



Contents

Contents	i
1.0 Introduction	2
1.1. Context.....	2
1.2. Background on Magnetawan First Nation.....	2
2.0 Key Issues for Magnetawan First Nation	6
3.0 References	6
Appendix A- Magnetawan First Nation Detailed Comments on NEB mandate, role, and NEB Act Modernization	7



1.0 Introduction

1.1. Context

The Expert Panel on NEB Modernization is examining the structure, role, and mandate of the National Energy Board (NEB) and the *National Energy Board Act (1987)*. Magnetawan First Nation (MFN) provides this written submission to the Expert Panel in good faith and with the expectation that our input will be carefully and meaningfully considered. MFN has also participated and made a preliminary oral submission to the Expert Panel during the hearings conducted earlier this year- Anthony Laforge, MFN's Director of Lands and Resources presented at the panel session in Ottawa, Ontario on February 23, 2017.

Magnetawan First Nation is utilizing the opportunity provided to put forth perspectives regarding the NEB and NEB Act Modernization and speaking to how processes can be more inclusive of First Nations voices. We have a natural gas pipeline (the TransCanada Canadian Mainline) running through the eastern portion of our territory for which we were not consulted and on which operations and maintenance activities are being conducted that we continue to not be notified and consulted about, nor provided the opportunity to participate in. Given this track record and the information we hear from other First Nations who have NEB-regulated pipelines and transmission lines crossing their territories, we are concerned about future NEB-regulated pipelines and transmission lines in our territory, including underwater transmission lines crossing Lake Huron/Georgian Bay similar to the recently proposed ITC Lake Erie Connector (<http://www.neb-one.gc.ca/pplctnflng/mjrpp/lkrcnctr/index-eng.html>).

1.2. Background on Magnetawan First Nation

Magnetawan First Nation is located a small Anishnabek community located along highway 69 and the shores of Georgian Bay. We are signatories to the Robinson-Huron Treaty of 1850. Magnetawan people are governed by a constitution called *Gichi-Naaknigewin* which is regarded as supreme law by Magnetawan people and states:

“We are the Magnetawan Atik Anishnaabe.

We are the indigenous peoples of the Magnetawan River Watershed and surrounding area.

We are descendants of the original peoples on this land and we identify our citizenship.

We are not a creation of the Government of Canada or its Indian Act.

We are a treaty nation with several treaties in a treaty relationship with the Crown.



We have lived on and exercised jurisdiction within the Magnetawan River Watershed and surrounding area for thousands of years.

We also have traditional territory including on Manitoulin Island and elsewhere on Georgian Bay.

In the nineteenth century, our head Chief Councillor was known as Paimauquineshcum. Paimauquineshcum is a spirit name for one who flies throughout the territory as guardian of the people, lands and resources. Chief Paimauquineshcum was an important leader of the Reindeer or Caribou clan, and was influential throughout Anishinabe territories on both sides of what is now the Canadian – US border.

The Vidal-Anderson Report of 1849 identifies Magnetawan's territories extending from the southeast shore at the mouth of the French River down the coast of Georgian Bay to Head Island at the mouth of the Magnetawan River. The Report also identifies Magnetawan territories as extending three days travel, or about one hundred kilometres, back into the interior.

Along with Head Island, Magnetawan occupied many other islands in northeastern Georgian Bay as fishing stations, and for berry picking and other purposes. The caribou clan was very widespread in the northeastern lake huron region, as well as among the Ojibway speakers who had moved into southern Ontario in the later seventeenth century.

The name recorded in the historical record for clan contains the root word atik, or caribou in our language. Chief Paimauquineshcum was born about 1801 and lived well into his seventies. He signed not only the 1836 Bond-Head Treaty, but the Robinson-Huron Treaty of 1850 and the Manitoulin Island Treaty of 1862. In 1836, at the invitation of Lieutenant Governor of Upper Canada (Ontario), Sir Francis Bond Head, Chief Paimauquineshcum moved to Manitoulin Island for at least part of every year, along with most of his band members. Magnetawan Gichi-Naaknigewin

Chief Paimauquineshcum signed the Robinson Huron Treaty in 1850 on behalf of the Magnetawan First Nation

He Withheld lands on the Magnetawan River from the Treaty to be aboriginal title Lands, for his people for all time.

Crown Surveyor Dennis surveyed Chief Paimauquineshcum's Reserve (No 1 in the Robinson Huron Reserve List) on the Magnetawan River in late July of 1853

Chief pointed out part of the bay west of the mouth of the river he wanted included in the Reserve, because it covered "certain planting grounds formerly occupied".



Our oral traditions and history tell us of the time of the great flood, and that Ojibway lands were among the first lands to emerge after the waters receded. This of course, is consistent with the geological history of the area, as the Canadian Shield includes the highest elevations in the Province of Ontario.

We are accordingly mentioned by name in the earliest records of the Europeans who first ventured into the vicinity of Lake Huron in the 1600's. Magnetawan First Nation is the Indigenous nation that interacts with the Government of Canada through Canada's Indian Act legislation and colonial policy structures. Ironically, this level of recognition by the Crown was actually subsequent to the creation of the Canadian state, even though we have been here since time immemorial. The Magnetawan First Nation is an Indigenous Nation in this territory and is currently comprised of the citizens who are Indians under the Indian Act of Canada.

This Magnetawan Gichi-Naaknigewin includes the rights, responsibilities and freedoms of First Nation's Citizens, its government and its governing institutions in relation to the jurisdictions set out in this Gichi-Naaknigewin as confirmed by the ratification by its Citizens.

