

***Submission by Makivik Corporation
To the National Energy Board Modernization Expert Panel***

MODERNIZING THE NATIONAL ENERGY BOARD.

1. Introduction

This submission is made on behalf of the Inuit of Nunavik (“Nunavimmiut”), who have occupied and cared for their homeland for millennia. Makivik Corporation (or, simply, “Makivik”), is the birthright organization established in 1975 to represent Nunavik Inuit ethnic rights pursuant to the James Bay and Northern Quebec Agreement (“JBNQA”)¹, the first modern land claims agreement in Canada. For certainty, Makivik has not had the opportunity to consult directly with its constituents before drafting this submission and therefore reserves the right to bring forward additional concerns and recommendations about the NEB process in the future.

Makivik, which in Inuktitut means “To Rise Up,” is a fitting name for an organization mandated to protect the rights and interests of Nunavik Inuit, while administering the financial compensation provided to them pursuant the aforementioned JBNQA. Makivik is also signatory to the Nunavik Inuit Land Claims Agreement (“NILCA”)², which has been in force since 2008. Through this agreement, Makivik, on behalf of Nunavimmiut, owns 80% of all the islands, including both surface and subsurface rights, in the Nunavik Marine Region, totalling some 5,300 sq. km. Certainty of rights is provided using a “non-assertion model” instead of the “surrender and extinguishment model” found in the JBNQA.

Although not-for-profit, Makivik Corporation’s various mandates range from owning large subsidiary enterprises and generating jobs, to social economic development, improving housing conditions, as well as the protection of the Inuit language, culture and the natural environment. Makivik Corporation and its subsidiary companies collectively employ over 2000 people. In the case of Makivik alone, there are 107 employees of which 68 are Inuit and 39 non Inuit. Its two airlines operate a combined fleet of 43 aircraft providing passenger, charter and cargo services within Nunavik and the pan-Canadian Arctic.

¹ The James Bay and Northern Quebec Agreement, 1975, as amended. The JBNQA was brought into force by the James Bay and Northern Quebec Native Claims Settlement Act, S.C. 1976-77, c32.

² Nunavik Inuit Land Claims Agreement, An Agreement between Nunavik Inuit and Her Majesty the Queen in Right of Canada Concerning Nunavik Inuit Land Claims, 2006 (hereafter the “NILCA”). The NILCA was brought into force by the Nunavik Inuit Land Claims Agreement Act, S.C. 2008, c.2.

Makivik Corporation is an intervener in the Supreme Court of Canada case involving the Hamlet of Clyde River and seismic testing off the shores of Baffin Island³. Makivik has identified a number of areas where we feel the NEB process can be improved to ensure better safeguards for the rights of Nunavik Inuit⁴. In light of this, we consider it Makivik's responsibility to provide input to this review of issues that are specific to the National Energy Board's ("NEB"), to ensure that these rights are protected. This is consistent with Makivik's May 2012 submission to the Right Honourable Steven Harper, in which it identified profound concerns with both the amendments to key environmental protection legislation included within *The Jobs, Growth and Long-term Prosperity Act* and the process through which those changes were being made. Of particular concern was the utter lack of consultation with Nunavik Inuit.

The mandate that you have been entrusted with by the Minister of Natural Resources ("the Minister") is an important one, and should result in sweeping changes to the role and functions of the NEB. Unfortunately, many of the fundamental changes that are necessary fall outside the purview of your mandate, since they must occur beyond the NEB. Such changes are meant to advance reconciliation with Indigenous Peoples and will require systemic and philosophical changes throughout the government apparatus. Similarly, Makivik notes that there are significant ties between this process and others that have recently been initiated by the Government of Canada in an effort to overhaul its environmental assessment ("EA") framework (i.e. the Canadian Environmental Assessment Act, the Fisheries Act and the Navigation Protection Act); we consider it both relevant and imperative that this submission be viewed within that broader context (and vice-versa).

Although you will have heard a range of views and concerns, we trust that the Expert Panel members will give full consideration to Makivik's views as they prepare recommendations to the Minister. That said, while Makivik appreciates the opportunity to provide input to the Expert Panel, the current process mustn't be considered a substitute for the Crown's duty to consult Nunavik Inuit on this matter. The Government of Canada's commitment to incorporate modern safeguards and restore public confidence in the NEB and in Canada's EA process suggests that legislative amendments are likely to ensue. Makivik fully expects that Inuit will be consulted at that time.

