
TO: CITY MANAGER **DATE:** 2016 June 05

FROM: DIRECTOR ENGINEERING **FILE:** 2130-01

SUBJECT: EXPERT PANEL'S REPORT ON MODERNIZATION OF THE
NATIONAL ENERGY BOARD

PURPOSE: To provide Council with the expert panel's findings and recommendations on
modernization of the National Energy Board.

RECOMMENDATION:

1. **THAT** this report be received for information purposes.
2. **THAT** a copy of this report be forwarded to:
 - a) Sustainable City Advisory Committee; and
 - b) All Burnaby MP's

REPORT**1.0 INTRODUCTION**

Under the New Business portion of the 2017 May 15 Council meeting, Mayor Corrigan referenced the 2017 May 15 report from the Expert Panel on the Modernization of the National Energy Board titled "*Forward Together, Enabling Canada's Clean, Safe, and Secure Energy Future*". Arising from the discussion, Council adopted a motion that staff review the report and report back to Council on the panel's findings and recommendations.

The purpose of this report is to provide Council with the expert panel's findings and recommendations on modernization of the National Energy Board.

2.0 MODERNIZATION OF THE NATIONAL ENERGY BOARD

In November 2016, the federal Minister of Natural Resources, Honourable Jim Carr, announced the creation of a five-member Expert Panel to provide recommendations to the Government for the modernization of the National Energy Board (NEB).

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The Expert Panel members David Besner, Wendy Grant-John, Brenda Kenny and co-chairs Hélène Lauzon and Gary Merasty, examined issues beyond environmental assessment, including the NEB's structure, role and mandate, and the participation of the public and Indigenous peoples in the regulatory structure.

The Expert Panel broadly engaged with Indigenous peoples, interested stakeholders, provinces and territories as well as the public to solicit their views on the NEB Modernization review.

The Panel travelled to ten cities across Canada. It heard presentations from close to 200 individuals, and over 1,000 people attended the sessions in person. More than 200 detailed written submissions were provided online to the Panel.

When visiting Vancouver on 2017 February 8 and 9, the Expert Panel, amongst receiving other presentations, had also received a presentation and written submission from the Mayor on the City's experience with the NEB process including several areas where improvements are required.

On 2017 May 15, the Expert Panel released its report containing its findings and recommendations. In reviewing the report, staff notes that the Expert Panel heard a number of concerns from many Canadians regarding matters such as:

- jurisdictional silos in the energy sector, resulting in a risk that national goals cannot be met;
- the NEB having fundamentally lost the confidence of many Canadians, being 'captured' by the oil and gas industry, and appearing to be working in a national policy vacuum;
- the perceived lack of transparency in the decision making process of the NEB, resulting in a lack of energy investment in Canada;
- improving lines of communication with Indigenous people and stakeholders.

The Panel's findings and 26 recommendations are underpinned by five principles:

1. Living the nation-to-nation relationship.
2. Alignment of NEB activities to national policy goals.
3. Transparency of processes and decision-making and restoring confidence.
4. Public engagement throughout the lifecycle.
5. Results matter: regulatory efficiency and effectiveness.

A high level overview of the Panel's vision showing how the five principles are woven into the recommendations is attached (see Attachment #1). Some of the most significant recommendations are:

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- Replace the NEB with two agencies, being the Canadian Energy Transmission Commission (the “CETC”), which would be responsible for approval decisions for major projects that currently fall under the purview of the NEB, and a new, independent Canadian Energy Information Agency (the “CEIA”), whose function would be to provide decision-makers and the public with energy data, information and analysis;
- Implement a regulatory system that aligns with a clearly defined and coherent national strategy;
- Cultivate real and substantive participation from Indigenous people “on their own terms and in full accord” with Indigenous rights, Aboriginal and Treaty rights and title, and including the creation of a new Indigenous Major Projects Office;
- Implement a one-year process for all major projects for the Federal Cabinet to ensure alignment with national interest prior to a detailed project review or licencing decision, and informed by substantive Indigenous consultation and stakeholder engagement;
- Provide for a two-year licencing and full environmental assessment process through a Joint CETC/Canadian Environmental Assessment hearing panel process for major projects;
- Increase the scale and scope of stakeholder engagement, and build better relationships with landowners. The current “standing” test to determine who can participate in the NEB hearings would be removed, and all Canadians would be able to submit a wider array of input (from Letter of Comment to the CETC to the provision and testing of evidence) during a decision-making process;
- Create a Public Intervenor Office to represent the interests and views of parties who use the service, and to co-ordinate scientific and technical studies to the extent possible;
- Create Regional Multi-Stakeholder Committees to review emergency preparedness plans with citizens, first responders, and other groups, to ensure their completeness, and to recommend any gaps for further action to be addressed by the CETC;
- Establish a Landowners Ombudsman to review and make recommendations on improving relationships with landowners, provide advice and potentially administer a fund so that landowners can access relevant legal advice; and

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- Move the CETC Board of Directors, CETC government co-ordination staff, the CEIA, and future staff related to electricity transmission to Ottawa.