United Nations Declaration on Rights of Indigenous Peoples (UNDRIP)

The Minister of Indigenous and Northern Affairs Canada, the Hon. Carolyn Bennett announced May 10, 2016 at the United Nations Headquarters in New York City, N.Y., that Canada has officially removed its objector status and now a full supporter of the United Nation's Declaration on Rights of Indigenous People, without qualification. The United Nation Declaration recognizes Indigenous People's basic human rights, as well as right's to self-determination, language, equality, land and helps to ensure our survival, dignity and well-being. The United Nations Declaration on the Rights of Indigenous Peoples, more importantly, affirms a right to Free, Prior and Informed Consent with regards to any development on our Magnetawan Gichi-Naaknigewin

Treaty Lands, that will provide a new roadmap for interactions between nations and indigenous peoples. Declaration of the Anishinabek Nation, the Magnetawan First Nation supports and affirms the Declaration of the Anishinabek Nation.

We are Indigenous Nations.

We have always been Indigenous Nations.

We have voluntarily entered into a relationship of friendship and protection with the Crown, which we have for two centuries referred to as the Covenant Chain.

In placing ourselves under the Crown's protection, we gave up none of our internal sovereignty.



We have never concluded any Treaty with the Dominion of Canada, nor have we ever expressly agreed to accept the Dominion of Canada in place of Great Britain as the party responsible under the British obligation to protect us.

We retain the right to choose our own forms of Government. We retain the right to determine who our citizens are. We retain the right to control our lands, water and resources. We retain our rights to those lands which we have not surrendered.

We retain the use of our languages and to practice our religions and to maintain and defend all aspects of our culture.

We retain those rights which we have in Treaties with other Nations, until such time as those Treaties are ended.

We retain the right to choose our own future, as peoples. The only process known to international law whereby an independent people may yield their sovereignty is either by defeat in war or by voluntary abandonment of it formally evidenced.

Our Nations have never yielded our sovereignty by any formal abandonment of it. We have never been conquered in war by any power on earth of which there is a record or tradition.”

(Magnetawan First Nation, 2016).

In addition to the *Gichi-Naaknigewin* on June 20, 2015 Magnetawan First Nation voters cast ballots to ratify our Land Code, becoming the 56th First Nation in Canada and the 11th First Nation in Ontario to ratify the Framework Agreement on First Nation Land Management and as a result, Magnetawan will implement land governance, assume jurisdiction over our reserve lands and resources, and opt out of 34 land-related sections of the Indian Act (Magnetawan First Nation, 2015).

The *First Nations Land Management Act* was the first real recognition that First Nations have an inherent right to govern their own reserve lands and resources. This First Nation-conceived Framework Agreement with Canada has expanded from the original 14 First Nation signatories in 1996, to 118 First Nations signatories in 2015 (Magnetawan First Nation, 2015).

Members of our community continue to practice traditional land-use and traditional livelihoods in our territory- hunting, fishing, trapping, and gathering. The viability of land and aquatic ecosystems in our traditional territory and Treaty area is critical both to the health and well-being of our community members, but also to our traditional knowledge and our culture. Conservation was a way of live for our people, preserving and protecting the environment to ensure the survival of future generations.



We continue to take our stewardship responsibilities over our traditional territory and Treaty lands seriously. We participate in forums at all levels of First Nations governance in our region to discuss and seek to influence environmental management and use of these lands in areas such as forestry, wildlife management, Species-at-Risk conservation and others. We regularly engage with proponents and Crown regulators in seeking to ensure the health of our watershed because our community is at the very downstream end and rely on the watershed for clean drinking water. We have participated actively in provincial and federal environmental assessments such as for the Highway 69 Four-Laning project. We are also in the process, under the provisions of the *First Nations Land Management Act*, in developing our own environmental laws and environmental assessment regime for our reserve lands. We take these stewardship responsibilities for the health of our lands very seriously, and expect the Crown to do the same.

2.0 Key Issues for Magnetawan First Nation

Our comments on the NEB and NEB Act Modernization are detailed in Table 1, Appendix A.

3.0 References

Magnetawan First Nation. (2015). *Through a Historical Vote, Magnetawan First Nation approves its Land Code, Community to Govern Reserve Lands and Resources*. Retrieved from:

http://www.magnetawanfirstnation.com/index.php?option=com_content&view=category&layout=blog&id=23&Itemid=43

Magnetawan First Nation. (2016). *Magnetawan Gichi-Naaknigewin*. Retrieved from:

http://www.magnetawanfirstnation.com/Final_Draft_September_1_2016.pdf

United Nations General Assembly (2008). *United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf



Appendix A- Magnetawan First Nation Detailed Comments on NEB mandate, role, and NEB Act Modernization



Table 1: The following recommendations are being made by Magnetawan First Nation (MFN) in the interest of modernizing the National Energy Board to create an independent Crown regulatory body that is inclusive of First Nations voices and perspectives, and is equipped to address the unique challenges and opportunities associated with regulating energy infrastructure located in the Traditional Territories of MFN and other First Peoples of Canada.

