



File ADV-PE-LandMC 0108
17 October 2012

To: Public Involvement Workshop Sub-Committee (Sub-Committee)

**National Energy Board's (Board) Oversight of Public Involvement Programs
by Regulated Companies –
Recommendations to the Board by the Land Matters Group Public Involvement
Workshop Sub-Committee (Sub-Committee)**

The Board appreciates the contributions of the November 2011 Public Participation Workshop participants and the work completed by the Sub-Committee to produce a Report with recommendations to the Board (Appendix A). The Board has reviewed the key messages and four recommendations in the Sub-Committee's report. The Board is committed to continual improvement and is pleased to note that many of the recommendations are complementary to and supportive of Board initiatives in progress. The Board responds to the recommendations as follows.

Recommendation 1 - Compliance Verification of Company Public Involvement Programs

The Board has considered the need to enhance its existing compliance verification activities for company public involvement programs, follow-up with directly affected parties, and focus compliance verification on certain project phases. The Board recognizes the importance of compliance verification and plans to increase the number of operational audits it conducts. The Board also will:

- review and adapt its methods and existing tools for verifying the public involvement activities that companies describe within applications and undertake throughout the phases of a project;
- consider the use of project conditions for public involvement program elements in cases where it would be appropriate to do so;
- enhance compliance verification activities for existing requirements related to public education and awareness, such as those in the *Onshore Pipeline Regulations, 1999*, the *National Energy Board Pipeline Crossing Regulations, Part II*, and Board Order MO-21-2010 (Exemption Order Respecting Crossings by Agricultural Vehicles or Mobile Equipment); and

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- clarify company consultation filing requirements by updating its Filing Manual, integrating components of the *NEB Draft Expectations for Public Involvement*.

Recommendation 2 - Development and Support of Capacity among Impacted Parties

The Board has considered the need for providing additional information regarding company compliance to affected parties, educating affected parties on the mutual roles and responsibilities of all involved, enhancing the Board's ongoing education and awareness activities, and improving the Board's internal means of tracking issues between companies and affected parties.

The Board will continue to promote and improve its existing tools and programs to provide information to the public and affected parties, support effective participation in Board processes, and help resolve issues. This includes but is not limited to:

- promoting the Board's issue resolution processes more broadly;
- maintaining the Land Matters Group (LMG) as a standing forum to address topics of interest;
- increasing public access to Board-initiated safety and environmental compliance actions under the *National Energy Board Act* by posting additional documents on the Board's website;
- conducting public information sessions and intervener workshops;
- providing process advisors to support participants in public hearings;
- continually improving Board publications;
- providing information and updates on the Board's website; and
- administering the Board's Participant Funding Program.

The Board is of the view that these tools, programs and issue resolution resources provide an appropriate range of support and service between pipeline companies and affected parties. Therefore, the Board will not be pursuing the establishment of an ombudsperson role at this time.

With respect to compensating affected persons for their time invested in raising concerns and responding to company requests, the Board encourages industry and affected parties to continue working towards mutually acceptable outcomes for compensation matters.

Recommendation 3 - Standards for Land Agent Conduct

The Board supports continual improvement in the area of land agent conduct. It is the view of the Board that regulated companies have a responsibility to ensure that its agents are respectful and professional in their dealings with landowners and affected parties.

The Board strongly encourages industry to develop, adopt and promote best practices, training and standards for land agent conduct. The Board would see a best practices guide (such as a code of conduct), developed in consultation with landowners, as a major improvement in this area.

Recommendation 4 - Forum for Dealing with Aboriginal Issues

The Board relies on its existing tools, mechanisms and processes to address issues which fall within its mandate and are unique to Aboriginal communities. These include the Board's:

- enhanced Aboriginal engagement process;
- company consultation requirements as described in the Filing Manual;
- Participant Funding Program;
- hearing and non-hearing processes; and
- issue resolution resources and processes.

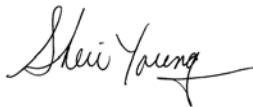
When appropriate, the Board also coordinates or engages in dialogue and consultation initiatives such as the 2010 Arctic offshore drilling review, the Northwest Territories Board Forum and the Memorandum of Understanding with the First Nations Tax Commission.

Therefore at this time, the Board will not be asking the LMG Steering Committee to consider setting up a separate forum for dealing with Aboriginal issues.

