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Response to the Expert Panel on the Modernization of the National Energy Board Modernization Final Report

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PREPARED BY: CANADIAN ENERGY PIPELINE ASSOCIATION

Introduction

The Canadian Energy Pipeline Association (CEPA) represents Canada's 11 major transmission pipeline companies that transport 97 percent of Canada's daily natural gas and onshore crude oil production with a longstanding operational record of 99.999% safe delivery over the last decade. In 2015, the transmission pipeline sector contributed \$11.5 billion to Canada's gross domestic product (GDP) and is projected to add \$175 billion to Canada's GDP over the next 30 years. Our member companies propose to invest more than \$50 billion in pipeline infrastructure projects in Canada over the next 5 years.¹ Because of this economic footprint, our interest in the outcome of this review and the related CEAA 2012 review is profound.

The Federal government committed in the last election to a balanced approach to protecting the environment while still growing the economy. The Prime Minister has more recently said that Canadians have "embraced the idea that we need strong environmental policies if we expect to develop our natural resources and get them to international markets."²

CEPA supports a balanced approach to the economy and the environment and believes that more can be done to enhance public confidence in regulatory review processes. However, we are concerned that the recommendations in the Expert Panel for Review of Environmental Assessment Report, *Building Common Ground: A New Vision for Impact Assessment in Canada*, released on April 5, 2017 ("CEAA Report") coupled with some of the recommendations contained in the Expert Panel on the Modernization of the National Energy Board report, *Forward, Together: Enabling Canada's Clean, Safe, and Secure Energy Future*, ("NEB Modernization Report") would sharply swing the pendulum away from a balanced approach and ultimately erode the competitiveness of the Canadian energy sector.

Moreover, combined with recently tabled legislation to impose a tanker moratorium off of British Columbia's northern coastline, proposed methane emission reductions, other provincial and federal GHG emissions regulations, and lack of clarity regarding the government's position on the implementation of UNDRIP and FPIC³, the net effect is a regulatory and political tsunami that will seriously challenge the energy sector's ability to be competitive in the world market. Already, our member companies have material assets in other jurisdictions and are now increasingly looking outside of Canada for capital investment opportunities because of the implications of changes to regulations and policies.

As the government considers options for legislative amendments to CEAA 2012 and the NEB Act, it should carefully consider the consequences the combined suite of policy initiatives could create for the national economy and key wealth-creating sectors. We look forward to ongoing discussions on how to implement regulatory change and maintain that critical balance between protecting the environment and growing the economy. Our message is clear; regulatory reform must proceed cautiously. It cannot be rushed, cannot have unintended consequences and cannot be implemented in a manner that has the potential to negatively impact the future of the energy sector. Let's take the necessary time to get this right.

¹ Canadian Energy Pipeline Association, "Taking Action on our Commitment to Canadians: 2016 Pipeline Industry Performance Report", online: www.aboutpipelines.com.

² Government of Canada backgrounder, "Prime Minister Justin Trudeau's pipeline announcement" (30 November 2016), speech on approving the TransMountain Pipeline.

³ United Nations Declaration on Indigenous Rights (UNDRIP), Article 19 declares that states should consult and cooperate in good faith to gain free prior and informed consent (FPIC).

Regulatory Reform: the NEB & CEEA Reports

CEPA fully participated in each of the four federal reviews of environmental and regulatory processes and provided detailed recommendations and practical solutions for continuous improvement to EA processes and the integrated NEB review process. We were extremely disappointed in the recommendations contained in the CEEA Report. The CEEA Report proposed a whole-scale overhaul of project regulation and ignored the fact that pipelines already have a comprehensive regulatory model that is highly regarded in other parts of the world. We believe that the CEEA Report recommendations are impractical, unworkable, introduce unacceptable uncertainty, result in inconsistencies with the Constitution and compromise the effectiveness of lifecycle regulation of pipelines.⁴

By comparison, CEPA believes that the recommendations of the NEB Modernization Panel (“the Panel”) are more practical and recognize that many aspects of the current approach to pipeline regulation are functioning effectively. Many of the recommendations would be feasible, if implemented in a practical and balanced manner. We share the principles that underlie the NEB Modernization Report:

- 1) Living the Nation-to Nation Relationship;
- 2) Alignment of NEB Activities to National Policy Goals;
- 3) Transparency of Processes and Decision-Making;
- 4) Public Engagement throughout the Lifecycle; and
- 5) Regulatory Efficiency and Effectiveness.

These principles and the Panel’s vision are generally aligned with the five principles that CEPA proposed in our NEB Modernization Submission⁵ that are essential for the future viability of the pipeline industry, as well as for improving public confidence. These principles are:

- 1) The NEB must be an independent, quasi-judicial, expert regulator;
- 2) The NEB must be a full life-cycle regulator;
- 3) The NEB review process must be coordinated, efficient and provide process certainty;
- 4) The NEB review process is guided by government policy, but is not the appropriate venue to address broader public policy issues;
- 5) The roles and responsibilities of the Federal government, industry, Indigenous groups and the NEB related to consultation and accommodation over the full life-cycle of the NEB process must be clarified.

While the overall vision and underlying principles that guided the Panel’s recommendations are generally sound, there are some recommendations that are aspirational. It is unclear how they would work. Some of the Panel’s recommendations are positive and workable, others need to be better understood and others are meant to address misperceptions.

The existing NEB review process and life-cycle oversight is already one of the most rigorous and robust regulatory processes in the world. It is transparent, science and evidence based and grounded in sound administrative law principles that have worked effectively for decades. Seismic changes to this process

⁴ CEPA Response to the Expert Panel Review of Environmental Assessment Processes Final Report, Building Common Ground: A new Vision for Impact Assessment in Canada.

⁵ CEPA Submission to the National Energy Board Modernization Expert Panel, March 2017.

without fully understanding the impact on the investment climate need to be carefully considered, justified, and understood.

Broader Public Policy issues

CEPA welcomed the NEB modernization review as an opportunity to foster a strengthened independent, quasi-judicial regulator that oversees the full lifecycle of pipelines. Equally, we saw this review as an opportunity to enhance public confidence in Canada’s already robust regulatory processes. We saw an underlying problem that needed to be addressed before achieving either of these objectives and that was how to address broader public policy issues that arise during project reviews. The NEB’s review of major pipeline projects had become ground zero for the often contentious debates about how new energy infrastructure projects square with broader public policy issues such as climate change, upstream and downstream impacts, Indigenous rights and title and discordant Federal-Provincial energy policy.

