



**SUBMISSION TO THE EXPERT PANEL  
ON THE MODERNIZATION OF THE  
NATIONAL ENERGY BOARD**

**ÉQUITERRE**

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## 1. Introduction

Équiterre is pleased to provide this submission to the Expert Panel on the Modernization of the National Energy Board (“the NEB”), and appreciates the opportunity to do so. It is our sincere hope and expectation that this review of the NEB and its governing law, the *National Energy Board Act* (“the Act”),<sup>1</sup> will mark the beginning of a new era in the way that the federal government approaches energy regulation and all other energy matters assigned to the NEB.

### A. Équiterre: a history of engagement on energy regulation and project impacts

Équiterre, a non-profit, charitable organization with offices in Montréal, Quebec City and Ottawa, has worked for over 20 years to raise awareness and advocate for sound environmental and energy policies in Quebec, Canada and on the international scene as well. Since its creation in 1993, Équiterre’s primary mission has been to help build a social movement by encouraging individuals, organizations and governments to make ecological and equitable choices, in a spirit of solidarity. Our organization includes 18,000 members and more than 150,000 supporters located largely in Eastern Canada, and also manages the world’s largest community supported agriculture program, with over 120 organic farms in Quebec. As a leading organization covering the full gamut of environmental and energy issues in Canada, including clean energy, transportation, climate change, ecofiscal policy, water and air quality, family farms, and social justice, Équiterre is specially situated to provide input to the Expert Panel.

Through its extensive experience participating in environmental and energy consultations and regulatory processes at the federal and provincial levels, and helping citizens to voice their views both directly and through our organization, Équiterre’s ability to identify conditions for effective yet credible and inclusive energy project processes underscores its value to NEB modernization review.

Équiterre has previously participated in and provided high quality information to the NEB as an intervenor in hearings on Enbridge Lines 9A and 9B, and has also been deeply involved in the NEB hearing process, to date, for TransCanada’s Energy East pipeline project. Équiterre has also participated in numerous hearings held by Quebec’s *Régie de l’énergie* and the *Bureau d’audiences publiques sur l’environnement* (BAPE). Most recently, Équiterre participated in a preliminary BAPE hearing on Energy East in spring 2016, and has also participated in a number of other BAPE

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<sup>1</sup> National Energy Board Act (R.S.C., 1985, c. N-7), hereinafter referred to in the footnotes as the “NEB Act”, <http://laws-lois.justice.gc.ca/PDF/N-7.pdf>.

consultations and hearings around energy and agriculture issues since 2003. Équiterre is also a key advocate and facilitator of public engagement on energy and environmental issues, having provided tools, information sessions, and guidance for the public to engage in reviews and consultations at both federal and provincial levels, leading to valuable input from various stakeholders.

## B. Overview: top concerns for NEB modernization

This position paper focuses on two of the Expert Panel’s recommended themes for this review process: NEB’s mandate and public participation. With respect to mandate, we discuss a variety of areas in which we believe the agency and its activities must evolve in light of new energy market dynamics, heightened public concerns around environmental impacts to local natural resources and safety, and a pressing environmental context – a warming world and climate change impacts beginning in Canada and beyond.

We examine the need for change in the NEB’s mandate in relation to both the scope of authority and the matters being regulated. Our comments around mandate focus primarily on the following issues: the proper organizational locus for environmental assessments of energy projects; why climate change must be central to focus of the agency’s mandate going forward; why expanding beyond the agency’s current focus on fossil fuel infrastructure is essential to progress on Canada’s desire to transition to a clean energy economy; and why the agency’s approach to “public interest” must be corrected to ensure consideration of all societal needs rather than proponent and industry needs.

Concerning public participation, we discuss not only how participation can and should be improved, but also the need to expand public participation in hearing processes so that more Canadians can express their concerns and demand answers about the large-scale energy projects that could affect their communities, their region and its vital natural resources, and the climate.

## 2. Times have changed and NEB modernization now is a must

The government’s characterization of this review of the NEB and the NEB Act as a “modernization” process is interesting, and take it to be, in part, an acknowledgement of Canada’s need to ensure that its energy regulator/energy information advisor keeps pace with significant changes in energy markets, technological innovations, and the ever-strengthening trend for public engagement on energy issues. In light of these kinds of developments, there is no need to belabour the point that the agency, its fundamental mandate, its legislation and its approach to public engagement are all in need of a deep, critical review and formulation of new solutions to the many challenges it has faced in recent times. That said, Équiterre wishes to present several observations on the need for

evolution in the NEB, which serve to set the stage for the views, concerns and recommendations presented in this paper.

Established in 1959 to regulate interprovincial pipelines, oversee interprovincial marketing and exports of energy resources, as well as advise the federal government on energy matters,<sup>2</sup> the NEB was formed to serve as Canada's primary energy regulator for the type of energy most prominent at the time: fossil fuels, in the form of oil and gas. It was designed as an agency whose primary responsibility would be to regulate oil and gas pipelines, as well as oil and electricity exports, at a time when energy markets were more predictable. Today's energy market volatility and uncertainty, however, mean that substantially new approaches to evaluating projects are needed, along with new methods for factoring uncertainty and new government policy and decisions – such as domestic and international commitments on greenhouse gas (GHG) reduction into projections of future need.

The context has changed tremendously since then, and today we are faced with emerging issues like climate change, energy transition, but at the same time, a crisis in public acceptance of energy projects. This, of course, is the context in which the need for modernization has taken shape.

While for over three decades the NEB operated as relatively traditional energy regulator, it was given the ability to conduct environmental assessments (EAs) on certain energy projects in 1995,<sup>3</sup> when the *Canadian Environmental Assessment Act 1992*, ("CEAA 1992") came into force.<sup>4</sup> When parts of the *Jobs, Growth and Long-term Prosperity Act* (referred to herein as "Bill C-38")<sup>5</sup> came into force in 2012, the NEB's powers over EAs were expanded, but in the context of a vastly weakened approach to EAs. Among other things, the *Canadian Environmental Assessment Act 2012*, ("CEAA 2012")<sup>6</sup> that replaced CEAA 1992 reduced the number, nature and scope of federal EAs, and required that certain energy projects were subject to the rules of CEAA 2012, meaning their EAs would be prepared by the NEB but according to the new and less robust EA provisions of the 2012 legislation. The 2012 changes flowing from Bill C-38 represented an

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<sup>2</sup> Government of Canada, "Discussion Paper: Mandate and Regulatory Framework," National Energy Board Modernization Expert Panel. Undated. [http://www.neb-modernization.ca/system/documents/attachments/e95149e9a07e6a150f9c1b344a33a5fbdcc48a3e/000/005/299/original/Discussion\\_Paper-NEB\\_Mandate\\_EN\\_-\\_FINAL.pdf?1484775564](http://www.neb-modernization.ca/system/documents/attachments/e95149e9a07e6a150f9c1b344a33a5fbdcc48a3e/000/005/299/original/Discussion_Paper-NEB_Mandate_EN_-_FINAL.pdf?1484775564), and Canada, Royal Commission on Canada's Economic Prospects, Final Report, chap. 7, November 1957. (Walter Gordon, Chairman).

<sup>3</sup> National Energy Board, "FAQs – 2012 Changes to the National Energy Board Act", undated, [http://www.neb-modernization.ca/system/documents/attachments/a3c9ab47316f506352d3ed2a3dd09f5b4f7490cc/000/005/419/original/FAQ-2012\\_Changes\\_to\\_the\\_NEB\\_Act\\_v3\\_EN.pdf?1485811391](http://www.neb-modernization.ca/system/documents/attachments/a3c9ab47316f506352d3ed2a3dd09f5b4f7490cc/000/005/419/original/FAQ-2012_Changes_to_the_NEB_Act_v3_EN.pdf?1485811391).

<sup>4</sup> *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 (repealed), available as archived on the web at <http://laws.justice.gc.ca/eng/acts/c-15.2/20100712/P1TT3xt3.html>.

<sup>5</sup> *Jobs, Growth and Long-term Prosperity Act* (S.C. 2012, c. 19), <http://laws-lois.justice.gc.ca/PDF/J-0.8.pdf>.

<sup>6</sup> *Canadian Environmental Assessment Act 2012* (S.C. 2012, c. 19, s. 52), <http://laws-lois.justice.gc.ca/PDF/C-15.21.pdf>.

unfortunate turn of events, since the NEB was not, at the time of its creation, designed for carrying out rigorous EAs with active public participation.

Équiterre believes that the mission creep in NEB's role, from regulator to regulator-plus-environmental evaluator, is at the root of the agency's public trust and credibility crisis. This particular type of multi-tasking has not been good for the agency or for Canada at large. Asking a fossil fuel regulator to keep regulating but also carry out EAs of projects proposed by the regulated community was problematic from the start, and the problems only grew as public awareness of the environmental and climate change impacts relating to pipelines grew.

It must be remembered that the NEB was created well before climate change became a household word and a problem of major concern. Today, however, we see evidence in Canada and around the world that serious climate change impacts have begun<sup>7</sup> and a large segment of the Canadian population is concerned about the future. Modernization is needed to revamp the NEB's approach to project evaluation and forecasting in a way that acknowledges the threat of climate change and lets Canada plan to try to do our part in the world, rather than make this worrisome situation worse.

It's not only the climate that is shifting, however. Public opinion about climate change and solution like clean energy projects is shifting as well, and this has spurred a sea change in the public's willingness to engage on energy issues. The NEB must respond effectively to this trend if it is to keep pace with the times and the needs of the public. More than ever before, people wish to voice their views and concerns about large-scale energy projects<sup>8</sup> and their impacts.

