



National Energy
Board

Office national
de l'énergie

**National Energy Board
Regulatory Improvement Workshop
November 8, 2004**

Facilitators' Report

The National Energy Board held its Regulatory Improvement Workshop on November 8, 2004. Eighty people participated in the day, 60 of whom are parties directly affected by NEB matters, and 20 participants who are NEB Board Members and staff.

This report offers a summary of the results from the workshop. The appendices are available upon request and provide a comprehensive record of the day. Included in the appendices are:

- Chairman Vollman's presentation;
- Tabulated results from the table discussions;
- Results from the feedback forms; and,
- Participant list.

For a copy of the appendices, contact Marina Pederson at (403) 299-3562 or publications@neb-one.gc.ca.

Purpose of the Workshop

The NEB is continually engaged in the process of improving the way its public interest goals are realized. The Board believes that understanding the views and ideas of those who are affected by NEB regulation is essential and an important contribution to its planning process.

The workshop offered an opportunity for NEB Board members and staff to meet with stakeholders from all over the country who have many shared interests and also many different interests with respect to the NEB. This forum also provided an occasion for people with different interests to better understand each other and work together to provide input to the Board.

After hearing a presentation from the NEB Chairman, Ken Vollman, regarding the NEB's vision, goals, and proposed objectives out to 2007, workshop participants were invited to discuss the following questions:

- What are the current and evolving influences and challenges in your environment that the NEB should take into consideration in its planning?

- What objectives does the NEB need to set for the next three years to respond to evolving influences and challenges?
- What activities should the NEB undertake to meet the objectives?
- Is there a need to create a plan or vision to achieve the public interest goals out to 2015?

Following is an overview of the Board's vision, goals, and proposed objectives. The balance of this report provides a summary of the participants' discussions on the four questions outlined above.

Overview of the Board's Strategic Plan

Ken Vollman, Chairman, provided an overview of the Board's plans for the next three years. He noted that as a result of the input given by participants at the workshop, the Board would be able to verify where its plans are sound and where different approaches could be considered.

The Board has a mandate to regulate in the Canadian public interest, which includes taking decisions that integrate and balance safety and security, environmental protection and economic efficiency. The direct influences and challenges which the Board believes will shape the direction of regulation over the next three years include: increasing demand for energy, changing supply and evolving markets for natural gas; the need for effective compliance and risk-based decisions; new questions about regulatory roles; and, the principles of Smart Regulation. Good regulatory processes will foster solutions to these and other challenges that *protect* the things that are important to Canadians and *enable* new projects to proceed where they are in the public interest. Great outcomes cannot be achieved with a single focus on either protect or enable. The Board will continually strive to find innovative ways to achieve a balance and, ideally, a synergy between protecting and enabling.

The Board focuses its planning around five goals:

1. NEB-regulated facilities and activities are safe and secure and are perceived to be so;
2. NEB-regulated facilities are built and operated in a manner that protects the environment and respects the rights of those affected;
3. Canadians derive the benefits of economic efficiency;
4. The NEB fulfills its mandate with the benefit of effective public engagement; and
5. The NEB fulfills its mandate by effectively leading its people and managing its resources.

Key Challenges and Influences in the Current Environment

As part of a panel, five participants shared their perspectives on the current challenges in their environments that the Board should consider in its planning. Following are some of the key points raised by the panellists:

Pierre Alvarez, Canadian Association of Petroleum Producers (CAPP)

- Everyone has a role in getting to better outcomes (industry, government, NEB and stakeholders);
- Significant change is happening in the location and cost of reserves, technology, pressure on land use, and competition for capital;
- We need to focus on rationalizing, not simply harmonizing, processes; and
- There is a need for policy leadership by the federal departments (e.g. Environment Canada, Fisheries and Oceans, Indian and Northern Affairs Canada, Natural Resources Canada) if the NEB is to become more efficient (e.g. NEB substitution under CEAA)

Susan Anderson Behn, BC Aboriginal Fisheries Commission

- Clarity is needed around how federal and provincial governments handle First Nations issues (imminent Haida and Takla Supreme Court decisions will provide some guidance);
- "Consultation" involves many things and is more than just "inform";
- First Nations communities need clarification on how they will be involved in regulatory processes, particularly for offshore oil and gas, in order to avoid delays in development; and
- Companies and regulators need to do their homework, and apply due diligence in terms of the court decisions and the politics.

Marlo Raynolds, Pembina Institute

- Cumulative effects is a major and significant challenge, particularly during boom times;
- Climate change and the reduction of greenhouse gas emissions is one of the top global environmental challenges we face. The NEB needs to consider its role in helping to manage energy related GHG emissions;
- The national energy strategy is unclear; we need sustainable energy systems;
- The NEB needs to consider these challenges from a "whole systems" perspective; and
- Is the NEB's role in the north strong enough?

David MacInnis, Canadian Energy Pipeline Association (CEPA)

- Coordination and collaboration needs to improve;
- The NEB's focus should be on public interest, not public policy;
- New approaches, such as different triggers for hearings, substitution, and processes to address emerging lifecycle issues need to be used;
- Performance based regulation, including clear measures and reporting, is important;
- The framework for tolls and tariffs should be improved; and
- Improved consultation with Aboriginal peoples is important.

David Core, Canadian Alliance of Pipeline Landowners Association (CAPLA)

- Government is not addressing issues faced by landowners;
- Landowners are different from other stakeholders; they are left with the pipe and it is a liability for them, particularly as land use practices change;
- Current processes create frustration and involve a high cost for participation;
- Regulations and easement agreements are out of date with changes in farm practice, and regulations change easement agreements (which are not regulated by the NEB); and
- Safety, wall thickness, depth of cover, corrosion, abandonment and liability need to be revisited.