CEPA has emphatically asserted that the NEB review process is not the home for these broader public policy issues and proposed a solution in the form of a two-part review in both our CEAA Panel submission and NEB Modernization submissions.⁶ We are encouraged that the NEB Modernization Panel also heard from participants across the country, including environmental groups, who identified the same problem - that stakeholders felt forced to use NEB project reviews to discuss these issues in the absence of a more appropriate venue.⁷

CEPA strongly agrees with the Panel’s observation that:

“The NEB cannot possibly succeed when pushed to serve as a forum for debate about national policy. On the one hand, if it denies a project because it deems the underlying activity (energy extraction) to be inconsistent with emissions reduction, it is exceeding its mandate, making government policy, and issuing judgements that run up against provincial jurisdiction for natural resources and energy...”⁸

Many of the Panel recommendations are related to finding a higher level solution to address gaps in broader public policy, including a two-phased approach to determine whether a preliminary major project proposal aligns with Canada’s broader policy context and is in the national interest prior to detailed project review. CEPA believes that this proposed solution, if implemented properly, would help build public confidence and allow the NEB to focus on its core mandate and responsibilities of pipeline project review and life-cycle regulation. CEPA is in the position to support and work with the government on the details and implementation of a two-part review that would achieve these shared goals.

Perceptions / Misperceptions

CEPA believes that resolving higher level policy questions will answer many of the concerns about the credibility of the NEB that some vocal groups have expressed. Some of the Panel’s recommendations, however, seem to respond to other public perceptions of the NEB that we do not believe are supported by facts or evidence.

⁶ CEPA Submission, supra note 5 at 6-8.

⁷ Report of the Expert Panel on the Modernization of the National Energy Board, *Forward, Together*, May, 2017, at 7.

⁸ Panel Report, supra note 7 at 18.

Regulatory Capture

The Panel heard from and accepted the views of participants in the Panel review that they lack confidence in the NEB because it is “captured” by the industry that it regulates and that every project gets approved. The Panel also heard that the NEB is an organization that “limits public engagement”, does not explain or account for many of its decisions, and “generally operates in ways that seem unduly opaque.”⁹ To address these perceptions, the Panel proposed a suite of recommendations, starting with moving the Board of Directors of the proposed CETC out of Calgary because it “set the stage for undue influence, as it places the regulator in a “social environment” that can erode its independence.”¹⁰

Beyond this perception, there is not credible evidence to suggest that the NEB is captured or that it shows bias in favour of approving projects. The reality, in fact, is that “bad” projects are dropped before regulatory reviews. They are not sanctioned by the company’s Board of Directors; only projects that have strong fundamentals, commercial support and can be constructed and operated in a safe and reliable manner proceed through regulatory reviews. This filtering out is often related to cost. For a major project such as Energy East, the cost to proceed through regulatory processes, estimated at an average of 7% of capital cost, is equivalent to \$1.1 billion.¹¹ This is just to get through the regulatory process. Very few companies have the financial resources or the ability to commit such amounts unless there is a high likelihood of receiving regulatory approval with satisfactory conditions that don’t undermine the commercial rationale of the project. If companies see risk that a project will not be approved or that the review process will be unduly delayed, they do not proceed.

Early Public Engagement

The Panel also heard from participants that they believe that projects are already designed and “baked”, prior to any opportunity to provide input. Some of the recommendations in the NEB Modernization report and many within the CEAA Report are meant to address a perception that companies do not engage early with communities. This certainly is not the case for pipeline development. In all circumstances, there has been substantial early engagement with the public and Indigenous communities during the course of a company’s feasibility assessment and vetting. In fact, this is a requirement of the NEB Filing Manual. By the time a project application is filed, months, and even years, of up front engagement with affected stakeholders has taken place.

Public Engagement throughout the review

It is also a misperception that the public is not adequately engaged through existing NEB processes. For instance, throughout the three-year review of TransMountain Pipeline Expansion Project process, the NEB heard from approximately 400 intervenors, 1,250 commenters and over 1,600 participants in the hearing. Intervenors asked over 16,000 questions during the course of the hearings and in answer to these questions, TransMountain provided more than 50,000 pages of information.¹² Clearly, these processes are extensive and provided ample opportunity for participation.

⁹ Panel Report, supra note 7, at 7.

¹⁰ Panel Report, supra note 7 at 64.

¹¹ The direct cost for proponents to go through a regulatory process for pipeline development ranges from 4%-11% of total development and construction costs, averaging 7%. See *Risks and Costs of Regulatory Permit Applications in Canada’s Pipeline Sector*, Submission to the National Energy Board Modernization Expert Panel, 31 March 2017, Ivey Business School, Energy Policy and Management Centre.

¹² National Energy Board, TransMountain Expansion Project, OH-001-2013, National Energy Board Report (May 2016) online NEB :<://neb-pme.gc.ca>. Another example is the Northern Gateway Pipeline Project which held 180 sitting days for oral hearings in 21 communities, 9500 letters of comments received, 1,179 oral presentations made, 268 participants allowed to cross examine and 389 witnesses put forward by intervenors.

It is unwarranted to suggest that the regulator is captured, that all projects are approved and that there are not already significant opportunities for early engagement and engagement throughout the entire review process. Not liking the outcome of a process does not mean the process was not fair, inclusive or comprehensive. Moving forward, CEPA and its member companies are committed to working with stakeholders and government(s) to clear up some of these misperceptions.

Panel Recommendations

Notwithstanding our concerns related to the Panel's perception of lost public confidence, overall, we find many of their recommendations to be positive and workable. Other recommendations require details and need to be better understood or be implemented in a modified manner.

Positive and workable

- **Two-step review:** The Panel identified an underlying public confidence problem that CEPA and its member companies agree with, "that there exists a major challenge to reconcile Canada's energy, economic and climate goals, and that this challenge plays out in the context of NEB hearings which are fundamentally incapable of resolving such challenges." In its role assessing and approving pipelines, the NEB must perform as a regulator, not as a policy maker.

CEPA agrees that major projects of national consequence should go through a process to determine alignment with national interest and broader public policy by the Governor in Council *before* detailed project review or licensing decisions. This is generally aligned with the two-part review that CEPA proposed to resolve broader public policy issues that are beyond the scope of a single project.¹³ Implementing this will require a careful consideration of what projects will trigger a two-step review, what the scope of each part will be and a clear understanding of the process and timelines. It will also require that governments be able to provide advanced guidance on whether a project is in the national interest and assurances that newly elected governments will abide by the decisions of previous governments.

- **Canadian Energy Information Agency ("CEIA"):** CEPA supports the recommendation to create an energy information function outside of the NEB/CETC. The energy information function is not a core role of an independent, quasi-judicial regulatory agency. It is more appropriate that this function be placed with a government department or an outside agency similar to the US Energy Information Agency. The creation of the CEIA should not continue to be a cost to industry, as it serves the needs of all Canadians and not just the energy sector.
- **Board of Directors, Hearing Commissioners and the CEO:** CEPA supports the recommendations that the new NEB/CETC would be governed by a Board of Directors whose sole responsibility is strategy and oversight of the Commission's activities. Hearing Commissioners would be responsible for Hearing Panels and Regulatory Decisions. The CEO would be neither a Board member nor a Hearing Commissioner. This separation of functions works well in other jurisdictions, including the Alberta Energy Regulator and is an appropriate model for effective governance.
- **Climate Change:** CEPA supports the Panel's recommendation that only direct GHG emissions from a project would be considered in project-specific reviews (upstream and downstream GHGs would be dealt with as a broader public policy issue outside of project reviews). Pipelines are the

¹³ CEPA submission, supra note 5, at 6-8.

safest and most environmentally sustainable way to transport hydrocarbon products and we welcome an analysis that is confined to GHG emissions based on a project specific review.

