# National Energy Board Modernization

## Considerations for a Modern Energy Regulator

Land Claims Agreement Coalition Conference

November 15 2017

Canada

# Overview

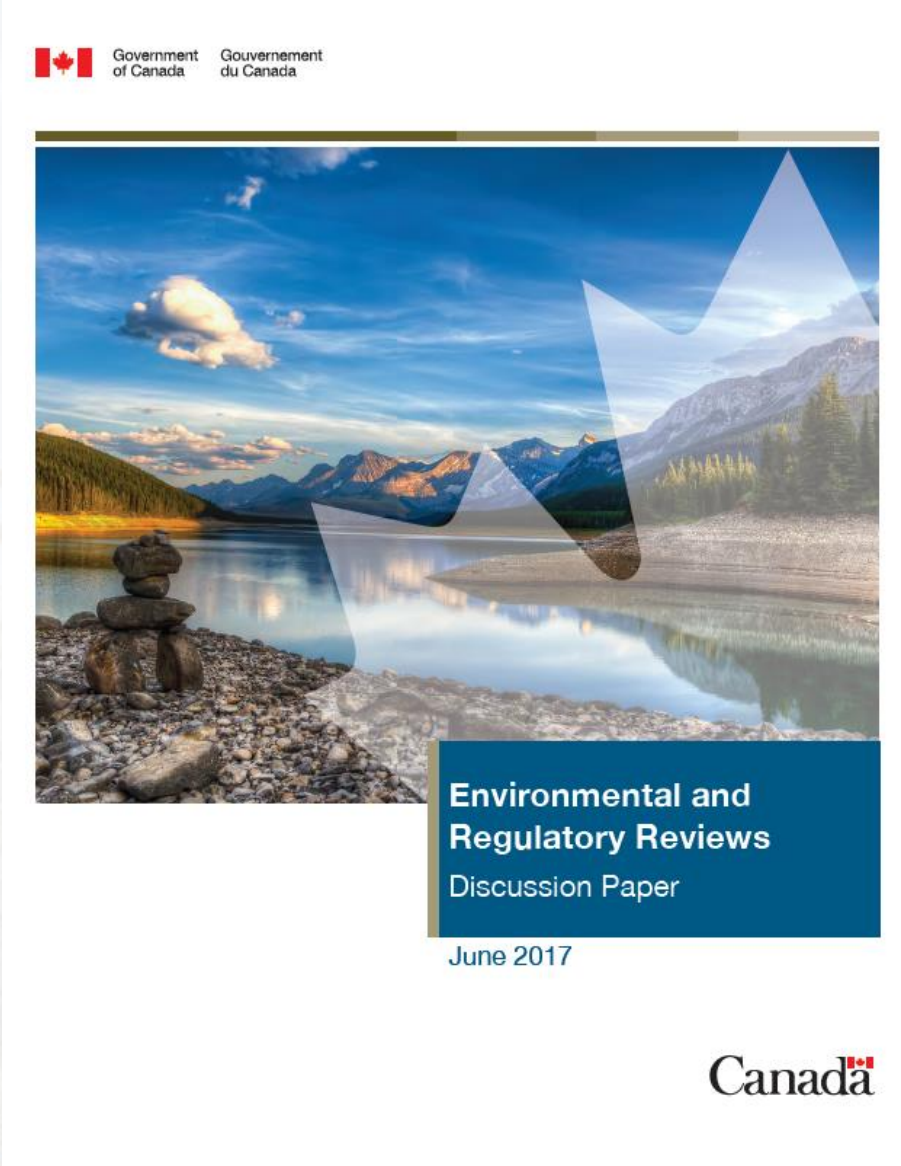
- Provide an update on the NEB Modernization review process
- Discuss proposed policy direction for NEB Modernization currently under consideration
- Provide an overview of next steps

# Context: NEB Modernization Process

- Minister of Natural Resources mandated to: "Modernize the National Energy Board to ensure that its composition reflects **regional views** and has sufficient **expertise** in fields such as environmental science, community development, and Indigenous traditional knowledge."
- **November 8, 2016:** Minister Carr establishes a five-member Expert Panel to review the *NEB Act*
  - The Expert Panel Terms of Reference instructed the panel to focus on issues related to the Board's structure, role and mandate pursuant to the *NEB Act*
- **January – March 2017:** Expert Panel travels to 10 cities across the country, including Yellowknife, hearing from approximately 1,200 participants
- **May 15, 2017:** Expert Panel submits its report, providing 26 recommendations across seven key themes.
  - Report release followed by 30-day comment period

