

## **NEB Mandate & Regulatory Framework**

### **My views on NEB's existing mandate:**

Currently, the NEB's mandate and regulatory framework seems situated pretty squarely within the context of fossil fuel energy projects (pipelines but also electricity). This focus creates a disjunct between current national and international energy needs and this disjunct widens even more because the mandate and regulatory framework does not encompass overarching climate concerns. At this point in history, it is imperative that we forefront climate change. Thus, we need to see a steady and immediate decline in the fossil fuel industries for the sake of overall emissions. In fact, two-thirds to four-fifths of known oil and gas reserves must remain unexploited in order to give us a chance to address climate change and protect our families' futures. These considerations are not included in the NEB's current scope. As is, the NEB seems ill-equipped to deal with up-to-date environmental and economic directions. The NEB should be given the funding, resources and policy updates needed to transform itself extensively and to become an effective partner in national and international efforts to reduce carbon output in the timely manner that science dictates.

### **The areas where the NEB's mandate should change:**

In line with the above statements, a modernized NEB mandate and regulatory framework must lead to an energy review and regulation process that clearly and accountably aligns with Canada's climate goals including Alberta's cap on tar sands emissions, the Paris Agreement to limit climate change to 1.5 degrees and the need to phase out fossil fuels by mid-century. If an energy project does not support national and international climate goals, it should be rejected (or not recommended). Currently accepted projects should also be subjected to a review which includes an account of all associated emissions to make sure they support the goals that climate science dictates. Without the addition of climate-change related considerations, the NEB can not truly ensure the health and safety of people and the environment. Therefore, climate considerations need to be a legislated part of the NEB's mandate and focus.

In order to accomplish this link to science-dictated climate goals, all GHG emissions (upstream and downstream) must be included in NEB considerations. It is commendable that the NEB imposed the condition on Trans Mountain that they offset their construction related GHGs. However, the NEB stance written in the National Energy Board Report Trans Mountain Expansion Project, that "The Board does not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by pipeline" is unacceptable, given the existential threat climate change poses for us all. The NEB mandate and regulatory framework needs to encompass the overall effects a project will have on the climate and environment.

Secondly, the NEB should not conduct environmental assessments (EA). Comprehensive EA should be required and conducted by a separate body, with substantial expertise in climate and environmental science and operating within a repaired and strengthened system of environmental laws (ex. restored Navigable Water's and Fisheries Act). The NEB would then conduct energy project review and regulation (in the context of science-dictated climate goals and up-to-date policies) separate from but strongly linked to and informed by the EA.

A few points from reading the National Energy Board Report Trans Mountain Expansion Project EA: I made an attempt to read the full report and would ideally like more time to consider my response, but here are some of my first thoughts.... The report is commendable in its comprehensiveness and organization. The whole report convinced me that the Board fulfilled its current role with integrity. However, a few things worth comment did stand out for me. For example, the EA is limited in range to local and regional study areas, and the NEB act directs the board to assess what is determined as "directly related and relevant to the project," which could perhaps lead to an exclusion of overarching environmental considerations. I suggest that this range of effect be expanded so that the EA includes national and international climate goals and imperatives which need to be mandated as indicated earlier on in this section.

Secondly, despite the many thoughtful conditions imposed, there remain enough cumulative risks and uncertainties (including the potentially negative impact on species at risk/habitat/marine life and the significant consequences that would result from a large spill) that I wonder, especially given overall climate concerns, if the drive to reach a justifiable risk level in order to facilitate approval of the project is mis-directed. I would suggest that economic/industry directives do not outweigh protection of the environment/climate in the NEB mandate and regulatory processes.

It also seemed to me that within the EA process, Trans Mountain provided a great deal of the data, which is fair enough in that they should be required to do and finance their own research. The qualified participants then provided additional data in a more piecemeal fashion and the Board assessed the data presented, imposing many thoughtful conditions but ultimately accepting Trans Mountain's commitments to follow avoidance, mitigation or compensatory actions. If the body conducting the EA was separate from the board and had a pre-existing wealth of relevant scientific expertise related to the environment and climate, I think the review would be stronger, more balanced and more coherent. In addition, climate considerations and those involving threatened species would receive the completely informed attention that is critical at this point in human existence.

