

Sheri Young, Secretary of the Board
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

via NEB Participation Portal

Wednesday, May 31, 2017

Re: Comments on the draft Lists of Issues and draft Environmental Assessment Factors in the matter of Energy East Pipeline Ltd. (File No. OF-Fac-Oil-E266-2014-01 02)

Dear Ms. Young,

We represent the intervenor Environmental Defence Canada (EDC) in the Board's review of the Energy East pipeline project. We thank the Hearing Panel for this opportunity to comment and for publishing a revised, draft List of Issues and draft Environmental Assessment Factors Document responsive to our letter submitted May 3, 2017.¹

PRELIMINARY MATTERS

i. Process and Limitations

As a preliminary matter, EDC notes that this submission is not endorsement of this comment procedure which expressly prohibits comments by email.

As stated in the NEB's letter seeking submissions dated May 10, 2017:

Those commenting can file their comments by hand delivery, mail, fax, or courier, or electronically through the Board's e-filing tool or Participation Portal (for previous participants with an online account). **Emailed comments will not be accepted.**²

Limiting the methods available for public input threatens to disregard hundreds if not thousands of comments from Canadians. The Board is vested with a public interest mandate and has

¹ Environmental Defence Canada, Letter to the Board re Issues List, dated 3 May 2017, Filing No. A83105

² National Energy Board, Letter to all interest parties, dated 10 May 2017, File OF-Fac-Oil-E266-2014-01 02, available online: <https://www.ceaa-acee.gc.ca/050/documents/p80079/118965E.pdf>

expressly recognized that “the public interest is inclusive of all Canadians.”³ The rejection of submissions via email does not aid in fulfilling this purpose, inhibits the depth and quality of engagement, and limits the scope of participation.

As noted in the recently released report by the Expert Panel on the Modernization of the National Energy Board (herein, “NEB Expert Panel”), the Board suffers from a “crisis of confidence” and has “fundamentally lost the confidence of many Canadians.”⁴ Among the recommendations made by the NEB Expert Panel is that the Board “examine and reform its processes to achieve a higher degree of engagement and flexibility” and ensure the “public feel welcome and to enable the participation of interested parties.”⁵ While recognizing that the NEB Expert Panel’s report has not yet been adopted by the federal government or the Board, it would be incongruous to disregard the expert panel’s recommendations which are indicative of Canadians’ sentiment regarding the NEB, its structure, role and mandate.

While the Board provides an online e-filing option, it is an arduous eight-step process which is both time consuming and cumbersome. To ensure the decisions related to the Energy East file are made using a fair and open procedure, there must be an opportunity for those affected or interested to put forward their views, in order for it to be considered by the Board.⁶ If the allowable means by which this can be accomplished are too onerous and restrictive, the Energy East file can not be decided fully and fairly.⁷

Arbitrarily refusing to receive public input through email communication violates the ability of the public to participate in the process. EDC submits that the hearing panel must ensure it provide a forum for engagement which is fair, inclusive, transparent and instills public confidence.

ii. Information Requests

EDC submits that all information requests related to the project must be reviewed by the new Panel to ensure that they are based on the new and expanded List of Issues. It is essential that information requests are complete so that the Panel’s completeness determination is not based on outstanding or unresolved IRs.

³ National Energy Board, *Chapter 1: Introduction to the NEB* (2016), available online: <https://www.neb-one.gc.ca/prtcptn/Indwnrgd/Indwnrgdch1-eng.html>

⁴ NEB Modernization Expert Panel, *Forward, Together: Enabling Canada’s Clean, Safe and Secure Energy Future*, (2017) available online: <https://www.nrcan.gc.ca/19667> at p 7

⁵ *Ibid*, p 71

⁶ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

⁷ *Ibid*

iii. Pending NEB Reform

EDC submits that the NEB, in undertaking this EA and review, is out of step with the findings of the expert panel tasked with reviewing environmental assessment (herein, EA Expert Panel). The EA Expert Panel recommended in its [report](#), *Building Common Ground: A New Vision for Impact Assessment in Canada*, that the NEB's authority to conduct EAs be removed and a single, EA decision-making body created.⁸ Furthermore, the NEB Expert Panel recommended the NEB be replaced by the new, Canadian Energy Transmissions Commission.⁹

The NEB has been largely ineffective at reconciling pipeline projects with the goals of environmental protection and sustainable development and EDC remains of the view that Board should not have the authority to conduct EAs. As the NEB lacks legitimacy under the current process, this review should be postponed until the NEB Modernization and EA reforms are complete.