Area of Concern	Comment/ Recommendations	Legislative Reference	Connection to First Nations Rights and Interests
Governance Structure and Mandate	<p>Currently the NEB Board members are widely comprised of former corporate professionals from the oil and gas sector. The composition of NEB Board members has limited diversity in demographic components such as race, age, and gender. The NEB must modernize its Board membership and roster of staff to advise the Board in the following ways:</p> <ul style="list-style-type: none"> • Ensure Board membership that consists of First Nations people. • Hire Board staff with knowledge and experience in subject areas such as: community development, socio-economics, First Nations Knowledge/ Aboriginal Traditional Knowledge, First Nations rights, Indigenous law, Indigenous fisheries, Indigenous business, Indigenous spirituality, Indigenous ecology and water resources, Indigenous approaches to environmental assessment, and other sectors such as renewable energy, energy efficiency, fisheries and aquatic ecology, terrestrial ecology, and climate change mitigation/ adaptation • Ensure better representation of First Nations peoples in decision making and oversight roles such as membership on project review panels • Ensure project review panels consist of a diverse range of background experiences to provide a well-rounded assessment and determination on whether a project is 	General Comment – Minister of Natural Resources Ministerial Mandate Letter from Prime Minister Trudeau; Sections 3-10 of the <i>National Energy Board Act</i> (the Act)	Members of Magnetawan First Nation (MFN) continue to access and use lands and waters of our homeland for traditional purposes, including hunting, fishing, trapping, and gathering including maintaining strong socio-economic and cultural connections to the lands where energy projects are being planned and proposed. It is critical that the composition of the NEB Board and review panels memberships can adequately consider Aboriginal rights, interests - including but not limited to issues of jurisdiction, current use of lands and resources for traditional purpose, and First Nations land use planning happening within the project footprint.



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	<p>in the best interest of Canadians</p> <ul style="list-style-type: none"> Ensuring diverse project review panel membership that consists of individuals from industry, environmental, community/ social development, and First Nations backgrounds as part of the panel composition and not having the panel biased to one specific expertise or interest area. 		
<p>Governance Structure and Mandate</p>	<p>A selection process for Board members that ensures diversity and inclusivity for Board appointments, and a transparent and public selection process, is necessary to restore public trust and ensure the Board is serving in the interest of First Nations and the public interest. In practice this would involve the following steps in the Board selection process:</p> <ul style="list-style-type: none"> Public participation, such as public hearings, on Board member selection. Having Board selection processes carried out in a more transparent manner – such as having a parliamentary committee with First Nations participation to oversee the selection of Board members. Have all of the above provisions reflected in legislation via changes to Section 3 of the <i>National Energy Board Act</i>. 	<p>General Comment; Section 3 of the Act</p>	<p>Members of Magnetawan First Nation continue to access and use lands and waters of our homeland for traditional purposes, including hunting, fishing, trapping, and gathering including maintaining strong socio-economic and cultural connections to the lands where energy projects are being planned and proposed. It is critical that the composition of the NEB Board and review panels memberships can adequately consider Aboriginal rights, interests - including but not limited to issues of jurisdiction, current use of lands and resources for traditional purpose, and First Nations land use planning</p>



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			happening within the project footprint.
Governance Structure and Mandate / Decision- Making Roles and Authority	<p>The National Energy Board as a regulator is best suited to provide lifecycle oversight of projects in its domain, and the Canadian Environmental Assessment Agency (CEAA) is best suited for the administration of Environmental Assessments (EAs), including those currently under the NEB’s regulatory jurisdiction. Eliminating the substitution of federal EAs to the NEB and having CEAA administer all EAs that are currently under the NEB’s jurisdiction will ensure Federal EAs are delivered in a consistent manner across project sectors, First Nations rights-bearing communities are provided with consistent environmental assessment experiences and environmental assessment relationship-building with the Crown through a single agency (one-window) It will also ensure that a single Crown agency and its staff are able to develop long-term knowledge of First Nations community rights and interests, sustainability objectives, and territorial knowledge. Finally, this will encourage the NEB to develop similar efficiencies and First Nations relationship benefits for its lifecycle oversight of energy projects. We therefore recommend the following:</p> <ul style="list-style-type: none"> • Have the responsibility for conducting the environmental assessment for NEB-regulated projects move to the Canadian Environmental Assessment Agency (CEAA); including CEAA maintaining the Crown Consultation role for projects • Have the responsibility of lifecycle regulation, including ensuring conditions of approval are met, fall to the authority of the National Energy Board • Ensure the NEB has appropriate staff capacity and 	General Comment – applicable sections of the act include: Sec 9, 10, 11, 12, 14, 15, 17-24	Members of Magnetawan First Nation continue to access and use lands and waters of our homeland for traditional purposes, including hunting, fishing, trapping, and gathering including maintaining strong socio-economic and cultural connections to the lands where energy projects are being planned and proposed. It is critical that the composition of the NEB Board and review panels memberships can adequately consider Aboriginal rights, interests - including but not limited to issues of jurisdiction, current use of lands and resources for traditional purpose, and First Nations land use planning happening within the project footprint.



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	<p>expertise to serve as the lifecycle regulator of federal energy projects, with the ability to develop effective long-term relationships with First Nations rights-bearing communities- by building up the staff roster with individuals with diverse subject matter expertise that will ensure projects are safely regulated from pre-construction planning all the way to post-closure monitoring. This includes retaining staff or external experts with expertise in subject areas such as: engineering, community development, socio-economics, First Nations Knowledge/ Aboriginal Traditional Knowledge, First Nations rights, Indigenous law, Indigenous fisheries, Indigenous business, Indigenous spirituality, Indigenous ecology and water resources, fisheries and aquatic ecology, terrestrial ecology, and climate change mitigation/ adaptation</p> <ul style="list-style-type: none"> • Have all the above recommendations adequately reflected in the legislation. Applicable sections of the NEB Act include sections 9, 10, 11, 12, 14, 15, and 17-24 		<p>Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.</p>
<p>Decision- Making Roles and Authority/ Indigenous Engagement and Consultation</p>	<p>Better, deeper and more robust consultation with First Nations Peoples <u>before</u> a project approval decision is finalized, is a necessary improvement to the environmental approvals process of NEB-regulated projects and applicable legislation and policy. More specifically the following is recommended:</p> <ul style="list-style-type: none"> • Early and deep First Nations engagement and consultation by the NEB at the screening stage of ESAs and Section 58 exception decisions to determine potential First Nations rights impacts. • An additional round of Board consultation with impacted First Nations between the release of the 	<p>General Comment</p>	<p>Canada has a fiduciary duty to consult and if necessary accommodate First Nations peoples if there is the potential to infringe Section 35 constitutional rights or Treaty Rights.</p>