2. Regional Context

Nunavik is the homeland of Nunavik Inuit. It is located in northern Quebec and includes the surrounding offshore areas. The total surface area is 507,000 km², representing approximately one third of the land base in the province of Quebec. Over 12,000 Inuit, comprising more than 90% of the resident population, live in Nunavik's 14 communities. The largest community, with a population of 2,375 inhabitants, is Kuujjuaq. It is the administrative centre of the region, where both the Makivik and the Kativik Regional Government head offices are located.

³ *Hamlet of Clyde River, et al. v. Petroleum Geo-Services Inc. (PGS), et al.*, 2016 SCC 36692.

⁴ To be clear, it is not the intent of the current submission to explore or advise on matters that are currently before the Courts. Rather, it is an attempt to ensure that a robust system is put in place to avoid such action in the future.

Inuit entertain a close relationship with the natural environment and, through time, have developed a profound respect for the plants, wildlife and other resources on which their survival has depended. Despite certain modernizations that have occurred in Nunavik, the sentiment of respect for the natural world remains a pillar of the Inuit culture. Nunavik Inuit rely heavily on the region's land and water bodies (be it Hudson Bay, Hudson Strait, Ungava Bay, the Atlantic Ocean or one of its thousands of lakes and rivers) for the harvesting of wildlife. "Country food" remains a major element in the Inuit diet and provides a healthy, affordable source of nutrients that cannot be matched by store-bought alternatives. For example, country foods are a particularly good source of vitamins, antioxidants, Omega-3 fatty acids, protein and other micronutrients, among others.

While the nutritional importance of fish and marine mammals is undeniable, an aspect that is often overlooked is their cultural importance to Inuit. The relationship between Inuit and wildlife has evolved over thousands of years and is reflected in many aspects of the Inuit society. The harvesting and use of traditional foods is essential to the transmission of *Inuit Qaujimajatuqangit*⁵. Accordingly, it is critical that Inuit continue to harvest fish and marine mammals in order for their traditional hunting, butchering and sharing practices⁶ to be transferred to future generations. For many Inuit, harvesting traditional foods also instills a sense of pride, cultural identity and a sense of purpose. Given the socio-economic vulnerability of our communities, such benefits have never been more important and must be recognized in EA.

Despite their reliance on the land, Nunavik Inuit are no strangers to development and they have come a long way in the 40 years since the JBNQA was signed and play a central role in the development of their traditional territory. While most Inuit are open to development, they accept it on the condition that specific conditions and principles be adhered to. Foremost, they want to be part of this development from the onset, to control its pace and scope in their homeland and to improve the quality of life for future generations. They want to benefit socially and economically from it, while ensuring their traditional lifestyle, culture and reliance on the environment and wildlife resources are protected.

When Nunavik Inuit learned of the Quebec Government's Plan Nord project in 2010, they tabled Plan Nunavik⁷. Plan Nunavik was a sector by sector response to the Plan Nord; it described the Nunavik Inuit vision of development, told about life and current conditions in Nunavik communities and set out Inuit priorities for the next 25 years. Plan Nunavik also set pre-conditions for the development of the north. Given the tight timelines (since the Québec government was driving the political agenda and timetable) there was no time for community consultations during the preparation of Plan Nunavik. A change in government in 2012 gave Nunavik Inuit an opportunity to broaden regional discussion on Plan Nunavik. Consequently, Makivik along with other regional partners, undertook a two-year public consultation with all Nunavik Inuit communities to build upon the work that had been initiated under Plan Nunavik.

⁵ *Inuit Qaujimajatuqangit*, or Inuit Traditional Knowledge. The term translates directly as "that which Inuit have always known to be true".

⁶ Many components of the Inuktitut language are also associated with these practices and/or with the environment, life on the land, etc. and are subject to disappearing if these traditional practices are not maintained.

⁷ Plan Nunavik. Published in 2010 by Makivik Corporation and the Kativik Regional Government.

This led to publication of the Parnasimautik Report⁸, which together with the Plan Nunavik lays out a detailed portrait of Nunavik as it currently stands along with the Inuit vision for future development (including views on areas such as housing, education, health, the environment, non-renewable resource development, etc.). Although these documents should be consulted in full to do justice to the significant effort and thought that went into their development, for Nunavik Inuit the main the principles of development include the following key points:

- Ensuring Nunavimmiut-controlled development of Nunavik's natural resources
- Respecting the legal commitments and rights provided for in agreements such as the JBNQA and the NILCA.
- Protecting Inuit culture and their lands.
- Securing Educational, training and employment opportunities for their youth.
- Enhancing social programs and community infrastructure.