**Emerging areas for which the NEB's mandate should be expanded:**

The NEB's mandate should expand into the emerging areas of renewable, sustainable infrastructure. Perhaps there is a real opportunity here, for a modernized NEB to take in a full spectrum of fact-based information, accounting for changing global energy supply and demand scenarios that foreground renewables (wind, solar, bio-fuels, geo-thermal, hydro, storage) in order to review and regulate energy projects/products in a manner that helps reduce our carbon emissions and strengthens our economy long term. The NEB could then also play a significant role in safely winding down and retiring existing pipeline infrastructure and easing a transition to renewable energy infrastructure.

Just as we depend on all the interconnected parts of our ecosystem to survive, we need all parts of our country's governance to work together in order to mitigate climate change, protect our health and safety and prepare us economically for the transition away from fossil fuels. The NEB must work closely with other decision making bodies to move toward a low carbon and ultimately, a decarbonized Canada.

## **Determining the Canadian Public Interest:**

1. The Canadian public interest means to me that decisions related to energy project review, regulation and abandonment protect Canadian's health, quality of life, safety and the future of our families. The biggest part of this task has shifted rather quickly over the last few years and includes, first and foremost, preserving a habitable environment.

2. In order of importance, the factors a modernized NEB should take into account when assessing public interest related to energy projects are:

1)Climate change mitigation (human health)

a) GHG emissions (upstream and downstream) and their effect on national and international carbon reduction efforts.

b)International climate goals and initiatives (ex. keeping global temperatures below 1.5C and 2C degree limits).

c)Science-dictated targets (ex. up to four-fifths of current fossil fuel reserves need to remain unexploited).

d)National climate goals (ex. Alberta's cap on tar sands emissions, reducing emissions to a minimum of 30% below 2005 levels by 2030; 80% by 2050).

2)Ecological sustainability, preserving wildlife, ecosystems and habitat

a)Clean water, breathable air (ex. don't take any chances on spills that may cause irreparable damage and/or for which the clean-up methods are uncertain).

b)Arable land and forest growth (soil productivity, vegetation).

c)Fish, wildlife and their habitat (ex. consider if a project is worth risking irretrievable loss of endangered species).

In general, the NEB should reduce risk-taking that makes our ecology shoulder most of the risk.

3)Cultural uses of the land and water (social and cultural wellbeing, traditional land and water use, heritage resources).

a)Indigenous sovereignty (recognize and respect all associated rights).

b)Indigenous cultural ties to and care-taking of the land (ex. sacred practises tied to water).

c)Indigenous consultation (ex. Indigenous consent before decisions and developments are made).

3)Economic needs and benefits

a)Availability of commodity (no longer focus on new sources of fossil fuel; include renewables).

b)Existence of market (based on comprehensive, broad-based data and projections including oil and gas supply and demand scenarios that reflect a low carbon objective).

c)Job creation (considering long-term stability in the context of winding down fossil fuel industries).

d)Economic feasibility and other economic benefits (clearly divulging who will receive benefits and accounting for the real social cost of carbon).

The climate and environmental considerations should take precedence over the availability of oil or gas resources and other economic directives listed in the discussion papers from the NEB act. In addition, the focus should move away from approving projects despite environmental risks, and toward determining whether a project, given the threats it poses to the environment, should be approved at all.

The climate and environment-related factors should be officially written in to the NEB act and evaluation process, linking the NEBs role meaningfully and accountably with national and international climate realities, policies and goals. The energy regulator should then be provided with the funding, tools and expertise to fulfill the new aspects of their role that the above changes entail.