Even those who do not participate in hearings or consultations or protest outside, however, are showing strong support for the view that continued reliance on fossil fuels is not a sound energy strategy. They want government, business and industry to move ahead in meaningful ways on clean energy. In a poll of Canadians' opinion on energy and climate issues conducted by Nanos Research last fall, over three-fourths of respondents (76%) said they supported or somewhat supported making clean energy and clean technology a top priority for federal investment, and slightly more (77%) said they supported or somewhat supported encouraging Canadians and Canadian businesses to switch from using fossil fuels in vehicles and buildings to using clean electricity.<sup>9</sup>

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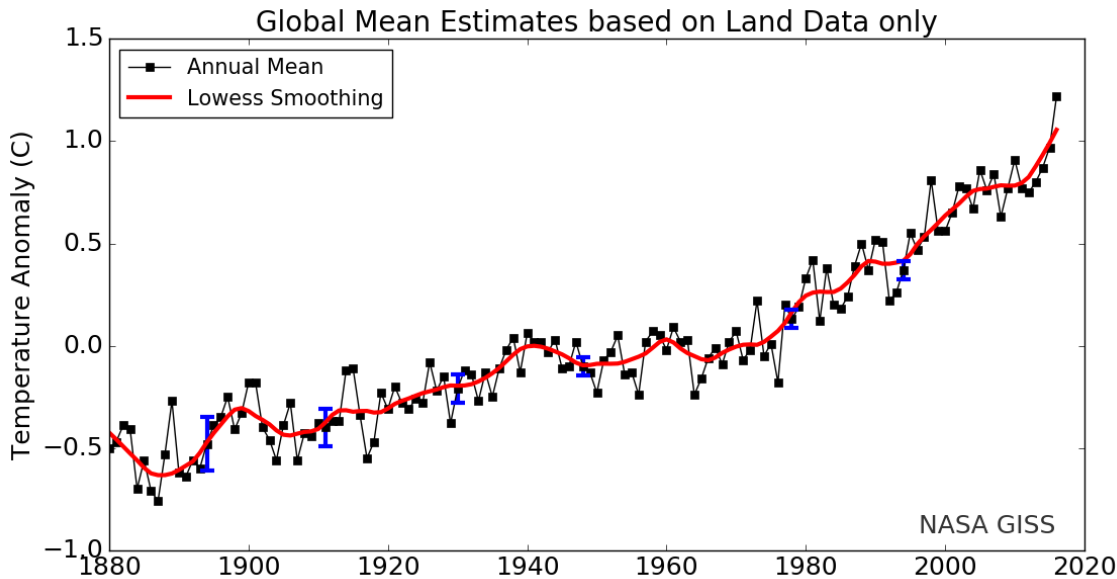
<sup>7</sup> Natural Resources Canada, "Climate change – impacts", webpage last modified July 18, 2016, <http://www.nrcan.gc.ca/forests/climate-change/impacts/13095>.

<sup>8</sup> See e.g., Mychaylo Prystupa, "NEB expecting record participation in Energy East hearings", National Observer, February 3, 2015, <http://www.nationalobserver.com/2015/02/03/news/neb-expecting-record-participation-energy-east-hearings>.

<sup>9</sup> Clean Energy Canada, "Canadians' Opinions on the Clean Energy Transition," October 2016, p. 3, <http://cleanenergycanada.org/wp-content/uploads/2016/10/Backgrounder-Clean-Energy-Transition-Polling-Nanos-CEC.pdf>.

These new attitudes evince a willingness on the part of the majority of Canadians to move forward now on opportunities for decarbonisation. The change in public sentiment is a logical reaction to the steady drumbeat of bad news on climate change. Figure 1, charting data monitored by the NASA Goddard Institute for Space Studies, is a graphic reminder that global warming is real and climbing sharply.

**Figure 1: Surfaces temperatures on land 1880 projected to 2020<sup>10</sup>**



The good news, however, is that the government could use this historic opportunity to reflect and reform the NEB into an agency that facilitates the kind of clean energy economy that so many Canadians value. Done right, the NEB could transition from being an agency perceived as an industry surrogate, to being an agency that through wise, forward-thinking regulation and dissemination of clean energy information could help ensure Canada is making the kind of energy choices that move the country forward toward a cleaner energy future. The NEB could play a pivotal role in putting the country on a safe, long-term path for pursuing overarching Canadian public interests in wise energy production and use, climate and environmental protection, health and community safety, and economic well-being.

<sup>10</sup> National Aeronautics and Space Administration. Goddard Institute for Space Studies. (2017). GISS Surface Temperature Analysis. <https://data.giss.nasa.gov/gistemp/graphs/>.

### 3. The NEB's Mandate: Core changes needed in NEB's authority and its subject matter

#### A. Environmental Assessments should be cut from NEB scope of authority

One of the most challenging issues for the NEB in recent years has been its handling – or mishandling – of environmental assessments (EAs) side-by-side its primary mandate of regulating interprovincial and international energy projects. As citizens have become increasingly aware of and concerned about large-scale energy projects and their impacts, public engagement in EA processes has climbed sharply. Suddenly, energy projects and their EAs were put under a spotlight and found wanting. The reinforcement and expansion of the NEB's authority to carry out EAs by the Harper government in 2012 was done in a wave of weakening the federal regulatory framework with respect to the environment, and the quality and handling of EAs suffered as a result.

The changes brought about in environmental and energy laws through the enactment of the *Jobs, Growth and Long-term Prosperity Act* (referred to herein as “Bill C-38”)<sup>11</sup> amplified an existing problem within the NEB in relation to its adjudicative function on energy project reviews: regulatory capture. This phenomenon occurs when a regulatory agency, created to serve the public interest, inadvertently (for the most part) advances the commercial and/or political interests of the regulated industry. Naturally, regulatory agencies tend to focus on the subject matter of the industries they regulate, and are typically concerned with technical and financial issues of regulation. As such, regulatory bodies often lack the interest or agency competence, or both, to carry out EAs in connection with projects proposed by the companies they regulate. It goes without saying that environmental assessments done by regulator that is or appears to be “captured” are not credible. The NEB has been increasingly perceived as a captured regulator, for reasons that are now well-known to the agency and the public alike (and thus will not be repeated here).

As already mentioned, the NEB has not always been in charge of carrying out its own EAs for the proposed pipeline and powerline projects it must review. Today, however, the NEB carries out its own EAs for large pipeline and power line projects in addition to its other duties. For projects requiring a certificate of convenience and necessity and which relate to a designated project within the meaning of section 2 of CEAA 2012, the NEB is the responsible authority for studying the environmental effects of the project. The environmental assessment provisions in the Act (section 52(3) for pipelines and section 58.16(6) for power lines) require the NEB to carry out EAs in accordance with the provisions of CEAA 2012.

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<sup>11</sup> *Jobs, Growth and Long-term Prosperity Act* (S.C. 2012, c. 19), <http://laws-lois.justice.gc.ca/PDF/J-0.8.pdf>.



The result of this interplay between the NEB Act and CEAA 2012 is that the NEB is supposed to carry out its EAs by considering the various “Factors to be Considered” in CEAA 2012 section 19(1), including but not limited to the purpose of the designated project, its environmental effects and their significance, mitigation measures possible for any significant adverse environmental effects, alternative means of carrying out the designated project, and comments from the public. In practice, however, EAs carried out by the NEB rely heavily on proponent provided data and studies and the critical view of that information, and independent challenge that should happen if both the spirit and letter of s. 19(1) in CEAA 2012 are respected just are not happening, or not happening sufficiently well.

Équiterre asserts that it has become increasingly clear that on the issue of EAs and the NEB the best way forward may be a return to the past – in other words, to remove EAs from the NEB’s sphere of authority. The phrase “return to the past” however, is a bit of an oversimplification, but essentially, it is our opinion, it is better to return to the pre-2012 era, when the Canadian Environmental Assessment Agency (CEAA) operated in a more independent fashion and had more expansive control over EAs, and where its powers to do EAs were more robust than they are today. This is not to advocate, however, for a simple re-enactment of CEAA 1992. If the goal of modernizing is to understand and wish to grapple with our fast-changing world, then what is needed is a fresh start, and hopefully the review of EA processes happening in parallel with the current review will make that a reality.

The bottom line is that in order to increase and secure the Board’s independence from industry influence – real and perceived – strong measures are in order and shifting the responsibility for doing the EA component of energy project evaluations to an agency or body outside the NEB is a critical step in setting things right. Thus, Équiterre recommends in the strongest terms that EAs be removed from the NEB and that they be carried out either by CEAA or, if the ongoing federal review of Environmental Assessment results in the creation of some other independent body for carrying out such reviews, then possibly to that other body.

While taking this step would, in our opinion, go far in establishing the independence and credibility of the NEB, gains in credibility and trust from this solution should be supplanted with other measures to heighten the Agency’s credibility in relation to its core duties regulating energy projects in Canada, and regain public trust. Such measures could include tightening and making more transparent all conflict-of-interest and recusal rules. We will not review here the serious problems that arose with the Energy East pipeline project,<sup>12</sup> but we must underscore that recusal measures must be tightened to prevent situations such as when Board members choose panels, sit on panels or otherwise influence panel work even though they had recently worked for a firm

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<sup>12</sup> We discussed this issue in our brief to the Expert Panel on the Environmental Review Process.

connected with a project under review or for a company whose project is under review. A similar measure would be to end “revolving door” appointments from industry. NEB appointments of persons coming to serve on the Board directly from companies who are parties to live hearings before the Board cause serious problems for public trust in the integrity and credibility of the agency.

Even if additional measures such as these are implemented and successful, however, Équiterre maintains that EAs are still best done by agency whose primary focus is assessment of environmental impacts. Removing from the NEB the responsibility for carrying out EAs on energy projects, is likely the only action that will effectively ensure that energy project EAs are not biased toward project approval due to an underlying closeness with the regulated industry.

