

From: Marilyn Eriksen <contact information removed>
Sent: July 20, 2016 11:51 PM
To: EA Review / Examen EE (CEAA); Marilyn Eriksen
Subject: Fwd: Comments on Canada's Terms of Reference for Canadian Environmental Assessment Act Expert Panel

The comments below are being shared with both the National Energy Board and the Canadian Environmental Assessment Agency

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From: **Marilyn Eriksen** <contact information removed>
Date: Wed, Jul 20, 2016 at 11:46 PM
Subject: Comments on Canada's Terms of Reference for Canadian Environmental Assessment Act Expert Panel
To: NRCan.NEBModernization-ModernisationONE.RNCan@canada.ca
Cc: Marilyn Eriksen <contact information removed>

Review of Environmental Assessment Processes

Canadian Environmental Assessment Agency

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Submitted by e-mail

July 20, 2016

Subject: Comments on Canada's Terms of Reference for the Canadian Environmental Assessment Act Expert Panel

Thank you for the opportunity to comment on Canada's Terms of Reference for the Canadian Environmental Assessment Act Expert Panel.

As a retired health professional, with over 20 years experience in Risk Assessment, I am concerned at the omission of Environmental Assessments of pipeline projects in the NEB Modernization *Mandate and Scope of Review*. I am also concerned that the Terms of Reference for the Canadian Environmental Assessment Act Expert Panel do not provide a clear role of the Ministry of Environment and Climate Change with respect to the Ministry of Natural Resources and the NEB in Environmental Assessment oversight. Is it an Audit role that MECC maintains? Also, I am concerned that there is no mechanism mentioned in the Terms of Reference for ensuring that Environmental Assessments, including those for pipeline projects, incorporate Climate Change targets committed to by Canada in Paris.

History shows that NEB has a poor track record in addressing Environmental and Socio-Economic Impact Assessment (ESEIA) concerns. Line 9B Reversal and Line 9 Capacity Expansion Project Hearing (Order OH-002-2013, File OF-Fac-Oil-E101-2012-10 02) was one of the first pipeline projects to be processed by NEB after Bill C-38 and the Canadian Environmental Assessment Act of 2012, were passed. The Bill and Act decimated meaningful Environmental Assessments of pipelines at the federal level in Canada.

When a limited ESEIA was presented during the Line 9B Hearing, several Intervenors asked the Proponent about the environmental effects of a Line 9 pipeline rupture, a concern to many considering Line 9 crosses prime agricultural land, sensitive environmental ecosystems, several First Nation hunting and archival grounds, major city infrastructure, and, water sheds providing municipal drinking water and recreational water ways to millions of people in Ontario and Quebec. The Proponent's response to NEB was that Scenarios concerning pipeline rupture events are not within the scope of the project Environmental and Socio-Economic Impact Assessment which is limited to the seven Project Sites Identified in table 1-1 of the ESEIA Addendum. To date, there has yet to be a full ESEIA of the Line 9B Reversal and Line 9 Capacity Expansion Project Hearing (Order OH-002-2013, File OF-Fac-Oil-E101-2012-10 02), despite the flawed NEB process, despite the 2014 warning from the Pipeline and Hazardous Materials Safety Administration-2014-0040 on the potential significant impact flow reversals, product changes and conversion to service may have on the integrity of a pipeline, despite 1000's of petition signatures, and despite requests for an Environmental Assessment by Municipalities along Line 9.

The NEB Modernization Term of References speak in generalities of environmental, economic and social factors of interest to the Public. Though it does state that there is an increase interest of stake holders and public participation in developing emergency response plans, it fails to address the "proactive", meaningful, Environmental Assessments, needed as a first step in the development of adequate emergency response plans

The role of a quasi-judicial regulator of pipelines for adjudicating energy projects is difficult for NEB. An adjudication process is one that is governed by formal rules of evidence and procedure and a decision rendered by an impartial, passive fact finder. NEB's conflicting roles do not allow NEB to be impartial.

The role for ensuring that meaningful Environmental Assessments of pipelines are conducted, should be removed from the Ministry of Natural Resources and NEB.

Because of the fractured nature of CEAA, 2012, (eg., pipeline Environmental Assessments under NEB; northern Environmental Assessments under Minister of Indigenous and Northern Affairs; nuclear environmental Assessments under the Canadian Nuclear safety Commission) and the conflicting mandates and potential biases of those Agencies and Board, particularly in their determination as to whom Projects "directly affect" for inclusion in consultation, consideration

should be given in the CEAA Terms of Reference for replacing CEAA, 2012 with a more rigorous piece of Environmental legislation.

In light of Canada's Paris Climate Change commitments, both the NEB and CEAA Expert Panels are encouraged to consult with other Ministries and Agencies with relevant expertise in their Decision Making Process. For example, the Public Health Agency of Canada (PHAC) should be consulted as it monitors new and emerging disease vectors, assesses the impact of extreme weather on vulnerable populations and has expertise in emergency preparedness.

Health Canada's " Decision-Making Framework for Identifying, Assessing and Managing Health Risks- August 2000" should be considered by the Panels as the Framework incorporates several critical principles: the importance of meaningful public consultation; transparency; sound science; and, the "precautionary principle": concepts lost with the passing of Bill C-38.
http://www.hc-sc.gc.ca/ahc-asc/pubs/hpfb-dgpsa/risk-risques_tc-tm-eng.php

With respect to *Complementary Mandates*, the mechanism for working with other Ministers should be detailed in the Terms of Reference to ensure that gaps identified that need to be addressed by more than one Minister are escalated to an overseer for joint resolution. Currently, Terms of References for the Panels describe taking into account activities associated with other mandated reviews....sharing information....coordinating review activities..forwarding matters beyond the scope of the Panel to other mandate review. Since Environmental Assessments are not mentioned within the scope of NEB's Modernization Mandate and Scope, it is unclear as to where the responsibility for ensuring meaningful environmental assessments will fall.

For your consideration.

Marilyn Eriksen

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