National Energy Board Modernization -March 21, 2017

Good Morning members of the NEB modernization Panel

Welcome to Saint John New Brunswick

My Name is John Kellock and I am here representing only myself and my views that hopefully can be considered assistance in the modernization of the NEB and the process for approval of projects in pipelines and power lines that are the jurisdiction of the board. I only have about 30 years experience in dealing with landowners on NEB projects and others.

Canada is 150 years old this year, more than 7 generations, and some long time since confederation of all the Provinces. The new face of Canada will see more in terms of territorial distinct societies and nations within the boundaries of Canada in the future. Land claims and the rights of all stakeholders in this country is undergoing critical changes and the board will have to be prepared for more streamlined approaches to the many diversified interests it will be dealing with.

The Board has developed and coordinated appropriate responses, programs and policies, and found new answers in continually upgrading the way pipelines and power lines, crossing various provincial and territorial jurisdictions are approved. The guidance in terms of how projects are proposed, approved in terms of safety security and environmental protection, and how pipelines are constructed, has

guaranteed that these projects are done in accordance with the highest standards and protections of the public interest.

It seems now that the process has been hijacked, and many Canadians held hostage in favour of some groups and individuals, who are using the forum for gaining attention to a cause, as opposed to providing useful and positive influences as we progress, in to the 21st century.

According to the Act the Board can only hear objections from landowners and others as to LOCATION, TIMING, and Methods of Construction.

Having said that, some of the sections of act have been around a long time, particularly in the areas of most concern to landowners and stakeholders, and may be in need of new amendments or regulations. When there is to be 1500 conditions added to a Board order, it seems something has been missed.

When the first pipelines were constructed the landowners probably got $50.00 and lost a strip of topsoil. But they contributed their land to the project, and contributed in a big way to development and progress in Canada. These contributions by landowners over the years have continued, and considering that the landowner continues to pay real estate taxes on that land, it is 58 years later and still paying.

The landowners have been the eyes and ears of pipeline safety and security, and stewards of the land for all this time, and even as the importance of the land is to pipelines, the amount invested in the land component of this process is minute in comparison to the costs of projects overall.

Fast forward to today and the value of land has appreciated and so too, the commitment to the prosperity of Canadians has continued, as landowners understand that their rights are protected by the Board, and respected by the companies with the encouragement of the Board.

Some of these protections now need review and possibly amendment and regulation to encompass the new realities of today.

I'd like then to mention the few sections of the National energy Board Act that have been with us for some time and that could use a closer look in the modernization process.

Part 1-LAND ACQUISITION Routing the basis for all determinations in relation to environmental and socio-economic determinations. Pipeline Companies will in their own interest propose a route that has the least impact on landowners and the community, including avoiding watercourses, wetlands, built up and heavily populated areas, schools, graveyards, parks and reservations, to name a few. This suggests that the final route is the most defensible by the Company.

Landowners: The first notice of the project by the Company is made at the request of the Board to the landowners, by the Board encouraging public Open Houses to present the project to the general public. At the same time representatives of the company, usually hired by contracted land acquisition companies, will deliver the National Energy Board brochures and request permission to do preliminary survey and environmental , geotechnical and archeological studies. The landowners are assured by this permit that any damages as a result of this work will be paid for and that liability for the work remains solely with the company, backed up presumably by the Board.

2. Resulting from the environmental studies and surveys, and possibly with different contract representatives, a notice will be given to the directly affected landowners covered by the survey of the proposed pipeline alignment. This notice is referred to as a Section 87 Notice reflecting the section in the Act and is in an NEB approved format and having provisions required by the Board.

This notice must be served on the landowner in person or by substituted service as official notice of the project and the Company requirements and what compensation is offered for the land rights only, that may be paid in the future. The notice must be served before negotiations can begin. This notice cannot be refused or objected to, and gives notice that if the project is approved the land will be the location for that portion of the pipeline on the owner's land <u>whether he or she likes it or not</u>. If there is an objection to this notice, or resulting damages incurred, the Board has noted that the landowner can go to court. NEB has precipitated this situation, but has no policy for resolving a dispute, at this stage.

The owner must disclose this Notice to any prospective purchaser, of course, since it is binding on the property with **no termination date**.

