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Submitted by email

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Response to Canada's Terms of Reference for National Energy Board Modernization expert panel

Prepared by Dr. Alana Westwood on behalf of Evidence for Democracy.

Thank you for this opportunity to comment on Canada's Terms of Reference for National Energy Board Modernization expert panel.

The Minister of Natural Resources has been mandated to modernize the National Energy Board (NEB), which is responsible for overseeing pipelines, energy development, and trade. In 2012, the NEB was given this jurisdiction, which previously fell under the former Canadian Environmental Assessment Act (1992). The [Terms of Reference](#), available for public comment, provide direction for the expert panel to tackle making recommendations to the government for revising or re-creating the role and capabilities of the NEB.

The NEB has been riddled with controversy since its inception. Presently, it is commonly perceived as having lost the public trust, and it has found itself mired in litigation. Public perceptions that it has served as a concierge for industry stakeholders will be hard to change. Some of its failings as well as complex, somewhat dubious relationships with provincial regulators are [described by Chris Tollefson](#), who states that "Band-Aid solutions that seek to remedy the deep-seated flaws of processes by annexing new reviews (such as creating a new consultation panel after the NEB's review of the Kinder Morgan Trans Mountain Expansion (TMX) project), have little or no chance of restoring trust."

The NEB came from a history of technical assessment, but had thrust upon it in 2012 the science-driven questions falling under the purview of the Canadian Environmental Assessment Agency. Concurrently, an expert panel is being constructed to make recommendations for revising

or replacing the Canadian Environmental Assessment Act (CEAA 2012), under which scope the NEB also falls.

Evidence for Democracy has also submitted [a list of suggested improvements](#) to the proposed TOR for the expert panel guiding recommendations to update CEAA. These include: 1. Provisions for independent science, 2. Expanding complementary mandates to include Health Canada, Agriculture and Agri-food Canada, and Parks Canada, 3. Ensuring expert panel composition and qualification is sufficient to evaluate evidence in a rigorous way, and 4. Increasing deliverables to include a concise document detailing specific suggested changes to legislation and/or policy. The TOR for the NEB expert panel should also include all of these elements.

However, the NEB is an institution that has lost public trust, has shown poor transparency and accountability, and the scientific integrity of its assessments have been called into question on a number of occasions. As such, the present panel should take this opportunity to re-evaluate the role and existence of the NEB entirely. To ensure consistency and quality of consultation, procedures, and integration of scientific evidence, at the very least, the NEB and CEAA should be harmonized. It would perhaps be better to avoid the duplication of resources in revitalization efforts, and entirely collapse the work of the NEB back into CEAA.

The NEB as an institution has not historically maintained scientific integrity, and the evidentiary basis of its decision-making has repeatedly been called into question. As such, our main recommendation is that the TOR for the NEB revitalization expert panel be updated to allow for the possibility that the panel, upon considering all relevant scientific evidence, knowledge of Indigenous communities, Indigenous and public response, may recommend to dissolve, disband, or relocate the organization. If the panel chooses this outcome, it should be done with provision for its current responsibilities to be captured in other agencies or legislation (such as CEAA). The current TOR allows the panel to make recommendations on the NEB's governance and mandate, but does not provide room for the panel to evaluate the necessity or use of the existence of the NEB entirely. Such strategic-level elements must be allowed to ensure that the expert panel can evaluate all outcomes based on received evidence, including the possibility that the present work of the NEB may be better undertaken by another institution.

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