, we are actively changing the way we assess our performance and our competence internally and we are putting structures in place to recalibrate our thinking towards more critical and focused cycle of continual improvement. We are actively striving for regulatory excellence as defined most recently in the body of work led by the Alberta Energy Regulator and the University of Pennsylvania.

The attributes of regulatory excellence, utmost integrity, stellar competence and empathic engagement are the foundation for our work, our programs, the activities we undertake and the managerial approach we use to achieve results. We have established an NEB management system that defines and describes how we will fulfil our role and that will allow us to drive the improvement in the way we work. With that focus in place, we have updated our results framework. We see our results framework as an opportunity to better report to Parliament and to all Canadians regarding our public assurance role and the results that we are expected to deliver. Our results framework describes to the public exactly what we are doing to fulfil our mandate and the performance indicators that we will use to measure our effectiveness.

Through the framework, we are capturing the purpose and intent of our work and it will allow us to clearly and credibly demonstrate that we are serious about our public

assurance role on behalf of Canadians that will also allow us to more clearly report to Parliament through the Minister of Natural Resources.

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

So firstly, defining and measuring public interest and the role of government policy and NEB processes. The public interest is at the heart of the NEB's mandate. Assessing the public interest involves balancing environmental, social and economic interests that change as society's values and preferences evolve over time. Through the hearing process, the Board is able to consider socioeconomic, safety and environmental factors and integrate them into an overall recommendation as to whether a particular project is in the public interest.

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

Now, while having the flexibility to determine the public interest based on society's evolving values is important, policy clarity from the government would be helpful in certain areas. This includes, for example, additional clarity on issues such as climate change and policy frameworks respecting climate change, indigenous issues, the need for consultation outside of specific projects, marine shipping, transition to different forms of energies and areas of shared jurisdiction with the province such as the treatment of cumulative effects on a regional scale.

These are broad system-based policy issues outside the scope of any specific project which is challenging for the NEB to consider properly without additional guidance and direction from government. Transparency and clarity from the government can help us focusing our processes and increase the effectiveness of them, minimizing the frustration and the dissatisfaction of those participating and wanting to deal with these larger policy issues.

It would also help to provide clarity as to how real or perceived regulatory or jurisdictional gaps are being addressed outside of the NEB process. In addition, clarity from government on the intended purpose and objectives of the NEB could also help inform the Board's public interest assessment and may help address the various assumptions held by the public regarding the scope of the NEB's mandate and the purpose of its public processes.

Policy clarity can be provided in different ways, some of which involve legislative change and others which do not. Regardless, it is important to preserve the NEB's independence for its adjudicative functions, therefore any policy clarity or directions from government should be transparent, general and at a higher level. The NEB does

need to retain flexibility to determine how to apply policy in the unique circumstances of a given case.

With respect to independence and governance, it is important for the panelists to understand that existing governance mechanisms in place, including requirements for the NEB to file plans and performance reports to Parliament, appear to be neither understood by the public nor particularly transparent to the public, partly because the processes occur within the broader system of reporting for all government departments and agencies.

Another challenge is the perception that Ministers should not have much interaction with us because we are independent in our quasi judicial adjudication processes, however, while government cannot and should not interfere with our decision and our recommendation-making processes, we submit that there must be robust transparent and easily understandable governance mechanisms clearly laid out in the NEB Act to dispel a myth that may be out there that we are not accountable to government for our overall performance.

I also want to highlight our results framework again here. We took the step of proposing substantial improvements to our reporting framework for government to Parliament and the public over past NEB efforts precisely because we believe that good governance demands that Ministers, Parliament and the public have the necessary information to properly challenge and assess our overall performance, even while we make independent adjudicative decisions.

So to reiterate, in terms of governance, maintaining the independence of the NEB in its adjudicative role is critically important to the integrity of the Board's regulatory processes, however, independence does not apply to all of our functions nor should it impede good governance of a public institution like ours. A balance must be struck between independence and governance.

