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July 20, 2016

The Honourable James Gordon Carr, P.C., M.P.  
Minister of Natural Resources  
House of Commons  
Ottawa, Ontario  
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**National Energy Board (NEB) Modernization Expert Panel:  
Draft Terms of Reference**

Dear Minister:

Thank you for the opportunity to provide comments on the Draft Terms of Reference for the National Energy Board (NEB) Modernization Expert Panel. The modernization of the NEB announced on June 20 is of critical importance to Canadian municipalities, and FCM is pleased to see the federal government taking steps to improve the review and approval process for major energy infrastructure projects, including pipelines.

As you know, FCM is the national voice for Canada's local governments. Our members include nearly 2,000 municipalities—urban, rural, northern and remote—representing 90 per cent of Canada's population. FCM works on behalf of local governments to shape the national agenda, help solve national challenges and empower municipalities to build stronger communities—and a better Canada.

FCM has a long history of building strong relationships with the Government of Canada to help ensure that the public interest is served in federally-regulated sectors. This is notable in recent collaboration on rail safety. FCM's Rail Safety Working Group works closely with Transport Canada and the rail industry to ensure that federal policy, legislation and review processes are reflective of local concerns and best serve the interests of Canadians.

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Municipalities are directly affected by pipelines and electrical transmission lines that are regulated by the NEB, including daily interaction with the existing network of 73,000 km of NEB-regulated pipelines. Direct impacts for municipal governments include emergency response planning, land-use planning, construction and maintenance of municipal infrastructure and enforcement of municipal by-laws. Specific to pipelines, the possibility of a catastrophic failure presents considerable risks to municipal governments in terms of drinking water, local ecosystems, including marine environments, and risks to the local economy. The integration of emergency response plans between all levels of government and industry, and adequate training and resources for municipal first responders, especially in rural areas, is crucial to ensuring public safety. At the same time, municipalities directly benefit from Canada's energy sector and understand the significant contributions that the sector makes to our economic prosperity.

For these reasons, in March 2014, FCM's National Board of Directors adopted three Principles to Protect Municipal Interests in Federal Assessment Processes:

1. Protect and strengthen local economies, quality of life and the health and integrity of the local environment as top priorities in federal assessment and review processes.
2. Equip and support municipal first responders to respond to emergencies related to proposed projects.
3. Prevent downloading of project-related safety, emergency response and other costs to municipal taxpayers.

The complete Principles to Protect Municipal Interests in Federal Assessment Processes are attached (Appendix 1).

In recent years, local governments have participated in NEB hearings on major pipeline projects. 27 municipalities participated as Interveners in the Line 9 Reversal, Northern Gateway and Trans Mountain Expansion hearings, and 15 municipalities have been approved to participate in the Energy East hearings. Based on this experience, municipalities have identified a number of specific concerns regarding the existing public hearing processes of the NEB. Two of these concerns have been specifically adopted by FCM's National Board of Directors as outlined below (Appendix 2 and 3), and other specific concerns about municipal input into these processes have been submitted by municipalities to the NEB.

In April 2016, FCM submitted comments to the NEB regarding the proposed Damage Prevention Regulations under the *Pipeline Safety Act*. Our submission emphasized that municipalities must be able to conduct routine maintenance activities on municipal highways without undue burden from pipeline operators, while still ensuring appropriate consultation where necessary for safety and environmental considerations. Specific concerns from other municipalities with experience conducting highway maintenance and construction projects in proximity to federally regulated pipelines were also submitted to the NEB at that time.

In consideration of the unique role that the municipal level of government plays with respect to federally regulated energy transportation infrastructure, FCM requests the following changes to the draft Terms of Reference for the Expert Panel:

1. The Terms of Reference should be expanded to explicitly and distinctly include a role for municipalities. FCM believes this will better enable the Panel will take into consideration the responsibility that municipal governments have to protect the health and safety of their residents; the local expertise that municipalities have regarding the planning, construction and maintenance of energy transportation infrastructure; and the unique and invaluable role that municipalities play during public hearing processes. The municipal role within the mandate and decision-making processes of the National Energy Board must be included within the scope of the Panel's work.
2. The Terms of Reference specify that the composition of the panel include at least one member with direct knowledge of, or experience in, local government, above and beyond the focus on "community development" outlined in the draft Terms of Reference.

FCM is pleased to see that as part of the public consultation process the federal government will be receiving feedback through an online portal until August 30, 2016. In consideration of the importance of this review, and given the challenges posed by summer work schedules, FCM requests that the period for public comment through the online portal to be extended to September 30.

FCM welcomes the commitment in the Terms of Reference to stakeholder consultation as part of the mandate of the Panel. In addition to stakeholder consultations, FCM believes it will be essential for the Panel to meet directly with municipal representatives, and we look forward to an opportunity to meet directly with the Panel this fall to discuss issues of importance to Canadian municipalities.

I wish the Panel the best of success in carrying out its mandate. FCM looks forward to assisting the Government of Canada in undertaking this important and timely review.

Sincerely,

A large black rectangular redaction box covers the signature and name of the sender. The word "President" is partially visible at the bottom left of the redacted area.

**PRINCIPLES TO PROTECT MUNICIPAL INTERESTS IN FEDERAL ASSESSMENT PROCESSES**

Municipalities regularly participate in federal, provincial or territorial assessment and review processes for larger projects, where the outcomes have local impact on areas of municipal responsibility. Major new projects subject to these review processes, especially resource development projects, are essential to the economic prosperity and quality of life of local communities, particularly for rural, remote and northern communities.

The following three principles, adopted by the FCM Board of Directors, speak to those areas where local governments have a legitimate interest to ensure their rights and responsibilities are protected:

- 4. Protect and strengthen local economies, quality of life and the health and integrity of the local environment as top priorities in federal assessment and review processes:**
  - A project's contribution towards local economies must be a priority in federal review and assessment processes, and must also be balanced with the environmental and social priorities of local communities.
  - Municipal interests must be respected and reflected in federal assessment and review process.
  - Federal review and assessment processes must be efficient and ensure effective "smart government" coordination between government and departments.
  
- 5. Equip and support municipal first responders to respond to emergencies related to proposed projects:**
  - Municipalities need to know what dangerous goods are being transported through, stored or used in their communities so local services can plan and respond effectively to emergencies.
  - Private sector project operators and federal, provincial and territorial oversight agencies cannot plan for emergencies alone. Local governments and authorities must be involved as partners in emergency planning.
  
- 6. Prevent downloading of project-related safety, emergency response and other costs to municipal taxpayers:**
  - Third-party liability insurance systems must be sufficient to prevent the downloading of liability costs on municipal taxpayers, even in the event of the bankruptcy of the original insurance holder.
  - Municipal first responders must be equipped and supported to effectively respond to an emergency arising from a new federally-regulated project.
  - Up-front costs associated with participation in a federal review process and back end costs resulting from any unrecoverable burden placed on municipal services and infrastructure by a federally-regulated project must not be unfairly imposed on local governments.

**National Energy Board Public Hearing Process**

WHEREAS, On 2013 December 16, Kinder Morgan submitted an application to the National Energy Board (NEB) for the Trans Mountain Expansion Project; and

WHEREAS, The NEB made an arbitrary decision on July 15, 2014 to remove from the standard public hearing for a major pipeline project long-standing protocols which provided opportunities for public review through open meetings, oral hearings and cross examination; and

WHEREAS, The loss of the standard public hearing from the application review process constitutes a significant erosion of the democratic rights of provinces, territories, local governments, First Nations and citizens to cross-examine evidence presented, articulate concerns and voice opposition to applications; and

WHEREAS, The loss of all opportunities for intervenors to participate in oral hearing and to cross-examine evidence within the NEB regulatory review process, has broad social, environmental and economic implications that would impact all local governments and their citizens; therefore be it

RESOLVED, That FCM call on the federal government and National Energy Board, and other avenues as appropriate, to oppose the loss of the standard public hearing process from the National Energy Board's application review and tribunal process; and be it further

RESOLVED, That the Federation of Canadian Municipalities call on the provincial and federal governments, through their appropriate and respective roles, to develop, in consultation with local governments, First Nations, and citizens, the restoration of a full public hearing process to the National Energy Board's consideration of all applications.

*Union of British Columbia Municipalities;  
City of Burnaby*

*March 2015*

### Appendix 3

#### **Requiring Consequence & Response Capacity Assessment for Sunken or Submerged Diluted Bitumen**

WHEREAS, On December 16, 2013, Kinder Morgan submitted an application to the National Energy Board (NEB) for the Trans Mountain Pipeline Expansion Project to increase the transportation of diluted bitumen via pipeline through British Columbian communities, across more than 700 streams and water-crossings in 12 BC watersheds; and

WHEREAS, Diluted bitumen has been shown to submerge and/or sink when spilled into freshwater environments, resulting in prolonged and costly response operations with limited success and negative impacts to local ecosystems, public and environmental health, local economies, and cultural and recreational resources; and

WHEREAS, As per Kinder Morgan's response on July 11, 2014 to interveners in the NEB hearing, Trans Mountain maintains that in the event of a diluted bitumen spill sunken or submerged oil "would be treated as a post-emergency response function" and declined to provide any specific information about how response plans or equipment stockpiling for the project would address submerged or sunken diluted bitumen, thereby raising serious concerns about the capacity to respond to the risk currently posed to local communities and watersheds by the existing Trans Mountain pipeline; therefore be it

RESOLVED, That, for the protection of communities and ecosystems reliant on the health of watersheds, the Federation of Canadian Municipalities (FCM) call on the National Energy Board to compel all pipeline operators shipping diluted bitumen, to provide site specific consequence analyses and response plans and tactics for submerged and sunken oil to be available for public and impacted communities review.

*City of Vancouver;  
Union of British Columbia Municipalities*

*September 2015*