## B. The NEB should include GHGs in evaluating project applications

Nearly every day, we learn of a new reason why climate change must be moved front and centre of decisions taken at personal and institutional levels: records on global temperatures are continually broken, ocean temperatures are rising, long duration droughts are more frequent and occurring in new regions, forest fires, floods and extreme weather events pop up in the news more often than they did a decade ago, glaciers are disappearing, flora and fauna are experiencing new stresses as they adapt and try to find safe and healthy habitats, and the list goes on.<sup>13</sup>

Indeed, it is now imperative that GHG emissions and climate change issues become pivotal in Canadian decision making on energy projects, and modernization of the NEB presents a timely and significant opportunity in this regard. Even some of the most unlikely companies and countries are taking major decisions in recognition of the need to transition away from a carbon heavy past. Major oil companies Statoil ASA and Total SA, for example, are beginning to take meaningful action to move beyond fossil fuels, as seen in their decisions to buy stakes in wind companies, battery makers and renewables.<sup>14</sup> Rather incredibly, even the world’s largest energy company, ExxonMobil, is urging U.S. President Donald Trump to keep the U.S. in the 2015 Paris climate agreement, calling it “an effective framework for addressing the risks of climate change.”<sup>15</sup> Similarly, Saudi Arabia, the world’s top crude oil exporter, recently launched a \$50 billion

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<sup>13</sup> See e.g., IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

<sup>14</sup> See e.g., Rakteem Katakey, “Shell heads for cleaner future with sale of polluting oil sands”, Bloomberg.com, March 9, 2017, <https://www.bloomberg.com/news/articles/2017-03-09/shell-becomes-gas-company-with-7-25-billion-oil-sands-sale>.

<sup>15</sup> Aric Jenkins, “Even ExxonMobil Wants President Trump to Stick With the Paris Climate Deal”, Fortune, Mar 29, 2017, <http://fortune.com/2017/03/29/exxon-mobil-donald-trump-paris-agreement-climate-change/>.

renewable energy plan to encourage creation of new solar and wind power resources to help meet its growing energy demand.<sup>16</sup>

In light of these ground-shifting trends, Équiterre believes that it is of vital importance that Canada weave GHG emissions and climate change considerations into all aspects of decisions made by its national energy regulator, the NEB. From adjudication on proposed projects, to oversight of

“The scientific evidence is clear: climate change is one of the greatest threats of our time. From increased incidences of droughts, to coastal flooding, to the expanding melt of our sea ice in our Arctic, the widespread impacts of climate change compel Canada to take strong action now.”

Government of Canada, April 2016

project lifecycles, to the development and dissemination of energy information about present and future supply and demand, a reorientation is needed. Not only is there an obvious moral imperative to see things through the lens of a world threatened by global warming and climate change, there are policy and legal obligations for Canada as well. The Government of Canada has already recognized climate change as an issue demanding our utmost attention and desire to act.<sup>17</sup>

Modernizing the NEB to put GHG emissions and climate change at the core of its institutional awareness and decision making activities would constitute an important action feasible now with current knowledge, skills and analytical tools. Doing so would also furnish a new and effective tool in helping Canada meet the domestic and international commitments on climate change that it took through the four actions below:

- signing the Paris climate agreement<sup>18</sup> in October 2016 and, with other signatories, committing to keeping a global temperature rise this century “well below 2 degrees Celsius” compared with pre-industrial levels, and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.
- setting a GHG emission reduction target of 30% below 2005 levels by 2030;<sup>19</sup> and

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<sup>16</sup> Anthony Dipaola, “Saudis Kick Off \$50 Billion Renewable Energy Plan to cut oil use”, Bloomberg, February 20, 2017, <https://www.bloomberg.com/news/articles/2017-02-20/saudis-kick-off-50-billion-renewable-energy-plan-to-cut-oil-use>

<sup>17</sup> Government of Canada, (web-page) “Canada’s Way Forward on Climate Change”, Last updated April 19, 2016, <http://www.climatechange.gc.ca/default.asp?lang=En&n=72f16a84-1>.

<sup>18</sup> United Nations, “Paris Agreement”, 2015, [http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf)

<sup>19</sup> Government of Canada, “Canada’s INDC Submission to the UNFCCC”, Submitted May 15, 2015, <http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Canada/1/INDC%20-%20Canada%20-%20English.pdf>.

- creating the *Pan-Canadian Framework on Clean Growth and Climate Change*,<sup>20</sup> a plan developed by Canada's first Ministers to meet or exceed Canada's 2030 target.
- proposing a pan-Canadian approach to pricing carbon pollution.<sup>21</sup>

Recent news from Environment and Climate Change Canada (ECCC) further underscores the need for more aggressive action and new approaches to Canada's battle against climate change: ECCC's February 2017 report, "Progress Towards Canada's Greenhouse Gas Emissions Reduction Target" indicates that by 2030, we may be emitting GHGs at a rate more than 30% higher than promised.<sup>22</sup> Again, recalibrating the NEB's energy decision making and other activities to reflect Canada's national and international GHG emissions objectives could give the country a new tool and a new advantage in decarbonisation.

Decisions and recommendations on proposed energy projects such as those made by the NEB carry significant emissions and climate implications. These can no longer be ignored, and in that spirit, Équiterre offers here some suggestions on how the modernization opportunity can be used to advance Canada's work on climate change. To better understand how the NEB's decisions concerning energy projects could be infused with a new climate consciousness, it is helpful to recall how project decisions and recommendations are made at the NEB.

Currently, energy project reviews at the NEB involve two discrete components, each with their own test.<sup>23</sup> One component of the NEB's process of evaluating projects in order to decide (for smaller projects) or recommend to cabinet (for larger projects) that a project be approved or rejected is the environmental impacts test, referred to in law and practice as the environmental assessment. While as described above, Équiterre recommends that EAs be handled by an agency or body other than the NEB, we urge and underscore that GHG emissions and climate tests must be considered regardless of which agency or body conducts the EAs. Additionally, the agency or body conducting EAs should analyze the GHG emissions attributable to not only the projects themselves, but also to upstream and downstream activities related to the project.

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<sup>20</sup> Government of Canada, *Pan-Canadian Framework on Clean Growth and Climate Change: Canada's Plan to Address Climate Change and Grow the Economy*, 2016, <https://www.canada.ca/content/dam/themes/environment/documents/weather1/20170125-en.pdf>.

<sup>21</sup> Government of Canada, (News Release) "Government of Canada Announces Pan-Canadian Pricing on Carbon Pollution," October 3, 2016, <http://news.gc.ca/web/article-en.do?nid=1132149>.

<sup>22</sup> Environment and Climate Change Canada, *Canadian Environmental Sustainability Indicators: Progress Towards Canada's Greenhouse Gas Emissions Reduction Target*, [http://publications.gc.ca/collections/collection\\_2017/eccc/En4-144-48-2017-eng.pdf](http://publications.gc.ca/collections/collection_2017/eccc/En4-144-48-2017-eng.pdf).

<sup>23</sup> Although Équiterre recognizes that the mechanism for linking these two tests is important, it is difficult to envision how the link would happen until the ongoing federal reviews affecting the NEB, CEAA and other agencies are complete. Consequently, it is beyond the scope of paper to speak to the linking mechanism.

The other component used in NEB project reviews, commonly referred to as the “needs test” focuses primarily on factors such as supply, demand and the existence of actual or potential markets, economic feasibility and financing.<sup>24</sup> For pipeline cases, this test is found in section 52(2) of the Act, and it is critical that it be revised to explicitly build in considerations for supply and demand in the context of active decarbonisation, meeting Canada’s domestic and international GHG commitments, and, of course, to account for the impact of carbon pricing measures. A necessary first step in bringing this about would be to broaden significantly the scope of section 52(2). Since 2012, the only considerations that the Board “must have regard to” in applying the test are those “that appear to it to be directly related to the pipeline and to be relevant”. Thus section 52(2) is too narrowly focused on the pipeline to comfortably allow the inclusion of more distant or indirect factors.

To understand how these modifications would change the way the NEB approaches the needs test component of project reviews, it is useful to look at present practice. Currently, the NEB relies upon supply, demand and other market information provided by proponents as it undertakes the needs test. The problem with this approach is that most analyses, forecasts and projections presented by proponents within their project applications are industry-centered, industry-prepared forecasts, like for example that issued each spring by the Canadian Association of Petroleum Producers (CAPP).<sup>25</sup> Unsurprisingly, these kinds of forecasts do not integrate assumptions or factors acknowledging, for example, Canada’s need to burn less carbon and meet its GHG emission reduction targets.

Indeed, it is hard to imagine an industry-prepared oil forecast that does *not* lead to the conclusion that more fossil fuel infrastructure projects are needed. Yet these are precisely the kind of forecasts relied upon most often in the needs test component of project reviews. That the NEB generally treats industry forecasts as gospel is abundantly evident in the NEB’s Decision Statements on pipeline projects like Enbridge Line 9 Phase 1 (“Line 9A”),<sup>26</sup> Line 9B<sup>27</sup> and Line 3.<sup>28</sup> Unfortunately, the NEB rarely, if ever, questions quality, credibility or assumptions of industry forecasts.

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<sup>24</sup> Public interest is also mentioned as a factor, but we discuss that issue in section III E, below.

<sup>25</sup> See e.g., Canadian Association of Petroleum Producers, *2016 Crude Oil Forecast, Markets and Transportation Report*, June 2016, accessible by download from the CAPP website at <http://www.capp.ca/publications-and-statistics/publications/284950>.

