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To: "Direct to Mayor and Council - DL" <CCDTMACDL@vancouver.ca>

Date: 5/17/2017 7:06:23 PM

Subject: Report of the Expert Panel on the Modernization of the National Energy Board

Attachments: CMO - Mayor & Council - NEB Expert Panel Report - 2017.05.17.pdf

Dear Mayor and Council,

Please see attached Memo on the National Energy Board's Expert Panel Report for your information.

A short summary of the memo is as follows:

- Provides a summary of the federal Minister of Natural Resources Expert Panel's May 16, 2017 report reviewing the National Energy Board's (NEB) structure, role and mandate under the *NEB Act*
- Outlines how feedback provided by the City of Vancouver was incorporated into the Expert Panel's report recommendations, and highlights key areas where our feedback was not addressed

Please contact Marnie McGregor at 604.873.7039 or marnie.mcgregor@vancouver.ca if you have any questions.

Best
Sadhu

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OFFICE OF THE CITY MANAGER
Sadhu Johnston, City Manager

MEMORANDUM

May 17, 2017

TO: Mayor and Council

CC: Sadhu Johnston, City Manager
Paul Mochrie, Deputy City Manager
Janice MacKenzie, City Clerk
Lynda Graves, Manager, Administration Services, City Manager's Office
Rena Kendall-Craden, Director, Communications
Kevin Quinlan, Chief of Staff, Mayor's Office
Katie Robb, Director, Communications, Mayor's Office
Naveen Girn, Director, Community Relations, Mayor's Office
Marnie McGregor, Director, Intergovernmental Relations & Strategic Partnerships

FROM: Sadhu A. Johnston
City Manager

SUBJECT: Report of the Expert Panel on the modernization of NEB

Dear Mayor and Council,

This memo is to provide you with a detailed report of the Expert Panel on the Modernization of the National Energy Board.

Overview

The Minister of Natural Resources established an Expert Panel to conduct a targeted review of the National Energy Board's (NEB) structure, role and mandate under the *NEB Act*. This review was undertaken to modernize the NEB and restore public trust. In the fall and winter 2016/17, the Expert Panel engaged Indigenous peoples, interested stakeholders, provinces and territories, as well as the public. As part of this process, the City of Vancouver provided a detailed submission to the Expert Panel, which can be viewed at tinyurl.com/km7f8rs. On May 15, the Expert Panel released an 87-page report, *Forward Together*, that includes 26 recommendations. The federal government is now accepting feedback on the report until June 14. The report can be viewed at: tinyurl.com/ksjqxs6.

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Some of the Expert Panel's key recommendations include:

- Replacing the NEB with a “Canadian Energy Transmission Commission” (CETC);
- Establishing a one year process for the Governor in Council to determine whether a major proposed project meets the “national interest” prior to regulatory review;
- Creating an independent agency (CEIA) responsible for energy information; and
- Improving consultation with Indigenous peoples

The report acknowledges a variety of concerns raised by stakeholders during the review process, including many of the issues identified by the City of Vancouver. While the report addresses several of these concerns, some of the City's suggestions were not accepted, including with regards to oral cross-examination and environmental assessments. In other cases the Panel proposes recommendations that are somewhat vague and difficult to assess, particularly as there is still uncertainty around their implementation. Below are some of the recommendations that the City of Vancouver commented on in its submission.

Canadian Energy Information Agency

- The Panel recommended that the energy information and data analysis portion of the NEB mandate be split off into a new organization, the Canadian Energy Information Agency (CEIA).
 - This is consistent with the City's submission. Such an agency would fill an important role, and also remove the potential for a conflict of interest between the organization's regulatory role and its energy information and advisory role.

Municipal Engagement

- While not an actual recommendation, the Panel encouraged the CETC to consider municipal issues in all of its operations, including targeted engagement with municipalities when updating regulatory policy and frameworks that affect them.
 - The City's submission had called for enhanced municipal participation.

Public Participation

- The Panel recommended repealing the standing tests for public participation that require participants to be either “directly affected” or possess “relevant information or expertise”. It further recommended that the *CETC Act* be adapted to allow for a “wider array of input”, and include a provision for all Canadians to be permitted to submit a Letter of Comment to the CETC for consideration during its deliberations.
 - The City had advocated removing barriers to meaningful public engagement. While the Panel's recommendations are a step in the right direction, we would like to see further details about how the legislation will be amended.