To add some weight to these suggestions, every day I hear of another distressing natural event that makes the pipeline approvals irresponsible. For example, the permafrost collapsing and the predicted release of CO<sub>2</sub> that is going to cause, the first measurable decrease of oxygen in the deep ocean due to warming (marine life can not survive a loss of oxygen and we can not survive if marine life dies). Even in this relatively safe place, in Toronto, we experienced a drought this summer and none of my neighbours usually plentiful tomato crop survived. I was caught at Union Station in the flood a couple of years ago and witnessed first hand the city completely unable to cope with the extreme weather. Doing our best to mitigate climate-related catastrophe is in the public's best interest. I believe, at this point, our priorities should align climate/environmental factors with economic factors.

Within the scope of the *National Energy Board Report Trans Mountain Expansion Project* review (Trans Mountain review), which does not undertake a full account of GHG emissions or overarching climate impacts, it is a shame that the Southern Resident Killer Whales, other threatened species like the Northern Cascades Grizzly bear and significantly increased shipping related GHG emissions take a back seat to factors like creating 445 permanent jobs and getting our crude oil to diverse pacific-rim markets. I agree with intervenors and commenters in the Trans Mountain review, who suggested that the energy industry should look to clean, non-GHG polluting projects and that to further new fossil fuel extraction projects at this point in human history is unconscionable and ill-considered. Climate facts show it is imperative to begin the move away from fossil fuels immediately.

To speak more directly to economic factors, projections for oil and gas use should reflect a low carbon future goal (a steady and timely decline in fossil fuel use starting now) and be consistent with the Paris Accord agreement and science-dictated climate goals. In the case of the Trans Mountain review, the Board decided that the new infrastructure would be useful for its economic lifetime because the global demand for crude oil will likely rise over the next decades. In line with these statements, one of the economic justifications for approval is that the capacity of the Trans Mountain pipeline system will likely triple. Tripling the capacity of a pipeline is not in the public's best interest at this point, especially given the fact that we are already, even without Kinder Morgan, expected to go significantly over our emissions targets for 2030. I would go even further and assert that we need to focus our resources, for the public interest, on reducing operation of our existing pipelines. There are other ways to create jobs and to generate money for government (clean tech, collecting carbon taxes from oil companies that reflect the real social cost of carbon, ending subsidies to oil industry etc.). Yet, we only have one chance at maintaining a habitable environment.

In the Trans Mountain review, people did make the arguments that I hear more convincingly voiced with each passing month. For example, that industry statistics may be overestimating the growth in crude oil production and price increases in oil, fossil fuel reserves should be considered stranded, we should focus on research and development, consider the changes in Chinese climate policy and incorporate Canada's own evolving policies in our projections. These points and others that speak to the emergence of cleaner, renewable energy sources and stronger climate policies are reasons to hope

that transitioning away from fossil fuels can be a positive economic move. Yet, the Board considered the position of intervenors who suggested they should consider economic competition from renewable energy sources unsupported by credible evidence. Could it be that the organizations with pro-economic views have more resources and benefit enormously from the fact that we have based our economy on oil and gas for many decades while those that suggested more eco-conscious approaches are speaking for more fledgling industries and emerging trends that haven't been documented or systemized as thoroughly?

I agree with those who suggested in the Trans Mountain review that the project wasn't as objectively evaluated without the addition of comprehensive projections, data and statistics from other competing forms of energy (hydro, solar, wind, biomass, biogas, geothermal, storage etc.) including supply and demand scenarios that reflect a low carbon future. I question using up resources to build new fossil fuel infrastructure instead of adapting our economy and maximizing renewables. It is in the public best interest that Canada embrace the international clean energy transition and become an economic leader in renewable energy/clean tech. Furthermore, if it is true, as the Board decides in the Trans Mountain review, that there might be some changes to policies around the world but that these changes will not significantly alter global reliance on crude oil, then for the sake of the public interest, of human health, safety, and our very survival, decision-making bodies like the NEB have an obligation to help alter this reliance!

Economic considerations, while important, will mean nothing if we don't make the changes needed to sustain ourselves long term. Creating a sustainable long term includes catching up with current global needs and investing ourselves in a low carbon future. It is not in the public interest to let ever-shakier economic benefits outweigh life itself. Let nature lead decisions at this point, and the NEB will serve the public interest both economically and environmentally.