Expert Panel Review of Environmental Assessment Processes

Submission by Enbridge

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Enbridge is a North American leader in delivering energy. As a transporter of energy, we operate, in Canada and the U.S., the world's longest crude oil and liquids transportation system. We also have a significant and growing involvement in natural gas gathering, transmission and midstream businesses. As a distributor of energy, we own and operate Canada's largest natural gas distribution company and provide distribution services in Ontario, Quebec, New Brunswick and New York State. We are also a leader in renewable energy with over $5 billion invested and plans to double this in the coming years. Our portfolio of wind, solar and geothermal power has potential to generate 3,000 megawatts (gross) of zero-emissions energy – enough to power over 1,100,000 homes.

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1. Executive Summary

The energy industry is on the cusp of a major transition as Canada moves toward a lower-carbon economy. In the interim, as global demand for energy continues to rise, it is increasingly important for Canadian resources to reach growing global markets. At the same time, public confidence in Canada's regulatory system is waning. Together, these factors present significant challenges to our collective growth and standard of living.

In order to address these challenges and meet Canada's international commitments, government must take the lead and ensure a strong public policy framework, including, but not limited to: a responsible climate strategy, an energy policy that supports development and market access, Indigenous reconciliation, and environmental safety and clean technology innovation. Without a clear policy framework or an appropriate forum for discussion of these topics, individual project reviews have become platforms for broader debate. As a result, project proponents are investing millions of dollars and years of regulatory review only to have their projects stalled because these broad public policy issues remain unresolved.

Government must ensure that Canada maintains a regulatory process that is rigorous, transparent, inclusive and effective. Enbridge submits that the National Energy Board (NEB) remains the best-placed regulator for federally-regulated pipelines, for reasons outlined more fully below. However, while Canada's federal regulatory system is among the most rigorous and robust, we recognize that, as with any process, there is always room for improvement. This submission outlines several specific recommendations for the Expert Panel to consider.

2. Introduction

Enbridge's submission will follow the Expert Panel's suggested themes, focusing on the issues where we can provide insight and examples, based on our many years of experience with federal environmental assessment (EA) processes. Throughout this submission, we have included specific recommendations regarding what is currently working well and what can be improved. This submission builds upon Enbridge's presentation to the Panel on November 23, 2016 and provides further details, including responses to questions posed by Panel members during the presentation. While we include some comments on EA processes in general, the focus of this submission is on the EA process used by the NEB in its review of federally-regulated pipelines. There will be some overlap between Enbridge's submission in this review and the separate submission that it will make to the Expert Panel overseeing the NEB modernization review. Enbridge also recognizes that the energy mix is changing – gas and renewables are supplying Canadians with energy in greater proportions. The public policy framework is changing too, including increased engagement by Indigenous and local communities in decisions about energy infrastructure. Enbridge recommends that the Expert Panel's report to the Minister consider how to build sufficient flexibility into the regulatory regime to address the evolving nature of energy development into the future.

Who We Are

Enbridge is a Calgary-based, global leader in the safe and reliable delivery of energy across North America, having been in operation for more than 65 years. We operate the world's longest crude and liquids transportation system and have significant assets in natural gas transmission and midstream businesses. We are also one of Canada's largest renewable energy generators. We have invested over $5 billion in renewable energy projects to date and we plan to double this in the next few years. Our portfolio has the potential to generate over 3,000 megawatts of zero-emissions energy – enough to power over one million homes. From 2006 to 2015, our liquids division delivered 17.2 billion barrels of crude oil and liquids with a safety record of 99.9995 percent. Our role at Enbridge is to ensure we meet society's need for secure energy supply while, at the same time, reducing greenhouse gas (GHG) emissions and protecting the environment. In order to address the shifting energy mix, our company is evolving too. In addition to growing our renewable energy business, we are expanding our natural gas business to make access to lower carbon and renewable energy more feasible. Our recently announced merger with Spectra Energy positions us well for this transition, by introducing a more equal balance between natural gas and liquids, along with our rapidly growing renewable power generation business.