<sup>26</sup> National Energy Board, “Letter Decision File OF-Fac-Oil-E101-2011-01 01”, 27 July 2012, <https://apps.neb-one.gc.ca/REGDOCS/File/Download/834303>

<sup>27</sup> National Energy Board, “Reasons for Decision Enbridge Pipelines Inc. OH-002-2013”, March 2014, <https://apps.neb-one.gc.ca/REGDOCS/File/Download/2431830>

<sup>28</sup> National Energy Board, “Enbridge Pipelines Inc. OH-002-2015 Volume I: Our Decisions and Recommendations”, April 2016, <https://apps.neb-one.gc.ca/REGDOCS/File/Download/2949922>

What's more, the NEB typically does not even make its own analysis of project need based on its own data and models. While the NEB projections models are themselves deficient for the purposes under discussion (a topic covered in the next subsection of this paper), the fact that the NEB does not even, in most cases, attempt its own assessment of forecasted need for projects is troublesome.

Needless to say, the NEB's current approach is far from one that factors in decarbonisation objectives and commitments, and this needs to change. The Pembina Institute has summarized the preferred approach for the NEB succinctly as follows: "Project-specific market evaluation and needs assessments should draw on data and forecasting that examines the implications of domestic and international climate action on the economic viability of proposed projects."<sup>29</sup>

Additionally, it is important to recognize that GHG emissions, along with their costs, now represent a major economic impact of any project. Consequently, the NEB should now, in addition to assessing other economic factors, *also* consider the GHG emissions from projects on a full lifetime basis when assessing the economic viability of projects.

The ultimate aim of the needs test should be to ensure that, respecting the framework of policy and legal commitments to promote reductions in GHG emissions, low-GHG projects that ensure Canada's energy security should be favoured over high-GHG projects. This should aim should, in our view, be reflected in the NEB's modernized mandate.

This approach to the needs test component of project reviews, in combination with the treatment of direct, upstream and downstream GHG emissions in the EA component, would allow both the microeconomic and macroeconomic risk associated with GHG emissions from projects to be assessed by the NEB.

To recap, Équiterre recommends in the strongest terms that GHG emissions and climate change implications of projects be considered seriously and thoroughly in both components of project review: the EA and the needs test. Given the state of the planet, Canada's domestic and international commitments, and the moral imperative to preserve a healthy planet for future generations, factoring climate tests into the NEB's energy project decisions is the right thing to do and should be given high priority in the modernization of the NEB.

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<sup>29</sup> Erin Flanagan, Lindsay Wiginton, "Good governance in the era of low carbon: a vision for a modernized National Energy Board," Pembina Institute, January 2017, p. 4, <https://www.pembina.org/reports/vision-for-neb-modernization-final.pdf>.

### C. The NEB should include GHGs in its projections of energy supply and demand

NEB energy forecasting is too traditional and must be substantially modified in order that the agency provide accurate and constructive energy information to the government, the public and industry. While the macroeconomic projections and forecasts prepared currently by the NEB, and used in publications like the *Canada's Energy Future* reports,<sup>30</sup> typically provide multiple scenarios (e.g., reference case, low, and high oil price scenarios) they still provide only one general view of the future – an unrealistic future in which fossil fuel production and transport continue on a business-as-usual path, unaffected by Canada's need to respect domestic and international commitments by reducing GHG emissions.

Consequently, Équiterre recommends strongly that as part of its modernization strategy, the NEB revise its methods to ensure that its forecasts and projections (relied upon by decision makers, the public, the media and others), reflect:

- Canada's need to meet its international and domestic climate commitments, and respect policy objectives on reducing GHG emissions;
- Alternative macroeconomic factors that reflect adjustments of supply and demand under a reduced carbon economy; and
- Future scenarios that are likely or possible as Canada moves toward decarbonisation that look at outcomes including substantial expansion of clean energy and efficiency, broader adoption of new technologies such as wind, solar (particularly decentralized), and increased electrification of transport, which are too often undervalued by certain forecasting agencies, including the International Energy Agency.

Forecasts and projections that follow this kind of approach are possible today. In fact, a recent study<sup>31</sup> prepared jointly by the International Energy Agency (IEA) and the International Renewable Energy Agency (IRENA), used similar methods in order to evaluate what changes would be necessary within the global energy sector in order to achieve the primary objective of the Paris climate agreement: keeping the global temperature rise this century to “well below 2 degrees

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<sup>30</sup> National Energy Board, "Canada's Energy Future 2016: Energy Supply and Demand Projections to 2040", January 2016, <https://www.neb-one.gc.ca/nrg/ntgrtd/ftr/2016/index-eng.html>.

<sup>31</sup> [Executive Summary/Chapter [1/4]] of *Perspectives for the energy transition – investment needs for a low-carbon energy system*, OECD/IEA and IRENA, 2017, [https://www.energiewende2017.com/wp-content/uploads/2017/03/Perspectives-for-the-Energy-Transition\\_WEB.pdf](https://www.energiewende2017.com/wp-content/uploads/2017/03/Perspectives-for-the-Energy-Transition_WEB.pdf).

Celsius and to drive efforts to limit the temperature increase even further to 1.5 degrees Celsius above pre-industrial levels”.<sup>32</sup>

Équiterre recommends that the NEB study the models used in the IEA/IRENA study, and similar models, in an effort to develop forecasting methods that integrate the kinds of factors mentioned above.

Other key improvements needed within NEB’s energy information mandate include:

- Requiring that the NEB provide details on the assumptions it uses for forecasts, analyses and projections;
- Increasing transparency and minimization of data suppression for purposes of preserving commercial advantages.<sup>33</sup>
- Improving timeliness of information and publication of data (e.g., reduce reporting lags, cover crude import data as thoroughly as exports);
- Improving spill data presentation (e.g., user-friendly formats needed for reasonable public access and understanding of data: spreadsheets alone are insufficient); and
- Taking active steps to guard against fossil fuel-focused assumptions and biases in NEB market reports and analyses.

D. NEB’s mandate should ensure consideration of alternative projects for producing, transporting and distributing energy

Since its inception, the NEB has approved pipelines and powerlines, and has overseen the marketing, export and import of fossil fuels. Today, however, the face of energy is changing as continued calls for cleaner, greener energy work are successfully moving markets toward acceptance of technologies and methods associated with emerging low-carbon energy alternatives. In 2016, for example, the International Energy Agency (IEA) was able to increase its

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<sup>32</sup> United Nations, "Paris Agreement", 2015,

[http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf)

<sup>33</sup> This is particularly a problem in relation to pipeline data. For example, there seems to be an inordinate amount of suppression of pipeline data for Eastern provinces in recent years. Better access to pipeline throughput data must be provided somehow. There must be a more equitable balance between company need for confidentiality and the public need for basic information on the movement of fossil fuels across the country.



five-year growth forecast for renewable energy due to significant cost reductions and strong policy support in the United States, Mexico, China, and India.<sup>34</sup> Also in 2016, renewables surpassed coal to become the largest source of installed power capacity in the world.<sup>35</sup>

Attitudes have also changed, perhaps as a cause or symptom or both, of the dynamics above. For example, a poll of Canadians in 2016 revealed that a large majority supported having the federal government provide technology and infrastructure support that would let provinces use more renewable electricity, such as from solar or wind power.<sup>36</sup>

**82% of Canadians favour technology and infrastructure support from the federal government to let provinces use more renewable electricity**

Source: Nanos Research poll commissioned by Clean Energy Canada, conducted in October 2016.

The NEB needs to reflect and support these shifts in energy markets and attitudes by exercising its adjudicative and energy information functions differently than in the past. This will require revising these two aspects of NEB's mandate as part of the modernization process.

In relation to its role adjudicating in energy project hearings, the NEB's mandate and the Act need revisions that would allow the agency to take a more proactive role in considering alternatives to large-scale fossil fuel infrastructure projects. When the NEB engages in a needs test in relation to a traditional pipeline or powerline project advanced by a proponent, it should be authorized to require proponents to identify, describe and assess an alternative, non-fossil fuel-based project that may meet the same needs. Such alternative projects could relate to producing, transporting and/or distributing energy. To name but a few examples, alternative projects might involve clean electrification of transportation, including electric vehicle support; clean electrification of building or industrial processes; distribution of renewable power generation from decentralized as well as centralized sources; and transmission grid modernization, including storage and smart grid infrastructure.

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<sup>34</sup> Megan Rowling, "2016: A year of transition from talk to action on climate change", Thompson Reuters Foundation, December 22, 2016, <http://news.trust.org/item/20161222000534-b46s4/>.

<sup>35</sup> Ibid.

<sup>36</sup> Clean Energy Canada, "Canadians' Opinions on the Clean Energy Transition," October 2016, p. 3, <http://cleanenergycanada.org/wp-content/uploads/2016/10/Backgrounder-Clean-Energy-Transition-Polling-Nanos-CEC.pdf>.

Currently, there is no language in the NEB Act requiring the NEB to consider alternatives to proposed projects. There is, however, a requirement in the NEB Filing Manual that asks proponents to include in their applications of need for the project, their rationale for selecting the proposed project over other possible options.<sup>37</sup> This, however, is not at all the same thing as being asked to provide a fulsome reply on how the proposed projects needs might be met by way of an alternative or competing project. Équiterre recommends that both the Act and *Filing Guide* be revised to ensure that alternative projects are both put forward by proponents, and considered by the NEB as part of its needs test.

In relation to the NEB's mandate to develop and disseminate energy information, the framework language of the NEB Act should be broadened to allow the NEB to monitor, report on and, where appropriate, also to regulate new or alternative methods of producing, transporting and/or distributing energy. Specifically, the NEB's mandate should be expanded to include tracking and regularly informing the government, the public and industry on:

- Alternative ways to produce, transport, distribute and store energy -- on and offshore;
- Canada's progress on modernizing Canada's electricity systems and specific projects aimed at clean electrification and electric vehicle support;
- Research and development of environmentally sound technologies and practices for replacing carbon intensive energy sources with low-carbon sources;
- Advancements in energy efficiency and promotion of energy efficiency as an alternative energy source; and
- Clean energy sector economic data (e.g., job growth, contribution to the economy).