After the panel discussion, all participants collaborated to identify the key challenges they see in their environments. Following are the themes that emerged related to challenges:

- Lack of energy policy or strategy at the national level, including connections to other jurisdictions;
- Uncertainty of environmental policies and their impact on energy development and the role of the NEB (e.g. climate change, cumulative effects);
- Rationalizing processes among regulatory agencies;
- Need for the NEB to understand, reflect and support the needs of all stakeholders and engage them effectively;
- Lack of participant funding and support to "level the playing field";
- Leadership, capacity and clarity around First Nations issues and interests;
- Capital investment in energy infrastructure in a changing environment (e.g. abandonment); and,
- Role of the NEB in providing policy advice and in educating the public about energy issues and the need for new facilities.

NEB Objectives

Participants worked in multi-stakeholder groups to suggest objectives which the NEB should consider setting for the next three years to respond to the challenges and influences already identified.

After listening to the plenary presentations, NEB staff identified the following eight key themes among the objectives:

- **Rationalize all regulatory processes** with a goal to:
 - clarify the roles and intent of regulatory agencies;
 - reduce redundancy among the processes; and
 - streamline the processes.
 Examples provided were the NEB and CEAA processes and lifecycle management.
- **Expand implementation of smart, results based, goal-oriented regulation.**
- **Create a public engagement program** which will lead to stakeholder confidence and trust in NEB processes and outcomes. Examples include reducing barriers to participation, building relationships between the Board and stakeholders and among stakeholders, and resolving funding issues.
- **Define the Board's role with respect to providing advice to the government about "gaps" in energy policy.**
- **Develop meaningful targets for NEB performance measures** which reflect real outcomes and ensure that NEB internal capacity is sufficient to fulfill its objectives.
- **Increase the Board's toolkit of "best practices"** to effectively deal with environmental and stakeholder issues. Examples include cumulative effects and regulatory clarity.
- **Clarify the NEB's role in ensuring effective aboriginal participation in regulatory processes.**
- **Deliver forward looking and comprehensive energy market assessments** for upstream, midstream and downstream.

Activities to Meet the Objectives

Five table groups discussed the activities the Board should undertake to meet the objectives. In total, the groups identified 24 activities that the Board should consider, along with steps that could be taken to begin those activities. Some of the activities that were identified by more than one group included:

- Facilitate **effective consultation and participation** in NEB processes for all stakeholders, and for landowners and First Nations groups in particular;
- Work with other agencies on **regulatory streamlining**, and in particular, pursue substitute authority for the NEB under the Canadian Environmental Assessment Act;
- Develop a **communication strategy** for a range of audiences and provide clear information about the role of the NEB and connections to other regulatory agencies;
- Complete the implementation of **goal-oriented regulation**;
- Implement **performance standards and measurement** to reflect and report on expected outcomes; and
- Establish NEB-lead and facilitated **multi-stakeholder working groups** to deal with issues that arise and create a longer term **advisory council** to provide input to the Board.

The Need for a Long Term Vision and Potential Collaboration

Five table groups were asked to discuss whether there is a need to create a plan or vision to achieve the public interest goals out to 2015; and if so, what are the steps to create a collaborative long term plan?

Generally, the groups agreed that the Board should have a longer term vision for the following reasons:

- To better provide a **balance of social interests and economic development**;
- To establish **long term guiding principles**;
- To provide a source of **credible information on energy issues**;
- To better **anticipate and frame emerging issues**;

- To provide **leadership for the country**;
- To establish a **longer term clarity of purpose**; and,
- To respond to its **stakeholders who hold a long term view**.

The distinction between creating a long term plan and a long term vision was mentioned by some groups. These groups cautioned that while it makes sense for the NEB to have ideas regarding the longer term which could be a vision, a key value of the Board may be in its nimbleness or ability to adapt to an ever changing environment. Any longer term vision would need to be dynamic and flexible.

With respect to whether a long term vision should be created in a collaborative process, most groups agreed that collaboration would be preferable and could provide a “win – win” result for the Board and its stakeholders. Groups suggested that involving people in a collaborative process could have the following outcomes:

- discovering effective solutions for everyone;
- supporting integrated approaches;
- creating respect with stakeholders; and
- generating “buy-in” from stakeholders

Participants also cautioned about the importance of finding the appropriate level of involvement for stakeholders in the process. Consideration must be given to which areas of the long term vision effectively lend themselves to consultation and which areas should be developed in full collaboration with stakeholders.

Workshop Evaluation

Approximately half of the workshop participants completed an evaluation form. A high majority (over 90%) mostly or strongly agreed that the workshop topics were relevant to their interactions with the Board and that the workshop was effective in engaging the Board and its stakeholders in a dialogue focused on regulatory improvement. In addition, most respondents indicated that they would be interested in participating in a future workshop to explore how to achieve the public interest goals out to 2015.

After the Workshop

Participants at the workshop were given an opportunity to comment on this report. No changes were proposed by participants.

This final report was released in January 2005 at the same time that Mr. Vollman sent a letter to participants thanking them for their contributions. He also informed them

about changes to the Board's strategic plan that were made as a result of the workshop discussions.

For more information, please contact Brenda Kenny at (403) 299-2748 or bkenny@neb-one.gc.ca.

Appendices

Appendix A: Ken Vollman's Presentation, Opening Remarks

Appendix B: Table Discussions on Challenges and Influences

Appendix C: Table Discussions on Objectives

Appendix D: Table Discussions on Activities

Appendix E: Table Discussions on the Need for a Long Term Vision and Potential Collaboration

Appendix F: Evaluation Form Results

Appendix G: List of Participants

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