Your review could clarify changes needed to the NEB Act to ensure transparent and clear governance mechanisms are in place and easily understood by the public. This is one area of improvement which we feel is foundational to regaining public trust.

The NEB Act does not draw a distinction between the NEB as a quasi judicial adjudicator, meaning a quorum of members reviewing an application or the broader organization. The broader organization has a variety of roles and responsibilities throughout the life cycle of energy infrastructure, such as the provision of energy information, engagement and oversight. Good governance that is transparent and protects independence in the adjudicative role could be enhanced in many ways, including clarifying the role of members and staff and by separating the roles of the Chair and CEO. Those distinct roles should be clarified in the NEB Act, along with the roles of others in the organization.

A modernized model for the structure of the NEB could focus these roles so as to

provide clarity of accountabilities for adjudication or a high degree of independence is required, management or a lower degree of independence is required, and governance, which involves strategic priority setting, a challenge function for management and requires engagement with stakeholders.

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

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

Regarding public participation, engagement and hearing procedures, it is important that you know that we engage with Canadians throughout our hearing processes, but also throughout the life cycle of our regulated infrastructure. NEB hearing processes are flexible to allow for different methods of participation and different types of hearings, both oral and written. We utilize technology and a variety of tools such as process advisors, information sessions and participant workshops to accommodate and assist hearing participants.

A challenge we regularly face with respect to public participation and pipeline hearings in particular is the frequent difference between the expectations of participants and our legislative mandate that reflects changes in the NEB Act that were made in 2012. Many participants expect to be heard on policy or system level issues such as climate change, that are outside of our project specific mandate.

And following legislative changes in 2012, some stakeholders and members of the public have expressed concern that NEB hearings do not enable meaningful participation due to the newly mandated rules on standing and time limits. The NEB is faithfully implementing these legislative amendments, however we do acknowledge that these public concerns exist. Regardless of one's view on how wide or narrow the opportunities for public participation should be in hearings, it is important that effective evidence based participation in NEB hearings should be focused on issues relevant to our mandate and should be meaningful to the review process, recognizing that meaningful can mean something different depending on one's individual expectations and perspective.

When considering modernization efforts in the area of public participation in our

hearings, the following principles should be taken into account. Participation should allow for and enable diverse views to be expressed. There is a need to hear from those who are directly affected by a proposed project, from the broader public and also from experts, including federal departments.

Participation should serve the purpose of informing the NEB of the facts and circumstances necessary to make a public interest determination regarding the application or a specific project. Project-based hearings are not the best place to review and debate matters of very broad energy policy.

Clarifying the NEB's purpose, mandate and role may also assist in managing the expectations of Canadians regarding the purpose of NEB hearings and the role of participants. It is important for us to maintain procedural flexibility, given that all pipeline projects or all projects that we review are unique and different processes may be necessary to accommodate meaningful participation in those particular circumstances.

So imposing additional and specific procedural requirements on our hearing processes may not contribute to effective decision-making or efficiency in our hearings.

Notwithstanding this, we recognize that all stages of our project life cycle require early, sustained and effective engagement, and that will be critically important for instilling confidence and earning Canadians' trust in our oversight.

With respect to life cycle tools for life cycle oversight of infrastructure, our role as a life cycle regulator is one of our strengths. We integrate socioeconomic, safety and environmental considerations into all of our processes. This allows for an effective transition between the application review, construction, operation and eventual abandonment of a project. It also allows us to use a combination of project specific requirements and regulatory requirements of general application to help ensure safety and environmental protection.

The NEB Act provides us with broad powers to set and enforce regulatory requirements and oversee company compliance. It also provides us with an important degree of flexibility and adaptability in carrying out this role. The Pipeline Safety Act, which came into force in June 2016 provided significant additional life cycle oversight tools, including financial requirements for pipelines and the ability of the Board to take over a response to a pipeline release in certain circumstances.

Recognizing that the NEB Act already provides comprehensive and robust enforcement and compliance tools, there is always room for continual improvement and we support legislative changes that will enhance the efficiency and the effectiveness of our life cycle oversight role. As I mentioned, a modernized structure or a modernized model for the structure of the National Energy Board should focus roles to provide clarity of accountabilities and this could include clarity regarding the roles of members and staff during the life cycle in activities such as compliance, oversight and engagement.