3. Environmental Assessment in Context

Confidence in the Regulatory System

According to the International Energy Agency, global energy demand is rising. A closer look at these projections reveals that much of the demand growth over the next three decades is expected to come from lower carbon energy sources, including natural gas and renewable, clean technologies. However, despite this shift, traditional energy sources will continue to address a significant portion of global energy demand for the foreseeable future. Additional pipeline capacity in Canada is required to support that demand.[1]

Canada must be ready to leverage the energy resources of today in order to meet the energy demands of tomorrow. Enbridge fully supports doing this safely, sustainably, and responsibly. The regulatory system in Canada is working; however, it is clear that confidence in that system has deteriorated. In order to realize the potential of Canada's vast resources, improvements must be made so that Canadians regain confidence in that system.

Canada's regulatory regime must be underpinned by a robust public policy framework. In the current regulatory and project environment, our experience has been that issues outside the purview of the regulator are increasingly challenging the regulatory process. Without a clear policy framework or an appropriate forum for discussion of broad public policy issues (e.g. climate change, Canadian energy policy, and Indigenous self-determination), project-specific reviews of major pipeline projects have become a platform to debate these policy issues which go beyond the scope of any single project. Canadians no longer feel connected to the decisions made by their regulatory bodies. We support this government's commitments to help restore these vital connections. Further action is needed to improve public confidence, and improving confidence in EA is a critical foundation. Canadians need to feel that the process is fair, transparent, timely, and based on science and fact-based evidence. Investors, too, need to have confidence in this process. Without long-term capital investment, responsible energy development will not just happen, nor will job creation, greater tax revenues, and safe and reliable access to the energy we all need.

This is why Enbridge, along with our colleagues at the Canadian Energy Pipeline Association, have been working on developing the concept of a two-part review for major pipeline projects, where the federal government's "go / no go" determination would occur before proponents invest hundreds of millions of dollars and years developing detailed project submissions.

Two-Part Review Concept

It is important to preserve the distinction between the policy making role of the government and the quasi-judicial role of the NEB. At the political level, decision-makers set the broader policy framework. At the regulatory level, the NEB applies that policy and conducts independent, science-based reviews of specific projects, free from political interference. The regulatory review of a specific project is not the appropriate forum to debate national policy issues. Rather, the broader policy implications of a major pipeline project, including whether it fits into Canada's overall energy strategy or climate change commitments, must be addressed before proponents invest years of work and hundreds of millions of dollars.

Government must lead by defining the broader policy framework in the following areas:

- Energy strategy (including interprovincial considerations);
- Climate change policies (including interprovincial considerations); and
- Indigenous relations and reconciliation.

The purpose of part one of the review would be to assess the project against this broad policy framework – for instance, whether new infrastructure for market access is needed and whether the project fits within the national energy strategy and climate change policies. Part one would review those aspects of the project that are of "national interest", taking into consideration the dual imperatives of economic prosperity and environmental

[1] World Energy Outlook 2016: https://www.iea.org/newsroom/news/2016/november/world-energy-outlook-2016.html

protection. At the end of part one, the Governor in Council would determine whether the project is in the "national interest" and can proceed to part two. Part two of the review would be the project-specific review, which would include the detailed assessment of the proposed route, project-specific environmental impacts and mitigation measures which are within the proponent's control.

The Panel has asked industry about its views on what a "climate test" would look like. Enbridge has implemented a company-wide climate policy[2], recognizing that the world must find new ways to meet increasing demand for energy from a growing population, while limiting GHG emissions. In support of this policy, we are developing multi-year plans and goals for carbon reduction and energy efficiency and are expanding access to natural gas and renewable energy. Through its membership in CEPA, Enbridge has submitted comments on the Department of Environment and Climate Change Canada's proposed *Methodology for Estimating Upstream GHG Emissions*. Enbridge supports the further development of the draft GHG methodology underpinning the 'climate test'. Further dialogue is required in order to better understand how the information will be used to inform a more complete view of global climate impacts and the role it will play in the overall review of a particular project. Similarly, Enbridge supports the federal government's efforts in collaborating with its provincial counterparts in the development of climate policy solutions and their alignment with international obligations under the Paris Agreement. Enbridge agrees with a process whereby the proponent prepares the GHG assessment report, based upon a clearly prescribed methodology, for consideration in part one of the two-part review.