Note that to this time all NEB information brochures and leaflets, supplied and delivered by the Company representatives, as is the case all through the acquisition process. A good reason to have trained and experienced land representatives, not just short term contracted delivery persons.

In light of the importance of land rights under the jurisdiction of the Board, the NEB should have its own land agents or representatives on site, particularly for construction, paid for by the Company to record and assess complaints and damages to resolve these issues immediately and track and report on incidents to the Board and the Company for resolution and damage payments as applicable. The Land Matters Group of the National Energy Board, over the last few years, has made some recommendations and produced some useful guidance for landowners,that is available on the Board web site.

At the same time the good public relations value of having responsible agents on site, renews the faith in the NEB and the Company in showing responsiveness and concern for the landowners and their rights. Having a presence other than in Calgary, for projects across the country would be good relations.

Negotiations can proceed with willing landowners immediately, with representatives presenting further documentation to the owner including the easement document or option for easement documents and in some cases confidentiality agreements. Keep in mind that the representatives do not have the authority to bind the Company by their words or actions, and cannot sign documents or agreements except as a witness to signatures.

It is worth noting that sometimes the confidentiality agreement must be signed before the compensation package as offered by the Company is presented to the owner, and in some cases it is also an agreement that the landowner on acceptance of the agreement, cannot object to the project at a later time or appear at a Hearing.

I have serious reservations about this practice and so hope the Board can add some clarity to the timing and contents of any agreement that seems to be at odds with the open and equitable rights of any person to attend a hearing, or for that matter oppose some policy or other influence that is yet to be determined by a Hearing. Hearings go on for months and the process can go on for years and a lot of things can change.

As to confidentiality, the owner cannot reveal the details of compensation to anyone, presumably his lawyer or accountant or financial planner or family, heirs and assigns. In rural areas the questions most often asked are:"will this affect my income supplement, or is this income or capital gain?" There is no definitive answer, for the immediate transaction or the future payments.

If a landowner agrees to the process, signs the documents, agrees to the confidentiality agreement, and agrees not to object (which the owner, by signing has evidenced that there is no objection), the easement is registered and payments due on signing will be paid by the company, reserving a portion of the compensation until determination of the final survey of the route as built.

This owner is obliged however to disclose the existence of the agreement to a prospective purchaser of the property or in a situation of heirs and assigns in terms of how much compensation is outstanding. This would appear to be in contravention of the confidentially agreement.

Due to the length of time between Hearings and pipeline approval (sometimes years), the landowner must provide disclosure notice that when sold, the property has yet to be dug up and a pipeline buried in the backyard, and what remains to be paid to the then new owner of the lands as well as actual damages that may occur.

If for any reason the application for the project is denied by the Board after the Hearings, these agreements will have to be torn up and voided; unfortunately there is no process for this defined by the Board.

3. In the unlikely event the owner does not sign, he is forfeiting the early signing bonus that is prevalent in agreements, and so unaware of the compensation package offered, and when the certificate is issued at the culmination of the hearing process, the owner will receive a Section 34 Notice as approved by the Board, determining the pipeline to be on his land. If he has objection to the location, timing or methods of construction, within a very short time frame he or she can apply to the board for a Detailed Route hearing.

IF the objection is to the 3 areas under jurisdiction of the Board of location, timing and method of construction, the Board can hear these objections. If the owner's objection is to compensation, of which the landowner still will not know the confidential details , he or she can apply to NRCAN for arbitration or Negotiation. There is a "friendly arbitration" process offered by the Board in the meantime.

If the objection is to timing, this is more of the purview of the environmental assessment and can relate to bird nesting season or other concerns as to requirements of winter construction on frozen

ground, or the timing of tree cutting, clearing in advance of summer construction, both of which are determined by the local of the project: (hard to object to the facts and the regulations).

If the objection is to method of construction, the NEB has indicated that the construction practices must be in accordance with the accepted methods of topsoil preservation, wet weather considerations, open ditch limits, fences tile drain exposure and trespass etc., and these are already accepted practice, and outlined in the environmental procedures. These are the items most often encountered during construction, and that cause most complaints by landowners. Some assurances, in writing should be made on each individual property, through the process of identifying landowner commitments.

If the objection is to location the Board has a process for Diversion, presumably to another person's land, and the process will have to be repeated.

