



CANADIAN ENERGY PIPELINE ASSOCIATION
2016 PRE-BUDGET SUBMISSION
STANDING COMMITTEE ON FINANCE
FEBRUARY, 2016

Introduction

The Canadian Energy Pipeline Association (CEPA) would like to thank the House of Commons Standing Committee on Finance for the opportunity to contribute to the 2016 pre-budget consultations.

CEPA represents Canada's 12 major transmission pipeline companies who operate approximately 117,000 kilometers of pipeline in Canada. This critical infrastructure moves 1.2 billion barrels of liquid petroleum and 3 trillion cubic feet of natural gas each year.

For more than 60 years, our pipelines have operated across the country, delivering the energy Canadians use every day and enabling tremendous wealth creation for our nation. Our members are committed to delivering this energy safely, reliably and efficiently. This responsibility comes with the understanding that we must earn the public's trust and the continued right to operate. We build this trust by demonstrating that our industry's safety and environmental performance are beyond reproach and that we are dedicated to continuous improvement in the areas of safety, emergency response and environmental protection. Over the past decade CEPA members have sustained a safe delivery record of 99.999 per cent and in 2015 there were zero significant incidents along Canada's mainline transmission systems. Canada's energy transmission system is safe and reliable.

Canada's Investment Climate

The energy industry and our existing pipeline systems are undoubtedly pillars of the Canadian economy. But the collapse in the price of oil has resulted in delayed or cancelled projects and enormous job losses in the energy sector throughout Canada. In 2015 alone, over 100,000 direct and indirect jobs have been lost within the economy, with more losses expected. The situation is exasperated by our dependence on the United States as our only major customer, forcing us to sell our oil at a severely discounted price. The primary problem is a lack of pipeline infrastructure to access global markets, leaving us with only one customer. Without more diverse and better access to markets, Canada is missing out on billions of dollars each year.

Our member companies propose to invest over \$68 billion in pipeline projects over the next 5 years. Many of these projects have been in the planning and development process for years and are ready to go infrastructure investments. All of these projects will be built with private capital. This represents thousands of jobs, when unemployment is reaching levels not seen since the 1980s.

To build these important projects we need to continue to have a competitive investment climate. Companies will choose to invest their capital in other jurisdictions if they see the Canadian regulatory and fiscal system imposing process uncertainty, additional risks, costs and delays that are not inherent in other more competitive jurisdictions.

CEPA appreciates and supports the Federal government's infrastructure spending commitments and the Prime Minister's promise to fast-track federal infrastructure spending for economies that are suffering.



Investing in other necessary infrastructure spending is an option during these difficult economic times. We support those initiatives. We also count on our governments to encourage and enable private infrastructure spending to supplement the investment of public monies. It is the responsibility of governments to create the circumstances to ensure that Canada remains competitive now and as the price of oil eventually recovers. If we don't take this responsibility seriously, we risk losing out on these private infrastructure investments now and into the future.

Building Public Confidence

We recognize that the responsibility to create investment confidence comes hand in hand with building public confidence. The public must have confidence that our pipeline systems are safe. The public also must have confidence in the regulatory oversight of existing pipeline systems as well as the processes for review and assessment of new pipeline proposals.

To increase public confidence, decisions on whether new pipelines will be built must be based on evidence, science and a rigorous quasi-judicial process. We recognize and agree that this assessment must now include an assessment of GHG emissions.

Building confidence also must include having a predictable and well-understood process for reviewing pipeline proposals. Unfortunately the recent government announcements that extended the review of two proposed pipeline projects, together with the requirement of additional reports and processes at the back end of an extensive NEB process are leading to increased ambiguity, delays, duplication of work and growing politicization of the review process. This uncertainty can have a profound impact on energy infrastructure and resource development activities in Canada. In the near term, uncertainty and delays could increase the risk that projects are delayed which, in some cases leads to the project being cancelled. In the longer term, Canada's regulatory system may be viewed as constraining competitiveness, investment and trade.

Building public confidence requires industry, regulators and governments to work working together. To that end, CEPA recommends four areas where public trust in the regulatory review of new pipelines and oversight of existing pipeline systems can be enhanced:

1. De-politicizing the NEB

CEPA is very concerned with the politicization of the review process for pipeline infrastructure. We believe that an evidence-based process to reach decisions serves better than a Cabinet decision, which may be based on politics rather than science, evidence and fact.

The National Energy Board was established in 1959 to depoliticize energy infrastructure decisions in the aftermath of "the Great Pipeline Debate" concerning the TransCanada gas mainline proposal. Following the advice of two Royal Commissions, the NEB, as an independent quasi judicial regulator, was intended to shelter energy infrastructure decisions of national significance from political decisions based on expediency. Decisions about national infrastructure were best taken out of the political process.

More recently we find ourselves in a similar situation. The legislative changes brought in by Bill C-38 in 2012 changed the role of the NEB from making a "decision" to making a "recommendation" to Cabinet, leaving Cabinet with the final "decision". This change has now led to politicization of the decision making process. More recently, the government said that decisions on pipeline approvals are ultimately the Cabinet's to make, based on a variety of factors. CEPA recommends that this 2012 amendment be reversed, restoring the balance of decision making towards the NEB, a quasi-judicial regulator whose



decisions are based on science, fact and evidence rather than with Cabinet. This requires an amendment to s. 52 of the National Energy Board Act and we believe that this will ultimately lead to more certainty in the process, helping to restore confidence in the regulatory review process.