3. Environmental Protection in Nunavik

Nunavik Inuit are fortunate (compared with other Indigenous peoples in Canada) to have environmental and social protection regimes built into their Land Claims Agreements. The James Bay and Northern Quebec Agreement was signed amidst the construction of one of Canada's most significant hydroelectric development projects (the La Grande complex). The need for a strong framework to guide future development was identified as a result of concerns stemming from the La Grande project. For the Inuit and Cree parties, it was also clear that their knowledge, values and concerns would not be well represented in a government-led process and that they needed to play a significant role in determining how their lands would be used. Consistent with this, Section 23 of the JBNQA provides for the establishment of an environmental and social protection regime for the territory of Nunavik (i.e. Québec, north of the 55th parallel)⁹. The regime incorporates a complete process for assessing and reviewing the environmental and social impacts of development projects. There remains some concern about the actual level of community engagement within the JBNQA processes (largely due to the lack of any prescriptive engagement mechanisms within the JBNQA¹⁰). However, it goes far beyond the role reserved for Inuit in the federal process, in that it accords special status to the Inuit and allows them a greater involvement than would be the case for other members of the public, including the right to act as members in the following institutions:

⁸ Parnasimautik consultation report on the consultations carried out with Nunavik Inuit in 2013. Published November 14th 2014 for Makivik Corporation, the Kativik Regional Government, the Nunavik Regional Board of Health and Social Services, the Kativik School Board, the Nunavik Landholding Corporations Association, the Avataq Cultural Institute and the Saputit Youth Association of Nunavik.

⁹ JBNQA, par. 23.2.1: The environmental and social protection regime applicable to the region shall be established by and in accordance with the provisions of this Section.

¹⁰ KEAC position paper on strengthening the environmental and social impact assessment and review procedure in Nunavik – April 2009. Available at: http://keac-ccek.ca/medias/2016/03/avis-final-en_20091109162112.pdf

- the Kativik Environmental Quality Commission (“KEQC”)¹¹ which is responsible to oversee environmental and social impact assessment processes related to matters of provincial jurisdiction;
- the Environmental and Social Impact Review Panel (“COFEX-N”)¹² and its “Screening Committee” which are responsible for review of projects subject to federal jurisdiction¹³;
- the Kativik Environmental Advisory Committee (“KEAC”)¹⁴ which acts as a consultative body to responsible governments and is the preferential and official forum for responsible governments in the region concerning the formulation of laws and regulations relating to the Environmental and Social Protection Regime contemplated within the JBNQA.

The KEAC is mandated to make recommendations regarding government legislation, regulations and other applicable measures, and particularly with regards to how these might directly affect the rights of Nunavik Inuit. As such, it is important that input from the KEAC form an integral part of any recommendations being put forward to the Minister of Natural Resources by the Expert Panel.

In addition to the JBNQA’s environmental and social impact assessment regime, the Nunavik Inuit Land Claims Agreement provides for a comprehensive system to oversee land use planning and development impact assessment in land and waters offshore of Nunavik, collectively referred to as the Nunavik Marine Region (“NMR”). Although the processes established under the NILCA are meant to play a similar role to those created under the JBNQA, the two are fundamentally different. The bodies created under the JBNQA make recommendations to the Administrator and are more akin to consultative bodies than to decision-making bodies. On the other hand, the Institutions of Public Government created pursuant to the NILCA (*see below*) are in fact decision-making bodies, with a much more well-defined mandate and operating framework (decisions of the NMRIRB and NMRPC are also subject to Ministerial approval, but the process is more formal and is not simply a consultation as occurs under JBNQA). In the NILCA:

- Article 6 deals specifically with Land Use Planning and establishes the Nunavik Marine Region Planning Commission (“NMRPC”)¹⁵ to develop planning policies, priorities and objectives regarding the conservation, development, management and use of land in the NMR as well as to prepare and implement land use plans which guide and direct resource use and development in the NMR.

¹¹ JBNQA, ss.23.3: establishes the Kativik Environmental Quality Commission as the body responsible for assessment of projects within provincial jurisdiction

¹² JBNQA, ss.23.4: establishes the Environmental and Social Impact Review Panel as the body responsible for review of development projects subject to federal jurisdiction.

¹³ JBNQA, par. 23.4.2: establishes the “Screening Committee” to act as an advisory body, under administrative supervision of the Environmental and Social Impact Review Panel, responsible for screening all development projects potentially subject to review

¹⁴ JBNQA, ss. 23.5: the Kativik Environmental Advisory Committee, is a multipartite consultative body responsible for the review / recommendation of legislation, policies, regulations, etc. related to the Environmental and Social Impact Assessment regimes.

¹⁵ NILCA, Art. 6: Land Use Planning, led to creation of the Nunavik Marine Region Planning Commission.

- Article 7, creates the Nunavik Marine Region Impact Review Board (“NMRIRB”)¹⁶ as the body responsible for project screening, scoping, environmental and socio-economic impact assessment as well as project monitoring.

