



The City of Saint John

**National Energy Board Modernization Expert Panel
NEB Modernization Engagement session
Saint John, New Brunswick
March 21, 2017**

Presentation by Mayor Don Darling, City of Saint John

Good morning, co-chairs and members of the NEB Modernization Expert Panel. My name is Don Darling. I have the honour of serving as the mayor of the City of Saint John, Canada's first incorporated city. It is a pleasure to appear before you today representing the City of Saint John.

C'est avec plaisir que je me présente aujourd'hui devant vous en qualité de représentant de la Ville de Saint-Jean. Je m'appelle Don Darling et j'ai l'honneur d'être le maire de la Ville de Saint-Jean, la première ville canadienne à être constituée en municipalité.

With me today is Chief Kevin Clifford, who is the chief of the Saint John Fire Department and also the Director of the Saint John Emergency Measures Organization (EMO). Chief Clifford will make his own statement, his being focused on keeping the people of Saint John safe when federally-regulated facilities are being constructed, operated or abandoned.

I extend to you and to your staff best wishes on behalf of Saint John Common Council and the City of Saint John with respect to the work you are doing in the very important area of effective energy infrastructure regulation. I would also like to thank you for holding one of your engagement sessions here in Saint John.

The people of Saint John are interested in your work at many levels. We already have NEB-regulated facilities within our city limits: the Saint John Lateral of the Maritimes & Northeast Pipeline, and the Brunswick Pipeline of Emera New Brunswick. We also have on the horizon the consideration of a major new pipeline, the Energy East Project. As a direct result of Energy East, the City of Saint John would be home to 13 kilometres of new oil pipeline with the capacity to handle in excess of 1 million barrels per day, a new 13.2 million barrel oil storage, and a new export marine terminal that would handle an estimated 281 crude carriers per year within Saint John Harbour and the Bay of Fundy. Needless to say, we have a significant vested interest in your work.



SAINT JOHN

P.O. Box 1971 Saint John, NB Canada E2L 4L1 | www.saintjohn.ca | C.P. 1971 Saint John, N.-B. Canada E2L 4L1



The City of Saint John

My main message for you today is that the current process has worked well for the City of Saint John. It can be continually improved but the fundamentals have worked well. The application for the Brunswick Pipeline gave rise to expressions of support and opposition from various people, all with legitimate interests. The NEB hearing allowed for a transparent, well-structured, well-paced, procedurally fair and peaceful debate on the pros and cons of the project. Following approval of the project, construction occurred in compliance with applicable laws and regulation, and certificate conditions. If there was any departure from compliance, the NEB process was there to make sure compliance occurred. The same can be said about compliance and enforcement during the operation.

In the same vein, there are members of our community and the general public that are in support of the Energy East Project, and there are others that are against it. There are also many citizens that have not made up their mind or have insufficient information to make a decision. It is our hope that the NEB regulatory process will be a place where all hearing participants can exchange information and objectively discuss and assess the project's benefits, risks, and overall impact. The City of Saint John is preparing for this hearing by examining the economic, social, and environmental factors relevant to Saint John as a community. We are integrating all of these factors in our analysis with the ultimate goal of determining the most appropriate course of action that the City of Saint John will recommend to the NEB Panel in its final argument. We believe our approach, at the community level, is the same as the NEB has used in past hearings when it considered the overall public interest of a project at the national level.

Now your role is to advise the federal government on how to modernize the NEB. I will now share with you our perspectives on that.

1. First and foremost, we strongly recommend that any NEB modernization retains an essential attribute of the NEB: its independence. We believe that there is a lot of value in the assessment of projects and the regulation of construction and operation of facilities outside of the political arena. There is a place for the political process: this occurs after the NEB has made its recommendations to the government on whether a project should be approved and if so under what terms and conditions. The independence the NEB has had since its creation in 1959 has been protected by the fact that, in its enabling legislation, the *National Energy Board Act*, the NEB is a quasi-judicial tribunal, master of its own procedure, upholding fundamental principles of natural justice, and taking decisions and actions that are underpinned by procedural fairness. Those attributes are very worthwhile and contribute, in our mind, to the NEB's credibility.



SAINT JOHN

P.O. Box 1971 Saint John, NB Canada E2L 4L1 | www.saintjohn.ca | C.P. 1971 Saint John, N.-B. Canada E2L 4L1



The City of Saint John

2. We also greatly value the fact that the NEB is a full life-cycle regulator. Through its Filing Manual, it specifies the public and Indigenous consultations that must occur even before a project is filed with the NEB. It is of course leading the hearing process, under its own legislation and the *Canadian Environmental Assessment Act*. When projects are approved and get built, it is actively involved through compliance and enforcement in the construction, operation and abandonment of the facilities it regulates. It has the powers to shut down construction, reduce operating pressures, or take any action it feels is required to keep people and communities safe and protect the environment.
3. On your website, you ask whether there are emerging areas for which the NEB's mandate should be expanded and, if so, what are they. The NEB's mandate is already very broad. However, we would ask you to consider adding under Part II of the NEB Act, where the NEB is required to keep under review and report publicly on a broad range of energy matters, a specific reference to Canada's reliance, present and future, on renewable energies. You could also include the NEB's monitoring of Canada's performance under Canadian laws and international treaties towards meeting its climate change commitments. While these topics are already covered by policy departments, and the NEB already issues occasional reports on renewable energy, a comprehensive and explicit mandate in the NEB's legislation to provide for the NEB's independent perspective on renewable energy and climate change would add something of value for Canadians.
4. My last recommendation is about section 52 of the NEB Act, where the NEB's mandate in reviewing pipeline applications is spelled out. Since its creation in 1959, the NEB has considered environmental effects of pipeline projects when assessing their merits. However, section 52 is silent on the environment. We understand that the NEB's practice has been to consider the environment under subsection 52(e), which stipulates that the NEB must have regard to "...any public interest that in the Board's opinion may be affected by the issuance of the certificate or the dismissal of the application." While the effect of such a change would be largely symbolic, since the NEB already does this, we recommend that the environment be explicitly listed on its own somewhere in section 52.

Chief Kevin Clifford will make his own recommendations about safety, environmental protection, and emergency prevention, preparedness and response. I have read his prepared statement and I agree with him on all of them.





The City of Saint John

As a final note, when you assess the need for NEB modernization and how to do that, I would invite you to reflect on the relevance, if any, of factors such as the popularity of the institution and public opinions about it. The NEB has been adjudicating very difficult, sometimes very divisive issues, in the last several decades. It has largely managed to stay above the fray of the political process, feeding recommendations into it as required under its legislation, but remaining independent from it. The credibility of the NEB in our mind comes from doing a good job, day in and day out, and being fair in its decisions. The NEB, as a quasi-judicial tribunal, like a Court, ought not to try to please everybody. Difficult decisions always make some people happy and some unhappy. Properly resourced and staffed, the NEB can retain and grow its credibility if you let it do its job in the interest of Canadians, helping the nation make very difficult choices in its journey towards sustainability.

Thank you for considering the City of Saint John's remarks.



SAINT JOHN

P.O. Box 1971 Saint John, NB Canada E2L 4L1 | www.saintjohn.ca | C.P. 1971 Saint John, N.-B. Canada E2L 4L1