Transparency regarding company compliance and our enforcement measures as a

regulatory institution, is an important part of building Canadian trust, Canadians' trust, and this is also an area that we were focusing on as part of our internal transformation efforts.

Regarding indigenous engagement, our hearings are flexible and provide meaningful opportunities for indigenous peoples to participate through, for example, the collection of oral traditional evidence. We provide the vast majority of available participant funding for our hearing process to indigenous groups. However, you should be aware that concerns are frequently raised about the adequacy of that funding. It would be beneficial to have clarity on how the duty to consult and accommodate indigenous peoples is discharged by the Crown in the context of a whole of government approach and where the NEB fits.

While we play an important role in supporting the Crown in discharging its duty to consult and accommodate indigenous peoples, there are limits on the type of remedial measures or mitigation measures that we can impose given the Board's project-specific legislative mandate. Initiatives could be explored that would streamline and remove duplication for indigenous peoples across the broader government approach to the review of major resource projects.

Through the review, it would also be helpful to better understand how traditional indigenous knowledge can best be considered in our project-specific assessments. It's important to note that concerns raised by indigenous peoples in our hearings sometimes relate to matters that are outside of our legislative ability to address, such as cumulative effects that are unrelated to the project. Our inability to address these concerns, combined with an absence of other processes in some cases to address them, often lead to frustration and dissatisfaction for participants with our hearing process.

With respect to emergency management, we have very well trained and qualified emergency management staff with necessary technical expertise. We recognize the importance of emergency management, we support the improvement of emergency management programs and systems and we are responding to the public interest in this area by significantly increasing transparency and engagement related to emergency management systems.

A key challenge to effective emergency management involves achieving coordination amongst federal, provincial and municipal governments, companies, first responders and stakeholders. We are committed to taking a leadership role to support the improvements of these systems.

With respect to land matters, we are supportive of initiatives that will facilitate land owner participation in our processes, such as the Land Matters group, as well as measures to modernize the land matters scheme in the National Energy Board Act to better reflect current land matters issues and concerns. For example, there can be an imbalance of power between individual land owners and pipeline companies and the

Land Matters scheme and the NEB Act can contribute to this imbalance. This imbalance of power is also an issue that may apply to municipalities in terms to the planning and siting of infrastructure within their jurisdiction.

It's important to note that while often closely aligned, land matters are distinguished from environmental matters. And it is also important to note or to distinguish between land owner issues, which are property-based issues and land issues, which is about how the land is treated and protected.

With respect to energy information programs, we conduct a robust energy information program under parts 2 and largely part 6 of the National Energy Board Act. The language of the NEB Act is general and allows for a broad and comprehensive energy information program. Given that market monitoring is relevant to the entirety of our mandate, not just part 6 of the legislation, clarity of and a greater focus on expanding our mandate powers and flexibility under part 2 of the act may be warranted.

Our energy information program can play a very important role into the future to present the interconnectivity of energy systems from a neutral perspective, be predictive and sensitive to emerging trends that are occurring within the broader energy systems and provide objective and neutral information to policy makers.

So in conclusion, I hope you take away from my opening remarks the strong foundation that the National Energy Board has set within our existing mandate and highlights of what is working well and where we see some challenges in terms of energy regulation in Canada. Thank you for allowing me to discuss these important issues. You'll be hearing a range of views throughout your engagement process and we would be happy to respond to any questions you might have and elaborate on any of the key issues, challenges and lessons learned from our experience as Canada's national energy regulator.

Our Chief Operating Officer, Josée Touchette, will now provide a presentation on the NEB's internal transformation and our Executive Vice-President of Regulatory, Sandy Lapointe, our Chief Environment Officer, Dr. Robert Steedman, and Shelley Milutinovic our Chief Economist, will follow with a presentation about our current role and mandate under the NEB Act.

Thank you.