The Panel also asked Enbridge at which stage impacts of projects on Indigenous communities and associated accommodation would be considered. Part one of the review would examine Indigenous issues that go beyond the scope of a specific project (such as Indigenous self-determination). Part two of the review would identify and assess project-specific impacts to Indigenous communities, together with appropriate mitigation measures. Currently, project proponents engage with Indigenous communities during project planning, including during development of the EA. Specific concerns and potential impacts are identified, and mitigation measures are proposed and reviewed with communities. This would not change.

Maintain What Is Working Well

Canada is the beneficiary of one of the world's most comprehensive regulatory regimes. The NEB EA process, in particular, is rigorous and robust, it is based on science and evidence, and it allows for broad participation of Canadians. There are aspects of this regime that we believe, as industry and as investors, are critical to maintain. This includes maintaining the current designated project list and keeping EAs for federally-regulated pipelines within the NEB's mandate, as described in more detail below.

Outcomes of EA Processes in the Future

One of the Panel's questions in its Suggested Themes for Discussion is: "What outcomes do you want federal environmental assessment processes to achieve in the future?" Enbridge advocates for an outcome in which environmental, economic and social interests are weighed equally. Canada must adopt an approach for the review of energy infrastructure projects that respects the needs of all participants involved – industry, governments and local and Indigenous communities – and that reflects environmental and market realities. Otherwise, we all stand to pay a substantial price in terms of missed employment and economic development opportunities.

Enbridge believes that effective EA processes are used to inform the development of energy infrastructure projects – to make them better. For pipelines in particular, construction methods and associated mitigation measures are well-understood. In order to be more effective and less repetitive, EA processes should focus on the issues that are most important and on those areas where the potential impacts and mitigation measures are unknown or uncertain. In order to improve the effectiveness of EAs as planning tools, changes could be incorporated that are designed to capture and provide feedback on proposed mitigation in an EA. For example, companies typically complete post-construction monitoring reports that indicate whether the mitigation was

[2] Enbridge Climate Policy: http://www.enbridge.com/~/media/Enb/Documents/CSR/Policies/climate_change_policy_old.pdf?la=en

effective. However, this information is not in a very usable format that would enable comparison with mitigation results of other companies. There are opportunities to introduce changes to make this information (that is being collected in any event) more useable and transparent so that successes and failures can be shared amongst companies and used for future projects. To illustrate: if a particular mitigation measure has had mixed success, more frequent monitoring may be justified. If, on the other hand, a particular mitigation measure has proven to be successful, another company could use that information to justify reduced monitoring for that particular item.

4. Planning Environmental Assessment

The Designated Project List is Working Well

The project list identifies the "designated projects" which may require an EA under the *Canadian Environmental Assessment Act* (CEAA). This current project list approach (rather than the previous federal triggers approach) has served well and should be maintained. This approach enhances certainty and helps to ensure that federal EAs are focused on areas of federal jurisdiction. The project list enables a prioritized, risk-based approach that focuses EA resources on those projects with the greatest potential for significant adverse environmental effects, allowing for a more efficient use of resources. Enbridge also submits that the designated project list will continue to be appropriate for natural gas and renewable power projects, as Canada transitions to a lower carbon economy.

For provincially-regulated pipeline projects in particular, the project list has introduced significant certainty. Prior to CEAA 2012, many of these projects were held up by the federal EA process even though the primary approval from the provincial regulator was already in place. As determined by the Supreme Court of Canada in the *MiningWatch* decision[3], when a provincial pipeline project included a federal trigger (e.g. approval from Fisheries and Oceans Canada for a specific water crossing), the federal authority conducting the EA was required to include the entire project scope in its assessment, rather than the discrete areas related to the specific trigger (i.e. the water crossing). This meant that no part of the project could be constructed until the federal EA was complete and all required federal approvals were received. As a result, construction of the entire project would be held up, even for those parts of the project that fell outside of federal jurisdiction.