Need to be better understood or modified

- **Decision-making:** The Panel recommended that s. 58(1) of the NEB Act be repealed and that the new legislation provide for a tiered system of reviews: (1) major projects of national consequence that require a two-part review and GIC approval; (2) Projects of significance that require a full Joint Panel review, but not a two-part review or GIC approval; and (3) smaller activities that require review and approval, but by the NEB/CETC and not a Joint Panel.

CEPA agrees with a tiered approach to decision making, but specific and precise definitions must be developed in order to delineate where projects fall. In particular, CEPA needs to understand how “national consequence” and “projects of significance” would be defined and how low-consequence activities, including operations and maintenance work, would be handled. Section 58(1) of the NEB Act has clear and meaningful delineations based on length of the pipeline. New legislation must be equally clear. CEPA’s view is that the majority of projects would continue to be reviewed only by the NEB/CETC and would not require a Joint Panel.

- **Joint Panel Reviews:** The Panel recommended that decisions for the first two tiers, projects of national consequence and projects of significance, would be conducted through Joint Hearing Panels that integrate CEA Agency-led project level EAs and the NEB/CETC decision-making process. This is meant to achieve the goals of a single regulatory review process, avoiding parallel technical and environmental review processes.

CEPA remains of the view that integrating the EA into the NEB/CETC process, with the NEB/CETC as the single decision-maker, remains the best approach based on the unique technical, operational and environmental considerations of pipelines.¹⁴ CEPA has concerns with the recommendation for Joint Panel Reviews that need to be addressed. First, the CEEA Report recommendations on the conduct of an impact assessment do not square with the Joint Review proposed by NEB Modernization Report. CEPA cannot agree with a Joint Hearing Panel process that incorporates the unworkable IA process recommended in the CEEA Report. Second, we are concerned that the proposed Joint Panel process itself could lead to dual tracks of decision-making, as was the case prior to delegation of EA responsibilities to the NEB.

- **Indigenous Major Project office (“IMPO”):** While CEPA supports the aggregation of capacity resources and the development of best practices, CEPA does not support the establishment of an IMPO with unclear Indigenous governance and a mandate to define consultation processes, issue guidelines for consultation, and/or assess compliance with those guidelines. This would further confuse consultation roles and responsibilities and create unnecessary duplication and uncertainty. There must be a single decision-maker to determine the adequacy of consultation and accommodation and compliance with consultation policies. The Crown is best placed to do this.

CEPA could support an IMPO that is part of the MPMO if it supports the development of Indigenous capacity, provides guidance to proponents on consultation and accommodation, better integrates project specific concerns and supports the fulfillment of the Crown’s duty to consult within the NEB/CETC regulatory review. If the IMPO can help facilitate the resolution of issues

¹⁴ CEPA submission, supra note 5 at 14.

raised during consultation that go beyond specific projects, it would be a big improvement. The exact scope, roles and responsibilities of this office would need to be better understood and further discussed with all affected parties.

Meant to address a perception / not necessary

- **Renaming the NEB:** The Panel recommended that a modernized NEB, to be called the CETC, should be established to replace the NEB. While CEPA is not necessarily opposed to changing a name, it does raise the question of whether this will actually build greater public confidence or just be an expensive rebranding exercise.
- **Location of the Headquarters:** The Panel recommended that the NEB/CETC Board of Directors be located in Ottawa because the “regulator needs a stronger connection to the seat of the federal government.” This is not practical. Moving the Board of Directors would involve a significant expense to taxpayers and would prove disruptive to ongoing regulatory activities. CEPA would like to understand the role of the Board of Directors, how the Board would interact with the day to day management of the organization and the Hearing Commissioners, and how often it would meet. Having a separate office for the Board of Directors in Ottawa, or anywhere else, does not make operational sense, especially if the Board’s role requires it to interface regularly with staff and Hearing Commissioners. Ironically, it also could lead to a perception that the Board does not operate independently and at arm’s length from the government.

The Prime Minister suggested that he understood this when he said “We recognize that for Canadians to have confidence in an important regulator like the National Energy Board, people have to know that the level of expertise on that board is top notch. Of course the level of expertise and energy is concentrated here in Alberta”. Premier Rachel Notley perhaps said it best when she flatly asserted that moving the NEB made no sense and would be similar to relocating the Atlantic Canada Opportunities Agency to Winnipeg. In response to the Panel recommendation she said “Let me just say that moving the NEB to Eastern Canada is just dumb. We are absolutely opposed to that.”¹⁵ For all of these reasons, we do not support moving the NEB/CETC Board of Directors Headquarters or key staff to Ottawa.

- **Fisheries Act and Navigation Protection Act permitting authority:** The Panel suggested that “in order to ensure clear accountability for permitting authority” the CETC should not exercise any permitting authority for permits under the *Navigation Protection Act* and the *Fisheries Act*.¹⁶ CEPA does not support this recommendation. It is counter to a one project, one review approach and no explanation is offered as to why the NEB/CETC should not continue to perform these functions. Changes to legislation and policy made in 2012 gave the NEB responsibility to assess fisheries and navigation-related impacts of pipeline watercourse crossings. These changes significantly reduced overlapping authority and enabled an integrated decision that supported the lifecycle regulation of projects. It also reduced the consultation burden on the Crown and Indigenous groups.
- **Timelines:** The Panel recommendations for timelines were framed within the context of a two-phase review. While CEPA supports this concept, the proposed timelines are not acceptable.

¹⁵ Chris Varcoe, “Moving NEB out of Calgary slammed as ‘dumb,’ ‘insulting,’ and ‘absurd’ idea”, Calgary Herald (17 May 2017) online: Calgary Herald <http://www.calgaryherald.com>.

¹⁶ Panel Report, supra note 5 page 60.

More specifically, it is not reasonable to require two years for the NEB/CETC to complete its technical review. Given that pipeline proponents already undertake extensive consultations long in advance of submitting a regulatory application and use well-established and proven practices to construct pipelines, the proposed timelines can be shortened. This is especially the case for smaller scale projects.

- **Standing:** The Panel recommended that the standing test be repealed and that every interested party should have a reasonable opportunity to participate commensurate with their contribution to the process. The Panel says, “we see a future where interested parties can make their own determinations about the extent to which they would like to participate and the responsibilities they bear in doing so.” CEPA supports ways to enhance the public’s ability to participate. However, more formal opportunities for participation such as Intervenor status should be reserved for those that are either directly affected by a proposed project or have relevant expertise. Otherwise, all parties, whether they have formal standing or not should have opportunities to be involved through flexible, scalable and appropriate processes. For instance, the Panel recommended that anyone should be able to file a Letter of Comment. CEPA agrees with this.