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	<p>Conditions of Approval report and the NEB issuing of a decision on a project. This must be integrated into the process for ALL projects under review and not decided upon on a project-by-project basis</p> <ul style="list-style-type: none"> Enhanced, deep and meaningful consultation processes regarding changes to NEB legislation and policy; more specifically conducting consultation including having representation in the groups of people tasked with developing policy and drafting legislative changes. 		
<p>Governance Structure and Mandate</p>	<p>The National Energy Board currently holds a mandate to “regulate pipelines, energy development, and trade in the Canadian public interest based on economic, environmental, and social considerations” (National Energy Board, 2014). As part of their mandate, the NEB is responsible for:</p> <ul style="list-style-type: none"> Efficient processing of applications Regulation of pipeline traffic, tolls and tariffs Regulation of traffic, tolls, and tariffs Export and import of energy Energy studies and advisory function <p>Given the commitment made by Canada in the Paris Agreement to reduce greenhouse gas emissions economy-wide by 30% below 2005 levels by the year 2030 along with the possibility of a shifting energy landscape, the NEB should:</p> <ul style="list-style-type: none"> Make sure the contributions projects would make to climate change measured in Tonnes of CO₂ Equivalent (tCO₂E) are evaluated and factored into the decision-making criteria for environmental assessments <ul style="list-style-type: none"> More specifically, modelling to indicate the projected GHG emissions associated with a project for its entire lifecycle from construction 	<p>General Comment – Paris Agreement, Canada’s Intended Nationally Determined Contribution (INDC) for COP21</p>	<p>Members of Magnetawan First Nation continue to access and use lands and waters of our homeland for traditional purposes, including hunting, fishing, trapping, and gathering including maintaining strong socio-economic and cultural connections to the lands where energy projects are being planned and proposed. We therefore are being and will continue to be inequitably impacted by the negative effects of climate change. It is critical to us that the contributions energy projects are making to climate change be assessed and appropriate mitigation</p>



Area of Concern	Comment/ Recommendations	Legislative Reference	Connection to First Nations Rights and Interests
	<p style="text-align: center;">all the way up to decommissioning and post-closure monitoring.</p> <ul style="list-style-type: none"> • Along with evaluating the impacts the project would have on climate change as measured in tCO₂E, have assessments include GHG reduction and mitigation measures identified and incorporated into the conditions of approval for projects moving forward • As part of the energy studies and advisory function the NEB plays, the NEB should commence with conducting studies on the long-term outlook of renewable and low-carbon energy uptake in Canada including identifying the opportunities and barriers to renewable and low-carbon energy uptake within Canada and policies and programs that could facilitate a shift to de-carbonizing Canada's energy system 		<p>measures be identified and implemented.</p> <p>Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.</p>
Decision-Making Roles and Authorities	<p>Due to changes that were instituted via CEAA 2012 and other environmental regulatory amendments that came out of the 2012 Federal Budget Bill, <i>Bill C-38</i>, authority regarding final approvals on projects formerly reviewed and evaluated by the National Energy Board rests with Governor in Council (i.e. Federal Cabinet). This means that regardless of the National Energy Board's decision regarding a project it has reviewed, the Governor-in-Council (GIC); which is comprised of the sitting government have final say on whether a project proceeds.</p> <p>An independent regulator will make decisions based on the best interest of the public and First Nations as opposed to the mandate of Cabinet which can hold partisan influence in decision-making.</p>	CEAA 2012, Sections 30(1) & 30(6)	Due to the longstanding connection to the lands and waters – including a commitment to being stewards of the land, waters, and resources for future generations it is critical that the regulator who has the ultimate decision making power is a truly independent regulator, influenced by the mandate of a project being in the best interest of the public and First Nations



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	<p>We fully expect the Crown to make future decisions regarding the regulatory independence of the NEB. Those future decisions will have tremendous impacts on our rights and interests. We require deep and meaningful consultation on all future Crown decisions that will impact the independence of the NEB as a regulator.</p> <p>We must be satisfied that the NEB is not a “captured regulator” and that the members of the Board include First Nations representatives and members with diverse backgrounds from industry, environmental protection, community/ social development, and First Nations Knowledge. We must also be satisfied that Board members have a breadth of subject matter knowledge related to our rights and interests.</p> <p>Restoring the NEB’s independence from partisan influence <u>and</u> energy industry influence is important. Crown consultation on decisions related to the future regulatory independence of the NEB must include consultation on oversight and accountability approaches and procedures that can ensure projects are safe and in the best interest of First Nations peoples of Canada- socially, environmentally, and economically.</p> <p>Canada has a fiduciary Duty to Consult and if necessary accommodate First Nations peoples if there is the potential to infringe Section 35 constitutional rights or Treaty Rights. Even if the If the NEB is able to function as an independent regulator, the Duty to Consult rests with the Crown, and not a regulatory body. As such, the GIC may continue to represent the Crown</p>		<p>Peoples as opposed to the mandate of Cabinet which can hold partisan influence in decision-making.</p>