Suggestions for Improvement

While Canada's regulatory system is among the most rigorous and robust in the world, we recognize that, as with any process, there is always room for improvement.

EA Library: One of the common themes in the presentations and submission to the Panel is that transparency in EA processes should be improved. Enbridge agrees. Previous EAs, as well as follow-up and mitigation information, should be tracked and more accessible to proponents so that it can inform future work. This would enhance the use of EAs as effective planning tools. This information should also be available to the public, so that they can see the commitments made by proponents and how they are following up on those commitments. One improvement that could be made is to create an "EA library" – a centralized body of knowledge that would enable public access to previous EAs, as well as follow-up and monitoring data. Increasing transparency in this way would be consistent with other ongoing federal initiatives regarding open innovation and information sharing.

Improving EA Documents: Enbridge recognizes that EAs are lengthy and complex documents. This can make it difficult for public and Indigenous stakeholders to review, understand and provide meaningful feedback on EAs. One way to make EAs more accessible and understandable to laypersons would be to require plain language summaries. In addition, one of the factors contributing to the length and complexity of EAs is the lack of clarity for proponents regarding EA requirements (e.g. between social and environmental aspects). EAs can be more structured and concise. Updated or additional guidance documents that more clearly outline the scope and requirements of EAs would help in that regard.

[3] *MiningWatch Canada* v. *Canada (Fisheries and Oceans)* [2010] 1SCR 6: http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7841/index.do?r=AAAAAQALbWIuaW5nd2F0Y2gB

More Meaningful Public Participation in Up-Front Scoping: During the public presentations, Panel members were interested to hear about the role of Indigenous communities and the public in the early project planning stage and during the EA process. Panel Member Pelletier asked specifically for comments on how to integrate Traditional Knowledge (TK) into EAs. Enbridge would be supportive of an expanded up-front process, similar to that used by the British Columbia Environmental Assessment Office (EAO). In that process, once it is determined that an EA is required, the EAO invites proximate Indigenous groups and all levels of government to provide technical advice and also provides opportunities for public input. As part of this process, the EAO seeks input from Indigenous communities, government agencies and the public in determining what should be considered in the assessment. This up-front public comment period provides a forum for local and Indigenous communities to help shape the scope of the EA, including a mechanism to incorporate TK (to the extent it is available and willingly shared). This also enables the proponent to identify issues early in the process, when they can be considered during the EA and incorporated into the project design (as opposed to during a hearing).

Clearer Requirements Regarding Cumulative Effects Assessment: Enbridge agrees with other parties that cumulative effects assessment in EAs could be improved. Proponents require more clarity and certainty with respect to how to capture and deal with cumulative effects. Currently, there is some guidance for assessing cumulative environmental effects[4], but it is not incorporated into legislation and provides only limited assistance to proponents in conducting EAs in the context of a single project. Additionally, this guidance only applies to projects assessed by the CEA Agency, and not to those assessed by the NEB or the Canadian Nuclear Safety Commission. This results in inconsistent interpretation and application by proponents and confusion for members of the public. One of the concerns with current cumulative effects assessment is that companies rush to get their applications in ahead of others, as the last company in the queue must deal with the cumulative effects issues. Enbridge recommends that a clear and consistent set of guidelines be developed so that proponents understand what information they need to provide and how that information will be evaluated by the regulator. One opportunity would be to look to the Cumulative Effects Framework[5] that is being developed in British Columbia. One benefit of that framework is that it clearly sets out areas of concern, together with required mitigation.

5. Conduct of Environmental Assessment

Enbridge strongly supports the concept of “one project / one review” by the best-placed regulator. Multiple reviews by multiple bodies add to the complexity of the regulatory process and make it more difficult for Canadians to understand and participate in the process, which could decrease public confidence. Complex regulatory processes can also act as a barrier to economic development and investment in Canada. Where there are both provincial and federal responsibilities (and, to a certain extent, municipal or other local responsibilities), EA processes must remain coordinated such that a single EA is completed to meet the applicable requirements. Subjecting the same project to multiple assessments adds time, uncertainty, and additional costs for project proponents.