4. When the Board issues the final determination of the route, and if negotiations have failed, a section 104 Notice will be applied for by the Company. When the Board is satisfied that the owner has been served the Notice Under section 104 of the Act with specified details as required under the Act, an immediate Right of Entry will be granted to

the Company, on lands that have not been agreed to by the owner, and the Company can begin construction.

An amount as determined by the Company will have been offered as an advance. No other money is paid and the owner can serve notice to the Company and to the Minister, that he or she requests arbitration of the compensation. Right, title and interest to the land (easement) will be vested in the Company, and registered on title, and noted in the Public Record as a Right of Entry, presumably in the amount of the compensation offered by the Company as an advance.

Compensation for other rights damages and other considerations, are to be determined by arbitration, and in the event the property changes hands the new owner should have registered notice of same.

Any compensation agreed to by the Company and the owner must be offered as a one-time payment or in annual payments over a period of time, but remain confidential, and in the event the property changes hands or is subject of estate or other interest by heirs or assigns, the question as to who gets these payments, and what they may be, is left unanswered.

To the Board, in terms of modernization, I suggest that reference should be made to the process that is already established under the Act and in keeping with the Act some clarity should be provided as to the interpretation, as has evolved concerning the provisions of the Act

This would help to reassure those who support pipelines and power lines going forward that they have some certainty, in the relevance and objectives of the Board, in protecting the rights of individuals, at the same time reviewing and accepting recommendations and addressing concerns of the public and the many groups organizations and councils that make up the Canadian fabric. There are thousands and thousands of landowners in the country with pipelines powerlines or both on their lands. The system is like the veins and arteries that supply the energy to run an economy, and make life possible as we have come to know.

This entire process should be preceded by a determination of what precisely are the rights, of all Canadians and confirming these rights. This would appear to be a Federal, responsibility generally and not a discussion under the consultation provisions of the ACT.

Part 2-OTHER ISSUES OF CONCERN TO LANDOWNERS

1. The Safety Zone or generally “prescribed areas” provisions of the Act are not clear to owners and stake holders IE: those members of the public owning or with interests in lands adjacent to the pipeline, but not easement lands. The policy or regulation applicable to these landowners has been vague and their rights to NOTE:“free and unencumbered use of the land to the exclusion of all others except police powers etc.”, leaves them in a situation where they cannot object, receive no compensation, are not protected for liability and damage claims and have lost certain rights for which they have had no notice on title or in writing. The ultimate fear is that, as has happened recently, their homes will be declared in the inclusion zone of class location changes required, and that their homes will be subject to outright purchase or relocation by the Company or under the NEB regulations, will be required. Further to this, <u>are they</u> responsible to disclose this to purchasers of their property on the market in the future?
   he awareness programs as encouraged by the Board are insufficient to place this permanent burden on landowners. There is no zoning that would allow for this setback and in the future this could affect insurance and mortgage appraisal value. (Sort of like having your home declared to be in a flood zone.)

   Publications by the Board are colorful and have some good general information, but do not address the very practical aspects of the process. It appears that the Board has lost its relevance in

terms of responsibility and accountability to the landowners, to be replaced by having to deal with issues now coming to the forefront regarding land claims, territorial boundaries, nations and their citizens and groups, and the nature of totally different land use rights.

It appears that Companies have been required to “consult” and in the process establish precedents for new or different rights than the Board was designed to deal with. The sections of the Act referred to previously, do not seem to apply, in the new order of things. Private Companies should not be in the business of determining other nations or groups Canadian Land Rights. This should be a government only negotiation, and in terms of compensation be entirely the purview of NRCAN, and the various other Federal Departments and not the NEB. In Canada all government lands are for the free use and enjoyment of ALL Canadians and as such we are all stewards of the land. There needs to be a MODERN approach to an old problem, or the Act has to be revised substantially and reviewed as to mission and relevance.

. There should be reference made to either termination or effective dates, or for renewal or renegotiation provisions, and these may affect adjacent owners and should be acknowledged, in writing as all agreements in real estate must be.

Finally I hope that as future considerations are made regarding reconstruction or changing use and/or abandonment of pipelines, that the same Act provisions can be relevant.

I hope this opinion can be of some assistance in reviewing the Act and in the process of Modernization of the operations of the National Energy Board. Thank you.

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