COMMENTS ON ADDITIONAL ISSUES THE BOARD SHOULD CONSIDER IN ITS REVIEW

The NEB has requested submissions discussing how items 1-4, listed as “additional matters that the Board is considering including in its review of Energy East” are relevant to the Board’s public interest determination under the *NEB Act* and *CEAA, 2012*. The draft List of Issues states:

The Board is also considering including in its review of the application Items 1) to 4) below.

- 1) The potential impacts of the Project on Canada’s greenhouse gas (GHG) emissions.
- 2) The potential environmental and socio-economic effects of the construction and operation of power lines required for the Project.
- 3) The potential environmental and socio-economic effects of changes to marine shipping resulting from the Project.
- 4) The potential impacts that government GHG strategies, policies, laws, and regulations (including ceilings and pricing) may have on the availability of oil supply and markets underpinning the need for the Project and its economic and financial considerations.

⁸ Expert Panel for the Review of Environmental Assessment Processes, *Building Common Ground - A New Vision of Impact Assessment in Canada* (2017), available online:

<https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf>

⁹ NEB Modernization Expert Panel, *Forward, Together: Enabling Canada’s Clean, Safe and Secure Energy Future*, (2017) available online: <https://www.nrcan.gc.ca/19667> at p 4

The Board notes in a footnote on page 7 of the draft List of Issues that Item 4 may be considered under Issue 1 of Part B. EDC reiterates its submission of May 3, 2017 to request that the text of Item 4 be included under Issue 1 in order to make the consideration of GHG strategies, policies, laws, and regulations an explicit item when the Board reviews the justification for the Project.

i. The revised list of issues are within the Board's public interest determination under the NEB Act and CEAA, 2012

EDC submits that it is not only squarely within the authority of the Board to review Items 1 - 4 on pages 6 to 7 of the draft List of Issues, but these issues must form part of its review. The *NEB Act* and *CEAA, 2012* expressly grant the Board with the power to consider the public interest, and by extension, confer powers which are reasonably necessary for the accomplishment of this statutory imposed mandate.¹⁰ EDC submits that Items 1-4 are necessary and incidental to the Board's review and must be considered in its review of the project.

In *Ontario v 974649 Ontario Inc*, 2001 SCC 81, it was established that a statutory body not only enjoys the powers expressly granted to it through legislation but by implication, all powers that are reasonable necessary for it to accomplish its mandate.¹¹ Disregarding the additional issues in Items 1-4 would compromise the Board's ability to effectively exercise its public interest mandate.¹² The doctrine of jurisdiction by "necessary implication" enables the Board to extend its jurisdiction beyond the precise wording of the legislation in order to encompass areas which allow it to fulfil its mandate.¹³

EDC submits that impacts related to greenhouse gas emissions, socio-economic effects of linear infrastructure and marine shipping are precisely the issues, in the context of energy regulation, which underpin a determination of the public's interest. Furthermore, the Board must act in a way which *best* furthers its legislative mandate and objectives.¹⁴ In this instance, not only is the Board compelled to act in the public interest under its enabling statute, the *NEB Act*, it must also do so under *CEAA, 2012*.

As stated in *Bell Canada v Canada (Canadian Radio-television and Telecommunications Commission)*, [1989] 1 SCR 1722:

¹⁰ MacAulay, Robert W, and Sprague, James LH, *Practice and Procedure before administrative tribunals* (Toronto: Thomson Reuters, 2004) (loose-leaf revision 2010 - Rel 5) at 29-1

¹¹ *Ontario v 974649 Ontario Inc.*, [2001] 3 SCR 575 SCC at para 70 citing *Halsbury's Laws of England* (4th ed. 1995), vol. 44(1), at para 1335

¹² MacAulay, Robert W, and Sprague, James LH, *Practice and Procedure before administrative tribunals* (Toronto: Thomson Reuters, 2004) (loose-leaf revision 2010 - Rel 5) at 29-4

¹³ *Ibid*

¹⁴ *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR at paras 21-22

The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.¹⁵

EDC submits that removing the additional items 1-4 in the draft List of Issues from the Board's purview would amount to an application of the public interest which is not in keeping with contemporary public comment¹⁶ and recommendations of regulatory reform.¹⁷

ii. The Board must exercise its discretion in furtherance of its public interest mandate

EDC submits that the Board must exercise its discretion and allow the additional items to form part of its review. As the Board notes in its draft List of Issues, the Board may:

have regard to “any public interest that in the Board’s opinion may be affected by the issuance of the certificate or dismissal of the application,” as set out in paragraph 52(2)(e) of the NEB Act, as well as to consider “any other matter relevant to the environmental assessment,” as set out in paragraph 19(1)(j) of the CEEA 2012.