Staff is in general agreement with the recommendations proposed by the Expert Panel in Modernization of the NEB.

For Council's information, the federal government is accepting comments on the Expert Panel's report until 2017 June 14. It will subsequently review the Expert Panel's report in depth along with the reports from other environmental and regulatory reviews to inform the development of next steps.

3.0 CONCLUSION

The Expert Panel's report on Modernization of the National Energy Board is far reaching. The Panel has heard and responded to the concerns voiced by a large number of Canadians that the current system is broken and that the NEB should be replaced. If the federal government adopts the recommendations of the Expert Panel report, they would significantly alter the way in which major energy projects are reviewed and permitted in Canada.


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DIRECTOR ENGINEERING

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Attachment

Copied to: Director Planning and Building
Director Public Safety and Community Services

ENERGY TRANSMISSION INFRASTRUCTURE

National Energy Policy

Energy Information

- Canadian energy strategy that explicitly reconciles energy, economic, and environmental policy objectives

- Provision of energy and economic information and analysis to support decision-making
- Public quantitative reporting on Canada's progress against energy policy goals
- Education of the public on energy issues and performance

WHAT IS IT?

WHO IS RESPONSIBLE?

Natural Resources Canada coordinating the whole of government, with provincial and territorial governments, and seeking the consent of Indigenous peoples

New Canadian Energy Information Agency, an arm's length entity supporting policy and operations, and reporting to the Minister of Natural Resources

LIVING THE NATION TO NATION RELATIONSHIP

- Seeking the consent of Indigenous peoples as per the Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples

- Inclusion of Indigenous knowledge in the universe of energy data

ALIGNMENT WITH NATIONAL POLICY

- Maintain and continue to reconcile a framework of national policies

- Independent assessment of progress in implementing policy vision

TRANSPARENCY AND RESTORING CONFIDENCE

- Arm's length centre for energy information, independent of policy and regulation

- Public report and recommendation on project approval
- Governor in Council encouraged to explain ultimate decisions

- Published rationales for all decisions
- New, more inclusive competency profile for Hearing Commissioners
- Clear criteria for appointments

- Governance by a Board of Directors that is not involved in regulatory decisions
- Clearer reporting on safety improvement, monitoring results, and compliance actions

PUBLIC ENGAGEMENT THROUGHOUT THE LIFECYCLE

- Public education mandate to inform meaningful engagement

- Engagement of all stakeholders, everyone has an opportunity to comment

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- Open and accessible quasi-judicial hearings and engagement activities
- Public intervener

- Multi-stakeholder committees, by region, to enable engagement on all aspects of operations

RESULTS MATTER: EFFICIENT & EFFECTIVE REGULATION

- Information and analysis to drive better-informed decisions

- Determination of national interest before proceeding with licensing does not waste industry and intervener time on a full review that might have fundamental flaws

- Clearer, more focused project reviews which get at the most important issues to ensure safety, security, and environmental protection

- Greatly enhanced oversight and engagement in all facets of CEC operations to drive constantly improved results

REGULATION IN CANADA A VISION FOR THE FUTURE

Determination of Alignment with National Interest

- Determination of a major project's alignment with national interest and Canadian energy strategy
- Indigenous Consultation and stakeholder engagement on main characteristics of a major project
- High-level risk assessment in line with relevant Strategic and Regional Impact Assessments

Licensing Based on Detailed Major Project Review

- Review of detailed project proposal for major projects deemed to align with the national interest and other projects within CEC authority
- Detailed environmental assessment of project
- Final go or no-go decision, including conditions

i-kanatak Askiy Operations Keeping the Land Pure

- Risk assessment, standards, and best practices
- Monitoring of compliance with standards and issue identification
- Emergency response and compliance to remediate harm and ensure polluter pays
- Analysis of performance and continuous improvement

Canadian Energy Transmission Commission, (and formal monitoring roles for **Industry and Indigenous peoples**), and with continuous improvement informed by **Regional Multi-Stakeholder Committees**

Joint Hearing Panel Review: Canadian Energy Transmission Commission and Canadian Environmental Assessment Agency

The **Minister of Natural Resources** makes public a recommendation to the **Governor in Council**, who makes the final decision of whether or not a major project aligns with the national interest

- Formal Consultation
- IMPO to define guidelines for effective Consultation and share best practices to increase Indigenous capacity for engagement

- Seat for Indigenous communities at multi-stakeholder tables
- Formal role in monitoring and emergency preparedness programs
- Ongoing engagement as defined by Indigenous communities

- Pre-project engagement
- Formal consultation
- Indigenous Major Projects Office (IMPO) to support representation of Indigenous perspectives

- Independent assessment of progress in implementing policy vision

- Seeking the consent of Indigenous peoples as per the Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples