



ALBERTA
ENERGY

Office of the Minister

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AR28483

Honourable James Carr
Minister of Natural Resources
Government of Canada
580 Booth Street
21st Floor, Room C7-1
Ottawa ON K1A 0E4

Dear Minister Carr:

On behalf of the Government of Alberta, I am writing to provide you with Alberta's feedback regarding the National Energy Board (NEB) Modernization expert panel's report: *Forward Together: Enabling Canada's Clean, Safe, and Secure Energy Future*. Please find our official comments attached to this letter.

Positioning our country as a desirable place to do business is of great importance not only to Alberta, but to Canada overall. Particularly for our resource development sectors, a key pillar in remaining competitive is having clear and certain regulatory frameworks. That said, as this review proceeds, it is our view the *National Energy Board Act* should be modified, rather than discarded and replaced with a new act.

Despite recent challenges, the NEB is one of the world's most respected, full-cycle energy regulators. Over the past nearly six decades, the NEB has undertaken some significant developments to improve its service delivery. The removal of a regulatory agency removes the certainty created in its history, including precedent decisions. Alberta urges the federal government to consider the positive attributes of the current mandate of the NEB as it considers the panel's recommendations.

Specific to climate change policy, and as referenced in our attached submission and technical submission to the panel, let me be clear: Alberta knows climate change is real. The Alberta government has taken concrete policy action to address climate change and to ensure Alberta's oil sands industry continues to be a leader in responsible energy development. We are proud to be the first jurisdiction in the world to voluntarily legislate a limit on oil sands emissions growth.

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The Government of Alberta submits that our Climate Leadership Plan should be recognized as sufficient for evaluating upstream greenhouse gas emissions associated with pipeline projects originating in Alberta. With Alberta's oil sands industry currently emitting roughly 70 megatonnes per year, the emissions limit allows for continued growth while ensuring all future growth is responsibly managed. Our Climate Leadership Plan effectively de-links pipelines from increasing greenhouse gas emissions. Prime Minister Justin Trudeau himself acknowledged these steps as being fundamental to his government's approval of the Trans Mountain Expansion Project and the Line 3 Replacement Program.

The Government of Alberta also has concerns around the panel's recommendation to implement a two-step review process. It is unclear how a review process twice as long as the current process will produce more satisfying, timely results for any parties involved. While we are supportive of the potential to streamline proceedings via joint review panels, improve consultation processes with better guidelines and clearer accountabilities, and enhance transparency and plain language reporting, it is Alberta's view that the proposed increase to timelines could further delay or deny major infrastructure projects. In addition, the process could also increase costs to industry and leave projects open to rejection in each review phase. Alberta submits industry should not be expected to pay for national interest debates and a process that could be more than three years long.

Finally, the Alberta government has been very clear regarding its position on our desire to see the NEB head office remain in Calgary where it can remain connected to some of the most experienced and knowledgeable energy professionals in Canada's oil and gas sector - as well as professionals from the emerging renewable energy sector. Alberta submits that moving the NEB office from Calgary to Ottawa does not solve a problem, but rather creates a variety of new problems, including replacing the perception of one bias with perception of another bias, explicitly increasing ties to the federal government. That said, Alberta agrees with the panel that more NEB satellite offices in population centres along major project routes will provide enhanced benefits to the evaluation of current and future projects.

Alberta's economy represents 20 per cent of Canada's overall GDP, with much of this activity directly linked to the energy sector. As the federal government reviews the expert panel's report in depth, I hope the outcomes of the regulatory process enable the country's oil and gas industry to deliver significant economic and social value to all Canadians. Alberta maintains it is in the national interest to ensure this review is done in a way that does not hinder the sector's ability to continue to provide value to all citizens. It is critical to the future of the country's economy and prosperity to get this right.

As referenced by my Deputy Minister, Coleen Volk, in her letter of March 31, 2017, to Deputy Minister Christyne Tremblay, Alberta has been supportive of the federal government's intention to review the operations of the NEB to ensure projects are properly reviewed. We believe Canada needs a regulatory system that Canadians can trust to ensure energy developments are reviewed in a timely and trusted manner. Therefore, it is Alberta's view that Canada's regulatory framework should facilitate, not frustrate projects. Decisions on projects should be made on their own economic and environmental merits through a credible, public, balanced process designed to hear, test, and assess the facts.

Sincerely,

original signed by

Margaret Mccuaig-Boyd
Minister

Foreword

Alberta is supportive of the Federal Government attempt to improve our regulatory system to ensure that it provides the best possible outcomes, uses the most comprehensive and accurate information, and that the public feels assured that there is a well-functioning regulatory body that meets the needs of Canadians.

The National Energy Board (NEB) has a long and proven history in Canada since its inception in 1959. It has ensured the responsible development of energy infrastructure, while mitigating environmental risks. The NEB has some of the most stringent reporting requirements around the world, ensuring environmental and socio-economic effects are mitigated, that oversight is comprehensive, and continuous improvement and safety is within the culture of the industry.

Alberta continues to respond to our local, national, and international concerns by ensuring the continued responsible, effective, economic development of our natural resources in a manner that can contribute to fulfilling the world's energy needs in a competitive environment that does not require Alberta to disproportionately suffer impacts to our economic and socio-economic environment, while other jurisdictions disproportionately benefit from Alberta's initiatives.

This Expert Panel Report (the Report) is, in our perspective, only a part of the larger conversation within Canada that must be undertaken and evaluated thoroughly and with a critical mindset for how to address the complex issues that are interlinked. Any outcome of these discussions will likely not only affect the energy industry in Canada, but it may transpose to other federally regulated industries, as well as indirectly affect other major economic centers in Canada that are linked to the Energy industry.

Alberta has concerns with the recommendations within the Report that cannot be addressed until the federal government determines a position and releases more information around their proposed legislative, regulatory, and procedural processes in order for Provinces and Territories, Indigenous Groups, and other stakeholders to appropriately comment on the proposed changes to the National Energy Board and other federal reviews.

General Concerns

There are number of general concerns around the Report that are important to be considered when reviewing the details and recommendations from the Expert Panel.

First, the details of the implementation are often not clear in the process or procedures. If the descriptions preceding the recommendation encompass the entire details on the justification and implementation, then the particulars are neither clear nor clearly justified. In a few cases there are options within a recommendation which the Federal Government could further clarify in order to receive proper feedback.

As the federal government aims to modernize the NEB, the Government of Alberta expects to be an active participant in informing this design. We anticipate that the federal review process will continue to engage provinces, territories and key stakeholders in informing the outcome.

Alberta agrees that the removal of policy from the independent regulatory agency would allow the agency to operate in a timely, stable, predictable manner within specific timelines; as long

as the technical matters are scoped properly for the project and that individual projects are not linked to peripheral issues including indirect upstream and downstream effects.

If the Federal Government creates non-prescriptive policy guidance documents, then a one-year national debate on policy for each major infrastructure project would not be needed, and we are more able to have a focused conversation of the specific impacts of any one particular project within matters of importance, such as environmental, socio-economic, and economic impacts. This would reduce timelines, uncertainty, and the need for citizens to continually reappear before agencies or government input panels to repeat the same perspectives on energy development.

The Federal Government must ensure the National Interest test is not overreaching. The potential lack of clarity on the Report's suggested expansive scope of national interest will encroach on decisions that are out of scope, overlap with provincial jurisdictions, potentially interfere with the structure and intent of Canadian Confederation, and contribute to potentially duplication and misalignment in responsibilities.

The first example of federal overreach in the National Interest determination is making determinations on unique engineering challenges that are the direct responsibility of project proponents. Rather, the government should remain within their mandate to outline regulatory requirements that project proponents must fulfill and permit the engineering challenges to be borne by the project proponents, including the costs and feasibility, since those factors are included in a decision by proponents to either proceed with a project or not.

A second area of overreach in the National Interest determination is considerations around the upstream and downstream effects in any project. Alberta agrees with the report that the upstream and downstream effects should not be examined by the regulator, but rather the regulator's mandate includes "testing the emissions of the project itself (not the upstream and downstream components...)". Alberta also believes that upstream and downstream effects should not be part of the National Interest test. Projects such as interprovincial and international pipelines are not directly connected to any particular project and therefore the examination of upstream effects is ineffective and improper. The intent of the review and oversight is to capture matters that are directly linked and necessarily incidental to a project under review, such as the project's construction and operations. Alberta has repeatedly stated that there is a need for optionality to ensure Canadians receive fair market value for products and that Canadian products are not restricted to a single discounted market. Provinces are best positioned to implement measures to control greenhouse gases and oversee resource development in a method that is flexible to account for relative trade-offs. The Federal Government should instead work directly with provinces on any matters around climate policies, emission targets and caps.

Another third area of federal overreach is the suggested examination of distribution of economic benefits. Provinces are already contributing significantly to confederation; the primary, secondary and tertiary benefits from projects reach across Canada, and Provinces also contribute within existing federal programs such as the equalization payments.

The panel recommends that federal, provincial, and territorial governments collaborate to develop a "whole-of-government policy direction via a Canadian energy strategy" under the leadership of the federal Minister of Natural Resources. Alberta submits that, as constitutional owners and managers of Canada's natural resources, provinces and territories agreed to the Canadian Energy Strategy in 2015 as a national framework for Canada's energy future.

Alberta agrees that a Canadian Energy Strategy as a policy document would be helpful in the guidance of energy infrastructure. On the subject of delivering energy via pipelines and transmission lines, provinces and territories agreed to “develop infrastructure, enhance energy regulatory processes, open markets, and responsibly move energy products to the people who need them.” Under this approach, provinces and territories also agreed to:

- Develop and enhance a modern, reliable, environmentally safe and efficient series of transmission and transportation networks for domestic and export/import sources of energy;
- Improve the timeliness and certainty of regulatory approval decision-making processes while maintaining rigorous protection of the environment and public interest; and
- Promote market diversification.

The Canadian Energy Strategy remains a clear, pan-Canadian policy direction and will be discussed by Premiers at the Council of the Federation summer meeting this July in Edmonton. It is Alberta’s position that the Canadian Energy Strategy remains the launching point towards establishing this national vision, with the Federal Government involvement in an appropriate role.

Furthermore, despite significant investments by provinces, territories, and the federal government, the Report makes no mention of the *Pan-Canadian Framework on Clean Growth and Climate Change*, another significant milestone in overarching energy and climate change policy. Generally, the framework is Canada’s “plan – developed with the provinces and territories and in consultation with Indigenous peoples – to meet our emissions reduction target and grow the economy.” The framework sets a path “to reduce GHG emissions and enable sustainable economic growth, recognizing the need for fair and flexible approaches to support the diversity of provincial and territorial economies.” The federal government and majority of provinces agreed to escalating carbon pricing and reducing emissions in the oil and gas sector.

The *Canadian Energy Strategy* and the *Pan-Canadian Framework on Clean Growth and Climate Change* are two national-level agreements on overarching policy that recognize the continued importance of hydrocarbons in Canada’s economy, as well as their potential to support Canada’s energy transition. Provinces, territories, and the federal government also remain engaged on broader, ongoing energy policy issues at the annual Energy and Mines Ministers’ Conference.

At a provincial level, Alberta has also made significant strides in developing and implementing overarching energy and climate policy in our *Climate Leadership Plan*. This made-in-Alberta strategy will reduce carbon emissions while diversifying our economy and creating jobs. Highlights of Alberta’s economy-wide efforts include implementing a price on greenhouse gas emissions, reducing methane emissions by 45 per cent by 2025, ending pollution from coal-generated electricity by 2030, increasing renewable electricity to 30 per cent of all production by 2030, and capping oil sands emissions to 100 megatonnes per year. The *Climate Leadership Plan* is an overarching policy that helped the Federal Government in its efforts to develop the *Pan-Canadian Framework*. In March 2017, in a speech to the oil and gas industry in Houston, Texas at CERA Week, Prime Minister Justin Trudeau stated, “We could not have moved forward on pipelines had we not acted on climate. And we could have not acted on climate had we not also focused on jobs, that is on the needs of the Canadian people, especially those of the middle class and those working hard to join it.” Alberta’s *Climate Leadership Plan* is a clear illustration of this balance.

By failing to mention these significant policy frameworks, the panel missed an opportunity to use its platform to demonstrate to Canadians the responsiveness of governments to their concerns. Alberta recommends that the Federal Government acknowledge these policy frameworks as constructive in guiding Canada's energy, energy transmission, and climate decisions. These existing efforts will continue to fill the gap perceived by the panel and guide future development.

Mandate

Alberta strongly supports the need for a regulator to be a quasi-judicial and independent agency and thus strongly agrees with the Report for that recommendation. An independent regulator is not a policy creator and it is not a mediator for public disputes. It is a quasi-judicial agency with a public interest test that includes, but is not limited to, the greatest good for the greatest number, and it makes decisions based on science, facts and evidence.

Alberta supports the sentiments behind the joint review panels between the NEB and Canadian Environmental Assessment Agency for streamlining processes and timelines. A single process creates more certainty, minimizes or reduces duplication, promotes efficiency, and reduces administrative costs. Therefore a modernized National Energy Board ought to consider undertaking joint reviews where possible.