In exercising these review powers, the Board must exercise its discretion in a way which furthers the flexibility and responsiveness of its decisions.¹⁸

As the first instance decision-maker and the primary, official interpreter of the *NEB Act*, the NEB is not only tasked with developing board-wide strategic priorities and policies, but also demonstrating its commitment to implementing its statute.¹⁹ It is incumbent that the NEB recognize its first and longstanding duty: a duty to act in the public interest.

As the NEB stated in its [Reason for Decision](#) (File No A81375-1), the “public interest is inclusive of all Canadian and refers to a balance of economic, environmental, and social

¹⁵ 1989 CanLII 67 (SCC) at para 51

¹⁶ See Environmental Defence, *NEB Modernization - Aligning Energy Project Assessment with Climate Policy*, p 2 (March 31, 2017), available online: http://environmentaldefence.ca/wp-content/uploads/2017/04/17-65_ED_ClimateTest_WhitePaper_v8-2.pdf

¹⁷ See NEB Modernization Expert Panel, *Forward, Together: Enabling Canada’s Clean, Safe and Secure Energy Future*, (2017) available online: <https://www.nrcan.gc.ca/19667> at 17

¹⁸ MacAulay, Robert W, and Sprague, James LH, *Practice and Procedure before administrative tribunals* (Toronto: Thomson Reuters, 2004) (loose-leaf revision 2011 - Rel 1) at 5B -23

¹⁹ Canadian Environmental Law Association, *Modernizing the NEB: Using International Best Practices as a Benchmark for Regulator Reform* (March 31, 2017), available online: <http://www.cela.ca/Modernizing-the-NEB> citing Kevin M Stack, “Purposivism in the Executive Branch: How Agencies Interpret Statutes” (2015) 109 (4) Northwestern University LR at 874

interests.”²⁰ Execution of the Board’s public interest objective requires that it demonstrate strong leadership, a visible commitment to improved performance, and a transparent recognition that things must be done “differently and better.”²¹

EDC submits that the NEB, as the regulator and decision-maker, must turn its mind to each matter and its procedural and substantive components.²² The expansion of power lines, transmission and marine shipping which will inevitably result from the project and the impact of the project’s upstream and downstream GHG emissions are all substantive elements which must be before the Board.

EDC submits that the NEB must, in its review of the draft List of Issues, adopt a broad definition of the terms “environment” and “environmental effect,” and expand the list of prescribed environmental planning factors which must be addressed in every EA. As the EA Expert Panel noted in its report, “a matter that was heard resoundingly from Canadians was the need for an EA process to move beyond the bio-physical environment to encompass all impacts, both positive and negative, likely to result from a project.”²³ Adopting such an approach, EDC submits, will assist in ensuring that all issues are fully canvassed and evidence is brought before the Board which is responsive to the project and its impacts.

In order to safeguard the public interest and ensure a transparent process which is conducive to public engagement, EDC submits it is necessary that these additional matters come before the Board. Including the additional Items 1-4 in the List of Issues will signal the NEB’s responsiveness to the EA Expert Panel’s report which found that the current EA process “erodes any sense of justice and fairness.”²⁴ Furthermore, if the additional issues outlined on pages 6-7 of the draft List of Issues are not before the Board, the record will not allow the Board to make a decision which regards and reflects the public’s interest.

iii. To fulfill its public interest mandate, the Board must include Items 1-4 in its review

In addition to seeking guidance on the issues which should come before the Board for review, the Board has asked to what extent each of these additional matters as outlined in Items 1-4 should be considered. Comments on the specific additional issues are noted below.

²⁰ National Energy Board, Reasons for Decision - ITC Lake Erie Connector LLC dated January 2017 (File No A81375-1) at 7

²¹ Canadian Environmental Law Association, *Modernizing the NEB: Using International Best Practices as a Benchmark for Regulator Reform* (March 31, 2017) citing Daniel Esty, “Lessons from Theory and Practice” in Cary Coglianese, ed, *Achieving Regulatory Excellence* (Washington: Brookings Institution Press, 2017) at 136

²² *Ibid* at 5B-24 and 5B-24.1

²³ Expert Panel for the Review of Environmental Assessment Processes, *Building Common Ground - A New Vision of Impact Assessment in Canada* (2017) at 13

²⁴ *Ibid*

Item 1 – Potential Impacts of Project on GHG Emissions

With specific reference to additional issue Item 1, “the potential impacts of the Project on Canada’s greenhouse gas (GHG) emissions,” EDC submits that NEB must be responsive to the public’s concern that the approval of projects will diminish Canada’s ability to mitigate climate change impacts.