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	and conduct Crown consultation processes, and where applicable, engage in efforts to accommodate First Nations rights and interests.		
Legislative Tools for Lifecycle Regulation – Compliance, enforcement, and ongoing monitoring	<p>Currently, as identified in the Fall 2015 Commissioner of the Environment and Sustainable Development Report 2 on <i>Oversight of Federally Regulated Pipelines</i>, the NEB’s tracking of company compliance with pipeline approval conditions is inadequate.</p> <p>Although the Board has been taking steps to improve its track record and regulatory changes have occurred such as the <i>Pipeline Safety Act</i> coming into force in June 19, 2016 which enacts the polluter pays principle, clarifies the audit and inspection authority of the NEB, and may ensure companies maintain responsibility for their abandoned pipelines; there is more to be done to fully modernize the practices of the National Energy Board in regards to lifecycle regulation of energy infrastructure and First Nations rights and interests.</p> <p>In regards to compliance, enforcement, and ongoing monitoring, the NEB should strengthen mechanisms that ensure the Conditions of Approval on projects are met, compliance on these conditions is maintained, and First Nations communities are fully engage by the NEB as part of those strengthened mechanisms.</p>	Pipeline Safety Act (an act to amend the National Energy Board Act), section 48.11, 48.12	Members of Magnetawan First Nation continue to access and use lands and waters of our homeland for traditional purposes, including hunting, fishing, trapping, and gathering including maintaining strong socio-economic and cultural connections to the lands where energy projects are being planned and proposed. It is critical NEB laws and regulations that provide oversight to pipeline projects can adequately consider Aboriginal rights, interests, ensure projects are carried out and regulated safely and that proper accountability measures are in place to ensure proponents are meeting their commitments and the regulatory requirements of the projects they own and operate.
Legislative Tools for	In regards to compliance, enforcement, and ongoing monitoring		



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<p>Lifecycle Regulation – Compliance, enforcement, and ongoing monitoring</p>	<p>the NEB should:</p> <ul style="list-style-type: none"> • Require project proponents, and existing project operators, to enter into lifecycle agreements with potentially impacted First Nations communities covering all stages of the project lifecycle. These stages should include planning/approval, construction, operation (including integrity digs) and decommissioning. This will help ensure NEB accommodation of First Nations right and interests, with minimal burden on NEB staff and resources. These agreements should include, but not be limited to, the following items: <ul style="list-style-type: none"> ○ Participation in cultural heritage and archaeological assessments ○ Participation in environmental monitoring ○ Participation in facility monitoring (e.g. pipeline or transmission line monitoring) ○ Identification and protection of species considered to be at risk by First Nations communities ○ Environmental, cultural heritage and socio-economic mitigation and follow-on programs ○ Economic benefits – procurement, supply chain, other ○ Linear corridor restoration and maintenance with native species, and with attention to pollinator habitat that benefits First Nations foods (e.g. wild blueberries) ○ Reviews project infrastructure enhancements 		



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	<p>and improvements that may be available to improve and provide capacity for regional infrastructure and services (e.g. oil pipeline pump stations require transmission reinforcement and/or additional regional power generation that can benefit rural/remote communities and regions; emergency management resources that can be deployed for emergencies beyond the regulated infrastructure)</p> <ul style="list-style-type: none"> ○ Spill response capacity and resources, including training, equipment and service contracts ○ Emergency response capacity and resources, including training, equipment and service contracts ○ Regulatory compliance monitoring <ul style="list-style-type: none"> ● Enhance public reporting and access to public information regarding conditions of approval and overall operational compliance through mechanisms such as: <ul style="list-style-type: none"> ○ Release of compliance reports on a regular basis (annual, quarterly etc.) ○ Direct notification of compliance status to the intervenors from regulatory process ○ Direct notification to First Nations groups whose Traditional Territories the project intersects 		
Legislative Tools for	In regards to compliance, enforcement, and ongoing monitoring		



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Lifecycle Regulation – Compliance, enforcement, and ongoing monitoring	<p>the NEB should:</p> <ul style="list-style-type: none"> • Enhance notification of MFN and other First Nations communities about compliance breaches and enforcement orders via the following mechanisms: <ul style="list-style-type: none"> ○ Release compliance reports on a regular basis (annual, quarterly etc.) ○ Direct notification of enforcement orders and follow-up action taken by the proponent to the intervenors to the related project NEB approvals processes ○ During instances of enforcement orders being issued and follow-up actions being undertaken by a given proponent, provide direct notification to First Nations groups whose Traditional Territories or are intersected by the project. 		
Legislative Tools for Lifecycle Regulation – Operations and Maintenance Programs	<p>Currently, as has been identified in the Fall 2015 Commissioner of the Environment and Sustainable Development Report 2 on <i>Oversight of Federally Regulated Pipelines</i> the NEB’s tracking of company compliance with pipeline approval conditions is inadequate.</p> <p>Although the Board has been taking steps to improve its track record and regulatory changes have occurred such as the <i>Pipeline Safety Act</i> coming into force in June 19, 2016 which enacts the polluter pays principle, clarifies the audit and inspection authority of the NEB, and ensures companies maintain responsibility for their abandoned pipelines; there is</p>		



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	<p>more to be done to fully modernize the practices of the National Energy Board in regards to lifecycle regulation of energy infrastructure.</p> <p>In regards to compliance, enforcement, and ongoing monitoring the NEB should:</p> <ul style="list-style-type: none"> • Require operators to have lifecycle agreements with MFN and other impacted First Nations communities whose Traditional Territories the project intersects, to ensure their direct involvement and advance notification when activities are planned pertaining to the company's operations and maintenance activities. Such direct involvement and notification should include but not be limited to involvement and participation in integrity management programs, facilities maintenance procedures, and any activities that fall outside of the usual day-to-day operations of the facility. This includes providing sufficient advanced notice for the impacted First Nations groups have the ability and capacity to raise any issues or considerations ((e.g. cultural heritage/archaeology, access to harvesting, hunting and fishing areas, environmental issues), so appropriate engagement and accommodation measures can be put in place. Agreements should include provisions and reasonable funding for environmental and archaeological technical expertise on par with the technical expertise available to the proponent and the Board. 		