Conclusion

The pipeline industry is a critical component of the overall value chain for energy resource development in Canada by providing the link between resource supplies and markets. It is also a major source of investment capital in Canada because there is a significant backlog of potential projects. The pipeline industry is already one of the most heavily regulated sectors in Canada with a full lifecycle regulatory model governing pipelines from inception through retirement and everything in between.

The pipeline sector is extremely capital intensive. Pipeline proponents spend billions of dollars per year on both construction and operations. Even small changes to the regulatory model have very significant repercussions for pipeline operators and investors. Radical changes take years to implement and create considerable uncertainty and risk during the transition. Risk and uncertainty will undermine the investment climate for energy infrastructure in Canada and make our country less competitive. Getting Canada’s energy products to markets will become more challenging and less likely.

CEPA has carefully reviewed the NEB Modernization Report in full and schedule “A” is attached to provide our preliminary views on each of the Panel’s recommendations. The NEB Modernization Report has some key elements that could, if implemented thoughtfully and in a balanced manner, contribute to lowering the uncertainty and risk for major energy infrastructure projects. The opposite is also true. Forgetting that project proponents are a vital stakeholder in the regulatory process, without whom no process would be required, and attempting to rebalance interests without consideration of the impact on proponents, will result in an extremely chilled investment climate.

The pipeline industry is committed to continuously improving pipeline safety, environmental protection and regulations that enhance performance. CEPA and its members look forward to working with the government to find the best balance of interests to ensure Canadian energy products get to market while maintaining the highest level of environmental protection and ensuring inclusive and effective regulatory processes.

SCHEDULE "A" to CEPA Response to NEB Modernization Expert Panel Report

Comments on each Panel Recommendation

AREA REFORM	RECOMMENDATION	CEPA COMMENTS
Mandate	<p>1.1.1 The Department of Natural Resources, in partnership with Environment and Climate Change Canada (and any other relevant players within the federal house), provinces and territories, in Consultation with Indigenous peoples, and with broad stakeholder engagement, publish and update on a reasonable schedule a formal Canadian energy strategy which plots a course for the future of energy in Canada, balancing environmental, social, and economic objectives.</p>	<p>CEPA supports this – it is a key component to removing broader public policy issues from project specific reviews.</p> <p>The Department of Natural Resources is in the best position to address energy policy issues and the MPMO is best placed to coordinate this across government departments. The existing framework within the Council of the Federation is an appropriate forum to make progress across multiple jurisdictions.</p> <p>However, progress on a Canadian energy strategy has been extremely slow over the last 10 years. We would like to see the federal government demonstrate clear commitment to advancing this in a reasonable timeframe. Projects cannot be delayed in the meantime.</p>
	<p>1.2.1 That the federal government should perform a high level of inter-governmental coordination on all energy-related matters in order to realize its vision of the future of energy in Canada, fully respecting the roles of provincial, territorial, and Indigenous governments. Furthermore, we recommend that this approach include, to the greatest extent possible, the engagement of other stakeholders, to create a united front for making Canada’s energy vision, and related emission reductions, a reality.</p>	<p>CEPA generally supports this but given the lack of progress on creating a Canadian energy strategy, we are skeptical that the degree of inter-governmental coordination the Panel envisions can be achieved. It is also important to recognize the limitations of federal jurisdiction with respect to natural resources, energy and energy infrastructure.</p>
	<p>1.3.1 The government establish an independent Canadian Energy Information Agency, reporting to the Minister of Natural Resources, whose mandate would include collection and dissemination of energy data, as well as the production of an annual public report on Canada’s energy system, and quantitative analysis of the alignment with Canadian energy strategy goals.</p>	<p>CEPA supports this. (See page 13 of CEPA NEB Modernization Submission) CEPA suggested that the NEB’s energy information function is not a core role of an independent, quasi-judicial regulator. Energy information can be managed by respective government departments or could be placed with an outside agency such as the US Energy Information Administration, which collects this kind of data in the United States.</p> <p>The new agency proposed, however, should not result in additional cost to industry or increased regulatory burden.</p>

AREA REFORM	RECOMMENDATION	CEPA COMMENTS
	<p>1.4.1 The enabling legislation of the CETC be amended to provide for the Minister of Natural Resources – based on advice from a whole-of-government perspective – to make a public recommendation to the Governor in Council of whether a preliminary major project proposal is in the national interest, on the basis of Consultation with Indigenous peoples (supported by a new Indigenous Major Projects Office described in Theme 2, below), strategic-level assessment, and engagement with stakeholders. The Governor in Council would have authority for the final national interest determination</p>	<p>CEPA supports this. (See page 6-8 of CEPA NEB Modernization Submission) CEPA agrees that major pipeline projects of national consequence should go through a process to determine alignment with national interest by the GIC <i>before</i> detailed project review or licensing decisions. This is generally aligned with the two-part review that CEPA proposed to resolve broader public policy issues that are beyond the scope of a single project. CEPA agrees that the MPMO or a similar whole of government approach would be best suited to coordinate a government determination of whether a project proposal is in line with the national interest.</p> <p>Implementing this new model, however, will require a careful consideration of a number of factors, including what projects would trigger a two-step review, what the scope of each part will be, a clear understanding of the process and timelines and a clear appreciation that the political decision /GIC is up front and there will not be a political override at the end of part two. Many details would need to be worked out in a way that ensures a coordinated, efficient process that provides greater certainty. Importantly, an understanding of Indigenous consultation and accommodation in both parts one and part two is needed. It is critical that these issues be addressed prior to legislation being tabled.</p> <p>CEPA is in a position to work with the government and other stakeholders to develop legislative and regulatory options for a successful two-part model.</p>
	<p>1.4.2 In addition, we recommend that a more complete definition of the national interest, inclusive of Indigenous Consultation, environmental, economic, and social factors, be enshrined in regulation and updated on a reasonable schedule to keep pace with societal change, and that enabling legislation of the regulator be amended to make mandatory the consideration of the national interest so defined</p>	<p>CEPA can notionally support this but would point out that the idea of public interest and national interest evolves as society’s priorities changes. As such, any attempt to define what is in the national interest or public interest cannot be prescriptive. A complete definition of national interest is simply not feasible and is probably better dealt with as part of a Canadian energy strategy.</p>
	<p>1.5.1 Enshrined in the CETC Act, a modernized National Energy Board, hereafter known as the Canadian Energy Transmission Commission (CETC) will have the mandate and authority for the licensing of transboundary pipeline and transmission line</p>	<p>CEPA supports this. (See page 3-8 of CEPA NEB Modernization submission) CEPA recommended that a modernized NEB must remain a quasi-judicial, independent, full life-cycle regulator, with responsibility for oversight of design and planning, the</p>