Indigenous Relations

Indigenous Relations matters are complex and Alberta recognizes there is some merit to having more clearly defined engagement that would enable further dialogue with the proper representatives and strengthen relationships, and that clarification would allow parties to more easily understand expectations of engagement.

Conflicts of interests are important to manage in the review of all projects. The Federal Government should be cautious about creating an agency or department that holds an interest in a matter and also adjudicates its outcome; in this case for example with the suggested IMPO office representing Indigenous interests, defining the responsibilities, and then assessing compliance. In addition, this structure applied broadly could effectively give any stakeholder or group an unlimited authority to infinitely delay processes and cause further uncertainty in the regulatory process.

Governance and Decisionmaking

Alberta recommends that the Federal Government, with input of Provinces, Territories, Aboriginal Groups, stakeholders, and public work toward determining a more clearly defined policy including the role of energy infrastructure in society. The Report acknowledges that the Canadian Constitution is not negotiable, that Provinces are more than just stakeholders, given the defined roles for the provincial and territorial governments, Alberta expects that any federal initiatives will involve Provincial governments in energy discussions.

Alberta submits that a one year public national interest debate is not appropriate for an energy infrastructure project. This is an unreasonable length and overly burdensome process. This

length creates a harmful business environment by increasing red-tape and hinders productive business processes.

Furthermore, the Federal Government should understand the implications of this new precedent and how it will affect the future of other federally regulated sectors such as nuclear, oceans and waterways, port authorities, mines, etc.

Alberta suggests careful consideration of the recommended two-year timeline for the proposed review of projects. Alberta believes once the NEB processes improve and the removal of public policy debates occur, the existing eighteen-month timeline is sufficient for a thorough review and analysis.

Alberta agrees that there should be more than one class of review within the regulator's mandate. To involve the Federal Government through the Governor in Council in every operational or facility approval would be inefficient. There are a significant number of decisions that are not of national consequence and must continually be made for the regulation of energy infrastructure. Further clarification from the Federal Government on how it will determine if a project is of national consequence should be released and we look forward to further dialogue and input into the details surrounding what criteria are used to define national consequence.

The Federal Government ought to carefully deliberate if and how to consider harmonization of processes for pipelines with those processes of export and import permits, and electrical transmission lines also regulated by the NEB. It should be noted that lengthy reviews of import and export permits may in some cases, such as with short term import and export permits, significantly damage the North American energy sector by restricting the ability of Canadian businesses to respond to market changes and potentially interfere in the ability to provide Canadians with petroleum products. The recommendation would also suggest that the review of long term LNG export permits be harmonized. The challenge is that the project size, complexity and impact varies greatly among differing projects and therefore a one-size fits all approach is not appropriate. Alberta would welcome more explanation if the Federal Government believes this is appropriate, in addition to more details and analysis on how this would occur in order to properly understand the impacts.

Alberta acknowledges the input provided to the panel suggesting options for hearing commissioner appointment. To that end, Alberta agrees that "direct regional, sectoral, national or other representation are inferior to a trustee model" as the practical considerations to ensure regional representation and the variety of skills would require an extraordinary number of hearing commissioners that would be beyond a practical ability to implement.

The Government of Alberta, our stakeholders and regulatory agencies agree that there is a need for an independent regulator free from the undue influence and the perception of bias. However, Alberta questions the assertion that moving the regulator to Ottawa will increase the perception that the agency is independent. Moving the location of the agency may not resolve concerns over bias and influence, it may simply shift the perception of bias from industry-influenced to political-influenced bias. Alberta recommends that the best approach to addressing perceptions of bias is to increase transparency and consistency within business processes.

Alberta believes that the best location for the regulatory is Calgary because it is the most practical and logical location. Alberta is where the majority of the business interactions occur, where field audits and audits of companies are necessary, where hearings can be attended by

the most stakeholders in the most number of hearings, enables access to the largest and most qualified field of workforce professionals for the energy sector, and where there is a need for physical presence due to the largest concentration of NEB regulated pipelines; it is simply impractical for the regulator be located elsewhere.

A Federal Government that accepts the independence of a regulator cannot act on the recommendation “that Canada’s energy transmission infrastructure regulator needs a stronger connection to the seat of the federal government.” Therefore, due to this deliberate connection that creates a conflict of interest and bias, all related recommendations in the Report that relates to moving staff to Ottawa cannot be acted upon and the Federal Government must dismiss all of these recommendations.