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<p>Legislative Tools for Lifecycle Regulation – Operations and Maintenance Programs</p>	<p>Currently, as has been identified in the Fall 2015 Commissioner of the Environment and Sustainable Development Report 2 on <i>Oversight of Federally Regulated Pipelines</i> the NEB’s tracking of company compliance with pipeline approval conditions is inadequate.</p> <p>Although the Board has been taking steps to improve its track record and regulatory changes have occurred such as the <i>Pipeline Safety Act</i> coming into force in June 19, 2016 which enacts the polluter pays principle, clarifies the audit and inspection authority of the NEB, and ensures companies maintain responsibility for their abandoned pipelines; there is more to be done to fully modernize the practices of the National Energy Board in regards to lifecycle regulation of energy infrastructure.</p> <p>In regards to compliance, enforcement, and ongoing monitoring the NEB should:</p> <ul style="list-style-type: none"> • Ensure proper measures are taken regarding the protection of the natural environment and cultural heritage resources within or upstream of the Traditional Territories of MFN and other indigenous communities, during any operations and maintenance activities. This should include but not be limited to integrity management programs, facilities maintenance procedures, and any operations that fall outside of the usual day-to-day operations of the facility. • Require facility operators to engage First Nations communities in planning, implementing and monitoring 		



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	all operations and maintenance activities in their traditional territories		
Legislative Tools for Lifecycle Regulation – Operations and Maintenance Programs	<p>Currently, as has been identified in the Fall 2015 Commissioner of the Environment and Sustainable Development Report 2 on <i>Oversight of Federally Regulated Pipelines</i> the NEB’s tracking of company compliance with pipeline approval conditions is inadequate.</p> <p>Although the Board has been taking steps to improve its track record and regulatory changes have occurred such as the <i>Pipeline Safety Act</i> coming into force in June 19, 2016 which enacts the polluter pays principle, clarifies the audit and inspection authority of the NEB, and ensures companies maintain responsibility for their abandoned pipelines; there is more to be done to fully modernize the practices of the National Energy Board in regards to lifecycle regulation of energy infrastructure.</p> <p>In regards to compliance, enforcement, and ongoing monitoring the NEB should:</p> <ul style="list-style-type: none"> • Directly consult and accommodate impacted First Nations groups in the development and/ or oversight of operations and maintenance programs – including but not limited integrity management programs, facilities maintenance procedures, and environmental protection plans. 		Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.
Legislative Tools for	In regards to emergency management and response programs		



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Lifecycle Regulation – emergency management and response programs	<p>the NEB should:</p> <ul style="list-style-type: none"> • Ensure mandatory notification of hearing intervenors and First Nations groups such as MFN whose Traditional Territories the project intersects, in the instance of any accidental spill, release, or malfunction including the response protocol planned and follow-up compliance monitoring regarding spill/ release abatement. • Directly consult and involve impacted First Nations groups in the development and/ or oversight of emergency management and response programs • Enhance participation and engagement with impacted First Nations communities through involvement in monitoring programs including but not limited to environmental monitoring, archaeological monitoring, spill and emergency response monitoring, compliance monitoring, and post-closure monitoring 		
Legislative Tools for Lifecycle Regulation – decommissioning and post-closure monitoring	<p>In regards to decommissioning and post-closure programs the NEB should:</p> <ul style="list-style-type: none"> • Enhance participation and engagement with impacted First Nations communities through involvement in monitoring programs including but not limited to environmental monitoring, archaeological monitoring, spill and emergency response monitoring, compliance monitoring, and post-closure monitoring 		
Legislative Tools for Lifecycle	<p>In regards to decommissioning and post-closure programs the NEB should:</p>		



Area of Concern	Comment/ Recommendations	Legislative Reference	Connection to First Nations Rights and Interests
Regulation – decommissioning and post-closure monitoring	<ul style="list-style-type: none"> • Ensure strong enforcement of measures outlined in the <i>Pipeline Safety Act</i> regarding companies maintaining responsibility for their abandoned pipelines and other abandoned facilities • Directly consult and accommodate impacted First Nations groups in the development and/ or oversight of abandoned pipelines - including but not limited to environmental monitoring and regular facility inspections 		
Legislative Tools for Lifecycle Regulation – decommissioning and post-closure monitoring	<p>In regards to decommissioning and post-closure programs the NEB should:</p> <ul style="list-style-type: none"> • Enhance First Nations notification and participation in oversight of decommissioning and post-closure monitoring plans via commenting opportunities, implementation of advanced notification systems when a project is nearing the end of its production lifecycle, and engagement in post-closure monitoring opportunities 		Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.
Screening and Scoping Criteria	<p>With respect to screening, scoping, and baseline evaluation criteria the NEB should:</p> <ul style="list-style-type: none"> • Develop project screening and scoping criteria that consider the full extent of the project – including but not limited to the electricity requirements of the project, the land requirements of the project, where the project connects to or becomes part of existing or other planned energy infrastructure (i.e. connecting pipeline segments), and any operations and maintenance (e.g. integrity digs) required for existing infrastructure to be redeployed for a new project use 	General Comment	