AREA REFORM	RECOMMENDATION	CEPA COMMENTS
	<p>projects, including the imposition of specific conditions on project proponents. Major projects must first be determined to align with the national interest by the Governor in Council, before any licensing hearing.</p>	<p>review process including environmental assessment, construction, operations, maintenance and abandonment. This recommendation is consistent with CEPA recommendations.</p>
	<p>1.5.2 We further recommend for major and significant projects that the CETC exercise this authority through Joint Hearing Panels which integrate CEA Agency-led project-level Environmental Assessments and the CETC decision making process to achieve the dual goals of delivering a single regulatory review process (not parallel technical and environmental review processes), and assuring that all federally mandated Environmental Assessments are conducted in a consistent, high quality manner (under the authority of the CEA Agency). Five person Joint Hearing Panels – with at least one Indigenous member – would be comprised of two Commissioners from the CETC, two from the CEA Agency, and a final independent Commissioner.</p>	<p>CEPA remains of the view that integrating the EA within the NEB/CETC process with the NEB as the single decision-maker remains the best approach based on the unique technical, operational and environmental considerations of pipelines. This supports a one project, one assessment, and one decision framework.</p> <p>The recommendation for a Joint hearing Panel for the first two tiers (projects of national consequence and projects of significance) needs to be better understood. First, the CEAA Report recommendations on the conduct of an EA / IA do not square with the type of Joint Panel process or the two year timeline. CEPA has significant concerns with the IA model proposed in the CEAA Report and cannot agree with a Joint Hearing Panel that incorporates the unworkable IA processes contained in CEAA Report. Second, CEPA is concerned that the Joint Hearing Panel will lead to dual tracks of decision-making. Third, a clear definition for “projects of national consequence” versus “projects of significance” is needed.</p> <p>CEPA also questions the need to have 5 person hearing panels. This does not seem efficient. There should be discretion to appoint 3 or 5 person panels, depending on the size and scale of a project. CEPA believes that ensuring one panel member is Indigenous is important. However, it should not be prescriptive and discretion should depend on the size and scale of a project and its likelihood of impacting Indigenous rights and title.</p>
	<p>1.6.1 The Canadian Energy Transmission Commission’s enabling legislation should have provisions to review and strengthen its capacity with respect to transmission lines, with a particular focus on building capacity for engagement with Provinces (under whose authority new generation projects will take place), and the integration of new forms of (renewable) energy into the national grid.</p>	<p>CEPA has no comment – this recommendation is related to electrical transmission.</p>

AREA REFORM	RECOMMENDATION	CEPA COMMENTS
<p>Relationship with Indigenous Peoples</p>	<p>2.1.1 Indigenous peoples should have a nation-to-nation role in determining Canada’s national energy strategy, and we look to the Minister of Natural Resources to define how this commitment can be met within the context of the decisions and recommendations of the Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples.</p>	<p>CEPA supports advancing reconciliation and developing a renewed Nation-to-Nation relationship (See page 25 of CEPA’s NEB Modernization Submission). CEPA agrees that the Working Group of Ministers could be an appropriate body to provide guidance on how to address Canada’s support for UNDRIP and FPIC. However, CEPA believes that incorporating the principles of UNDRIP (in particular FPIC) into decision making processes should be done in a way that is consistent with our constitutional framework and Supreme Court of Canada jurisprudence on Indigenous and treaty rights. CEPA’s submission emphasized that FPIC should be interpreted as the objective of consultation when the duty to consult is triggered but not an absolute requirement or veto. The FPIC requirement does not provide Indigenous peoples with a veto, but rather, establishes the need to frame consultation processes in order to make every effort to build consensus (see Page 32 of CEPA NEB Modernization Submission).</p> <p>At the same time, any approach to incorporating FPIC principles for linear projects needs to be flexible to account for the fact that the nature and magnitude of impacts can vary significantly within and between projects. For example, certain projects may have very limited new impacts on Indigenous groups because they are on existing rights of way or private land where there are no Indigenous rights exercised or where rights have been ceded. Moreover, affected Indigenous groups are often divided in their support or opposition of a given pipeline. This context and nuance matters and needs to be considered in any incorporation of FPIC principles in decision-making.</p>
	<p>2.2.1 The government fund an Indigenous Major Projects Office, under the governance of Indigenous peoples (determined as they see fit). Responsibilities of this Office would include but not limited to defining clear processes, guidelines, and accountabilities for formal Consultation by the government on energy transmission infrastructure, regulatory processes and assessing compliance with those guidelines. In addition, the Office would define and disseminate best practices, including coordinating and/or supporting Environmental Assessments and regulatory reviews, to help interested Indigenous communities enhance the quality of their participation in formal Consultation</p>	<p>While CEPA supports the aggregation of capacity resources where appropriate, we do not support the establishment of an IMPO that would define consultation processes, issues guidelines for consultation, and assess compliance with those guidelines. This would further confuse roles and responsibilities in consultation and create unnecessary duplication and uncertainty. The Crown is and should remain responsible for assessing whether consultation is adequate. The Crown is best placed to balance the interests of all affected parties in developing reasonable consultation processes and guidelines and assessing the adequacy of consultation. There must be a single decision-maker responsible for</p>

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	and engagement processes.	<p>determining whether consultation is adequate. The determination of whether the duty to consult has been met is a legal question, not one that can be determined by a committee or entity with unclear governance and expertise. (See page 30 of CEPA’s NEB Modernization submission).</p> <p>If the role of the IMPO was instead to better integrate project specific concerns, support the fulfillment of the Crown’s duty to consult with the NEB/CETC regulatory review, and facilitate Crown action on issues that go beyond individual projects, this would be a welcome improvement. However, the scope, roles and responsibilities of this office would need to be better understood. If implemented, it may be more efficient to have this office integrated with the MPMO rather than create a parallel office. The current MPMO regional offices currently handle many Indigenous matters very well. Creating yet another entity will in no way contribute to clarity or delivery of outcomes.</p> <p>Clarification of the role of the IMPO must be finalized before any changes are implemented.</p>
	2.2.2 The CETC Act should empower the CETC to engage in discussions with Indigenous communities to enhance and facilitate the meaningful participation of Indigenous communities in the strategic and licensing phases of projects	CEPA supports enhanced Indigenous engagement and collaboration. Two positive examples are how the Alberta Energy Regulator holds traditional knowledge gatherings in the community and how the BC OGC approaches consultation.
	2.3.1 That the Minister of Natural Resources, working under the framework defined by the Ministerial Working Group, and in partnership with Indigenous peoples, define authorities for Crown consultation in the strategic phase of a project review, in the detailed assessment and regulatory decision making phase of a project review, and for the oversight of CETC operations on an ongoing basis. This must include clear guidance regarding who may or must be physically present on behalf of the Crown during Consultations, not just overall authorities.	<p>The duty to consult is a Crown duty but in practice governments can and do rely heavily on proponents and regulatory processes to fulfil consultation and accommodation requirements. CEPA noted that the role of the NEB in consultation is unclear, particularly where the NEB is the final decision-maker. (See Page 26 of CEPA’s NEB Modernization Submission).</p> <p>The Panel, in section 2.3.1, specifically recommended that the CETC, as the regulator, should not be the agent of the Crown for the purposes of consultation and that the MPMO is positioned to perform this role. This contradicts the proposals in the CEEA Panel report, which suggested that the new IAC, a quasi-judicial regulatory authority, be charged with Crown consultation duties. The appropriate authorities for consultation at each stage of review need to be clarified, particularly where the GIC is not the final decision-</p>