# Discussion Paper

- On June 29, 2017, the Government of Canada published a discussion paper that outlines potential reforms being considered to rebuild trust and modernize Canada's environmental and regulatory processes
- Identifies proposals for changes to energy regulation and review process for NEB-regulated projects that build on the NEB Modernization Expert Panel report



# What We Heard: Indigenous Communities

- NEB-regulated projects have potential to advance Indigenous prosperity, but many communities skeptical about benefits in light of risks and impacts
- Communities have felt considered at the last minute in NEB project reviews
- Despite challenges, Indigenous peoples want to step-in and play a leadership role—do not wish to have to "prove" their rights
- Seek nation-to-nation relationship with Canada based on mutual respect and acknowledgment of shared goals & values
- Seek a meaningful seat at the table early, to lend experience to help Canada navigate energy and environmental challenges

# What We Heard

**Submissions from Modern Treaty holders emphasized in particular:**

- The importance of recognition of their jurisdiction and improved opportunities for harmonization of treaty processes and federal processes
- The importance of Indigenous Knowledge
- The importance of timely and sufficient information exchange
- Support for Indigenous representation and diverse membership, including regional representation, amongst board members
- That early engagement is key

# National Energy Board Modernization

## Potential Changes Under Consideration

Canada

# 1. Mandate

**Goal:** Mandate of modernized NEB is aligned with and supported by federal policy activities

| From | To |
| --- | --- |
| • NEB reviews used as a forum for policy discussion<br>• Diffuse responsibility for energy information | • Use existing policy dialogue venues to **define federal energy policy framework** outside of project hearings<br>• Develop a new model for timely and credible **energy information**<br>• Add legislative provisions to regulate **offshore renewable energy** projects and associated power lines in federal offshore |

# 2. Governance

**Goal:** Put in place modern and effective governance mechanisms

| From | To |
| --- | --- |
| • Concerns that NEB is biased in favour of industry | • Separate adjudicative and operational functions by<br>  • **Splitting the roles** of CEO and Chairperson of the Board, currently held by the same person<br>  • Creating corporate style **executive board**<br>  • Creating separate **hearing commissioners**<br>• Enhance **diversity** of Board members and hearing commissioners through a competency matrix, including requiring expertise in **Indigenous knowledge**<br>• Eliminate Calgary **residency requirements** for Board members and hearing commissioners |

# 3. Indigenous Participation and Nation-to-Nation Relationship

**Goal**: Ensure Indigenous rights are recognized, and the modernized NEB is fully engaged in the Government of Canada's move to a nation-to-nation relationship

| From | To |
|---|---|
| • Consultative processes viewed as inadequate<br>• Consultation viewed as too focused on project reviews | • Create opportunities for dialogue with Indigenous peoples on key **policy issues**<br>• **Earlier and ongoing engagement** with Indigenous peoples<br>• Enable the regulator to better **support the Crown's consultation process** in key areas under its mandate<br>• Strengthen the approach for Indigenous peoples to **build capacity** for participation in regulatory processes and help coordinate Crown consultations<br>• Improve **participant funding** to streamline funding application processes and expand list of eligible activities<br>• Clarify consultation **roles and responsibilities** for all parties<br>• Integrate **Indigenous knowledge** into hearings and lifecycle activities |

# 4. Decision-Making

**Goal**: Establish transparent, efficient and effective decision-making processes

| From | To |
|---|---|
| • Limited opportunities for public participation in various NEB processes<br>• Strict timelines for major projects<br>• Lack of transparency | • Offer **open opportunities for public participation** in assessments and regulatory reviews<br>• Change the definition of **determining public interest** to include environment, safety, social, health and Indigenous considerations<br>• Encourage the development of **cooperation agreements** with interested jurisdictions |

# 5. Safety and Environmental Protection

**Goal:** Strengthen the NEB operations to increase transparency and improve safety and environmental protection.

| From | To |
| --- | --- |
| • Limited opportunities for public and Indigenous participation<br>• Concerns as to whether NEB has required tools to ensure environmental protection and regulatory compliance | • Expand the role of Indigenous peoples in **energy infrastructure monitoring**<br>• Enhance **safety and security measures** to protect energy infrastructure |

# Next Steps

- As part of broad engagement effort, Government officials will continue to work together to share information, gather views on the discussion paper and the vision it proposes

- Input received is being considered in the development of legislative and policy measures brought forward for consideration

- Engagement will continue well beyond this date as regulatory, policy, and implementation measures are developed