The NMRPC and NMRIRB are, among others, intended to protect and promote the existing and future well-being of those communities using the Nunavik Marine Region, while protecting the ecosystemic integrity of the NMR and taking into consideration the interests of all Canadians. The creation of a land use plan that recognizes that people are a functional part of the environment and that, consequently, reflects the social, cultural and economic priorities of the human communities affected by it is integral to the NILCA process. All decisions of the Boards give full consideration to both environmental and socio-economic/cultural parameters. The active and informed participation of Nunavik Inuit is encouraged at all steps of the NILCA process including as members of the Boards, to which Makivik nominates members. The NMRPC and NMRIRB may also hold public hearings as part of their deliberation process and are expected to make significant efforts to hear from Nunavik Inuit before rendering decisions related to land use planning or EA.

4. Relevance of the NEB for Nunavik Inuit

There are no pipelines in Nunavik, and oil and gas is not extracted or produced in Nunavik, so why should Makivik care what changes are made to the NEB process? The answer lies partly in the vast hydroelectric potential within our region, partly in our efforts to move away from diesel-powered electricity production, but primarily, it revolves around our concerns over current and potential future Arctic hydrocarbon exploration/exploitation.

With regards to hydroelectric production, Nunavik’s potential is significant and the Quebec Government remains committed to exploring opportunities for developing it¹⁷. Given this potential, it is conceivable that the construction of international or interprovincial power lines will occur in the future. In the event that this happens, we will expect a rigorous and effective assessment and regulatory process.

The jurisdictional complexities of Nunavik are unlike those in most other parts of the Canadian Arctic. Because the NMR and the mainland of Nunavik fall under different Provincial/Territorial jurisdictions (Nunavut vs. Québec, respectively) the potential for construction of interprovincial power lines also exists. As the Government of Canada continues to work with Inuit communities towards reducing their use of diesel (by harnessing tidal energy or via offshore wind turbines, for example) this may well become a reality. Any project built in the NMR that delivers power to Nunavik communities (even if these are directly adjacent) will require interprovincial power lines and, potentially, the involvement of the NEB.

¹⁶ NILCA, Art. 7: Development Impact, led to creation of the Nunavik Marine Region Impact Review Board.

¹⁷ The Plan Nord towards 2035: 2015-2020 Action Plan. 2015. Gouvernement du Québec. 111 pp.

Lastly, and more significantly, there is significant interest to explore the Arctic's potential as a source for hydrocarbons, especially beneath the seabed. This typically requires seismic exploration, an exercise which has been negatively received by Inuit across the Arctic. Since the NEB will continue to regulate this type of work in our region (not to mention any extraction activities that could take place in the future), it is important that the process be relevant to Nunavik Inuit and that it be carried out such that we will have confidence in the outcomes.

5. The role of the NEB

The NEB and the Expert Panel Secretariat have done an excellent job of compiling extensive background materials and have posed questions that are conducive to garnering detailed feedback about the NEB process. Despite this, Makivik Corporation will focus most of its energy on tackling issues related to project approval. Given that we seek major changes to the structure and purpose of the NEB, it seems futile to provide advice on tweaking the current system.

Makivik fully supports the regulatory role of the NEB with regards to oversight, monitoring and enforcement throughout the lifecycle of a project. However, as an organization whose mandate includes the promotion and development of the energy sector, it is problematic that the NEB also be charged with deciding how such projects should proceed. The proximity of the NEB to industry, both physically and professionally, is one of the principle factors behind the public perception of bias in NEB decisions. If the Government of Canada is committed to rebuilding public trust in its environmental assessment framework, then the NEB cannot continue to assess the environmental and socio-economic impacts of energy-related development. Whether the public perception of bias is factual or perceived is not the question; it exists, and will continue to exist for as long as the authorizing agency has such close ties to industry.

6. The Big Picture: recommendations that extend beyond the NEB

The following thoughts and recommendations deal with issues that are highly relevant to the modernization of the NEB, but which are not strictly related to the NEB. They deal with issues such as the conduct of environmental and socio-economic assessments, consultation, traditional knowledge, etc. While some of these issues have implications that go beyond the NEB's mandate, they cannot be overlooked in the current modernization exercise.