Area of Concern	Comment/ Recommendations	Legislative Reference	Connection to First Nations Rights and Interests
	<p>(e.g. the integrity digs required to repurpose the TransCanada Mainline natural gas pipeline to bring the pipeline to maximum operating pressure to transport oil – these types of activities are called “operations and maintenance” and conducted under previous project approvals, but are used by proponents to keep key and relevant construction impacts out of future project approvals and environmental assessments. This is not an appropriate or accepted environmental assessment practice. In particular, this approach must be denied by the NEB when it is clear that a coordinated set of Operations and Maintenance activities are occurring in a manner that enables an unapproved major pipeline project proposal.</p> <ul style="list-style-type: none"> • Eliminate the 40 km pipeline length for triggering environmental assessments and replace with a consultative project screening and scoping approach that examines the real impacts of a proposed project and assumes that an environmental assessment will be triggered, unless it can be proven that impacts will be negligible and that First Nations communities consent to any project going forward without an environmental assessment. This will eliminate project proponents “gaming” the regulatory system by piece meal project pipeline lengths into segments under 40 km to avoid environmental assessment requirements • Provide a consultation and accommodation process during the project scoping stage so that First Nations communities can review and comment on a draft of the project scope to ensure that all aspects of the project 		



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	important to First Nations communities can be reasonable included in the scope of the project to be assessed by the NEB		
Effects Assessment and Mitigation Measures	<ul style="list-style-type: none"> • The NEB must assess how a proposed project could contribute to climate change by assessing the projected greenhouse gas emissions associated with the project throughout its lifecycle. • Effects assessments conducted by the NEB as part of an Environmental and Socioeconomic Assessment (ESA) must adequately consider the effects a project will have on the Traditional Territories of First Nations. Such an assessment should include but not be limited to effects on traditional land use and occupancy, effects on commercial harvesting/ land use, effects to cultural and historically significant sites, direct and indirect effects on socioeconomic and health conditions, and effects on future land uses planned by communities. 	General comment	
Indigenous Consultation and Engagement	The NEB and Canada must ensure meaningful and sufficient indigenous consultation, input, and participation throughout the entirety of the review process and the subsequent project lifecycle. Doing so is crucial to achieving Nation-to-Nation relations with First Nations Peoples that the Government of Canada has consistently expressed it would like to improve and strengthen.	General comment	Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.
Indigenous Consultation and	The NEB must follow established principles and best practices regarding the Duty to Consult and Accommodate Indigenous	General comment – UNDRIP	Magnetawan First Nation has implemented the United



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Engagement	Peoples by enacting the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) including mechanisms that demonstrate a commitment to Free, Prior, and Informed Consent (FPIC)		Nations Declaration on Indigenous Peoples in our Constitution.
Indigenous Consultation and Engagement	The NEB and the Crown should directly engage with First Nations People regarding the development of Consultation Plans for projects before the project description has been filed; in pre-project planning stages	General comment	
Indigenous Consultation and Engagement	The NEB must require the integration of First Nations' traditional knowledge, and traditional land use and occupancy information into ESA filing requirements for proponents and its decision-making- where First Nations are willing to share this information. It must also ensure integration of other key First Nations planning documents for their traditional lands or communities, including but not limited to Land Use Plans, Environmental Management Plans, Consultation and Accommodation Protocols, Community Social and Economic Development Plans, and Asset Management Plans amongst others.		Traditional Ecological Knowledge is paramount to all our planning tools
Indigenous Consultation and Engagement/ Public Participation	Currently, the NEB's Participant Funding Program provides a limited amount of funds to First Nations. According to the Participant Funding discussion paper, a maximum of \$80,000 is awarded to groups per hearing however it has been our experience that in projects where funding is in high demand, participants received half that amount (i.e. \$40,000 was the maximum funded per group for the Energy East hearing process). The funding program in its current form does not	General Comment- participant funding program	Members of Magnetawan First Nation continue to access and use lands and waters of our homeland for traditional purposes, including hunting, fishing, trapping, and gathering including maintaining strong



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	<p>necessarily reflect nor meet the needs of First Nations to be adequately resourced to participate in decision-making processes that can have major implications on Indigenous land and resource use and overall way-of-life.</p>		<p>socio-economic and cultural connections to the lands where energy projects are being planned and proposed. It is essential for our community to have adequate resources to properly inform our citizens and fully participate in hearing processes</p>
<p>Lifecycle Regulation of the project- Compliance, enforcement and ongoing monitoring</p>	<p>Presently the following components are required as part of a management system for a project:</p> <ul style="list-style-type: none"> • Emergency Management Program • Integrity Management Program • Safety Management Program • Security Management Program • Environmental Protection Program <p>In their current form these management programs have limited requirements to notify affected First Nations of any incidents or activities that will be undertaken.</p> <p>The NEB should ensure that the requirements of these programs be amended to require notification of First Nations about:</p> <ul style="list-style-type: none"> • Opportunities to participate as monitors in these programs, including conditions pertaining to adequate training, contracting, and procurement opportunities • Adequate whistleblower protections and accountability mechanisms for reporting instances of non-compliance • Adequate integration of First Nations traditional 	<p>NEB filing manual – 3.3 Management Systems and Programs under OPR – changes to the Filing Manual</p>	<p>Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.</p>