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<sup>37</sup> National Energy Board, *Filing Manual*, revised December 2016, pages 4-3 to 4-4, <https://www.neb-one.gc.ca/bts/ctr/gnnb/flngmnl/flngmnl-eng.pdf>.

### Clean energy now employs more people than fossil fuels in the U.S.

- Clean energy jobs outnumber all fossil fuel jobs by over 2.5 to 1
- Clean energy jobs outnumber all jobs in coal and gas by 5 to 1

Source: analysis of U.S. Department of Energy data by the Sierra Club published March 2017.

<http://content.sierraclub.org/press-releases/2017/03/attention-donald-trump-new-report-shows-clean-energy-employs-far-more-workers>

E. NEB must ensure that “Public interest” and “Need for project” are viewed correctly: industry interests must no longer eclipse environment and social interests

#### Public interest

At the core of the mandate issue lies the question, “Whom does the NEB serve?” Since the NEB is a public agency, the answer would seem obvious: the public. This view is also reflected in the Terms of Reference for the Expert Panel, which states that the NEB “has a legislative mandate to regulate in the Canadian public interest.”<sup>38</sup> Similarly, the NEB Annual Report to Parliament underscores the fact that the agency’s core purpose is to serve the public interest, and clarifies what that means with the following definition: “The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social interests that change as society’s values and preferences evolve over time”<sup>39</sup>

Unfortunately, however, treatment of the term “public interest” in relation to NEB hearings has reflected neither the legal nor plain meaning sense of this term. It seems that the concept has drifted far from its original meaning, and this no doubt ties back to the problem of regulatory capture, discussed above. Yes, the NEB regulates industry, but this is not at all the same as saying it serves industry’s interests above all. A fundamental step in modernizing the NEB will be to readjust the agency so that it truly serves the public interest, and many of our recommendations in the preceding sections relate to this objective.

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<sup>38</sup> Government of Canada, “National Energy Board Modernization: Expert Panel – Terms of Reference” Last modified February 10, 2017, <http://www.neb-modernization.ca/terms-of-reference>.

<sup>39</sup> NEB Annual Report to Parliament, 2015, p. 12, <http://www.neb.gc.ca/bts/pblctn/nnlrprt/2015/nnlrprt2015-eng.pdf>.

The needed readjustment begins with the clarification of terms, and stopping what has been a harmful concept drift around the term “public interest”. If terms are not defined and used properly, the NEB will likely remain a “captured regulator”, and the crisis of confidence and deficit in public trust will continue.

Équiterre believes we must repair the concept of “public interest” in the Act for two reasons: first, to ensure that it is indeed an obligatory and primary factor in project decisions, and second, to ensure that everyone involved in energy project hearings is clear on the understanding that “public interest” means much more than proponent interest, or industry interest or even economic interest. The NEB must serve the needs of society at large as it goes about the business of regulating the energy industry. This means it must make decisions or recommendations on projects with that fact firmly in mind.

Why is clarification of the term “public interest” so important to modernization of the NEB’s mandate? Again we refer to the root problem of regulatory capture. Unfortunately, there is “too much water over the dam” in the history of regulatory capture at the NEB to presume that during modernization, the problem will fix itself. Additionally, the phenomenon of regulatory capture is very strong, wherever and whenever it occurs, and thus opting not to take precautions for insulate future agency decisions from its influence is unwise.

Decisive steps and explicit clarifications on public interest are not just a language exercise: they are important to our future environmental *and* economic well-being, because by working to address regulatory capture, they may help Canada avoid tying itself to an industry overly reliant on a dying energy source – fossil fuels.

The first task would be to define “public interest” in the Act. That seems necessary and obvious and the definition in the 2015 NEB Annual Report to Parliament is a good start. However, the concept should also be understood to include inter-generational interests (a critical aspect of the climate change battle), interests connected to community safety, and regional and local interests rather than national interests only.

Beyond defining the term, however, other legislative repairs relating to public interest are also badly needed. If government truly intends that “public interest” should be a core concern when evaluating pipeline projects, there is a serious lacuna in the Act. Specifically, in the test for “public convenience and necessity” (frequently referred to as the “needs test”) in Section 52(2), “public interest” is listed as the last “factor” in an optional list of factors that the Board “may consider” when evaluating projects. This is completely illogical in two ways. First, how can “public interest” be the core and ultimate concern of the project review process, but yet be optional? (as in “*may consider*”). If the whole point of the needs test, in combination with test for “significant adverse environmental effects” under CEAA 2012, is to determine whether or not the proposed project is

or is not “in the Canadian public interest,” then surely “public interest” is not to be seen as optional. Second, and for similar reasons, if indeed the *raison d’être* of the agency, at its core, is to serve the public interest, then including it as a “factor” to be considered is circular. It makes no sense and must be corrected.

One other related oddity must be mentioned, although the solution is not clear. Thinking of “public interest” as it is defined by the NEB in its 2015 Annual Report to Parliament, we know that it includes environmental and social interests, and they are factors examined in the EA process, which we have recommended should be done outside the NEB. Thus the needs test in the NEB Act must be completely revised to reflect the fact that the NEB must incorporate the findings of an EA done ideally outside of the NEB (e.g., by CEAA).

Équiterre believes that making these course corrections in the language of the Act will help shift the thinking back where it belongs during project reviews – to the question whether a proposed project, with all that is known about its potential impacts and benefits, is or is not in the public interest.

### Need for the project

The concept of “need for the project” needs an overhaul to ensure that it refers to broader societal needs and reflects a fulsome analysis of competing or alternative projects. Not only is an overhaul needed in the Act, but also in the NEB’s general approach to the concept. Proponents, industry allies, decision makers and others need to understand clearly that proponent needs are not public needs. Industry needs are not the same as public needs.

Confusion on this point is widespread for several reasons because the term “need for the project” is neither used nor defined in the Act. The result is that the “need for project” concept has come to be equated with the proponent’s desire to build the project based on its belief that it is needed. This problem ties in closely to the way the needs assessment has been handled to date (discussed above). To recap, proponents provide the NEB with market analyses and forecasts that are narrowly based on industry-driven assumptions about the future, and the NEB tends to rely heavily on this information in conducting the needs test. As explained above, it is imperative that the NEB require that proponents demonstrate how their project fits within alternative macroeconomic projections of supply and demand that go beyond low/med/high oil price scenarios and integrate factors such as the adoption of electric cars, fuel economy, and so on. Thus, ideally the Act needs explicit language added to ensure that proponents choose and analyze “alternative” projects. These alternative projects could potentially involve something other than infrastructure (e.g., fuels).

As well, the NEB’s filing manual for proponents, for example, needs to be revised to ensure that companies faced with the term “need for the project” do not presume that this means *their* need

for the project, from a commercial point of view. The same is true of how the term is viewed by hearing participants when “need for the project” appears in a “List of Issues” for a hearing, as it so often does.

Thus, to ensure that proponent or industry interests do not dominate the outcome of the needs test component of NEB project reviews (described above), a broader view of “need for the project” is imperative and should be explicitly defined in the Act. Only this step is likely to eliminate any doubt that “need for the project” does not refer only or primarily to the proponent’s or the industry’s need or economic needs.

Finally, if as recommended in the previous sub-section, “public interest” is viewed broadly and inclusively, then logic dictates that “need for the project” must also be viewed through a broad and inclusive lens.

#### 4. Public Participation and NEB hearings

Significant challenges for the NEB in the area of public participation follow, no doubt, from the fact that the agency was not truly designed to accommodate comprehensive public engagement. In this section, we identify many of the current obstacles to meaningful public participation in NEB hearing processes and consultations, and provide specific recommendations for improvement.

All obstacles to full and effective public participation tend to breed frustration and dissatisfaction among potential participants, and this leads to compromised credibility, trust, effectiveness and efficiency. Eliminating or minimizing such obstacles should, in Équiterre’s opinion, lead to fuller, and more efficacious hearings in the future -- hearings that do what they need to do but at the same time, satisfy the particular needs of the various participants.

##### A. Who should be allowed to participate in NEB hearings and in what ways?

We begin from the premise that broad engagement is necessary for a constructive dialogue on energy projects. Unfortunately, however, that is not the current starting point under NEB rules and legislation. As explained in the NEB *Hearing Process Handbook*, only participants who are accepted by the NEB as hearing participants may participate as intervenors or commenters.<sup>40</sup> Detailed applications are required of prospective participants, whether they seek status as an intervenor (a person or organization who may participate in all aspects and phases of a formal hearing) or as a commenter (a person, usually but not necessarily an individual, whose participation in the hearing is limited to submitting a letter of comment).

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<sup>40</sup> National Energy Board, *National Energy Board Hearing Process Handbook*, September 2016, pages 9-10. Available at <https://www.neb-one.gc.ca/prtcptn/hrng/hndbk/index-eng.html>

What is immediately striking about the participation criteria, laid out in Section 55.2 of the Act, is that *all* participants, whether intervenors or those simply wishing to submit letters of comment, must meet strict and narrow requirements for participation. These criteria require that participants be *either* persons who, in the Board’s opinion, are “directly affected”<sup>41</sup> by the granting or refusing of a project application, *or* persons who, again in the Board’s opinion, have “relevant information or expertise”<sup>42</sup> relating to the project. Prior to the 2012 changes, the NEB was required to consider objections to the proposed project that were put forward by any interested person, although the agency still decided who was or was not an interested person.<sup>43</sup>

With regard to persons seeking to participate as commenters, Équiterre views it as an unwise use of everyone’s time and trouble for Canadians who wish to write a letter to the government on their views about a project to be required to meet these strict participation requirements, and submit an application. The current law puts the agency in the highly unpleasant position of having to tell concerned citizens, “No, we won’t even look at the letter you took the trouble to write about this project, because we do not believe you meet the legal requirements for necessary as someone eligible to write a letter.” Équiterre believes that any Canadian wishing to provide input on a major energy project should at least be granted “Commenter” status, as of right, and recommends dispensing with the nonsensical need for a formal application for participants in this category.