EDC submits that in light of climate change’s incalculable effects on weather patterns and ecological systems,²⁵ the NEB must function in a way that allows it to adapt and respond to new scientific theory and data. The Panel must consider the upstream and downstream GHG emissions of the project to be within its purview. That is, the review must not only consider the direct GHG emissions produced by the infrastructure, during construction, conversion, operation and eventual decommissioning, but also the emissions generated in the extraction of raw materials, their processing and transportation, before being utilized by the proposed energy infrastructure

The methodology of the GHG analysis must avoid the pitfalls seen in GHG emissions assessments with regards to other projects reviewed by the NEB, such as the Trans Mountain Expansion Project review. In order for the GHG assessment to be meaningful, transparent, and in the public interest, the Panel must seek further input from intervenors and members of the public regarding the proposed methodology.

As a preliminary note, the methodology must include all upstream GHG emissions necessary for the function of the proposed Project, including emissions resulting from land use changes and grid electricity required for the increased oil sands extraction and production. The methodology must also avoid the trap of assuming alternative transportation projects would be responsible for incremental oil sands production if the proposed Project is not approved, as it leads to a fallacy according to which no increase in oil sands production would ever be truly accounted for. The Applicant’s stated purpose of the proposed Project is to facilitate the increase in crude oil supply by providing shipping capacity.²⁶ The methodology for assessing upstream GHG emissions must evaluate the emissions resulting from the incremental production that is necessary to the proposed Project.

The Panel’s review must also include the third-party electricity generation that will be required throughout the lifetime of the project. This analysis must consist of an assessment of the GHG emissions in light of any provincial GHG reduction targets, in addition to a full assessment of environmental and social impacts of the proposed infrastructure.

²⁵ Canadian Environmental Law Association, *Modernizing the NEB: Using International Best Practices as a Benchmark for Regulator Reform* (March 31, 2017) citing Bridget Hutter, “A Risk Regulation Perspective on Regulatory Excellence” in *Regulatory Excellence*, *supra* note 12 at 111

²⁶ *Application, Project Overview*, at 2-5.

While the third-party generation projects may also be subject to relevant provincial licensing processes, undertaking this assessment is nevertheless within the Board's jurisdiction, and necessary to its public interest mandate. These ancillary projects would not be necessary but for the proposed Project, and the proposed Project would not function without ancillary electricity generation. The viability of the ancillary projects, especially in light of the environmental and socio-economic impacts associated with them, must be thoroughly assessed by the Panel in order for it to fulfill its responsibility to public interest when reviewing the proposed Project.

Item 2 – Potential Environmental and Socio-Economic Effects of Power Lines and Item 3 – Potential Effects of Changes to Marine Shipping

EDC submits that the Panel's review must include a thorough assessment of the issues in Item 2 and Item 3 in order to fulfill its responsibility to make decisions for the public interest of all Canadians. While elements of these matters may be beyond the Board's ability to regulate, that does not bar the Panel from reviewing their potential impacts. As noted in EDC's letter of May 3, 2017, the Applicant's submissions include estimates of numerous types of benefits the proposed Project may result in, which are outside of the Board's ability to regulate or enforce. Public interest can only be served if both the positive and negative impacts are assessed side by side. As discussed above, the Panel must exercise its discretion in the furtherance of the public interest.

Item 4 – Potential Impacts of GHG strategies and the need for the Project

With regards to additional Item 4, "the potential impacts that government GHG strategies, policies, laws, and regulations ... may have on the availability of oil supply and markets underpinning the need for the Project and its economic and financial considerations" the NEB must also seek to ensure that Canada's commitments under the Paris Agreement are met, both as an energy regulator and EA authority.²⁷ The text of Item 4 must be included under Issue 1 in order to make the consideration of GHG strategies, policies, laws, and regulations an explicit item when the Board reviews the justification for the Project.

EDC submits that the NEB is in a unique position to respond to climate strategies, laws, and policies in the international area which may affect oil supply and demand. The Panel must consider Canada's ability to fulfill our obligations under the Paris Agreement, including provisions to enable the conservation of greenhouse gas sinks and reservoirs (Article 5), by

²⁷ *Paris Agreement*, being an Annex to the *Report of the Conference of the Parties on its twenty-first session, held in parties from 30 November to 13 December 2015 – Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session*, 29 January 2016, online: UNFCCC <http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>

lessening deforestation and the development of wetlands, and implementing adaptation actions (Action 7) which may help to stabilize greenhouse gas concentrations in the atmosphere.²⁸

Currently, Canada lacks any climate policy or regulatory framework to undertake a comprehensive climate test of a proposed pipeline project. The Panel has acknowledged that GHG considerations are outside of the scope of the review and beyond the NEB's ability to regulate and therefore EDC again reiterates that this review must be postponed until a proper framework and climate policy is in place.