One project / one review by the best placed regulator ensures accountability and accessibility by centralizing expertise and avoiding expensive and repetitive processes. The NEB is the best placed regulator to oversee federally-regulated pipeline projects. Its oversight as a lifecycle regulator, including follow up compliance and enforcement, along with its centralized expertise on energy projects, best positions it to continue in this role.

[4] See CEA Agency’s draft Technical Guidance for Assessing Cumulative Environmental Effects under *CEAA, 2012*: https://www.ceaa-acee.gc.ca/default.asp?lang=en&n=B82352FF-1&offset=&toc=hide and Operational Policy Statement for Assessing Cumulative Environmental Effects under *CEAA, 2012*: https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=1DA9E048-1

[5] British Columbia, Cumulative Effects Framework: http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework

NEB As Best-Placed Regulator

Enbridge strongly believes that the NEB is the best-placed regulator for federally-regulated pipelines. These are a few of the reasons:

- The NEB is an independent and expert quasi-judicial tribunal with extensive pipeline experience dating back to 1959. This includes conducting environmental assessments dating back before CEAA 2012 and even before CEAA 1992.
- The NEB's quasi-judicial process allows for evidence to be rigorously tested (i.e. through cross-examination and information requests). This is a key benefit over reviews conducted by the CEA Agency.
- The NEB employs highly skilled staff, including engineers, environment, socio-economic, and lands specialists, inspectors, engagement staff, and legal and administrative specialists.
- As a full lifecycle regulator, the NEB understands all components of a pipeline project – from design and construction to operation and eventual retirement, including potential impacts and mitigation measures during that lifecycle. As a lifecycle regulator, the NEB also has the ability to apply lessons learned in the field to new projects being proposed.
- The NEB requires EAs for all types of projects (not just those on the federal project list) and EA requirements are much more extensive than current CEAA requirements[6].
  - Under CEAA 2012, the scope of federal EAs is limited to areas of the environment that are under federal responsibility. These are: fish and fish habitat, migratory birds, marine plants, impacts that may cross provincial or international boundaries, impacts on federal lands and impacts on Indigenous people resulting from a change in the environment.
  - The NEB provides a comprehensive and fit-for-purpose EA process for pipelines in Canada. The NEB's EA requirements include a wide array of factors, including: physical and meteorological environment, soil, soil productivity and vegetation, wetlands, water quality and quantity, fish, wildlife and their habitat, species at risk or species of special status and related habitat, heritage resources, traditional land and resource use, human health, aesthetics and noise.
- The NEB imposes enforceable conditions on projects to ensure environmental protection measures will be implemented and will be sufficient. The NEB also uses conditions to address other issues raised by Indigenous communities and public stakeholders.
- The NEB is well positioned for monitoring and follow-up and is active in compliance and enforcement through inspections, audits and incident investigations. The NEB has robust enforcement tools and resources, which it actively uses; this includes, for example, stop work orders and administrative monetary penalties.
- Project EAs and other studies required to be completed as part of project conditions (e.g. post construction monitoring reports) have long been posted publically on the NEB's website. In recent years, the NEB has been implementing new tools for increasing transparency. The public now has access to: compliance and enforcement information (status of condition compliance, inspection reports, inspection officer orders, information related to administrative monetary penalties, and Board Orders, Letters or Directives that are related to safety and environmental protection issues). Companies are now also required to publicly post emergency response and environmental information.
- The NEB is an independent and professional body – free from the influence of government, proponents, individuals and special interest groups. NEB staff is governed by a code of conduct[7] which identifies what all employees must do to avoid real or perceived conflicts of interest. The *NEB Rules of Practice and Procedure*[8]

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[6] National Energy Board Filing Manual, Release 2016-01: http://www.neb-one.gc.ca/bts/ctrg/gnnb/flngmnl/flngmnl-eng.pdf (See section A.2 Environmental and Socio-Economic Assessment (starting at p. 4A-16).

