

## Public Interest Advocacy Centre



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Notes for an oral Submission to the NEB Modernization Expert Panel

Public Participation at the NEB – A View from the Sidelines

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### *Introduction*

1. The Public Interest Advocacy Centre (PIAC) is a national, non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. We have been deeply involved with energy regulation from a consumer perspective since the early 1980s.
2. I am therefore pleased to share PIAC's thoughts on modernization of the National Energy Board. My comments today will focus exclusively on the issue of public interest advocacy and representation before the NEB.
3. Under the heading "Scope of Review" under your Terms of Reference for this study it states: "Specifically, these efforts will aim to position the NEB as a modern, efficient, and effective energy regulator and regain public trust."
4. This is a laudable goal and it is the correct goal for a tribunal that is specifically mandated to consider the public interest.

## *Public Trust Comes from Trusting the Public*

5. The *National Energy Board Act* was recently modified to reduce public participation in its process. The 2012 amendments reduced intervenor status to those persons directly affected by a particular proceeding and provided for interested experts to become involved only if the NEB permitted.
6. Not uncoincidentally, public trust in the NEB has since eroded.
7. The Canadian Radio-television and Telecommunications Commission (CRTC) has had since the 1980s, as the NEB used to have, regular public interest intervenors such as PIAC. The CRTC *Rules of Practice and Procedure* allow for public interest intervenors to claim reasonable costs of participating fully in CRTC proceedings, including the hiring of lawyers at close to market rates.
8. Yet even so, given the increasing importance of communications to Canadians, the CRTC found about 5 years ago that it was very poorly regarded by the public. The new chairman, Jean-Pierre Blais, chose the course of increasing public participation in CRTC hearings by taking email comments, opening discussion boards, using social media and generally facilitating access to the CRTC. The CRTC now has much higher consumer “ratings” but more importantly, the CRTC’s decision-making is more complete and defensible and it has navigated very difficult policy questions and had its decisions upheld consistently by Cabinet and the courts.
9. Lest you think that that is all well and good for communications but not energy, this panel should also know about PIAC’s regular appearances before the Ontario Energy Board on behalf of our clients the Vulnerable Energy Consumers Coalition. The OEB has even more generous public interest intervenor funding and even higher public participation at times than the CRTC, even in very technical rate-setting hearings.
10. British Columbia’s Utilities Commission also attracts scores of intervenors in major regulatory proceedings and their contributions were lauded by the Chair/CEO in the BCUC’s Annual Report 2013-2014:

Likewise, Interveners brought forward high quality and consistent participation to Commission proceedings. Increased public participation was noted in a number of proceedings, and we hope to see continued growth in effective participation going forward as this certainly enriches the quality and efficacy of the review processes.
11. Having participated in these regulatory boards, representing PIAC and other consumer groups, I have seen firsthand the effect of letting in the public – of trusting the public – it increases the public’s trust in the regulator.

*NEB is Downloading Problems to the Provincial Regulatory Boards*

12. There is another effect of not allowing, nor adequately facilitating, general public interest interventions at the NEB: the NEB risks downloading problems to provincial energy regulatory bodies and other decision-makers.
13. Let me provide you with an example. It is old, but it is not to our knowledge resolved, and it affects the provinces. In 2001, TransCanada Pipelines had a sudden reduction in contract non-renewals and sought approval of rates that would have the shippers absorb 100% of their revenue shortfall. Shippers quite naturally rebelled and proposed these costs be shared. The NEB decided it could not create just and reasonable rates with the sharing model. The shippers (who were also provincial distributors) then turned around and sought rate increases in the Ontario Energy Board. In the end, Ontario consumers paid for much of these contract non-renewal charges, with no real say in the matter.
14. In our view, a public interest intervenor, in particular one like PIAC that knows the provincial regulatory regimes in detail, could make known the downstream effects of NEB tariff decisions and expand the NEB's consideration of the public interest in the system as a whole. We talk much of cooperative federalism; this is a chance to do something about it. However, such public interest intervenors will not, and cannot afford to, participate in the NEB without a costs regime that mirrors that of the major provincial energy boards.

*Conclusion*

15. PIAC thanks the Panel for the opportunity to comment on modernization of the National Energy Board and we wish you well with your work.

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