Conduct of Environmental and Socio-Economic Assessment of NEB Regulated Projects

For the reasons outlined in section 5, Makivik Corporation is of the opinion that the NEB cannot continue to act as the authorizing agency responsible for the conduct of project-specific EA. We have consistently maintained¹⁸ that the Federal review process must be straightforward if

¹⁸ Makivik Corporation has also made submissions to the Expert Panel on Environmental Assessment Review, to the Standing Committee on Fisheries and Oceans and to the Standing Committee on Transport, Infrastructure and Communities.

communities are to understand and meaningfully engage in it. To this end, we recommend that all Federal environmental assessments be conducted by the Canadian Environmental Assessment Agency (“CEAA”), with the requirement for substitution of the Impact Review Boards established under the JBNQA and NILCA and/or harmonization of Federal and regional processes as appropriate. To be clear, Makivik believes that all projects occurring within Nunavik and the NMR should be assessed by the bodies mandated for such under our Land Claims Agreements.

Others have argued that CEAA lacks the technical expertise of the NEB to conduct such assessments. However, we consider that the scope of the NEB’s mandate is such that it is poorly positioned to integrate the full breadth of cumulative impacts, environmental & social considerations, and Indigenous rights into its assessments. This is especially true following amendments made in 2012 that exclude the NEB from considering information that it considers relevant, but not directly tied to the project being assessed. It should be noted that the CEAA similarly lacks expertise in some areas (e.g. Indigenous rights, traditional knowledge, etc.) and is also poorly placed, in our opinion, to consider the full suite of issues that must be factored into an EA. That said, it is more realistic to equip a single assessment agency with a full complement of experts than it is to bring such expertise to both the NEB and the CEAA. If the CEAA cannot be equipped to conduct strong EA of energy-related projects such as those regulated by the NEB, then the NEB itself should become an arms-length centre of expertise that feeds into the CEAA-led assessment process (see Section 7, below).

Via an engagement session hosted by Makivik (related to the review of the Canadian Environmental Assessment Act, 2012), it became clear that our communities know very little, if anything about these federal processes. Having a single EA authority, will ensure that the process for environmental and social impact assessment is consistent and predictable for all federally regulated projects, regardless of their nature. If separate agencies are left to make decisions/recommendations using a different set of policies (including decision-making criteria, scope of assessment, timelines, participation rules, etc.), it will be extremely difficult to ensure the meaningful participation of our communities in the future. Consistency and predictability in the way EAs are conducted, regardless of project-type will also serve to boost the legitimacy (real or perceived) of the EA process and to build trust in the outcomes of those evaluations. This is not only true for Inuit, but for all Canadians. A predictable, non-duplicative process that is well understood by Indigenous communities is also likely to benefit industry, by eliminating unforeseen delays and lost opportunity.

Assessing Public Convenience and Necessity

The test for determining whether or not an NEB-regulated project should proceed has historically been a matter of balancing its burdens and benefits to Canadians, but there has not been a clear set of criteria established to guide this assessment. Consequently, a great deal of subjectivity is introduced to the decision-making process and, with this lack of transparency comes a great deal of mistrust by members of the public. Furthermore, the rights and interests of Indigenous

peoples must be considered separately from those of other Canadians; these cannot be part of a balancing act. The difference between “Public Interest” and “Aboriginal Interest” should be clearly defined going forward and a set of indicators against which these must be measured should be developed jointly with the National Indigenous Organizations (i.e. Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis National Council).

Strategic and Regional Environmental Assessment

Makivik Corporation is sensitive to the risks that industry members expose themselves to under the current approvals process, where broader public policy issues are often introduced to project-specific EA. Similarly, the livelihoods and culture of Inuit and other Indigenous groups are at risk under such a system, since project-specific assessments are not broad enough to encompass all of the issues that must be addressed within an EA. Project-specific EA is also poorly placed to consider the cumulative impacts that result from the patchwork of upstream and downstream facilities that are associated to major developments. As a result, project approvals are often contested for having failed to consider matters that, by definition, fall outside of the review – resulting in delays for the proponents. Inuit do not want to be seen as a cog in the wheels of development, they simply want to ensure that it is done correctly and with respect for our culture and traditions.

To mend this issue, Makivik recommends that a tiered approach to EA be implemented by the Government of Canada. Such an approach would allow Government to measure issues such as social-acceptability before a proponent is required to make significant investments towards the elaboration of a detailed environmental and socio-economic assessment (“ESA”). Making use of Strategic Environmental Assessment (“SEA”) and Regional Environmental Assessment (“REA”) will allow the integration of a multitude of issues that may be relevant, but not directly related to the construction of new energy infrastructure; it is unreasonable to ask this of project-specific EA. Similarly, the conduct of SEAs would provide an opportunity for the Government of Canada to evaluate and implement notions of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) related to self-determination. Similarly, REA could serve to identify areas where specific types of development should not occur. A similar process (i.e. land use planning) exists in Nunavik via the Kativik Regional Government and the NMRPC, and could serve as a model for other regions. SEA and REA should be conducted within government, to ensure that there is a certain level of political accountability.