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		<p>maker. Much needed guidance is expected in two Supreme Court of Canada decisions that are imminent (<i>Hamlet of Clyde River</i> and <i>Chippewas of the Thames</i>).</p> <p>While it is not a formal recommendation, CEPA is concerned by the Panel’s statement on page 50 that “..consultation is the responsibility and duty of the Crown, and should not be delegated to or discharged by industry (though project proponents may be present during consultation as a resource, if desired by the Indigenous community in question”).</p> <p>The duty to consult is a Crown duty and greater involvement and guidance by the Crown is welcome. However, this does not mean that proponents should simply be bystanders in the project specific consultation. Proponents need to be actively involved as they are best placed to answer questions and put in place measures that avoid and minimize impacts. This dialogue can also support the development of relationships between proponents and Indigenous groups, which help advance reconciliation and set the foundation for a positive relationship throughout the life of the project.</p>
	<p>2.4.1 The CETC and the Minister of Natural Resources should move to produce guidelines for early engagement, that allow industry and Indigenous peoples to communicate more freely and without prejudice to outstanding claims of right, or subsequent project reviews. This would include pre-filing information sessions, town halls with proponents under the oversight of the regulator, and more.</p>	<p>CEPA supports this.</p>
	<p>2.5.1 That the Crown retains flexibility in its processes, reflecting the principle that each Indigenous nation has an independent relationship with Canada. In addition, we encourage the government to do more to meet with Indigenous peoples on their own terms, and in their own places, to the greatest extent possible.</p>	<p>CEPA supports this.</p>
<p>Governance and Decision Making</p>	<p>3.1.1 Authority should be enshrined in legislation for the Governor in Council to make the determination of whether or not a major project is in the national interest, based on a public report and recommendation from the Minister of Natural Resources. Furthermore this phase, from preliminary</p>	<p>See comments in recommendation 1.4.1 above.</p> <p>CEPA supports this, but the overall timeline for this phase is too long. Pipeline companies need to decide whether to invest in subsequent environmental studies and detailed engineering for the second phase. In</p>

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	<p>project filing to Governor in Council Decision, should typically happen within 12 months, with three months for GIC decision. The purpose of this phase of the process would be to determine whether a major project may proceed to a detailed project review.</p>	<p>general, the proposed timelines do not take into account the extensive consultations that pipeline proponents already undertake long in advance of submitting a regulatory application. What the Panel considers a 3 year process is actually more like 5 years or more when the applicant's work is taken into account.</p>
	<p>3.2.1 The enabling legislation of the Canadian Energy Transmission Commission should establish it as an independent, quasi-judicial body, with full authority to approve or deny major projects - based on technical criteria, detailed environmental assessment and project-specific conditions including social, economic, lands, and municipal interests - that have passed a Governor in Council review. We further recommend that detailed project reviews of major projects typically be concluded within 2 years from time of filing, to allow adequate time for meaningful Consultation and engagement.</p>	<p>See comments in recommendation 1.5.1 above. A modernized NEB should be an independent, quasi-judicial body with responsibility for oversight of design and planning, the review process including environmental assessment, construction, operations, maintenance and abandonment.</p> <p>However, the 2-year timeline for detailed project review is too long. Given that pipeline proponents already undertake extensive consultations long in advance of submitting a regulatory application and use well-established and proven practices to construct pipelines, the proposed timelines can be shortened. This is especially the case for smaller projects.</p>
	<p>3.2.2 We also recommend that Section 58(1) of the NEB Act be repealed, and that the Act be amended to provide authority, mechanisms, and specific criteria for three classes of review: 1. Projects of national consequence, which require review by the Governor in Council; 2. Projects of significance which require a full Joint Panel review (but not review by Cabinet); and 3. Smaller activities which require review and approval, but not a full Joint Panel review. Such criteria should relate to a project's risk and impact, not an arbitrary distance criterion.</p>	<p>CEPA can support a tiered approach, but details and definitions of the three classes of review need to be understood. Our support of a two-part review for projects of national consequence is dependent on how those projects are defined. Likewise, better details are needed on how low consequence activities, including operations and maintenance work would be handled. Section 58(1) currently ensures clear and meaningful delineations based on length of the pipeline. Clarity and certainty is essential in any new legislation and these issues must be addressed prior to legislation being implemented.</p>
	<p>3.2.3 Enshrined in the CETC Act, moreover we recommend that processes and authorities for export/import permits and electric transmission line reviews be harmonized, to the greatest extent possible, with those pertaining to pipelines, to afford all review processes the same level of transparency and integrity</p>	<p>CEPA agrees that there should be harmonization between Federal and Provincial policies and a one window approach for industry and stakeholders.</p>
	<p>3.2.4 Enshrined in the CETC Act, in order to ensure clear accountability for permitting authority, the CETC should not exercise any permitting authority delegated to it by the federal entities of Fisheries and Transport Canada (e.g. permitting under the Fisheries</p>	<p>CEPA does not support this. (see CEPA NEB Modernization submission, page 5) It is counter to a one project, one review approach and no explanation is offered as to why the CETC should not continue to perform these functions. Changes to legislation and</p>

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	or Navigation Protection acts) and any existing agreement to exercise such authorities on their behalf should be abrogated	policy made in 2012 gave the NEB responsibility to assess fisheries and navigation-related impacts of pipeline watercourse crossings. These changes significantly reduced overlapping authority and enabled an integrated decision that supported the lifecycle regulation of projects.
	3.2.5 Lastly, we recommend that the government enshrine in legislation two core principles: that no regulated activity shall proceed without proper approval, and that all regulated activities undergo environmental assessment commensurate with the scale and risk of the proposed activity.	<p>CEPA agrees with this, though clarification of some of the terms is needed. We also note that there is already a prohibition on constructing or operating a pipeline without authority by the NEB. This is in the current legislation.</p> <p>CEPA also agrees that EA should be commensurate with scale and risk. The experience of EA under CEAA 1992 was that thousands of minor projects were being assessed, for no meaningful environmental gain. This was not efficient. While CEPA supports a tiered approach to EA, we remain concerned with what EA might look like if some of the processes proposed for EA/IA in the CEAA Panel Report are implemented. Many of the processes proposed for conduct of an EA/IA are impractical, unworkable, and introduce uncertainty. We also need to clarify what “commensurate with the scale and risk” means.</p>
	3.3.1 The enabling legislation of the Canadian Energy Transmission Commission should require that the CETC be governed by a board of directors whose sole responsibility is strategy and oversight of the Commission’s activities, while hearing panels and other regulatory decisions would be the purview of Hearing Commissioners responsible for executing Commission decision-making responsibilities.	CEPA agrees with this (see CEPA NEB Modernization Submission, page 11).
	3.3.2 We further recommend that the Commission be managed by a Chief Executive Officer who is neither a board member nor a Hearing Commissioner, nor the Chair of the Board (with relevant amendments to the current NEB Act as required). Also, the CETC Act should ensure that the Chair does not have the discretion to undertake measures to ensure that the time limit of a project review is met, such as removal of commissioners dealing with an application.	<p>CEPA supports the recommendations regarding the mandate of the CEO (see CEPA NEB Modernization Submission, page 11).</p> <p>However, it is essential to ensure accountability for meeting timelines. Past experience (i.e. the Joint Review Panel Mackenzie Gas Project) has shown that timelines can be ignored. There must be tools available to the CEO and/or Board of Directors to ensure that Hearing Commissioners act within the statutory framework.</p>

