

## **NEB Modernization Discussion Paper #11**

### **The Hearing Process**

#### **Question #1 - In your view, what core principles and elements should be reflected in the hearing process?**

In terms of procedural fairness, any person who may be adversely affected by a decision of the NEB must be given an adequate opportunity to be heard. The process to apply, and for the Panel to decide on participants in a hearing, may limit the opportunity to be heard. There does not appear to be a mechanism for an affected party to be heard after the list of intervenors and commenters has been established.

The NEB has discretion to decide whether a hearing is conducted entirely in writing or if an oral component is included. There should be more transparency with respect to the NEB's exercise of this discretion, i.e., under what criteria is an oral component included.

#### **Question #2 - Not all applications currently have to undergo a public hearing process. Which applications do you think should have a public hearing process?**

#### **Question #3 - What are your views with respect to the basic steps of the public hearing process? What are the areas that can be improved?**

As noted under Question 1 above, more clarity and transparency on whether a hearing is conducted in writing or with an oral component is desirable.

Further to this, a recurring criticism voiced by intervenors and others during the Trans Mountain Expansion Project process was the lack of opportunity for cross-examination of evidence, whether submitted by the project proponent or intervenors.

#### **Question #4 - How could the NEB enable public participation in hearings in a less formal way?**

Participation in a hearing follows a somewhat rigorous process that requires application and a decision by the Panel on "who can participate and how". In Metro Vancouver's public notification and stakeholder consultation processes we are relying increasingly on using a range of mechanisms for public participation and input, beyond the use of

traditional public hearings. Some of these mechanisms include but are not limited to web-based access, on-line feedback forms, email, social media, and webinars.