Climate Change

Climate change must be among the factors that are considered within energy-related SEA. Canada has committed to be a world-leader in the fight against climate change and to take significant domestic measures in this regard. Inuit are one of the world’s most affected peoples, and have been witnessing the effects of climate change firsthand for decades. It is therefore

important to us that impacts on climate change be factored into energy development in Canada. Although climate change impacts must be assessed as part of SEA, they should also form part of the evaluation criteria for individual projects. While providing high-level policy direction and guidance through SEA is useful, proponents must also demonstrate that every feasible effort to limit greenhouse gas emissions and climate change impacts has been made at the project level, with additional conditions imposed if these are inadequate.

Indigenous Engagement / Consultation

As noted previously, Makivik Corporation will abstain from making recommendations related to whether or not the Crown's *Duty to Consult* should be / can be discharged to the NEB (or other regulatory bodies). That said, it would be beneficial to all parties if this effort to modernize the NEB results in a clear framework that explains how responsibilities related to consultation of Indigenous groups will be implemented, and by whom. Ambiguity in this regard is not to the advantage of any of the parties involved.

The bigger issue that must be addressed, and which likely cannot be addressed solely within the NEB context is the capacity of Nunavik Inuit to meaningfully engage in the public consultation processes related to project approval. In order to achieve this, there is a need to completely rethink the consultation process. In many instances, the current mechanism for government consultation is perceived more as an effort to convince communities that a particular project will benefit them rather than a meaningful effort to understand their concerns. Knowing that a project will proceed regardless of the concerns that are raised at the community level promotes disengagement; the no-go option must always be on the table.

It is critically important that communities be given sufficient time to review, consider and meaningfully respond to project proposals and EIS. In practice, most communities lack the technical expertise and capacity to conduct a meaningful review of a product proposal and EIS, especially within the timeframe that is generally afforded to them. Consequently, consultation meetings often end up being no more than information sessions with little or no dialogue.

The timelines imposed in 2012 were intended to result in quicker treatment of project applications, but an expedient process which ends up being contested is no more efficient than one which allows sufficient time for communities to consider the full breadth of socio-economic and environmental impacts and to propose appropriate mitigation measures. Consistent with our Land Claims Agreements, Makivik recommends removing the time constraints imposed for decision-making; these can be determined mutually by the proponent, government and Indigenous groups once a project is tabled, and in consequence of its scale.

Although allowing for longer timelines will help, doing so is not in itself a solution to the underlying problems that limit the ability for communities to engage meaningfully in consultation. The reality is that most communities in Nunavik are solicited heavily for their input on a wide breadth of subjects, including day-to-day operation of the municipality, health care

services, wildlife management, crisis situations, etc. In most cases, these communities have a very small pool of individuals who are tasked with taking on all of these different files. Given the magnitude of information that they are flooded with when a large project takes place, it is unreasonable to think that they can continue the balancing act that allows them to juggle so many hats on a day-to-day basis. It is therefore necessary to ensure that resources are made available for these communities to expand their capacity when faced with major consultation initiatives, for example by hiring experts to counsel them in understanding the breadth of issues before them.

Regardless of who conducts EA related to energy infrastructure, it is important to consider that the concept of public hearings is foreign to most of our communities and requiring them to engage in such a formal setting via written communication is problematic. Similarly, participation to public hearings and delivering oral testimony before a panel is intimidating and dissuades many from participating. The assessment agency should be given the mandate and tools to reach out directly to the communities affected in order to ensure that they are well-informed about the project, the assessment process and the means by which they can provide input. Our communities have indicated that they would like to see experts debate the pros and cons of a project, to better inform their own opinions about it; the use of regional and local media is another means of informing and engaging Inuit. It should be incumbent upon government to take all means necessary to ensure that the affected Indigenous groups have been given every opportunity to provide input.

The fact that submissions or oral depositions must be made in Canada's official languages is an example of this. Despite a history of colonialism and development, Nunavik Inuit have maintained strong ties to their heritage and Inuktitut remains the first language of most Inuit in this region. As a result, participation in the formal process is complicated when they are forced to provide input in a language other than their own. Government must ensure that all relevant documentation is available in Inuktitut and that Inuit be allowed to make submissions in their native tongue. Allowing oral participation, ideally through interpreters, would also be beneficial. Since some concepts cannot easily be translated into English or French, allowing participants to express themselves in Inuktitut will allow for more meaningful participation. Providing this type of accommodation throughout the government apparatus can also play an important role in the preservation of Inuktitut (and other Indigenous languages) and would be a marked change from Canada's colonialist past.

