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From: Dave Core <davecore@caepla.org>
Sent: July 19, 2016 09:02
To: NEB Modernization / Modernisation de l'ONE (NRCAN/RNCAN); Jim.Carr@parl.gc.ca
Subject: Re: National Energy Board (NEB) Modernization Expert Panel: Draft Terms of Reference

Re: National Energy Board (NEB) Modernization Expert Panel: Draft Terms of Reference

Dear Hon. Jim Carr,

Thank you for your invitation to stakeholders concerned about energy transport to communicate their suggestions for the modernization of the National Energy Board's mandate and also submit comments on the Terms of Reference for this process of evaluation.

The Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA) is Canada's leading national grassroots property rights organization. Landowner-driven, CAEPLA advocates on behalf of farmers, ranchers, and other rural landowners to promote property rights, environmental stewardship, and the continued viability of the family farm. We also represent directly affected landowner groups in negotiations for mutually beneficial business agreements with pipeline and power line companies across Canada, from coast to coast.

CAEPLA is pro development and pro pipeline, but believes a level playing field must be established between landowner and industry in order to protect family farmers, property rights, soil and water, as well as land values.

Our goal as a grassroots advocate is to cooperatively address directly affected landowners' operational, safety, and environmental stewardship concerns via mutually beneficial agreements that provide the public with peace of mind while enabling companies to win "social license" for economically important pipeline projects.

Our many negotiated settlements on major pipeline projects have set precedents for safety and environmental sustainability that far surpass those promulgated by the NEB.

In fact it is the *National Energy Board Act*, and the Board's interpretation of both this archaic legislation and its regulations that compromise landowner rights and pipeline safety and compromise our ability to set higher safety and environmental standards through business negotiations and contract law disciplined by the courts.

CAEPLA's precedent setting settlement and easement agreements have raised the safety bar and we have accomplished this even as an all too often ham-fisted NEB -- with its Right of Entry legislation -- undermines our efforts to set yet higher standards in the public interest.

Landowners have had to come together, at great cost, to pool their resources and knowledge to leverage these high standards to make pipelines safer and more sustainable -- in spite of the NEB.

Having said this CAEPLA looks forward to seeing the NEB modernized from its outmoded modelling of the Railroad Act and brought into the 21st century with an understanding that those directly affected by pipeline intrusion are the people with the greatest interest in pipeline safety. These are the people who are considered the first line of defense for pipelines and have the greatest interest in protecting their own self-interest from a safety and environmental perspective as they attempt to protect the future of their families, food production, businesses, land investments and their stewardship responsibilities.

When the NEB effectively expropriates on behalf of pipeline companies, they are essentially subsidizing these companies with a kind of rent control. This subsidy represents a transfer of wealth from family farmers to shareholders in energy companies.

Worse, this wealth transfer creates a "tragedy of the commons" whereby companies, getting a valuable input at far below fair market value, have historically tended to be more reckless in terms of safety and the environment than they would otherwise be if they in fact were fully invested in the land they use.

In 2008 CAEPLA hired experts and legal counsel, at great expense, to research and create papers advising the NEB on how to improve its processes to address landowner safety,

environmental and property rights issues. We did this at the Board's request in the LMCI process and have yet to receive payment of our costs for that research and exemplary advice. That research and those submissions have been ignored for 8 years. Obviously, to the Board's detriment and its lack of credibility with the Canadian Public.

CAEPLA's suggestions regarding the Terms of Reference for the Panel:

Scope of Review:

- **Non Indigenous Pipeline Landowners are not simple stakeholders, they and Indigenous Peoples live and work on the land 24/7/365 and have the same stewardship responsibilities as Indigenous people along with many having the additional responsibility of protecting their farms and soils to produce safe food for Canadians.**
- **We suggest that directly affected "Non Indigenous Pipeline Landowners" be a seventh Subject of Focus. Addressing the issues of the people living and working and growing food on the pipelines 24/7 and who are ultimately responsible as title holders of the land need to be respected. Resolving our contractual issues (such as, but not limited to, liabilities, risks, duty of care, mitigation, agricultural) helps to resolve safety and environmental concerns more significantly than any other change.**
- **Under the heading Legislative Tools for Lifecycle Regulation: "Land acquisition matters and related negotiation proceedings" be moved to the new subject "Non Indigenous Pipeline Landowners".**

As CEO and Director of Federally Regulated Projects for CAEPLA, I, our Board of Directors and our membership have been calling for the modernization of the NEB since CAEPLA's inception in 2000. For some of us in the landowners movement prior to CAEPLA's founding, this has been a core concern since at least 1975.

It is with guarded optimism that CAEPLA looks forward to the efforts of your government and NRCAN to initiate a long overdue process of reform and modernization for the NEB. While we as always will maintain our mandate as watchdog of industry and regulator on behalf of landowners and the public, we nonetheless are happy to engage with you directly in the interests of assisting you in this important work.

Sincerely,

Dave Core

Landowners Want In!

Dave Core

CEO & Director of Federally Regulated Projects

CAEPLA (Canadian Association of Energy and Pipeline Landowner Associations)

"Promoting the responsible use of our lands and resources"

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