Environmental Assessments

- The Panel recommended that the CETC jointly conduct environmental assessments with the Canadian Environmental Assessment Agency (CEAA). Currently, the NEB conducts its own environmental assessments for projects.
 - The City strongly believes that the NEB should be divested of its mandate to conduct environmental assessments, and that this responsibility should again be solely delegated to the CEAA to ensure all proposed projects in Canada are reviewed consistently and objectively.

Governor in Council (GIC) Determination of National Interest

- The Panel recommended a “first phase” for major project reviews to determine if a proposed project aligns with the national interest, “before going too far down the road of considering a new project.” The GIC would make this decision. If the GIC decides a project is in the national interest, it would proceed to the licensing phase where it would go through a full environmental assessment.
 - The City had suggested that the GIC have the final determination on major projects recommended by the NEB, but only after they had gone through a rigorous environmental assessment (EA) process. It is unclear how the GIC would be able to adequately assess the national interest before an EA is conducted. The City believes that such decisions should be informed by scientific evidence and a national energy and climate strategy. The Panel’s report also provides few details about guidance or trade-off rules that the GIC would utilize to make these decisions.

Project Timelines

- The Panel proposes expanding timelines for major project reviews from the current 15 months to 3 years (one year for national interest determination plus Governor in Council decision-making, and two years for detailed joint panel hearings).
 - The City had called for the elimination of legislated timelines - as they are a barrier to thorough project reviews and public participation - and instead advocated for a more flexible approach.

Climate Change

- The Panel recommended that the Department of Natural Resources - in partnership with other relevant federal agencies, provinces and territories, in consultation with Indigenous peoples, and through broad stakeholder engagement - publish a formal Canadian energy strategy.
 - The City had called for this, although our submission emphasized that this policy must be in the context of climate change and Canada’s commitments to reduce its greenhouse gas emissions. The Panel’s report also made no mention of using national carbon budgets to determine if a proposed project would help or hinder Canada’s efforts to meet its climate targets.
- The Panel recommended that the CETC’s enabling legislation include provisions to strengthen its capacity with respect to transmission lines, as well as facilitate the integration of new forms of renewable energy into the national grid. As the Panel noted, “new pipeline projects will be fewer and fewer in the future.”
 - This is consistent with the City’s submission. The proposed changes will further enable interprovincial electricity transmission and the decarbonisation of Canada’s energy system.

Oral Cross-Examination

- While the Panel acknowledges that “It is reasonable that intervenors expect to meaningfully cross-examine project proponents,” it recommended only that the CETC’s enabling legislation “demand that it performs its quasi-judicial role to a high standard” and that the CETC’s processes be “designed and implemented in such a way as to maximize the inclusion of all parties.”
 - The City strongly believes that the oral cross-examination of project proponents’ evidence should be expressly mandated for all public hearings, yet the Panel failed to recommend this.

Board Governance

- While the Panel acknowledged “near unanimous criticism of the current requirement that Board members reside in the Calgary area”, it concludes that moving the CETC to Ottawa would “be ineffective.” The Panel does propose basing in Ottawa the CETC’s board of directors along with a CETC office devoted to government coordination, and eventually the CEIA office as well, but proposes keeping most staff in Calgary.
 - The City believes that projects that cross provincial and territorial boundaries must reflect the public interest of all Canadians, not solely those in one province, and that basing the organization in Ottawa would allow for more independence from the companies it regulates.

Monitoring, Compliance and Verification

- The Panel recommended efforts to improve the transparency of project monitoring, including the online publication of reports on incidents and compliance actions. It also recommended the creation of Regional Multi-Stakeholder Committees to allow all participating parties to assess aspects of the CETC’s practices and outcomes, and make recommendations for improvement.

The City had called for much stronger monitoring, compliance, and verification processes. The report also fails to acknowledge many problems with NEB monitoring and enforcement that have occurred in the past, including the serious deficiencies that Canada’s own Commissioner of the Environment and Sustainable Development identified in her 2016 report.



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