In light of these constraints, it is critical that the absence of a response by Nunavik Inuit not be equated with consent. Government officials who are responsible for authorizing energy-related development must take all steps necessary to ensure that communities have been given every opportunity to engage. Inuit consultation must be meaningful. We do not expect that the Government of Canada will share the interpretation of Indigenous groups when it comes time to implement the right to self-determination in the UNDRIP, however requiring the consent of

affected Indigenous groups prior to authorizing a project to proceed would certainly bolster their trust in the system.

The role of Inuit Qaujimajatuqangit

As expressed previously, it is important that Inuit feel like it is worthwhile for them to engage in a consultation process before they invest the time and energy to do so. When projects are being proposed within their traditional areas, or which will impact their traditional foods, it is important that Nunavik Inuit trust that their concerns will be weighted more heavily than those of other Canadians living far from the affected area.

Along the same lines, the consideration of *Inuit Qaujimajatuqangit* in assessments and decision-making must be meaningful and contrast with the nominal recognition that it has been given in the past. Too often, *Inuit Qaujimajatuqangit*¹⁹ is dismissed as being anecdotal or because it does not align with science. Nunavik Inuit understand and promote the use of scientific knowledge in decision-making, but are not convinced that their own knowledge receives the same respect. Government must take steps to increase its own capacity to gather, document and integrate *Inuit Qaujimajatuqangit* with the data and information being collected by its scientists. These two ways of knowing must be considered on par with one another. If there is no clear effort and direction to do so within the government of Canada's decision-making framework, then communities are likely to disengage in the process, knowing that their view will likely be trumped by those of a scientist who spends a couple of weeks per year in their homeland.

Most research conducted in the Arctic focuses on a specific geographical area or on a specific subject, and most programs have access to a rather limited time series from which to draw conclusions. As a result, there are very few publications or baseline studies that make the linkages between the land, the animals and the human inhabitants of the region. *Inuit Qaujimajatuqangit*, on the other hand, is the culmination of thousands of years of experience and observations. This history results in a worldview and system of knowing that understands ecosystemic linkages in a way that cannot be assessed scientifically.

7. The specifics: comments relating directly to the NEB and its governance

The National Energy Board

As discussed earlier, it is Makivik's opinion that Environmental Assessment be done outside of the NEB and that Board should concentrate its efforts on the other aspects of its mandate. Under this scenario, we nonetheless consider that there is an important role for the NEB to act in an

¹⁹ *Inuit Qaujimajatuqangit* is a unified body of knowledge and unique cultural insights that form the Inuit worldview into the workings of nature, humans and animals. It is based on both the traditional knowledge that has been developed and passed down for generations, as well as the contemporary observations that continue to build upon it.

arm's length expert advisory role to CEAA (and other government departments) when it comes to assessing specific projects or the conduct of SEA.

The NEB is an energy regulator and that should include all forms of energy. In its role as a Centre of Expertise, the NEB's mandate therefore should be amended so that renewable energies are considered within its assessments and predictions of Canada's energy needs. This includes matters such as determining the state of our energy supply and demands or making future projections about them. The NEB's work should also be complimentary to Canada's efforts to address climate change, including the establishment of hydrocarbon extraction limits. There has been a recent focus on reducing the dependence of Northern and remote communities on diesel fuel. Similarly, the NEB must begin elaborating a national strategy to reduce the country's reliance on fossil fuels and to promote renewable energy. Nunavik Inuit are familiar with the impacts of renewable energy development and understand that it can also have deleterious impacts on the environment and that they might not be the best alternative under all circumstances. However, we are also aware that a long-term dependence on fossil fuels is not sustainable. Careful thought and planning by the NEB will be an important part of Canada's long term energy strategy.

It is important that NEB board members have a diverse background. Since the question of Indigenous Rights will also play a prominent role in these discussions going forward, it is critical that Board members also be well-versed in the matter. To ensure that the proper candidates are nominated, we propose a joint-nomination system whereby Government and the National Indigenous Organizations share decision-making. Diversifying the composition of the Board will also serve to boost public confidence in the process, by removing the perception that board members who have previous ties to industry are biased (regardless of whether or not they are qualified to hold office).

The fact that Board members are located so close to industry is problematic from the public's perspective. Ending the requirement for Board members to live in Calgary and allowing them to work away from the centre of the oil & gas industry would certainly increase public's trust in their work. We propose that Board members be based out of each of the NEB's regional offices (Montreal, Vancouver, Calgary), as well as in Ottawa. Having members from across the country will ensure that they are aware of regional priorities and concerns.

That said, given the volume of day-to-day interactions between the NEB employees and industry, it is essential that the NEB maintain a technical/professional presence in the area. It is thus logical that the operations-side of the NEB be geographically proximate to industry. This proximity reduces the burden related to the conduct of the day-to-day activities related to the realization of projects that have received approval and follow-up throughout the lifecycle of a project.