In conclusion, the Board thanks you for your contributions and participation in this LMG initiative. The Board acknowledges and appreciates the effort and commitment exhibited by LMG November 2011 workshop participants and Sub-Committee members. The LMG has been, and is expected to continue to be, a constructive and valuable avenue for raising and addressing topics of interest to stakeholders.

If you have any questions, please contact Lorna Patterson at lorna.patterson@neb-one.gc.ca or (403) 221-3010, or through the Board's toll-free number at 1-800-899-1265.

Yours truly,



Sheri Young
Secretary of the Board

Attachment: Appendix A – April 2012 -- Recommendations to the Board
by the LMG Sub-Committee

c.c: Land Matters Group

National Energy Board's Oversight of Public Involvement Programs by Regulated Companies

Recommendations to the Board

**by the Land Matters Group /
Public Involvement Workshop Sub-Committee**

April 2012

This report presents recommendations to the Board based on input gathered during a workshop held in Calgary on 22-23 November 2011 on the NEB Draft Expectations for Public Involvement Programs.

NEB Oversight of Public Involvement Programs by Regulated Companies

Report to the Board from the Land Matters Group Public Involvement Workshop Sub-Committee

1. Introduction

This report presents recommendations to the Board based on input gathered during a workshop held in Calgary on 22-23 November 2011. The primary objective of the workshop was to seek feedback on what is needed to effectively support and improve the NEB's regulatory approach to its oversight of public involvement programs by NEB-regulated companies.

Approximately 40 members of the Land Matters Group (LMG) contributed to discussions over two days, which included participation from landowners and landowner associations or groups, Aboriginal groups, industry, and other government agencies.

At the conclusion of the workshop, a Public Involvement Workshop Sub-Committee (Sub-Committee) was established from among participants to develop recommendations to the Board based on the workshop input. The members of the Sub-Committee¹, and co-authors of this report, are:

Don Bester – Alberta Surface Rights Group
Isabelle Bouffard – Union des producteurs agricoles (UPA), Québec
Norville Getty – Union of New Brunswick Indians (UNBI)
Carl Gitscheff – Dawson Creek Trappers Association, BC
Miriam Kjos – Landowner, Fort St. John, BC
Patrick Leys – TransCanada PipeLines Limited
Sean Maher – National Energy Board (NEB)
Fraser Paterson – Alliance Pipeline Ltd

The input gathered at the November 2011 workshop was refined during the subsequent meetings of the Sub-Committee, and this document reflects their consensus for recommended actions by the Board related to its oversight of company public involvement programs and activities.

2. Background

In the fall of 2007, the NEB undertook the Land Matters Consultation Initiative (LMCI) to engage in dialogue with those affected by NEB-regulated infrastructure. Through the LMCI, a need was identified for the NEB to clarify its expectations for public involvement programs by NEB-regulated companies throughout the lifecycle of pipeline facilities.

¹ Bob Small represented the Confederacy of the Treaty Six First Nations on the sub-committee when it was formed. Mr. Small and the Confederacy of the Treaty Six First Nations withdrew from the sub-committee 16 February 2012. Mr. Small indicated that Treaty Six First Nations will be making a submission to the NEB that First Nations interests be accommodated in a separate forum.

In its 2009 LMCI Final Report, the Board committed to extending its existing regulatory approach in place for other aspects of the NEB's mandate such as safety, security and protecting the environment to encompass respecting the rights and interests of those affected by NEB-regulated facilities and/or activities. As part of this commitment, the Board released its *Draft Expectations for Public Involvement Programs* in 2009,² and gathered feedback from NEB-regulated companies and interested parties.

In 2011, the Board invited further input on the need for and extent of changes to the Board's regulatory tools used in its oversight of company public involvement activities (including the Board's Draft Expectations) from members of the Land Matters Group (LMG). This input was facilitated through the November 2011 workshop.

3. Workshop Outcomes

The workshop gathered input, comments and suggestions about the Board's role in oversight of public involvement programs by NEB-regulated companies. Participants at the workshop were asked to provide comments and suggestions in response to the following questions:

- *What should the NEB do in providing oversight of company Public Involvement Programs at each phase of the lifecycle of a project?*
- *How do you see this being implemented?*

Input was provided on the Board's role in setting "Expectations", carrying out "Compliance" activities and "Enforcement". Small-group discussions were facilitated based on phases of a facility lifecycle (Planning, Construction, Operations and Abandonment).