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	<p>3.3.3 Finally, we recommend that the government include a plain language report on and explanation of the CETC cost recovery funding model in CETC annual reports, and that the funding model be included in the list of issues for possible consideration by Regional Multi-Stakeholder Committees.</p>	<p>CEPA agrees that it would be helpful for industry stakeholders and the public to better understand the funding model of the NEB/CETC. However, including consideration of a cost recovery model in the list of issues for a multi-stakeholder committee to consider would not be appropriate. The current cost recovery model is based on industry funding. This is appropriate when the regulator is providing a service for industry. Many of the Panel recommendations will set up new committees and activities that are designed to serve the public. These activities will dramatically increase costs. Those costs should not be borne by industry.</p>
	<p>3.4.1 The CEO of the CETC (or NEB in the immediate term) should be responsible for establishing a competency matrix for hearing panel members, which represents a broad array of skills, experience, and backgrounds, and for ensuring that each hearing panel contains a cross-section of those competencies. Because Indigenous knowledge is essential to inform sound decision-making, and to enable real nation-to-nation relationships we further recommend that every joint hearing panel consist of at least one Indigenous member with extensive experience with Indigenous issues and worldview. Further, the competency matrix should be subject to Consultation and engagement, made public, and updated on a regular basis.</p>	<p>CEPA agrees with the concept of a competency matrix. A competency matrix, similar to what is created for Board governance, needs to be practically applied and flexible so that the right skills are available and people can be found to fill the roles.</p> <p>Ensuring that one panel member is Indigenous is important. However, it should not be prescriptive and discretion should depend on the size and scale of a project and its likelihood of impacting Indigenous rights and title.</p>
	<p>3.4.2 We further recommend that the NEB Act be amended to remove the requirement that Board members (Hearing Commissioners in our modernized vision) live in the area of the organization’s headquarters, and that the future office of the Board of Directors be based in Ottawa.</p>	<p>CEPA supports the first part of this recommendation but disagrees with the second. (see CEPA NEB Modernization Submission, page 11).</p> <p>Hearing commissioners should not have to be located in the same geographic areas as the organization’s headquarters. They can travel to attend hearings.</p> <p>Having a separate office for the Board of Directors in Ottawa, or anywhere else, does not make operational sense, especially if the Board’s role requires it to interface regularly with staff and Hearing Commissioners. It is appropriate for the Board of Directors headquarters to be geographically close to the industry that it regulates. The expertise is in Calgary.</p>

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	3.4.3 Enshrined in the CETC Act, we recommend that the CETC affirm the current NEB conflict of interest rules, including industry cooling and post-employment provisions, to reduce the risk of real or apparent conflict of interest. In addition, the CETC conflict of interest policy should provide for the revocation of a Director or Hearing Commissioner appointment in the event of serious real or perceived conflict of interest that is further bolstered by guidelines or regulations that can be updated periodically.	CEPA agrees with conflict of interest rules for the NEB/CETC for Hearing commissioners. This would have to be extended to all of the NEB/CETC advisory committees and bodies proposed by the Panel, including Indigenous, community, stakeholder, industry, etc.
	3.4.4 Finally, we recommend the establishment of an Elders External Advisory Council, in Consultation with Indigenous peoples, charged with advising the Board, CEO, and Hearing Commissioners on Indigenous issues, as well as reviewing CETC practices, and helping to ensure high quality inclusion and interpretation of traditional knowledge.	CEPA could support an Elders External Advisory Council. Inclusion of an EEAC is respectful of the role of Elders in community decision making and mirrors the same decision making structure in many Indigenous communities. However, details regarding its mandate and role need to be understood prior to formal establishment of the Council. We would not support a role for this advisory council in project reviews. This council could provide strategic advice to the Board.
Public Participation	4.1.1 Standing tests be repealed as a criterion for input into project hearings and operational oversight, and the CETC Act should be adapted to allow for a wider array of input (from simple letters to the provision and testing of evidence).	CEPA disagrees with this. (see CEPA NEB Modernization submission, page 34). Standing requirements for formal participation opportunities such as intervenor status are necessary and consistent with other tribunals' standing tests and allow for those who are directly affected or have relevant expertise to participate in a meaningful way. Allowing everyone to formally participate in the process would impact the ability of directly affected persons to meaningfully participate.
	4.1.2 Furthermore, it is recommended that the CETC Act provide a provision for all Canadians be permitted to submit a Letter of Comment to the CETC for consideration during its deliberations.	CEPA Agrees that anyone should be able to file a Letter of Comment. (see CEPA NEB Modernization Submission, page34).
	4.2.1 The government should amend enabling legislation of the CETC to empower the regulator and demand that it performs its quasi-judicial role to a high standard, but also that its processes are designed and implemented in such a way as to maximize the inclusion of all parties. The regulator should examine and reform its processes to achieve a higher degree of engagement and flexibility, toward the outcome that the public feel welcome and to enable the participation of interested parties who may not be experts in legal process.	CEPA agrees with this. (see CEPA NEB Modernization Submission, page 34-35). Ways to enhance the public's ability to participate should be explored. However, this should be done without compromising the fundamental principles of natural justice, procedural fairness, and effective and efficient processes. An inclusive approach to public involvement that allows for timely decisions can be accomplished where scalable and flexible levels of involvement, including written submissions, expert witnesses, oral statements and letters of comment are accommodated.