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	<p>knowledge, land use, and occupancy based on guidance provided by those First Nations that have the project located within their Traditional Territory</p> <ul style="list-style-type: none"> • Adequate follow-up conducted by the NEB to ensure the conditions mandated pertaining a company’s management system are upheld 		
Indigenous Engagement	<p>In the proposed changes being set forth in the NEB filing guide, the following is said regarding the inclusion of Indigenous Knowledge:</p> <p>“Local and Traditional Knowledge Consider augmenting the application with local and traditional knowledge and integrating the information and knowledge, where appropriate, into the design of the project. Where local and traditional knowledge is obtained, provide an opportunity for the individual who provided the information to confirm the interpretation of the information and how it was used in the project design.”</p> <p>Merely “considering” the integration of First Nations’ Traditional Knowledge is not an adequate means to appropriately evaluating the effect a project will have on First Nations rights and interests and ensure the Duty to Consult is upheld.</p> <p>The NEB should replace the word “consider” with the phrase “The application MUST include or demonstrate reasonable effort to include local and traditional knowledge.”</p>	Changes to the NEB filing manual – Emergency Management, notification of First Nations groups	<p>Magnetawan First Nation has implemented the United Nations Declaration on Indigenous Peoples in our Constitution.</p> <p>Traditional Ecological Knowledge is paramount to all our planning tools</p>



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	<p>Furthermore, traditional knowledge is collective knowledge and the verification of appropriate interpretation should be conducted at the community level while including the individual in such verification.</p>		
<p>Lifecycle Regulation of Projects – Operations and Maintenance</p>	<p>Presently there is limited guidance provided on vegetation management in transmission line and pipeline right-of-ways (ROWs). There is still frequent use of pesticides to manage vegetation despite its environmental and biodiversity impacts. There are also limited allowances for and encouragement of alternative prescriptions and maintenance practices that maintain wildlife habitat, biodiversity, and water quality protection values. Therefore, we recommend:</p> <ul style="list-style-type: none"> • The NEB retain experts to develop Operations and Maintenance guidance and best practices that address these issues. • Operations and Maintenance guidance policies and/ or manuals be updated to mandate the elimination of pesticide use where possible and application of an Integrated Pest Management (IPM) approach in other circumstances, with an emphasis on protecting water quality and maintaining biodiversity. • Operations and Maintenance guidance policies and/ or manuals be updated to mandate that project ROWs provide habitat value for wildlife in the project area • Operations and Maintenance guidance policies and/ or manuals be updated to mandate that project ROWs implement the planting of pollinator friendly species and native plant species as a method vegetation management that supports a thriving ecosystem within a project’s footprint. 	<p>Operations and Maintenance Activities on Pipelines under the National Energy Board Act – Requirements and Guidance Notes File-OF-Fac-NOMA 01 01</p>	



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	<ul style="list-style-type: none"> The NEB can play an important role in supporting and enhancing pollinator habitat along linear corridors. Many of the plants important to First Nations across Canada require healthy pollinator populations – like blueberries for example – but those pollinator populations are threatened and in decline. The NEB should develop pollinator planting requirements for linear corridors in consultation with First Nations. 		
Governance Structure and Mandate	<p>In August 2012 the NEB repealed order XG/XO-100-2005 and replaced it with XG/XO-100-2012 including the implementation of a Schedule A flowchart to determine the criteria that would enable a project to qualify for a Section 58 exception under the NEB Act. Step 2 of the Schedule A flow chart provides the following rules/ criteria that if the answer is no the exception does not apply:</p> <ul style="list-style-type: none"> 2.1 Directly affected persons or those persons with relevant information or expertise (e.g., might include Aboriginal groups; directly affected landowners; shippers; federal, provincial, municipal agencies) have been consulted on the project and all issues and concerns have been resolved. 2.2 The project will be located entirely on the existing right-of-way or other property on which the facility is located, including company-owned land, easement, leased or licensed land. 2.3 The project will not be located on federal lands. 2.4 The project will not be located within a provincially- or federally-designated environmentally sensitive area. 2.5 The project will not be located in a wildlife area or 	Section 58 exclusions & NEB Order XG/XO-100-2012	



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	<ul style="list-style-type: none"> • migratory bird sanctuary (see the <i>Canadian Environmental Assessment Act, 2012 Regulations Designating Physical Activities</i> for definitions). • 2.6 The project will not impact a water body or wetland. • 2.7 The project will not impact Schedule 1 <i>Species at Risk Act</i> species (plant and/or wildlife) or habitat. • 2.8 The project will not involve an increase in airborne emissions or noise during operations. • 2.9 The project will not involve chemical or contaminant liquid or solid discharges during operations. <p>However, no evaluation criteria have been provided to ensure the above requirements have been met. Therefore, it is recommended that the Board develop, implement, and publicly share its assessment criteria. In the case of item 2.1 the development of evaluation criteria must involve participation and feedback from First Nations as they are directly impacted by the outcomes developed.</p>		
General Comment – Access to Information	Currently project information from NEB-regulated projects is available through an on-line repository called REGDOCS. This on-line system is meant to be a tool to keep proponents, the Board, members of the Canadian public, and First Nations Peoples informed on projects being reviewed and/ or regulated by the NEB. However, this system in its current form is not user-friendly, is very difficult to navigate, and creates a significant barrier for people to remain informed. We acknowledge that the system does hold a high volume of data however there are a number of improvements that if implemented would enable	General Comment	



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	<p>REGDOCS to better serve all interested parties. Specifically, it is recommended that:</p> <ul style="list-style-type: none"> • All project applications follow a consistent filing structure on the REGDOS registry • A simplified file naming convention is created to promote clarity, plain language, and user-friendliness • A function is created in the registry that allows letters of comment for facilities in operation to be filed • Drastically improving the search function within the registry to ensure information can be found quickly and efficiently by laypeople. 		



