



canadian energy pipeline association  
association canadienne de pipelines d'énergie



Honourable Jim Carr  
Minister of Natural Resources  
580 Booth Street, 21st Floor, Room C7-1  
Ottawa, Ontario  
K1A 0E4

20 July 2016

Dear Minister Carr;

The Canadian Energy Pipeline Association (CEPA) would like to thank the Government of Canada for the opportunity to comment on the proposed Expert Panel's draft Terms of Reference pertaining to the modernization of the National Energy Board (NEB).

CEPA members operate 119,000 kilometres of transmission pipeline in Canada and transport 97 per cent of Canada's daily natural gas and onshore crude oil production from producing regions to markets throughout Canada and the U.S. Many of CEPA member companies are federally regulated and as a result we have a deep interest in participating and collaborating to ensure that we have a highly effective regulator that assures safety, transparency and accountability - values that CEPA members prioritize and emphasize in their operations.

Our comments are specific to the draft Terms of Reference only. We look forward to opportunities during the Panel's review this fall to provide our views on how to continue to effectively regulate transmission pipelines in Canada in a manner that has the confidence of Canadians. We believe that industry can provide valuable information to the Panel about how we can work together to regain public trust and facilitate getting Canada's natural resources to market. This must include ensuring that NEB processes are efficient, predictable, consistent and completed in a timely manner.

CEPA members support robust regulatory oversight throughout the full lifecycle of our operations and we recognize this requires a regulatory framework that is conducive to continuous improvement. With this in mind, we believe that the draft Terms of Reference is appropriately focused on current issues that are relevant to Canadians. This includes seeking public input on the NEB's structure, governance, mandate, decision-making roles, legislative tools for lifecycle regulation, Indigenous engagement and public participation. Furthermore, we support the Panel's intention to take into account the activities associated with the other mandated reviews including potential changes to the *Canadian Environmental Assessment Act*, the *Fisheries Act* and the *Navigation Protection Act*.

While the scope of the draft Terms of Reference is sufficiently broad and addresses the key issues regarding the regulator's mandate, we believe that the focus should be limited to effective regulation of energy infrastructure and not on expanding the role of the regulator. We suggest that a good starting point is an examination of the study recently commissioned by the Alberta Energy Regulator on regulatory excellence, as part of its "Best-in-Class" project. Should the government wish to assess expanding the role of the regulator, the panel should take into consideration that the NEB operates on a cost recovery model where the transmission pipeline sector pays for almost all of the NEB's costs.

We also believe that to ensure the review of the NEB serves the future interests of Canadians the Panel should not presuppose any set of circumstances. The Panel should seek to uncover evidence that points



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to specific areas that could be improved. This is accomplished through an open, fact-based dialogue during a process that relies upon experts and science-based evidence. To this end, we have provided recommendations (see attached table) that we believe would enhance the draft Terms of Reference and ensure a fact based process.

Thank you for the opportunity to provide comments on the draft terms of reference pertaining to the modernization of the NEB. CEPA looks forward to working with the Panel to develop findings, conclusions and recommendations with respect to the relevant issues within the Panel's mandate.

Yours sincerely,

Chris Bloomer  
President and CEO



**NEB MODERNIZATION – comments on draft Terms of Reference**

COMMENTS	RECOMMENDATION
<p>The focus of the review should be on effective regulation of energy infrastructure.</p>	<p>Delete “Potential to expand the NEB’s mandate (i.e. in emerging areas such as offshore renewables and to support the transition to a low carbon economy).”</p> <p>Recommend modifying the “Mandate” from “Potential to clarify and expand the NEB’s mandate with respect to collecting and disseminating energy data, information, and analysis;” to read “Potential to clarify whether the NEB’s mandate should include collecting and disseminating energy data, information, and analysis, or whether the NEB should focus exclusively on energy regulation.”</p>
<p>Some of the language used seems to predetermine a certain outcome for the review. For example:</p> <ul style="list-style-type: none"><li>• “NEB Modernization will involve engaging Canadians on <u>reforms to the NEB Act</u>”; and</li><li>• “Identifying <u>legislative changes</u> to support greater stakeholder and public participation.”</li></ul> <p>This language assumes that legislative amendments are required without leaving open the possibility for improvements to be made within the existing legislative framework.</p>	<p>Recommend using balanced language throughout that does not presuppose measures to be implemented, for example: “<u>potential reforms</u>” and “<u>potential legislative changes</u>.”</p>
<p>The potential outcomes listed under the Governance section of the Scope of Review include the role of the NEB in implementing the Government’s policies and priorities, including mechanisms for policy direction. It does not specifically include the role of the Government in setting the NEB’s priorities and initiatives.</p>	<p>Expand this potential outcome to include seeking views on both the NEB’s and the Government’s role (including various federal ministries) in setting and implementing the Government’s policies and the NEB’s priorities and initiatives.</p> <p>Include as a potential outcome, the Board’s processes and systems – e.g. competencies, performance goals, benchmarking against other regulators, etc.</p>



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More explanation of Legislative Tools for Lifecycle Regulation would be helpful. It is unclear what is intended for review under this heading. For example:

- What is contemplated by “*effective legislative tools throughout project planning, construction and operation and abandonment*”?
- Do “legislative tools” include existing compliance assurance tools available to the NEB, such as inspections and audits?

Provide greater clarity regarding what is intended by Legislative Tools for Lifecycle Regulation including an examination of what “legislative tools” are currently available to the NEB, together with the effectiveness of those tools (what is working and what requires improvement). For instance, regarding compliance assurance tools like inspections and audits, are they being applied consistently and fairly? Are safety and environmental concerns balanced appropriately against regulatory certainty and economic and market interests? Is the NEB’s desire to be transparent balanced appropriately against confidentiality and reputational concerns?

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The wording used in relation to assessing where and how more public and stakeholder participation would enhance the regulatory outcomes assumes that legislative changes are required, and seems to focus more on quantity instead of quality.

Under “Public Participation” modify “Identifying legislative changes to support greater stakeholder and public participation in various NEB activities (e.g. hearings, developing emergency response plans, etc.)” to “Identifying NEB activities where more effective stakeholder and public participation would enhance the outcome of those processes and identify potential processes that would support such participation where appropriate.”

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Although the review may identify some changes in the way the NEB operates, effective regulation involves a process in which decisions are based on science, fact and evidence, has predictable timelines, that avoids duplication, and has efficient and effective processes for Indigenous, landowner and public consultation.

The objective of the review should include the continuous improvement of the NEB to ensure it remains a modern, effective and efficient regulator.

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