[7] Code of Conduct for National Energy Board Employees, Effective 1 June 2014: http://www.one-neb.gc.ca/bts/whwr/gvrnnc/cdcndctfnbmply/cdcndctfnbmply-eng.html

[8] *National Energy Board Rules of Practice and Procedure, 1995* (SOR/95-208): http://laws-lois.justice.gc.ca/eng/regulations/SOR-95-208/index.html

govern the procedures to be followed during a proceeding. Regulations are also in place to govern cost recovery from industry.[9]

- It is also important to understand the many opportunities for public participation within the NEB processes. For projects which require a public hearing, the NEB allows participation from people who are directly affected by a proposed project, as well as from those who have information and expertise about the project they are considering. There is a range of participation opportunities, including as an intervenor (can present evidence, test evidence and make final argument) or as a commenter (oral or in writing). Aboriginal intervenors are given an opportunity to provide oral traditional evidence. For projects that do not involve a hearing, parties may share their views in a letter of comment. The public may also participate in other ways, including: commenting on the list of issues, reading evidence on the public registry, attending or listening to live broadcasts of hearings, and attending any community meetings or information sessions that the NEB or proponent may arrange. In Enbridge's experience, the NEB has been very inclusive in its approach to public participation. For example, on the Northern Gateway Project, all 219 applicants were granted intervenor status. On the Line 9B Reversal and Capacity Expansion Project, 60 of 71 applicants were granted intervenor status and the remaining 11 were granted commentor status. In addition to providing opportunities for inclusive public participation, the NEB also takes proactive steps to facilitate that participation and ensure that it is meaningful.

During Enbridge's public presentation to the Panel on November 23, 2016, Madame Chair Gélinas asked Enbridge what would be the downside of another regulatory body conducting the EA of the project. Enbridge believes that if EA responsibilities were to be removed from the NEB to the CEA Agency (or another agency), the level of environmental protection would decrease, because the CEA Agency does not have the pipeline expertise of the NEB. Changes to CEAA 2012, as well as changes to how the Agency carries out EA reviews, would be required in order to allow for more rigorous testing of pipeline EAs. In order to improve the effectiveness of the CEA Agency's monitoring and follow-up activities, the Agency would need to increase staff, including those with specialized knowledge of pipelines. Moving EAs to another body would contradict the principles of "one project, one review by the best-placed regulator", which would result in multiple and potentially duplicative processes. The value of lifecycle regulation would also be diminished in that those who see how things practically work in the field would not be part of the upfront evaluation of new projects.

Timelines

The Panel asked some questions about the mandatory timelines for regulatory processes, and how they could be more effectively addressed. The 2012 changes to CEAA and the *National Energy Board Act* included the establishment of mandatory timelines. However, legislated timelines have not resulted in predictability and consistency as expected. This is primarily because the 2012 amendments introduced multiple opportunities for time extensions and time outs, for instance:

- Regulator deems application to be incomplete (clock does not start);
- Regulatory issues information requests or requires additional studies (clock stops running);
- Minister and / or GIC may extend the time limit (more than one extension is possible); or
- GIC may refer the report back to the Board for reconsideration.

In our experience, overall timelines, from the date the application is filed to the date of GIC approval, have actually increased since 2012[10]. Enbridge encourages the Expert Panel to consider the need for predictability in EA and regulatory processes. Predictability allows for greater investor certainty, transparency and clarity for all involved (including proponents, public participants and Indigenous groups).

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[9] *National Energy Board Cost Recovery Regulations* (SOR/91-7): http://laws-lois.justice.gc.ca/eng/regulations/SOR-91-7/index.html

[10] Timelines for major Enbridge pipeline projects were as follows: Southern Lights (filed Mar 2007) – 14 months, Alberta Clipper (filed May 2007) – 12 months, Line 4 Extension Project (filed Jun 2007) – 12 months; Bakken Pipeline (filed Jan 2011) – 13 months, Edmonton to Hardisty Pipeline (filed Dec 2012) – 16 months, and Line 3 Replacement (filed Nov 2014) – 19 months. Though not an Enbridge project, the TransMountain Expansion took 29 months to process.

