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14 June 2017

The Honourable Jim Carr,
Minister of Natural Resources

Re: Forward, Together
Report of the Expert Panel on the
Modernization of the National Energy Board

Dear Minister Carr:

The Ontario Rivers Alliance (ORA) is a Not-for-Profit grassroots organization acting as a voice for several organizations, as well as private and First Nation citizens who have come together to protect, conserve and restore healthy river ecosystems.

ORA is pleased at the opportunity to comment on the recommendations made in the Forward Together – Enabling Canada’s Clean, Safe and Secure Energy Future (report) of the Expert Panel (Panel) on the Modernization of the National Energy Board.

The broad mandate of the Panel as set out by Minister Carr was to *“aim to position the NEB as a modern, efficient, and effective energy regulator and regain public trust”*.

ORA supports the Panel’s broad strokes Vision in general, and applauds it for the recommendations of an accessible, inclusive, open, transparent and user-friendly process. However, there are several areas where we feel the recommendations fall short of its goals, and could be strengthened as follows:

Replacing the National Energy Board with the Canadian Energy Transmission Commission

The Panel recommendations to replace the National Energy Board with the Canadian Energy Transmission Commission (CETC) does not address the root problem – it would basically be the same organization with a name change. The main issue is a lack of confidence in a government body that is making decisions on whether pipeline applications should be approved, while at the same time nurturing and promoting the energy industry.

As we stated in our 31 March 2017 submission, Part VI of the NEB Act stipulates that the NEB collects energy statistics, monitors energy markets, assesses Canadian energy requirements, and identifies trends in energy systems. These functions should be left up to the oil and gas and pipeline industry, as it conflicts with a mandate to promote safety, security and environmental protection through the regulation of pipelines and energy projects. It doesn’t



appear that responsibility for the economic well-being of the industries it is regulating has been removed from the proposed reformed NEB/CETC.

It appears that the Canadian Energy Transmission Commission (CETC) (the NEB) would be in equal partnership with the Canadian Environmental Assessment Agency (CEAA) and an independent Indigenous representative, but it is unclear what this Joint Panel would be called? If it is to be called the CETC, then there must be a clear and transparent governance that demonstrates the full and equal partnership.

Recommendations:

1. A new CEIA should be responsible for all statistics, spill and compliance reporting (including provincial), as well as monitoring the energy markets.
2. A new CEIA should work with governments, industry, Indigenous peoples, provinces and territories to come up with a National Energy Strategy.
3. A CETC in equal partnership with the CEAA, and an independent Indigenous representative, must form a Joint Panel to act as a regulator to conduct hearings, issue approvals, monitor, and ensure compliance. This Joint Panel's (CETC/CEAA/Indigenous) sole purpose must be to ensure public safety, security, environmental protection, and to ensure broad public engagement.
4. The CETC and any Joint Panel must refrain from any involvement or interest in the energy markets if it is at the same time issuing approvals, permits, and monitoring the oil and gas and pipeline industry.
5. The CETC and any Joint Panel should also be responsible for initiating effective policy and legislation to enable their mandate to ensure public safety, security, environmental protection, and to ensure broad public engagement.

Determination of National Interest

ORA supports the preliminary review of an application in order to determine whether it is in the national interest and aligns with policy; however, an essential criteria that is missing is whether valued ecosystem services (such as streams, rivers, lakes, wetlands, aquifers) and essential services (a primary source of food, water, or a traditional way of life) for an individual, community or a valued resource would be placed at risk.

If the Minister of Natural Resources made a recommendation to the Governor in Council (GC) to proceed, ORA seriously questions whether the GC would ever go against the recommendation, and decide that it does not align with the national interest. This seems like a rubber stamp process, which is a primary weakness that undermines stakeholder confidence in the first phase of the recommended process to determine national interest.

Recommendations:

1. A preliminary review of an application should first be undertaken to determine whether it is in the national interest; however, a national interest determination must not take precedence over or preclude the environmental or socio-economic interests of local and/or regional stakeholders.
2. A National interest determination in the first phase must not preclude a rejection of the application after a thorough assessment in the second phase.



3. A national interest determination should be initiated if a valued resource, an individual or community's primary source of food, water, or way of life would be placed at risk.

Joint Panel Reviews

The Panel suggests that the second phase “*would seek to ensure that the detailed project plan adequately minimizes risks to the environment, and public health and safety, and respects Indigenous rights, aboriginal and treaty rights, and title*”, and ensure “*that all projects are held to the highest standards of planning and operation*”. Additionally, the title of this section is “*Project Review: Licensing Based on Assessment of Technical Considerations and Risk Mitigation*”ⁱ.

ORA is concerned that this wording does not relay assurance that there is still a question of whether or not it should be approved, but instead sounds like more of a planning phase to ensure risks have been properly mitigated. In other words – it sounds like a done deal – not whether it will be done, but how it will be done.

However, the document also suggests that “*the Joint Panel would have authority to grant or deny licences reviewed via this process*”. The message in the report is quite conflicting and unclear.

Additionally, in the factors to be considered by a Joint Panel, the essential criteria that is missing is the risk to valued ecosystem services and essential services.

Recommendations:

1. The Joint Panel must be clearly given the power to either approve or deny an Application based on **all considerations**.
2. The Joint Panel must consist of either 3 or 5 members so that a final decision on a proposed project would require a majority vote.

Relationships with Indigenous Peoples

As far as the recommendations for Indigenous Engagement, the bottom line is that the government must work nation to nation with Indigenous peoples, and all processes must adhere to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which specifies that “*states shall consult and cooperate in good faith to **gain the free, prior, and informed consent of Indigenous peoples in all matters that affect them***”ⁱⁱ.

“Keeping the Land Pure” – It is the responsibility of the government to “*take a leading role in protecting the environment on behalf of the generations that will follow us*”, and to have “*a point of view that looks at the health of the whole, not its component parts, and sees humanity as part of nature, not its master*”. These are very wise words spoken by individuals from the Indigenous culture that we would all do well to heed when deciding on how to modernize and strengthen the NEB process.



Recommendations:

1. Government and Indigenous peoples must have a nation-to-nation engagement in determining Canada's national energy strategy, and there must be Indigenous representation on the Joint Panel.
2. CETA must adhere to UNDRIP, and obtain "*free, prior and informed consent*" before a project achieves approval.

The oil and gas and pipeline industry has had a bad track record with spills, ruptures, and clean-up to date, so it is unreasonable that the CETC would expect to have "zero incidents and zero releases". However, any Joint Panel must be vigilant in ensuring any approved pipelines have state-of-the art engineering, leak detection, with vigilant life-cycle monitoring that protects stakeholders and the environment.

Thank you for this opportunity to comment!

Respectfully,

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ⁱ Forward, Together – Enabling Canada's Clean, Safe, and Secure Energy Future – Report. P-24.

ⁱⁱ Forward, Together – Enabling Canada's Clean, Safe, and Secure Energy Future – Report. P-46.