



20 July 2016

NEB Modernization Secretariat  
580 Booth St.  
Ottawa, ON  
K1A 0E4

**DELIVERED BY EMAIL**

Dear NEB Modernization Secretariat,

**Subject: Gwich'in Tribal Council Comments re NEB Modernization Expert Panel TOR**

The Gwich'in Tribal Council (GTC) welcomes the federal government's initiative to Modernize the National Energy Board and the opportunity to comment on the draft terms of reference (TOR) for the "Expert Panel" that will lead the review. As you would recognize, the GTC's primary focus is on implementing the Gwich'in Comprehensive Land Claim Agreement (GCLCA), which includes a significant proportion of the Mackenzie Valley and Western Arctic region. Notwithstanding devolution in the NWT, the NEB continues to have significant decision-making and regulatory authority in our region, and this situation may expand in the future as the energy market place changes and as cross-border pipelines are potentially developed linking Arctic oil and gas production to southern markets. As such, the Gwich'in have a significant interest in the future of the National Energy Board.

With this perspective in mind, we make the following comments on the draft TOR for the panel leading the NEB modernization review:

- The TOR should be amended to require that the Expert Panel consult northern land claim Aboriginal governments directly. Currently, the TOR is focused primarily on consultation with "National Indigenous Organizations"; however, the GTC does not readily fit under any of these organizations and we would thus be substantially unrepresented in this process, as would other modern land claim jurisdictions in the Yukon and Northwest Territories.
- The TOR should be amended to require that the Expert Panel hold consultation activities in the Mackenzie Valley and Western Arctic Regions. The legacy of Mackenzie Valley pipeline reviews have been an important part of institutional and legal developments in our region. We feel it is critical for the Expert Panel to come to this land during this review process to see the region and hear directly from the communities and representative organizations.
- The TOR should be amended to provide a more open mandate for the Expert Panel rather than the current relatively narrow and prescriptive approach. We note that the NEB decision-making and regulatory regime has a significant impact on design and implementation of

other regimes in provincial, territorial and land claims contexts. As such, we suggest that the TOR provide space for the Expert Panel to address broad, long-standing decision-making and regulatory challenges, including Aboriginal consultation, cumulative effects, and scope of project reviews. On a specific note, we suggest that the panel be provided a basis to take a very broad view of how a modernized NEB fits in the broader context of fulfilling the federal government's duty to consult.

- The TOR should also be amended to provide a longer time horizon for participation of Aboriginal groups, if not all groups. The TOR sets out an extraordinarily short timeframe, with completion by January 31, 2017. While this may be suitable to high-functioning private actors or government agencies, this time horizon will make it challenging for most Aboriginal groups to meaningfully engage.
- The TOR should be amended to explain the relationship between this review and a parallel Indigenous and Northern Affairs-led process described in the TOR for the CEAA 2012 review. Such clarity is critical as Aboriginal groups struggle to understand how to allocate our limited capacity across what may become an overwhelming volume of complex consultation and negotiation in coming months.

Overall, we see this Expert Review as an opportunity for the “renewed nation-to-nation” process with Aboriginal peoples, contemplated by the Trudeau Government and stated in Ministerial mandate letters, to start off in a constructive and meaningful manner. We look forward to this new beginning and suggest that the government make the above changes to the TOR as part of the much needed work to repair relationships and move forward.



cc:

Hon. Carolyn Bennett, Minister of Indigenous and Northern Affairs, [Carolyn.bennett@parl.gc.ca](mailto:Carolyn.bennett@parl.gc.ca)

Hon. Jim Carr, Minister of Natural Resources, [Jim.Carr@parl.gc.ca](mailto:Jim.Carr@parl.gc.ca)

Hon. Catherine McKenna, Minister of Environment & Climate Change,  
[Catherine.McKenna@parl.gc.ca](mailto:Catherine.McKenna@parl.gc.ca)

Peter Watson, Chair/CEO, NEB, [peter.watson@neb-one.gc.ca](mailto:peter.watson@neb-one.gc.ca)