Similarly with considerations for independence, including the need for fair and equal access for all registered parties in a hearing, the considerations must also be applied to the establishment of an Elders External Advisory Council and the Indigenous Major Projects Office. If established, these must be managed to avoid the perception of, or actual influence, that is inappropriate given the recommendation that the Elders External Advisory Council is to advise the Board, CEO and commissioners.

Public Participation

It may be appropriate for expanded input by allowing a wider range of stakeholders to submit a letter of comment for issues within scope and without the need for a standing test, and thus improving participation and public input into the hearing. This would continue to enable parties who wish to thoroughly participate due to expertise, direct impacts, or direct interest, to apply for intervenor status and ensure they are not at hearings to discuss matters that are outside the scope of the hearing. Alberta understands that there may be formalized processes that must occur to ensure peace, safety of participants, equal treatment for all participants, and ultimately the need of a fair hearing.

The National Energy Board Act should be amended to invite provinces to participate where the federal regulator is considering an application to construct and operate a federally-regulated pipeline project located with that specific province’s boundaries. Provinces have significant responsibilities in regards to federally regulated pipelines, thus provinces should be granted standing automatically upon providing the federal regulator a simple letter of request.

There may be significant challenges around the creation of a public intervenor office. First, the industry is indirectly funding opposition to their projects. The creation of a public intervenor office would decrease effectiveness and increase hostility for investment and the business environment across Canada. The public intervenor office would be subject to a significant amount of internal conflicts of interest due to the different interests of the different parties. In addition, it is unlikely the office would have unlimited funding, and therefore would encounter challenges in decisions in how to allocate time and resources. The public intervenor office may in theory sound beneficial, however would be challenging to implement and Alberta does not recommend a public intervenor office.

Alberta sees many challenges in the creation of regional stakeholder committees. This includes unlimited participation, policy debates, project debates, public education, feedback on technical matters, a degree of challenge in providing advice on quasi-judicial processes, and the wide suggested scope of the committees. The regulator must also ensure that stakeholder

committees are not a venue to review matters that have previously been decided as it would be unreasonable and impractical. The Federal Government should also consider the implications of this model to other sectors within the federal and provincial realms. Alberta recommends that if any committees are formed, it may be appropriate to have a functional working group size representing varied interests and that has a focused mandate to ensure the most functional value added subject or process matters.

Alberta believes that there is value in the creation of an online public outreach office to engage citizens with general process help and to assist with navigating documents and processes.

Alberta looks forward to providing more comments on these matters once the Federal Government releases their proposal and more information on the implementation of any proposals.

Keeping the Land Pure

Alberta supports the idea of increasing transparency through plain language reports that will enable the public to better understand the pipeline industry, issues, standards, processes, scope, oversight, and functions of a regulator.

Alberta is aware of the recent review in 2014 by the Federal Government of the liability amounts for pipelines and the introduction of legislation for liability of \$1 billion dollars when a pipeline is not at fault, and unlimited liability when at fault or negligent. Alberta does not believe that another review of the surety bond amount is required at this time.

Alberta submits that any recommendations in this section will require further details and significant consultations with stakeholders on the proper processes to implement any of these recommendations.

Respect for Landowners

Alberta acknowledges there may be opportunities during the processes for improved interactions with landowners.

Alberta cautions the Federal Government in its implementation on directing hearings commissioners for alternative dispute resolution, and to ensure the removal of conflicts of interests and avoid the impingement of independence of the regulators and hearing commissioners.

Alberta recommends that any investigation into guidelines and requirements around communication and interactions with landowners involve consultation with landowners, Provinces, Territories, and other stakeholders, and is further followed up by release of draft proposals including implementation details seeking further comments on the newly refined proposals.

Conclusion

Alberta acknowledges the Federal Government's efforts to resolve public concerns about the National Energy Board and public policy, and the attempts to create certainty for a stable businesses environment.

As mentioned through this submission, there are a number of high level concepts that are directionally positive attempts to reconcile the desire for public input with the formation of policy issues, while improving oversight of federally regulated infrastructure.

Additionally, Alberta suggests that the Report contains a significant number of recommendations that will have to be thoroughly evaluated and focused into clear proposals in order to allow Provinces and Territories, Indigenous peoples, and other stakeholders the opportunity to provide input.

A major consideration with the NEB Modernization is to ensure a system that is efficient, timely, and effective without becoming an unnecessarily burdensome process. Many of the concepts presented within the Report, if applied to other areas of the federal or provincial governments, would significantly and detrimentally alter the business environment in Canada and therefore careful consideration of recommendations is warranted.

Alberta looks forward to actively participating in further feedback on the Federal Governments draft proposal for the NEB Modernization.