



July 14, 2016

National Energy Board
517 Tenth Avenue S.W.
Calgary, AB T2R 0A8

To Whom It May Concern:

Please find below some comments from the Canadian Federation of Agriculture (CFA) regarding the *National Energy Board (NEB) Modernization Expert Panel: Draft Terms of Reference*. We would like to express our gratitude for the opportunity to comment on the draft Terms of Reference (ToR) as well as the general focus on transparency and engagement that is found within the draft ToR.

Firstly, the ToR should also clearly ensure that the Modernization Expert Panel (the Panel) has the mandate to explore and determine whether the NEB has the capacity to meet any new requirements or changed mandate as a result of the Panel's recommendations. Furthermore, the issue of how the NEB determines compliance and enforcement of its regulations and decisions and whether the NEB has the capacity to do so should explicitly be included within the mandate of the ToR. By expanding the mandate of the Panel to include these two capacity issues, the Panel will be better placed to make strong and achievable recommendations that will improve the effectiveness of the NEB as a modern energy regulator.

The CFA encourages a larger Panel than is currently proposed within the ToR in order to ensure that there is diverse backgrounds and experiences represented. While it is reasonable to expect that the Minister will choose to select more than the minimum of three panel members, a minimum of at least five panel members would ensure that there is sufficient regional representation and expertise from different fields brought to the Panel. Preferably, a Panel of seven members would be a level that would begin to provide sufficient expertise.

One area that is of concern throughout the ToR and especially in the *Scope of Review*, is that there are numerous sections where outcomes are suggested. This section has many suggestions on what the potential outcomes could be and leads to some worry that the ToR may be influential over the Panel to meet predetermined outcomes. While examples of potential outcomes or findings of the WG are useful, especially to stakeholders and the broader public, they do not belong in a ToR. The wording of this section must be reviewed in order to ensure that the ToR is not interpreted as suggesting outcomes of the Panel's review and thus potentially jeopardizing the full scope and integrity of the Panel's recommendations. For example, under *6. Public Participation*: only legislative changes are provided as an example of

findings and recommendations. While legislative changes may be necessary, the Panel should clearly also consider how regulatory and policy changes would contribute to the modernization of the NEB.

The CFA would also like to recommend that the ToR specifically require the Panel consult and engage affected and adjacent landowners beyond general inclusion in the Public Participation. It should be recognized that those that have dealt with pipeline and energy development on the lands that they own and/or use have significant experience with how the NEB operates and will be in a better position to propose recommendations that will modernize the NEB. Those that have been affected by pipeline and energy development on their lands will be able to draw from their experiences to have a more informed engagement than the general public. It is therefore suggested that a seventh bullet be added under *Scope of Review* that highlights how the Expert Panel will engage directly affected and adjacent landowners in the review separate from public participation.

Once again, the CFA thanks the Government of Canada for the opportunity to comment upon the draft ToR of the Panel. A small number of changes outlined above will contribute to a stronger and clearer ToR to guide the important analysis and development of recommendations to modernizing the NEB. The transparency and opportunity for engagement that has been exhibited to date is welcomed and the CFA looks forward to remaining engaged in this process as it moves forward.