Furthermore, regardless of category of participant (intervenor or commenter) the “directly affected” rule is an unreasonably narrow, outdated and ineffective criterion. Reasons for this are many, but include the simple fact that everyone is ultimately affected by climate change. As well, many more people may be affected by harm to natural resources such as drinking water than just those living a short distance from the pipeline. Équiterre recommends this concept be eliminated in the legislation.

With respect to the category of participants having “relevant information or expertise”, it is highly unfortunate and unnecessarily restrictive that the law (section 55.2 of the Act) gives the NEB the power to choose who is in or out for this category on a discretionary basis. The current wording of the Act states that while the Board “must” consider the representations of any person “directly affected”, it “may” consider the representations of any person who it deems to be someone having “relevant information or expertise.” This discretion in the legislation must be removed so *all*

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<sup>41</sup> Ibid, p. 9.

<sup>42</sup> Ibid, p. 10.

<sup>43</sup> National Energy Board, “2012 Budget Implementation Act: Key Amendments to the National Energy Board Act (NEB Act)”, undated, [http://www.neb-modernization.ca/system/documents/attachments/4bd293cfc958f6a15902e40abfad39805a9e02d6/000/005/420/original/NEB\\_DM\\_2012\\_Changes\\_\\_Before\\_and\\_After\\_EN.pdf?1485811468](http://www.neb-modernization.ca/system/documents/attachments/4bd293cfc958f6a15902e40abfad39805a9e02d6/000/005/420/original/NEB_DM_2012_Changes__Before_and_After_EN.pdf?1485811468).

persons interested in intervening and who may have relevant information and expertise may participate in a hearing.

Équiterre believes that eligibility for participation in hearings should flow from a properly expanded definition of “public interest,” as discussed previously in this paper. Essentially, if “all Canadians” are part of the concept of public interest, and a project must be evaluated in terms of its effects on public interest, then potentially all Canadians are affected by the project. Thus, all Canadians have inherent interest in participating in hearings on major energy projects.

It is worth noting that proponent project applications, as well as public relations materials, are often replete with mentions of “benefits to Canadians” or “benefits to Canada”. When proponents adopt this view of proposed projects, they effectively admit that projects have Canada-wide impacts, but there is another side to this coin. The view that these impacts are beneficial belongs to the proponent. Citizens and communities may view a project’s impacts differently. The question that must be answered on the basis of the EA<sup>44</sup> and the needs test process is whether these impacts are helpful or hurtful. Only full public participation will create the proper knowledge base on those questions. Expanded public participation by Canadians is logical and entirely reasonable in light of common claims by industry and project proponents that fossil fuel infrastructure have broad national, provincial or regional benefits. In our view, it is undoubtedly equitable in this context.

All that said, a more inclusive participation process will inevitably have implications for the size and manageability of hearings, and resources available to assist intervenors. One solution may be to require that intervenors present well-articulated reasons for intervening and explain how their interventions would contribute to the understanding of the project or its impact. This, however, does not address the fact that not all intervenors have the same capacities nor even interest in participating in a full, formal hearing process. For example, some intervenors may be interested in asking questions that proponents are obligated to answer, through Information Requests, but they may not have the capacity or the interest in preparing and presenting written evidence and participating in cross-examinations.

With these considerations in mind, Équiterre is of the opinion that public participation would be best served by something other than a one-size-fits-all hearing process. A traditional hearing before a quasi-judicial tribunal, with lawyers and experts, is quite ill-suited to the needs and participation interests of regular citizens. We recommend that an intermediate option, between letter-of-comment writing and full-blown participation in an adjudicative process, be explored. Regular citizens must be offered a simple and accessible way of participating in hearings that are not traditionally judicial in nature and which do not limit the subject matters that may be raised.

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<sup>44</sup> Which, as we recommend in this position paper, is best carried out by the CEAA or another independent body.



At the same time, public interest organizations with the capacity to prepare for full hearings, test the evidence presented, present their own expert evidence and develop alternative scenarios to the proposed project should have the opportunity to engage in this way. Only with sufficient resources, however, can such groups engage in a real and meaningful debate with proponents (an issue to which we shall return later in this paper).

## B. How can NEB participation processes be improved?

The NEB's challenges in the area of public participation likely stem in part from the fact that the agency was not originally designed with public engagement in mind. Obstacles to meaningful public participation in hearing processes and consultations create a number of problems in addition to simply reducing the number of potential public participants. They erode the public's trust as well as its ability to view the agency as credible, effective and efficient. Increasing meaningful public participation is also essential from a fairness standpoint: put simply, the public must be allowed input to decisions about major projects that carry potentially large impacts and risks. Below, we identify key obstacles to meaningful participation and provide suggestions for overcoming them.

### Expand Intervenor Funding

Adequate intervenor funding is essential if public interest intervenors are to be given a full and fair opportunity to participate meaningfully in hearings on major project applications. In its Discussion Paper on the NEB's Participant Funding Program, the Expert Panel stated that "reducing financial barriers to participation supports increased public participation and facilitates the consideration of a greater diversity of concerns and perspectives."<sup>45</sup> The reverse is also true: insufficient funding inhibits full and meaningful public participation and restricts the diversity and depth of issues covered.

An example from Équiterre's own experience is particularly pertinent here. Équiterre has been and will continue to be involved in the hearing on TransCanada's Energy East pipeline project application. As you know, Energy East is the largest proposed pipeline project of its kind in Canadian history, spanning 4,500 km across six provinces. Access to adequate levels of intervenor funding in this hearing is essential for meaningful participation by Équiterre so that we may hire high-quality experts and all of the legal assistance that is required in a case of this size. The sheer size of this hearing, in terms of numbers of intervenors and documents, requires enormous

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<sup>45</sup> Government of Canada, "Discussion Paper – The National Energy Board's Participant Funding Program", National Energy Board Modernization Expert Panel. Undated, [http://www.neb-modernization.ca/system/documents/attachments/fb9fc18af001a12e8d4ec2c51c1ae730fd83aaf8/000/005/300/original/Discussion\\_Paper\\_NEB\\_PFP\\_2017-01-10\\_EN.pdf?1484767726](http://www.neb-modernization.ca/system/documents/attachments/fb9fc18af001a12e8d4ec2c51c1ae730fd83aaf8/000/005/300/original/Discussion_Paper_NEB_PFP_2017-01-10_EN.pdf?1484767726).

numbers of hours simply to monitor all of the filings, let alone develop arguments and testimony, prepare and file information requests and prepare for oral cross examination and final arguments.

According to the NEB, participant funding for hearings is generally based on "the project's size, location, possible effects, range of issues, the number of Indigenous groups and landowners affected, the anticipated level of public interest, and the funding approved by Parliament."<sup>46</sup> The maximum amount available for any single group is \$80,000 per project hearing and \$12,000 for individuals but the NEB adds it "may request to increase the total available funding".<sup>47</sup>

In the Energy East pipeline hearing, the NEB had originally indicated a \$80,000 cap for organizational intervenors (\$12,000 for individual intervenors), to be provided in two phases of \$40,000 each.<sup>48</sup> Later, however, the NEB decided to cut the total funding available to group intervenors in half, resulting in a total cap of \$40,000.

The maximum cap of \$40,000 per intervenor was already insufficient for a hearing of this magnitude, and following recusal of the former panel and the establishment of a new panel, we will soon begin the process again, which will require many additional hours of monitoring filings, analysis of new information from the proponent. The new panel has already indicated that it will allow the proponent to amend, withdraw, and add to the project application, including with supplemental filings, any of which may provide information about new or modified project details and all of which will need to be reviewed by our lawyer and experts.

Équiterre wishes to underscore the fact that the Energy East hearing will require us (as well as all other public interest and individual intervenors with limited financial resources), to carefully review and respond to filings and arguments from approximately 40 industry intervenors who are largely supporting the Energy East proposal. These include large international energy companies such as Suncor, Valero, Shell, BP, Statoil, Nexxen, Repsol, Imperial (subsidiary of Exxon), Canadian Natural Resources Limited, Husky Energy, Canada Energy Group, and Irving Oil, to name but a few. Without a doubt, each and every one of these companies has teams of lawyers and experts who may be called upon to assist in hearing matters, while we have one lawyer, and our three experts must be shared across three environmental organizations. The inequity is self-evident.

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<sup>46</sup> Government of Canada, "Discussion Paper - The National Energy Board's Participant Funding Program", National Energy Board Modernization Expert Panel. Undated. [http://www.neb-modernization.ca/system/documents/attachments/fb9fc18af001a12e8d4ec2c51c1ae730fd83aaf8/000/005/300/original/Discussion\\_Paper\\_NEB\\_PFP\\_2017-01-10\\_EN.pdf?1484767726](http://www.neb-modernization.ca/system/documents/attachments/fb9fc18af001a12e8d4ec2c51c1ae730fd83aaf8/000/005/300/original/Discussion_Paper_NEB_PFP_2017-01-10_EN.pdf?1484767726).

<sup>47</sup> Ibid.

<sup>48</sup> National Energy Board. 2016. "Information Session - Participant Funding Program - Energy East Project / Eastern Mainline Projects". National Energy Board. Last modified December 5, 2016. <https://www.neb-one.gc.ca/pplctnflng/mjrpp/nrgyst/nrgystprsnntn/nrgstfpf-eng.html>.