Proponent's Role in EA

Enbridge believes that EAs of pipeline projects should continue to be conducted by the project proponent. The proponent is best placed to conduct the EA for a variety of reasons. The proponent is best placed to identify actionable mitigation measures, as they are most familiar with project development and execution plans. Proponents can modify the project design or implement mitigation as the results of the potential impacts identified and assessed in the EA, resulting in a project that better protects the environment. Proponents are also driven to complete the EA in a reasonable timeframe and have the appropriate resources and support to complete the EA.

Project proponents typically use the services of professional EA practitioners / consultants in the development of the EA. It is important to note that the EA conclusions regarding significance of potential environmental effects are those of the EA practitioner, and are not dictated by the proponent. EA practitioners are generally certified professionals, bound by a code of ethics. As a further check and balance, the EA is rigorously tested in the NEB process – through information requests and cross-examination by the Board members, NEB staff and legal counsel, and by other intervenors.

6. Decision and Follow-Up

Enbridge's comments regarding decisions and follow-up are included in the sections above, in particular in Section 3 (regarding the two-step review concept) and Section 5 (regarding the NEB as the single best-placed regulator).

7. Public Involvement

Enbridge is committed to timely and meaningful dialogue with all stakeholders, including Indigenous peoples, regulators and landowners.[11] Section 3 above discusses Enbridge and CEPA's recommendations for public involvement in the development of Canada's public policy framework. Section 4 includes comments geared towards enhancing meaningful public involvement (including improving EA documents, increased participation in the up-front scoping of EAs, and increased transparency). Section 5 summarizes the many different opportunities for the public to be involved in the NEB's project reviews.

Enbridge supports broad public participation and believes that, in general, the greater the potential impact, the greater the participation rights should be (e.g. ability to cross-examine the proponent vs ability to submit a letter of comment). One potential improvement that could be made would be to introduce incentives for stakeholders to coordinate their input across like-minded groups, which would minimize duplication and focus public resources on common interests.

8. Coordination

Enbridge's comments regarding coordination are included in the sections above, in particular in Section 5 (regarding the NEB as the single best-placed regulator).

9. Overarching Indigenous Considerations

At Enbridge, we understand the importance of local and Indigenous engagement and the role that communities must play in our projects in order to be successful. This sets the foundation of Enbridge's Indigenous Peoples Policy. In this Policy:

- We recognize the importance of UNDRIP in the context of existing Canadian law and the protection of Indigenous peoples under the Constitution.

[11] Enbridge Corporate Social Responsibility Policies: http://www.enbridge.com/About-Us/Corporate-Social-Responsibility/CSR-Policies.aspx

- We respect Indigenous Peoples' legal and constitutional rights and we commit to ensuring our operations are carried out in an environmentally responsible way.
- We also commit to helping Indigenous peoples achieve mutual benefits, including opportunities in training, employment, procurement and community development.

There is significant opportunity to improve Crown consultation processes and mitigate the likelihood of post-approval legal challenges. Both proponents and Indigenous communities require greater clarity regarding the roles and responsibilities of all parties involved. There is a lack of common understanding of what is required and by whom in order to satisfy the Crown's duty to consult and accommodate in the context of project reviews. This is evident in the Federal Court of Appeal's decision regarding the Northern Gateway Project. In that case, the Court concluded that the Crown did not satisfy its duty to consult, despite a positive assessment of Northern Gateway's engagement efforts.

Some provinces have introduced policies and guidelines which provide greater certainty regarding Aboriginal consultation requirements. For example, Alberta has implemented policies and guidelines for consultation with First Nations and Metis communities on land and natural resource management.[12] The guidelines outline the roles and responsibilities of all parties engaged in the consultation process and clearly outline the consultation process. The purpose is to demonstrate how Alberta is seeking to fulfil its consultation responsibilities under the Policy. The general process is as follows:

- Early in the development of a project, the proponent contacts the Aboriginal Consultation Office ("ACO") and the ACO provides a list of Aboriginal communities that must be engaged and the level of consultation is required.
- The proponent consults the identified Aboriginal communities about the project and keeps consultation records.
- When the proponent feels that it has completed consultation, it submits the consultation records to the First Nations for review and comment.
- Once the required timelines have passed, the proponent may request a determination of adequacy of consultation from the ACO.
- The ACO issues a letter in which it assesses the adequacy of consultation (Letter of Adequacy), by considering a list of factors.
- Generally speaking, the regulator (in this case, the Alberta Energy Regulator) does not issue a license for the project until the ACO issues a Letter of Adequacy. The Guidelines recognize that agreement of all parties is not required in order for consultation to be adequate.
- There are timelines built in for each of these steps.