2. Modernizing the NEB

The NEB's role in regulating existing operations of a pipeline spans the entire life cycle of a pipeline, from its design to construction, operation and ultimately abandonment. The NEB has almost 60 years of experience in regulating pipelines and has over 450 staff in disciplines such as engineering, economics, Aboriginal relations and environmental science. It is recognized globally as a leader with strong expertise in the lifecycle regulation of pipelines. The NEB is familiar with pipeline construction and operation standards through decades of operating practice and experience.

Historically the NEB performed this role with little public concern. However, recent public focus on new pipeline applications has led to unprecedented public scrutiny related to safety and environmental

concerns sometimes driven by other agendas not necessarily related to pipelines. To meet this growing concern, the government has committed to "modernizing" the National Energy Board. This includes ensuring that its composition reflects regional views and has sufficient expertise in environmental science, community development and indigenous traditional knowledge. CEPA agrees that a more diverse board, particularly greater indigenous representation, will help to build public confidence in its processes and oversight and supports this objective. Other areas of modernization are already underway, including the passing of the Pipeline Safety Act, which will come into force in June 2016. The legislation will enshrine the principle of polluter pay into the law and will play an important role in building confidence in robust oversight of the operations of pipelines.

The other significant role that the NEB fulfills is overseeing the application and review process of new pipeline projects. Significant changes to this process were made in 2012. CEPA believes that while there is always room for continuous improvement, the system itself is not broken. Many of the changes have served the system well and have led to efficiencies without compromising robust environmental oversight. Any review of these processes should include wide consultation and must be based on evidence, science and facts. It should look to other jurisdictions for comparison and should always consider Canada's competitive position. To the extent that this process is reviewed and modernized, a good framework can still be found in the Smart Regulation Policies that were highlighted in the 2004 Report titled "Smart Regulation: a Regulatory Strategy for Canada". Smart regulation emphasized that regulation should "generate social and environmental benefits while enhancing the conditions for a competitive and innovative economy that will attract investment." Public confidence can be improved by getting the right balance, building on what works well, improving what doesn't and providing the regulator with the tools and resources for oversight through the entire lifecycle of pipelines.

3. Resourcing the Governance of the NEB

CEPA believes that a strong, credible regulator needs to be well resourced to provide the tools it needs to fulfil its mandate. CEPA recognizes that the finite resources now available to the NEB may limit its ability to further enhance technical and operational expertise as well as its ability to adapt to changing circumstances. The Board faces challenges in attracting and retaining specialists in key areas and in tracking and monitoring compliance and approval conditions of regulated companies, more recently confirmed by the Commissioner of the Environment and Sustainable Development's report. We also appreciate the Board's efforts to increase energy literacy across the country and recognize that this



requires resources and funding. In order to address these issues, CEPA recommends that the Treasury Board grant the NEB greater flexibility within the cost recovery model, allowing the NEB to better attract and retain highly skilled employees and to continue to fulfil its strategic priorities. Any funding increase would be passed on to regulated companies through levies and fees and would have no bearing on general government expenditures. The federal government recovers approximately 90% of the cost from industry, and it should continue to do so.

4. Enhancing Indigenous consultation

CEPA agrees with the government's commitment to enhance the consultation, engagement and participatory capacity of Indigenous people in reviewing and monitoring major resource development projects. For national infrastructure projects to be successful, the Crown must fulfill its own responsibility to consult. This will require nation to nation consultation and additional consultation outside of the NEB hearing process. Without the Crown fulfilling these obligations, pipelines and other infrastructure and resource development projects are put at risk. We believe that the Major Projects Management Office (MPMO) is best placed to provide stronger leadership and implementation of guidelines and approaches related to consultation.

Summary

In order to build public trust that will enable Canada to enhance its market options, CEPA recommends:

1. **Depoliticizing the NEB:** The decision making for review of pipeline projects must be de-politicized. The legislative changes brought in by Bill C-38 in 2012 that changed the role of the NEB from making a decision to making a "recommendation" to Cabinet led to politicizing the process. CEPA recommends that this 2012 amendment be reversed, restoring the balance of decision making powers towards a quasi-judicial regulator whose decisions are based on science, fact and evidence.
2. **Modernizing the NEB:** CEPA agrees that a more diverse board, particularly with indigenous representation, will help to build public confidence in its processes and oversight. Any changes to the review process for new pipelines must start with the recognition that the system itself is not broken.
3. **Resourcing the Governance of the NEB:** In order to ensure that the NEB can continue to enhance its technical and operational expertise to meet changing dynamics and fulfill its mandate, CEPA recommends that the Treasury Board grant the NEB greater flexibility within the cost recovery model, allowing the NEB to better attract and retain highly skilled employees and continue and expand its important role in energy literacy.
4. **Enhancing Indigenous consultation:** CEPA agrees with the government's commitment to enhance consultation with indigenous communities on a nation to nation basis. To that extent, the Major Projects Management office is well placed to play a coordinating role.

By improving public confidence, we will be better able to make progress on necessary pipeline project approvals. Canada must make this progress in order to sustain our way of life today as we transition to a low carbon economy. We believe this can be best accomplished by giving the NEB the tools that it needs and allow it to continue to make decisions based on evidence, facts and science in a quasi-judicial process. We need to remove politics from the process, let the NEB do its work and work towards a constructive dialogue to make sure that together we find solutions to make progress on pipeline projects and the safe and reliable operation of our energy infrastructure.