Substantially uneven playing fields as between project proponents and public participants hurt participation, credibility, and quality of the input to the process, and nowhere do we see more unevenness than in the financial resources available to the parties in relation to project hearings. The current very low levels of intervenor funding substantially disadvantages ENGOs and other civil society NGOs and can substantially advantage project proponents like TransCanada, who can and do use their much greater financial resources to make their case.

### Improve access to affordable, high-quality expertise for public interest intervenors

Another way to improve participation, as well as the quality of the evidence brought before hearing panels, is to improve access to high quality expertise. The minimal financial capacities of ENGOs and individuals wishing to participate in NEB hearings make it extremely difficult to afford high-quality experts. Experts and frequently even students, avoid serving as consultant experts to ENGOs or other public interest intervenors out of fear of being “blacklisted” by industry, or in the case of students, being unable to find work in their fields upon graduation.

One option may be to devise more efficient mechanisms for cost-sharing among eligible intervenors who wish to collaborate. Current models require substantial inter-organizational coordination, and while these costs are considered “eligible costs” for the purpose of the Participant Funding Program, they deplete the amounts that intervenors can spend on lawyers and experts. Even with sharing among two or three intervenor organizations, lawyer and expert costs for even modest hearing participation can easily and quickly exceed a \$40,000 cap.

Yet another solution may be for the NEB to grant public interest intervenors access to independent “pools” of experts who are publicly funded or subsidized by the government. While this is an intriguing possibility, this option should be first examined in a deeper, more focused way, with early and direct consultation of public interest intervenors who may avail themselves of such services. Their views and concerns on developing such a pool or similar cost-effective, efficient method of providing high quality expertise to groups and individual intervenors needing could be invaluable in developing a workable, effective mechanism.

### Develop standards to ensure complete, high-quality project applications

New standards are needed to ensure that public participants are working with information that is of sound integrity, credibility, and reliability, and is presented clearly and in a well-organized way, free of unreasonable redundancy. This is essential to avoid public intervenors spending unnecessary hours and resources (their own or Participant Funding Resources) engaged in activities such as investigating information gaps, inconsistencies, inaccuracies etc.

Perhaps the most time-consuming activity of this nature for ENGOs and individual intervenors is trying to fill in the facts and knowledge gaps when faced with incomplete applications. They may have to spend time and resources making specific requests for information, even prior to discovery, and/or they are so concerned about potential impacts they must try to find answers for

themselves in the face of missing information, such as specific route for a pipeline or the method that would be used to cross a waterbody.

We suggest two measures for addressing the serious problem of intervenors needing to spend time and resources on finding information that should have been provided by the proponent in a properly prepared, complete application. First, revise NEB filing procedures for applicants in order to curtail piecemeal presentation of one project by way of serial applications. An example of a piecemeal “one-segment-at-a-time” application procedures occurred with Enbridge as happened with Enbridge Line 9 “Phase 1” (also known as Line 9A), and Line 9B applications.<sup>49</sup> These were literally applications to reverse the direction of flow of oil on different segments of the same pipeline, when it was well known that both segments were to be working in tandem to bring oil from the west to Montréal, which raised questions about the Board’s credibility. The two projects should have been combined into one hearing, and the fact that they were not drew unnecessary time and resources from public interest intervenors like Équiterre.

The second measure would be to develop and implement guidance to NEB review panels to tighten the criteria for determination of completeness. The Energy East pipeline project provides a vivid example about problems related to completeness of the proponent’s application. While there is neither time nor space here to discuss the many issues and inconveniences surrounding the gaps in the application, a few key observations should suffice in relation to the resulting drain on public interest intervenors’ time and resources. Since the original filing in October 2014, the proponent has issued two full amendments to the application (in December 2015 and in May 2016),<sup>50</sup> each amendment consisting of thousands of pages of documents. Intervenors, of course, have had to review all three iterations of the Energy East project application in detail in order to find new and modified information and reports. As well, the former Energy East panel ruled in June 2016 that TransCanada’s project application was complete,<sup>51</sup> despite many substantial gaps in the file, including basic information on how and exactly where the proponent planned to cross certain rivers.

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<sup>49</sup> National Energy Board, “Reasons for Decision”, Enbridge Pipelines Inc., Application dated 29 November 2012 for the Line 9B Reversal and Line 9 Capacity Expansion Project, OH-002-2013, March 2014, <https://apps.neb-one.gc.ca/REGDOCS/File/Download/2431830>; National Energy Board, “Letter Decision, Enbridge Pipelines Inc. Line 9 Reversal Phase I Project”, OH-005-2011 (A43137), July 27, 2012, <https://apps.neb-one.gc.ca/REGDOCS/File/Download/834303>.

<sup>50</sup> Although the May 2016 amendment is referred to as the “Consolidated Application”, it contains new documents and modified information that was not seen in the amended application filed in December 2015. As such, intervenors have to treat the Consolidated Application the same as it would an amended application.

<sup>51</sup> National Energy Board - Letter to Energy East Pipeline Ltd. and TransCanada Pipelines Limited - Ruling No. 11 Completeness Determination and Legislated Time Limit (A77626), no longer available on line due to voiding of the decision. The new Energy East Panel has ruled that this completeness determination, like all decisions of the former review panel, were void. NEB ruling January 27, 2017, <https://apps.neb-one.gc.ca/REGDOCS/File/Download/3178887>.

The finding of completeness on an application so obviously full of holes harms the credibility of the process and costs public intervenors substantial time and resources chasing down the missing information. It is Équiterre's sincere hope that part of the reform of the NEB and its legislation will be to ensure that this situation is not repeated.

### Lift mandatory timelines and ensure fair timing of steps within hearings

Timeframe issues also affect the efficacy and effectiveness of public participation, and this happens in two areas: legislative limits on action by the NEB to render a decision or recommendation on a project, and problems involving tight timeframes on procedural steps within a hearing process. In both cases, shorter timeframes hinder public participation because public interest intervenors and individual intervenors have far fewer resources than proponents and industry intervenors with which to meet these time constraints. This situation favors proponents to the detriment of intervenors.

With respect to legislative limits, the mandatory timelines such as those imposed under the NEB Act for pipeline and powerline project evaluations (sections 11(4), 52(4), 54(3), 58(4), 58.16(4)) tend to compromise the quality of information gathering and review and stymie public participation. Public interest groups, with vastly smaller capacity and fewer resources than proponents or governments, must struggle hard to keep up with filings, additional procedural requirements and new developments. We recommend they be eliminated entirely. If such limits must be kept, however, then legislative provisions such as sections 52 (7) and 58 (10), which give the NEB and Cabinet the discretion to extend these limits if necessary, must be preserved and ideally should be expanded.

Tight schedules, with insufficient time between hearing steps, are favourable for proponents but unfavourable for intervenors, with limited resources. An example is seen in the Energy East hearing, where the original hearing order for Energy East provided only seven days between TransCanada's presentation of additional evidence and intervenors' second round of discovery ("Information Requests" or "IRs"). Given that the proponent's evidence, if the past is any guide, would have likely been extensive, this would have created unreasonable burdens on our ability to prepare discovery.

### Require cost-benefit analyses (CBAs) by proponents and fund alternative CBAs by public interest intervenors

Cost-benefit analyses provide the Board with a vastly more realistic picture of the net benefit/net cost to Canada of proposed energy projects than the simple employment and spin-off benefits so often prepared by proponents, their consultants, and/or their industry allies. CBAs evaluate net benefits and net costs, rather than gross benefits alone. Consequently, as tools for examining the

real economic impact of projects, they are vastly superior to economic impact analyses and employment projections, which are generally focused on gross benefits alone.

Other federal government agencies, including the Treasury Board of Canada<sup>52</sup> and the Canadian Nuclear Safety Commission<sup>53</sup> are now either requiring or considering requiring CBAs on major projects. Given the potentially large impacts of projects that come before the NEB, it too should require CBAs. While not perfect, CBAs help give a more realistic picture of a project's benefits or costs to society than other methods.

If the government feels it cannot dictate to proponents what type of studies or reports they will use to justify their projects, then it becomes even more essential that public interest intervenors be accorded sufficient resources to prepare and submit a cost-benefit analysis from their own experts. This single step will assist the Board in testing the proponent's evidence, as well as allowing at least one full view of costs and benefits from a public perspective.

### Require full compliance on language matters in hearings

The NEB must put in place hard and fast rules requiring proponents to provide fully translated documents, with no lag time between French and English versions. Such requirements are fundamental to equal access to information for Francophones and Anglophones trying to inform themselves about a proposed project and its potential environmental and socio-economic impacts in their communities.

Inaccurate or incomplete translations of project documents cause grave problems for public participants. A stunning example is found in the Energy East file in the form of inexcusable differences between French and English versions of the sentence in a project document on the Saint Lawrence River crossing: in the English version, it is said that an additional feasibility study is needed. In the French version, this sentence is simply absent.<sup>54</sup> Situations like this must not be repeated.