Participation to hearings

Significant consideration must be given to the eligibility for participation/standing during the approval process for energy-related development. Participation is currently limited to those

parties whom the Board has determined are directly affected, or whom are considered to have relevant expertise and information. Makivik considers that the current scope of participation is inadequate, and that all Canadians must be allowed to intervene in the assessment process. Expanding the current eligibility is especially important when communities who rely on traditional foods are involved. For example, Inuit rely heavily on marine mammals like beluga, narwhal and walrus and such species undertake long annual migrations; communities that are geographically distant from a proposed undertaking may therefore see their food security directly impacted by a project that they've never been consulted about, and in some cases that they've never heard about.

The concern inherent in this position is not so much with regards to standing itself (because Makivik is confident that the NEB would grant standing to Nunavik Inuit in a hearing for a project that could potentially affect their traditional foods), but with regards to how notification is given to potentially affected communities. There needs to be a scoping exercise conducted within the NEB to determine who the affected parties are and whether they have been made aware of the project proposal, of their rights to intervene in public hearings (or other similar processes) and of the procedures for doing so. Makivik is aware that the NEB currently does this, but the criteria used to evaluate which groups are potentially impacted by a proposed project are evidently ineffective or incomplete. In either case, this aspect of the NEB's work needs to be revisited. Posting relevant information on a federal registry is not an effective means of communication (for many of the same reasons outlined previously). As well, experiences in other regions have shown that relying on the proponents to determine which Indigenous Nations are affected by a project is insufficient, this role must be led by the NEB.

Follow-up & Monitoring

One of the fundamental roles that the NEB must play going forward is monitoring and follow-up of projects that fall under its purview. To do this well requires a significant amount of human and other resources. One alternative is requiring industry to monitor its own work and report on the outcomes. Another, is partnering with local communities to develop a network of community-based monitoring initiatives that will serve to collect necessary data and to notify the NEB when the conditions for authorization are not respected, for instance.

In the Arctic regions, dispatching a team to conduct sampling or other data collection is extremely costly, requires significant logistical preparation and is subject to weather and other unanticipated events. Community-based monitoring networks simply require equipping Inuit with the tools they need to collect the necessary samples and providing them with the support they need to coordinate the work. Furthermore, many of these people spend a large part of their lives "on the land" and have an in-depth knowledge of the local ecosystem and, consequently, an inherent capacity to notice even the most subtle change in their surroundings. Although setting up such monitoring networks requires an important initial investment in time and relationship building, they are far more sustainable in the long-term.

The NEB must also develop a more robust and transparent monitoring and reporting system that is easily accessible by the Canadian public. This system must clearly describe the conditions imposed on the proponent when a project was approved, and a description of all monitoring and enforcement that was carried out to ensure that the conditions are respected. The results of any monitoring efforts must also be readily available within this system. This level of transparency is expected by Canadians and will serve to advance public confidence in the regulatory system.

Concluding Remarks

Makivik Corporation expects the Government of Canada to undertake a significant overhaul of its Environmental Assessment legislation. We expect major changes to the current system, and with major change comes some level of uncertainty. A regular review of the EA process will help to ensure that it does not become so outdated that a review as substantial as this one will be necessary again in the future.

Modernizing the National Energy Board is but one piece of a larger review and it will be important, ultimately, that all of these pieces be considered together if there is a real interest in rebuilding the trust and confidence of Canadians in a system that has come under harsh criticism. For Nunavik, this hinges on enabling Inuit and allowing them to play a key role in decisions that will directly impact their region and their livelihoods. Our communities are bombarded with a vast array of inquiries and consultation requests so this empowerment can only happen if the Federal assessment system is straightforward and consistent, regardless of whether the project under consideration is a mine, a pipeline or a power line. To achieve this, all federal EA must be conducted by the same agency; Makivik proposes that the CEAA plays this role.

The rules and roles of each party during consultations must be clarified and all efforts must be taken to ensure that Nunavik Inuit are informed and engaged when a project is reviewed. It is not sufficient simply to send them a written notification, there needs to be follow-up. Communities need to be given the necessary tools to participate meaningfully in the evaluation of a proposal.

If the Government of Canada is sincere in its mission to restore trust in the NEB, then there needs to be less influence on the Board from individuals with ties to the fossil fuel industry and more representation by experts in other fields. It must also raise the bar for transparent decision-making. Providing a detailed matrix of recommendations received during this review, along with the weight and consideration given to each (including reasons for rejection positions that were not retained) will be an important first step towards attaining this objective.