



July 20, 2016

Via Email to:
CEAA.EARReview-ExamenEE.ACEE@ceaa-acee.gc.ca

Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3

To Whom It May Concern:

**RE: Environmental Assessment Processes: Draft Terms of Reference for Expert Panel
National Energy Board Modernization: Draft Terms of Reference for Expert Panel**

Imperial appreciates the opportunity to comment on the draft Terms of Reference for the Environmental Assessment Process Expert Panel and the National Energy Board Modernization Expert Panel. It is very important to our company that both these agencies have the public's trust, and that their processes are fair and transparent. We encourage these Expert Panels to foster ongoing cooperation and coordinated action between federal and provincial governments. This will help prevent duplication while ensuring high-quality environmental assessments and environmental protection. Regulatory certainty, including a clear definition of assessment scope, clarity on when assessments are triggered, legislated timelines and coordination with the provinces and territories to avoid duplication are all critical to maintaining the competitiveness of our global industry and should be enhanced. Thank you for this opportunity to comment on these Draft Terms of Reference.

Imperial also supports the Canadian Association of Petroleum Producers (CAPP) July 17, 2016 submission on this topic.

You will find below our detailed comments, organized by sub-heading, on each of the draft Terms of Reference (TOR) for your consideration:

Draft Terms of References for Review of Environmental Assessment Process Expert Panel

- **Context:**
 - We concur with the need to “regain public trust and help get resources to market” in a manner that includes working in partnership with affected parties.
 - Imperial supports the need to work with provinces, territories and boards to avoid duplication and also maintain reasonable and predictable time-lines for review.
 - We recommend that “best technologies” be further defined as “best practical and proven technologies”. In addition to environmental performance, technology selection also needs to address worker and public safety, reliability, operability, damage prevention in case of failure and must be cost effective.

- **Mandate:**
 - The Panel report should include a review of “best practices” and “lessons learned” from within Canada and globally to learn from both the positive and negative experiences of others.



- Complementary Mandates:
 - We suggest that the stated Indigenous and Northern Affairs Canada (INAC) initiative to amend northern environmental assessment regimes be either included in the EA Expert Panel review, or, if conducted separately, be part of the final report.

- Scope of Review
 - In addition to CEAA 2012, we suggest the review should also take into account operational policy statements, technical and reference guidelines, and the 1990 Cabinet Directive on strategic environmental assessment of policy, plans, and program proposals.
 - We recommend that “best technologies” be further defined as “best practical and proven technologies” as previously noted.
 - Per bullet (2) in the TOR, Imperial whole-heartedly supports decision-making being based in sound science.
 - Per bullet (2) in the TOR, “serve the public interest” should be inclusive to assess broader social-economic factors of the operations included in the environmental assessment. There is a need to address potential social, cultural, health and wellbeing impacts from projects and to also capture expected positive effects including economics at the local, regional and national level, employment, and business opportunities.
 - Per bullet (5) in the TOR, we suggest it should not be assumed that EA legislation will need to be amended. It may be more effective to improve on processes and guidelines. We suggest that the Panel be given flexibility to determine the appropriate policy instruments to execute recommended changes.
 - We agree that the Panel will require additional input opportunities from a Multi-Interest Advisory Committee and / or specific experts. We suggest that the Panel also accept formal written submissions from Indigenous people, stakeholders and all Canadians. We strongly suggest alignment will also be required with the provinces and territories.
 - We strongly agree that the Panel needs to “enhance regulatory certainty in the development of major projects in Canada”. The trigger list, legislated review times and coordination with provincial and territorial authorities have been effective in this regard. Imperial suggests “regulatory certainty” should be made into a specific question to be addressed in the TOR scope.

- Review Process
 - Panel members should be free from conflict and bias. Within the Panel, they should have a practical understanding of EA, including experience in undertaking and / or reviewing a cross section of examples for major projects in Canada.