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<sup>52</sup> Government of Canada. "Cabinet Directive on Regulatory Management". Last modified 2012-10-01. <https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulatory-management.html>

<sup>53</sup> Canadian Nuclear Safety Commission. "DIS-16-01, How the CNSC Considers Information on Costs and Benefits: Opportunities to Improve Guidance and Clarity". Last modified 2016-02-10, <http://nuclearsafety.gc.ca/eng/acts-and-regulations/consultation/comment/d-16-01/index.cfm>

<sup>54</sup> Golder Associates, Phase II Assessment, (March 12, 2015) available online in English at [https://docs.neb-one.gc.ca/II-eng/IIisapi.dll/fetch/2000/90464/90552/2432218/2540913/2543426/2995824/2958035/A76912%2D14\\_V4\\_Appendix\\_4%2D8\\_Golder\\_Hyrotechnical\\_Hazards\\_Phase\\_2\\_1of8\\_%2D\\_A5A0R7.pdf?nodeid=2958038&vernum=1](https://docs.neb-one.gc.ca/II-eng/IIisapi.dll/fetch/2000/90464/90552/2432218/2540913/2543426/2995824/2958035/A76912%2D14_V4_Appendix_4%2D8_Golder_Hyrotechnical_Hazards_Phase_2_1of8_%2D_A5A0R7.pdf?nodeid=2958038&vernum=1), and in French at [http://www.oleoducenergieest.com/reg-files/R%C3%A9glementaire/O8\\_Demande%20consolid%C3%A9e%20E2%80%93%20Volume%204%20E2%80%93%20Conception%20du%20pipeline%20E2%80%93%20Annexes%20g%C3%A9n%C3%A9rales%20E2%80%93%20Do](http://www.oleoducenergieest.com/reg-files/R%C3%A9glementaire/O8_Demande%20consolid%C3%A9e%20E2%80%93%20Volume%204%20E2%80%93%20Conception%20du%20pipeline%20E2%80%93%20Annexes%20g%C3%A9n%C3%A9rales%20E2%80%93%20Do)

It is also essential that English and French versions of hearing information be “housed” together, on the NEB website. In other words, we should never again see a note on an agency website of the type that currently exists on the NEB website for the Energy East pipeline project directing Francophone readers to the website of the proponent, TransCanada:

“If you need to read the application for the Energy East Project in French, please visit the company’s website.”<sup>55</sup>

Situations such as these simply deepen doubts about the objectivity and credibility of the NEB project review process. Equally as serious, as a result of the situation just described, Francophone users of project documents are put at a distinct and serious disadvantage relative to their Anglophone counterparts in their access to easily searchable document databases. When full-text searching across multiple project documents is possible on the NEB website, but not possible on the proponent website (as is the case in the Energy East file), there are serious equality of access and fairness issues at play.

### Follow logical, internally consistent steps within the hearing process

While some variation among hearings is understandable, the ordering of the steps has varied substantially in recent years, causing unnecessary confusion, discouragement from participating, and other specific problems, to be discussed in more detail below, for public interest intervenors. Following logical, internally consistent steps within the hearing process.

One example of these “cart-before-the horse” or “Catch-22” problems is that intervenors are often been required to complete time-consuming participant application forms before project applications are even deemed complete.

A related problem occurs when the Board has issued Lists of Issues before it has complete and accurate project information. Thus even while the NEB’s Hearing Process Handbook indicates that the Board will generally determine and publish a list of issues when it publishes the hearing order, the NEB Panel for Energy East issued a List of issues right after the initial project application was filed in October 2014, in other words, a full 20 months before the application was finally deemed complete (June 2016).

Similarly, the Board’s rule<sup>56</sup> on developing conditions for project approval and asking intervenors to comment upon them, all before it has rendered its recommendation to cabinet whether to approve

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ssier%201/A76912-14%20V4\_Annexe\_4-8\_Golder\_G%C3%A9orisques\_Hydrotechnique\_Phase\_2\_1de8%20-%20A5A0R7.pdf. Compare pdf page 45 in the English version with pdf page 48 in the French version.

<sup>55</sup> National Energy Board, “Energy East and Eastern Mainline Projects”, [webpage] available at <https://www.one-neb.gc.ca/pplctnflng/mjrpp/nrgyst/index-eng.html>.

<sup>56</sup> Section 52(1)(b) of the Act requires that the Board identify all conditions that it considers in the public interest, prior to an approval/rejection decision on the project by Cabinet.

a project does little to assure public participants that the review process they are contributing to is credible, since project rejection no longer appears like a possible outcome of the hearing.

### Improve how project information is initially presented to the public

For conveying introductory project information in public settings, proponents should be required to use community meeting formats for public consultations rather than “Open Houses”. The information format is more effective in that as members of the public ask questions and receive answers, all others benefit from that information. This major benefit and efficiency is simply lost when public members must mill around at open houses and engage in one-to-one conversations with company representatives. The open house method discourages less extroverted persons from seeking the information they want about the project. Some public participants will be less willing to ask tough questions of a company representative in a close, one-one-one than in the more structured setting of a public meeting, in which tough questions are standard fare.

### Restore public hearings for imports and exports, and expand public hearing opportunities for power line projects

Prior to the legislative changes in 2012, public hearings were required for the issuance of gas and electricity export licenses, and for gas import licenses. As with other matters, however, Bill C-38 weakened opportunities for public input on energy exports and imports. Specifically, the NEB Act removed the mandatory requirement for these public hearings, and made them optional. Under Section 24 of the Act, whether or not public hearings are held on gas and electricity exports or gas imports is up to the Board, at its discretion. Public awareness about and input to matters involving energy imports and exports are important in an open society, and Équiterre recommends that public hearings be restored for imports and exports.

As Canada decarbonizes, it seems reasonable to expect that we may see new power line projects for transmission and distribution of clean electricity sources. Toward this end, Équiterre recommends that the public hearing provisions in the Act pertaining to power lines be strengthened, and all improvements mentioned above in relation to pipeline projects should be integrated into the provisions for power line projects. Currently, the “default” rule for international power lines is that permits may be issued without public hearings, although hearings are required for major international power line projects.<sup>57</sup> This situation should be remedied by making all power line projects subject to public hearing.

### Eliminate “double-standards” in proceedings for intervenors vs. proponents

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<sup>57</sup> NEB Act, section 58.11(1).



To illustrate an example, during the Energy East pipeline project hearing, the proponent tabled thousands of pages of amendments, re-amendments and finally a “consolidation” of previous revisions that in fact had some new, never-before-seen material, as well as some serious errors, in particular relating to substantive discrepancies between English and French versions of documents. Thus, the proponent was essentially granted “extra time” by the NEB to file documents. Meanwhile, intervenors and other participants were expected to adhere to inflexible, short deadlines and timeframes. Another aspect of this double-standard touches on the comparative resources of public interest intervenors and proponents. When proponents file multiple amendments and supplements to their application, it is important that intervenors have access to commensurate financial resources (through participant funding awards) for reviewing voluminous additional materials.

### Improve integration of public input into the Board’s decision making process

One relatively simple but important way of accomplishing this objective is to replace simple descriptions of individual concerns with syntheses of concerns across individuals and communities. This method lets common concerns emerge. Too often, public input is simply described, rather than analyzed, and this kind of treatment does not lend itself to the thoughtful integration of public input. Specifically, simple lists or tables of concerns/comments do not lend themselves to identification of common concerns or themes of participants, which would seem to be vastly more useful – particularly in getting a sense of impact on public interests.

We have seen two forms of this problem and both have similar, straightforward solutions. Project proponents reporting to the Board on public information sessions, engagement sessions or other public consultations should avoid simple listings of input from members of the public or groups in tables and be asked to attempt some synthesis of comments and concerns. Similarly, NEB Panel reports should go beyond the current recitation of “Views of Participants,” where we see specific concerns and comments of specific participants, and include a section that attempts some synthesis or analysis of all of the public participant views taken together. Both should be provided.

## 5. Concluding recommendations

The modernization of the NEB presents an enormous opportunity for the Government to not only repair credibility and regain public trust, but also to accomplish something even more important: to remake the agency from a traditional oil-and-gas, pipelines-and-powerlines regulator, to a multipurpose agency who can help Canada meet the challenges of a decarbonizing world head on. By remolding the NEB’s mandate to serve the broader Canadian public interest, ensure that energy projects are thoroughly evaluated for environmental and socioeconomic impacts, and vet projects

for their ability to let Canada meet its obligations and aspirations on GHG emissions, Government could create a truly effective partner in helping Canada transition to a low-carbon future.

Yes, it would involve a paradigm shift – perhaps a significant one – away from regulatory capture and toward inclusiveness and innovation, but if successful, it could help Canada make the rewarding shift to a world-leading, clean energy economy. Équiterre believes there simply is no better way to ensure a healthy environment for present and future generations, and secure the country’s long-term economy, than to work with purpose toward a clean energy economy.

Équiterre’s top recommendations for modernizing the NEB, under the mandate and public participations themes examined in this position paper, are as follows:

### Mandate

- Remove responsibility for environmental assessments (EAs) from the NEB; shift it to CEEA or some other body whose primary responsibility it is to conduct thorough EAs
- Align with, support and assist Canada in respecting domestic and international climate commitments by infusing all three facets of NEB’s mandate with climate considerations:
  - Hearings on project applications
  - Lifecycle oversight of projects
  - Development and dissemination of energy information
- Include GHGs (upstream and downstream) when evaluating project applications:
  - When conducting EAs (regardless of which agency handles that task); and
  - When conducting the “needs test” to balance economic and related factors
- Include GHGs in market analyses and projections of supply and demand done in-house
- Ensure consideration of alternative projects for producing, transporting and distributing energy
- Ensure that “public interest” is no longer eclipsed by proponent and industry interests

### Public Participation

- Open up participation by eliminating or relaxing narrow, overly restrictive criteria

- Make energy hearings and consultations more public interest group- and citizen-friendly with added flexibility, and perhaps add an intermediate option between letter writing and formal adjudication
- Expand intervenor funding – critical for ensuring meaningful participation by low-resource intervenors
- Help public interest intervenors find and afford high quality experts
- Fix any and all language-related issues to ensure full and fair access to project and hearing information by Francophones and Anglophones alike

Once again, Équiterre thanks you for this opportunity to provide input on the Modernization of the NEB, and we look forward to reading the Expert Panel's final report.