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	<p>4.2.2 In addition, tests of standing should be abolished, and every interested party should have a reasonable opportunity to participate <i>commensurate with their contribution to the process</i>. Finally, Letters of Comment from any party should be permitted without qualification.</p>	<p>See comments in 4.1.1 and 4.1.2 above.</p>
	<p>4.3.1 Enshrine the enabling legislation of the CETC a Public Intervenor Office, based on successful models from other jurisdictions, to represent the interests and views of parties who wish to use the service, and to coordinate scientific and technical studies to the extent possible.</p>	<p>CEPA disagrees with this. A separate office, with associated additional cost, is not needed.</p> <p>A PIO could be beneficial if it helped to streamline interventions (ie reduce duplication of evidence, etc.) However, better processes within the NEB/CETC to assist public participation can facilitate the same result and outcome as setting up a new office.</p>
	<p>4.4.1 CETC legislation establish Regional Multi-Stakeholder Committees, open to all interested parties, with a mandate to review all aspects of the regulatory cycle and operational system (for example, issues like: emergent environmental risks, monitoring performance, socio-economic impacts of regulated activities, and more).</p>	<p>CEPA is not supportive of the type of Regional Multi-Stakeholder committees proposed by the Panel. On the surface, the concept might sound appealing. However, a lot of details need to be understood. Who pays for these committees? Are they volunteers? Who sits on them? Everyone? Who selects them? Will they be bound by conflict of interest rules? How are they coordinated? What is their role? What is their magnitude? What is their expertise, especially relating to engineering and operational issues? Is the role advisory only or project specific? What authority would they have? Their authority could not be parallel to or a duplication of the regulator's.</p> <p>It is difficult not to foresee that this type of committee would degenerate into a forum to host policy debates that are well beyond the project.</p> <p>Through current processes undertaken by pipeline companies such as stakeholder engagement, community events, open houses, and public posting of emergency response plans, the public, first responders and other interested parties already have the opportunity to provide comments and voice concerns. The RMSC would be a duplication of engagement processes that already exist.</p> <p>Increased outreach by the NEB/CETC is desirable. However, standing committees of stakeholders would not be the most efficient means of engagement.</p>

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	4.5.1 The government continue to reform its online presence, driven by the priorities of its users, not the regulator. We further recommend the creation of a visible and accessible online public outreach office charged with engaging citizens and helping them to navigate the many processes and documents that can represent a barrier for participation in the regulatory system.	CEPA supports this concept. However, a separate office is not needed. Improvements and better communications tools within the existing NEB/CETC could achieve the same desired outcome.
Keeping the Land Pure	5.1.1 That the CETC regulate and clearly communicate its standards and approach to ensuring compliance with standards and expectations for management systems, and water protection specifically, in a way that can be understood by non-specialists, and that it should engage its (proposed by us) Regional Multi-Stakeholder Committees to identify specific elements for review and revision, as appropriate.	CEPA supports this (see CEPA NEB Modernization Submission, page 23) subject to comments in 4.4.1 regarding the Regional Multi-Stakeholder Committees. CEPA recommended increasing public education and awareness by showcasing the current suite of compliance and enforcement tools available to the NEB. Better communication is something that CEPA supports.
	5.1.2 We further recommend that the CETC explain in plain language how rules for liability work, how the relative monetary amounts are calculated, and consider a public review of the surety bond amount to ensure that it adequately addresses risk as intended.	CEPA supports this. (see CEPA NEB Modernization Submission, page 21). The <i>Pipeline Safety Act</i> , which came into force on June 16, 2015 further strengthened Canada's pipeline safety regime by modernizing the NEB's tools for prevention, emergency preparedness and response, liability and compensation. The rules are there; better communication by both the government and the NEB/CETC regarding the world class pipeline safety standards is something that CEPA supports.
	5.2.1 The government immediately improve transparency of monitoring information, incident reports, and follow-up, including the provision of better online tools to help all citizens interact with this information.	CEPA supports this and notes that the NEB has already taken steps to achieve this.
	5.2.2 That the government enter into formal agreements with Indigenous nations who wish to participate, in order to deliver local Indigenous energy infrastructure monitoring programs which are considered as a vital input to existing monitoring tools and systems.	<p>CEPA does not support this and has concerns with the use of monitoring committees (see CEPA NEB Modernization Submission, page 24). If monitoring committees are established, they need to be well defined, non-political and must ensure that monitoring activities are not put at risk. They must not be oversight committees – that is the role of the regulator.</p> <p>While project specific monitoring committees could offer a limited but potentially important opportunity to enhance participation, there must be input from the affected proponent, consideration of the arrangements that may already be in place between the proponent</p>

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		and Indigenous groups and clearly defined roles and responsibilities. Monitoring committees cannot have parallel processes or regulatory roles. Their powers cannot overlap with the NEB/CETC.
	5.2.3 We further recommend that Regional Multi-Stakeholder Committees review emergency preparedness plans with citizens, first responders, and other groups, to ensure their completeness, and to recommend any gaps for further action to be addressed by the CETC.	See comments in 4.4.1 above.
	5.3.1 That the CETC publish regular reports – written in plain language, not jargon, without sacrificing accuracy – on incidents and compliance actions, that will allow any interested party to know what happened, why, and what was done in response.	CEPA agrees with this but notes that the NEB has already taken steps in to publish this information.
	5.4.1 That the CETC Act would enable the creation of Regional Multi-Stakeholder Committees. The intention in operation is that these Committees be formally integrated into the CETC’s management and continuous improvement systems, allowing all participating parties to assess aspects of the CETC’s practices and outcomes, and make recommendations for improvements.	See comments in 4.4.1 and 5.2.3 above.
Respect for Landowners	6.1.1 The CETC Act should establish a Landowners Ombudsman to review and make recommendations on improving relationships with landowners, provide advice and best practices on how to navigate processes, enable better mediation, and potentially administer a fund so that landowners can access relevant legal advice.	A Landowners Ombudsmen could be an interesting idea, but details are needed to better understand the role, cost and functioning of the Ombudsmen. Is this something that can be done within the existing NEB/CETC structure?
	6.1.2 We further recommend that CETC Hearing Commissioners take on the alternative dispute resolution, with support from alternative dispute resolution staff as appropriate, and adjudication functions, and reform the current process to streamline it significantly, and make public the results of adjudication decisions.	If Hearing Commissioners are going to take on alternative dispute resolution, the AER has a model that can be referred to.
	6.2.1 That the CETC work with the provinces and territories to enact more rigorous standards for land agents, up to and possibly including a formal certification program, and that it conduct more regular oversight of this function. Such standards should include strict protocols for first contacts with landowners, should	CEPA member companies support this concept, but note that pipeline companies have already undertaken considerable work in this area and member companies have collaborated to share best practices. This includes developing a Land Agent Code of Conduct that sets out common principles, expectations and values that land

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	require that industry fully explain expected impacts on the land and how the proposed agreement works, and should enact a mandatory cooling off period between first contact and signing, to ensure full consideration of the agreement.	agents must meet. In addition, in order to ensure that land agents are familiar with the pipeline industry and able to present information to landowners in a consistent and accurate manner, CEPA member companies developed an Industry Orientation Module to provide additional training to land agents.
	6.2.2 We recommend that the CETC establish clear protocols for communication to ensure that landowners are adequately informed of operators exercising rights of entry, in non-emergency circumstances. This would include resolving issues around right of entry in cases of disputes that have not yet been settled.	See comments in 6.2.1.
	6.2.3 We further recommend a review of compensation practices and outcomes, resulting in a public report on the matter, so as to better understand and deal with compensation issues both large and small.	CEPA disagrees with this. This is a private matter between the company and the landowner. A public report may result in difficulties in pipeline companies acquiring land. It would tend to raise the bar all over, when there are often valid reasons for differing compensation arrangements.