More than 100 comments and suggestions were gathered at the workshop. The Sub-Committee considered all of the comments and suggestions and aggregated them into "themes", including:

- the Board's guidance to companies and affected parties;
- compliance oversight activities;
- issues related to the methods, timing and adequacy of consultation; and
- the Board's role in ongoing education and capacity support of impacted parties.

The Sub-Committee's consensus is that all of the input received at the workshop has been considered and accounted for in the recommendations and key messages identified below.

4. Key Messages

The Sub-Committee identified a number of key messages that emerged through the November 2011 workshop and subsequent discussions of the Sub-Committee. Although not presented as recommendations to the Board, these messages provide important context which should assist in the Board's understanding of the substantive issues raised and recommendations given:

² [National Energy Board Draft Expectations-Public Involvement Program](#)

- (a) Consultation is a mutual responsibility, and is based on the expectation that all parties will participate in good faith.
- (b) The adequacy and effectiveness of company public involvement programs differs among companies. Regulatory oversight should therefore be focused on level of risk, potential impact and company performance.
- (c) The burden of understanding the rights and responsibilities found in the NEB's regulatory framework is shared among all parties. Both the NEB and companies must conduct ongoing education and awareness in this regard.
- (d) It is important to clarify which "public" is addressed within a company public involvement program. The focus of the Sub-Committee's discussions was on affected parties, and was not intended to address issues associated with the "general public" who are not directly affected by a project.
- (e) A gap has been identified regarding the integration of self-identified, or potentially difficult to identify, affected parties (such as guide-outfitters and other non-tenured land users) into both company public involvement processes and the Board's review processes.

5. Recommendations to the Board

The Sub-Committee identified 4 recommendations to the Board that emerged through the workshop and subsequent discussions.

Recommendation 1

- (a) The Board should enhance its activities to verify company compliance with the NEB's expectations for company public involvement programs. Particular consideration should be given to verifying company records for adequacy and effectiveness against company commitments and Board expectations, including:
 - the timing and methods of consultation;
 - the competencies and training of company staff who undertake Public Involvement efforts;
 - the way in which affected parties are identified and consulted; and
 - processes and opportunities provided to affected parties to raise and resolve issues.
- (b) The NEB should follow-up directly with affected parties (such as through random samples or risk-based verifications) to verify company consultation documentation.
- (c) The following phases of the project lifecycle have been raised as being of particular concern to affected parties. The Board should focus its compliance verification activities on these phases :
 - early (pre-application) notification and consultation;

- post-construction monitoring and Right of Way reclamation, bearing in mind the mutual responsibilities of parties to engage;
- ongoing education and awareness programs during the operations phase (specifically in relation to pipeline crossings using agricultural vehicles and mobile equipment, and emergency response); and
- abandonment planning (including both procedural aspects and desired end states).

(d) The Board should clarify or enhance its expectations for the various aspects of company public involvement programs in order to effectively verify compliance. The Board should consider a higher level of prescription to address current ambiguity regarding what the Board expects, and should clearly define terms used (e.g., “appropriate”, “adequate” and “affected parties”).

Recommendation 2

The Board should enhance its efforts to develop and support capacity among impacted parties, in order to facilitate their effective participation in processes affecting them and to resolve potential issues. Particular consideration should be given to:

- Identifying potential best practices and mechanisms for compensating affected persons (i.e., making whole) for time invested raising concerns and responding to company requests;
- Providing information regarding company compliance to affected parties in a timely and transparent manner;
- Making resources available to support an Ombudsman role or service between the pipeline company and affected persons;
- Educating potentially affected and affected parties on the mutual roles and responsibilities of all involved (companies, the Board, and affected parties);
- Enhancing the Board’s own activities with respect to ongoing education and awareness programs (specifically in relation to pipeline crossings using agricultural vehicles and mobile equipment, and emergency response);
- Maintaining a standing forum where parties can raise concerns regarding the Board’s regulatory approach outside of an application process; and
- Improving the Board’s internal means of tracking issues which emerge between companies and affected parties to ensure the maintenance and transition of this knowledge.

Recommendation 3

As the conduct of some land agents remains an ongoing issue related to public involvement activities, the Board should consider how to promote the development and use of best practices, training and standards to address land agent conduct.

Recommendation 4

While the public involvement concepts described in this report apply to all parties, many issues unique to Aboriginal communities raised at the workshop could not be addressed in this process. The Board should bring this matter to the attention of the Land Matters Group Steering Committee and ask that it consider setting up a separate forum for dealing with such issues.

This report was approved by the Public Involvement Workshop Sub-committee on 20 April 2012.