- Conduct of the Review
 - The January 2017 report delivery date is ambitious. We suggest allowing more time to ensure Indigenous people and all Canadians are able to fully participate in the process, and for the Panel to be able to complete a thoughtful and comprehensive review.
 - The website should be easy to access, fully functional and maintained. Preparing and disseminating the Engagement Plans in a timely manner is essential to successful consultation. We suggest these should be available several weeks before any public events first take place. We also suggest these be coordinated and aligned as appropriate across all four (CEAA, NEB, Fisheries Act, Navigable Waters Act) review processes.
 - Participant funding needs to be in place well in advance of the start of consultation to allow groups and individuals to plan. Imperial suggests these be coordinated and aligned as appropriate across all four review processes.
 - It is unclear how the provincial and territorial governments will be involved to ensure alignment. We suggest they be specifically included in an advisory capacity to the Panel.
 - We concur with the Minister’s approach to make the final report of the Panel available to the public. In the interest of transparency, we suggest that the Government provide a formal response to this report and set a timeline for the Government’s review and path forward after the report is completed.

Draft Terms of Reference for National Energy Board Modernization Expert Panel

- Context
 - In the course of its history, the NEB has provided a fair and efficient review of projects under its mandate, including economic, environmental and social considerations into its decision-making process for the betterment of the country. We welcome the opportunity to look for ways to modernize the Board's function without losing or undermining its role as an independent federal, quasi-judicial regulator of the oil and gas industry.
- Panel Mandate
 - It may not be necessary to reform or amend the NEB act itself or regulations, but rather to update and modernize the Board's process and guidelines for public consultation. We suggest providing the Panel flexibility to determine the appropriate policy instruments to execute recommended changes.
- Scope of the Review
 - We support the focus of NEB modernization. With regard to sub-heading (1) Governance in the TOR, we suggest clarifying what is meant by "relevant fields". With regard to (2) Mandate, the NEB should not be expected to develop policy in areas of renewables or low carbon economy as this is the purview of other levels of government. We agree with regard to (3) Decision-Making roles, that clear and transparent distinctions are required between the decision-making roles for the NEB, Minister, and Governor in Council. For Indigenous Engagement (5), including a review of the project at the planning stage should also be considered.
- The Review Process
 - Panel members should be free from conflict and bias. Panel members should have practical experience with the oil and gas industry, including pipeline construction and operations, but do not think it is necessary for all Panel members to have energy regulation experience as the draft implies.
 - As with the CEEA review, consideration could be given to the establishment of a Multi-Interest Advisory Committee, in addition to outside expert advice. The Panel should also accept formal written submissions from Indigenous people, stakeholders and all Canadians. We strongly suggest provincial and territorial governments, Land & Water Boards be specifically included in an advisory capacity to the Panel to ensure alignment and avoid duplication.
- Conduct of the Review
 - The January 2017 report delivery date is ambitious. We suggest allowing more time to ensure Indigenous people and all Canadians are able to fully participate in the process, and for the Panel to be able to complete a thoughtful and comprehensive review.
 - There is a need to ensure that the website is easy to access, fully functional and maintained.
 - Preparing and disseminating the Engagement Plans in a timely manner is essential to successful consultation. We suggest these should be available several weeks before any public events first take place. We also suggest these be coordinated and aligned as appropriate across all four (CEAA, NEB, Fisheries Act, Navigable Waters Act) review processes.
 - Participant funding needs to be in place well in advance of the start of consultation to allow groups and individuals to plan. We suggest these be coordinated and aligned as appropriate across all four review processes.
 - It is unclear how the provincial and territorial governments and Land & Water Boards will be involved to ensure alignment. We strongly suggest they be specifically included in an advisory capacity to the Panel.
 - We concur with the Minister's approach to make the final report of the panel available to the public. In the interest of transparency, we suggest that the Government provide a formal response to this report and set a timeline for the Government's review and path forward after the report is completed.

Thank you for the opportunity to provide comments on the draft Terms of Reference for the Environmental Assessment Process Expert Panel and the National Energy Board Modernization Expert Panel. I trust that you will find the foregoing in order.