Enbridge recommends providing similar certainty and guidance regarding Indigenous consultation and accommodation regarding federal EA, including in legislation, policy and guidance, as appropriate.

10. Conclusion

At the Panel Presentations in Calgary on November 21 and 23, 2016, Madame Chair Gélinas asked industry participants to tell the Panel what they are prepared to do differently. Enbridge has participated fully in the Expert Panel's review processes, including attending public workshops and public presentation sessions, reviewing submissions, and presenting to the Panel. We have listened to the perspectives of others who have participated in the process – everyone from Indigenous communities, EA practitioners and environmental groups to academics, industry partners, and interested citizens. We see areas of significant alignment amongst the various

[12] See the Alberta Aboriginal Consultation Office website – includes links to the Alberta Indigenous Consultation Policy and Guidelines: http://indigenous.alberta.ca/1.cfm

views presented and believe that there are opportunities to reach a common ground on several issues. As one of Canada's largest pipeline companies, we have a large stake in this review process. Our submissions highlight some of the things that we are prepared to do differently:

- We are open to more meaningful participation from members of the public and Indigenous communities. This includes our recommendation to increase the opportunities for public and Indigenous participation in the scoping of EAs before they start.
- We are willing to make changes that make EAs easier to understand and more accessible. Our recommendations include providing plain language EA summaries as well as placing EA and follow-up information onto a public registry, for use by everyone.
- We recognize the desires of Canadians to have a say in public policy matters that are important to them. Enbridge believes the most appropriate place for this dialogue around issues of broad national importance is in the context of policy development by the government – not in project-specific reviews.

Enbridge believes in sustainable development and that a good regulatory process must balance the three pillars of environmental, social and economic interests. Public confidence cannot be satisfied by industry alone. Government must address the broader public policy priorities, especially indigenous reconciliation and climate action. For industry to thrive and survive in challenging times, we require a regulatory process with greater investor certainty, predictable timelines, and outcomes that the public can accept.

Summary of Key Recommendations

- Canada's regulatory system does not require radical reform. The foundation remains strong and could be incrementally improved with several targeted initiatives.
- Canada's regulatory regime must be underpinned by a robust public policy framework, including climate change, energy strategy and Indigenous engagement policies. Enbridge recommends preserving the distinction between the policy making role of the government and the quasi-judicial role of the NEB, and increasing investor certainty by moving the "national interest" decision up front (two part review concept).
- The NEB remains the best-placed regulator for federal environmental assessments, in light of its world-class expertise, experience and project lifecycle mandate.
- The current designated project list approach is working well and should be maintained. This will also work well for the review and development of natural gas and renewable power projects.
- Enbridge recommends the establishment of an "EA library", a centralized body of knowledge that would enable public access to previous EAs, as well as follow up and monitoring data. EAs could also be made more accessible and understandable to the general public by requiring plain language summaries.
- Enbridge is supportive of an expanded up-front scoping process for EA development which would involve participation from impacted Indigenous communities, government agencies and the public.
- Improvements can be made to the cumulative effects assessment, including development of clear and consistent set of guidelines.
- Project proponents remain best placed to conduct EAs, which are then rigorously tested in the NEB process.
- Incentives for stakeholders to coordinate their input across like-minded groups may help minimize duplication and focus public resources on common interests.
- Provide greater certainty and guidance regarding Indigenous consultation and accommodation, including clearly outlining roles and responsibilities, process steps and timelines.

Enbridge thanks the Expert Panel for the opportunity to make submission on this very important topic.