COMMENTS ON ISSUES THE BOARD WILL CONSIDER IN ITS REVIEW

i. Municipal and Local Community Considerations

EDC supports the "Municipal and Local Community Considerations" enumerated by the Board and requests the consultations with municipalities occur throughout the duration of the hearing process and deliberations.

ii. Aboriginal Considerations

In response to the Board's proposed "Aboriginal Considerations," EDC submits that the Board must, in its review, ensure Indigenous reconciliation, the upholding of Treaty rights, and the furtherance of First Nations' right to free, prior and informed consent.

iii. Routing Considerations

In response to the Board's "Routing Considerations," EDC supports a review of the criteria which informed the route selection. It is important that the public is aware not only of the route, but the method through which the route was decided.

iv. Project Justification, and Economic and Commercial Considerations

The wording of additional Item 4 on page 7 of Appendix 1 to the Board Letter must be included within this issue in order to make the consideration of GHG strategies, policies, laws, and regulations an explicit item when the Board reviews the justification for the Project.

With regards to the justification for the capacity of the Pipeline, EDC submits that this analysis must include a thorough and up-to-date review of the potential and existing markets in light of a carbon-constrained world. Global support for the Paris Agreement and the corresponding

²⁸ *Ibid*

commitment to reduce GHG emissions by 80 per cent by mid-century will not support a continued increase in oil consumption. Global oil demand is expected to peak as soon as 2020.²⁹ An analysis of these global trends must be included in the Panel's consideration of the need for the Project. The need analysis must be conducted based on the full predicted operating life of the proposed Project, and ensure that the Project would not become a stranded asset.

Similarly, the availability of other pipelines and other modes of transportation of liquid hydrocarbons in Canada must be considered. To date, three other pipelines that rely on increased oil sands production and aim to transport hydrocarbons from Alberta have been granted approval. The assessment of the need for the Project, and the economic feasibility of the Project, must include a complete review of the feasibility of the combined additional pipeline capacity if this Project, a fourth pipeline, is approved. The additional pipeline capacity proposed by the Project must be assessed in light of the constraints of the current Alberta GHG emissions cap, federal GHG reduction commitments, and the global commitments under the Paris Agreement.

v. *Environmental and Socio-economic Considerations*

EDC submits that it is necessary the proponent disclose impacts regarding species at risk resulting from exploration and requests that this data be forthcoming and continually updated by the proponent.

EDC further submits that the potential effects of the proposed Project on the environment must also include a study of the impacts of the Project on the St. Lawrence River, and a thorough examination of the potential impacts of proposed methods for river crossings. EDC notes that to date the Applicant has not provided sufficient information regarding the proposed river crossings.³⁰

COMMENTS ON THE SCOPE OF FACTORS TO BE CONSIDERED IN THE EA

EDC adopts the submissions in our letter to the NEB on May 3, 2017, and emphasizes the importance of delaying the Project review until the new legislative regimes for both the NEB and federal environmental assessment are in place. If the Panel proceeds with the review, the EA must be conducted in a way that furthers the Board's public interest mandate, as outlined above.

²⁹ "Expect the Unexpected: The Disruptive Power of Low Carbon Technology" (2017) Carbon Tracker Initiative & Grantham Institute, available online: <http://www.carbontracker.org/report/expect-the-unexpected-disruptive-power-low-carbon-technology-solar-electric-vehicles-grantham-imperial/>

³⁰ Environmental Defence and Équiterre, Letter to the Board re: River Crossing Information Gaps and Completeness of Application, dated May 17, 2017, Filing No. A83656, available online: <https://apps.neb-one.gc.ca/REGDOCS/Item/View/3267661>

The greatest threat to species diversity and ecosystem health is climate change, and therefore the Project's potential to exacerbate climate change must be considered within CEAA's meaning of environmental effects.³¹ Section 19(1)(j) of *CEAA, 2012* provides that the Panel may address "any other matter" and EDC submits that the Panel must consider the effects of the upstream and downstream GHG emissions associated with the Project, as well as the potential effects of "project-related activities." While the application does not include a permit for the extraction of the oil sands bitumen that would be transported through the proposed pipeline, the project would not be viable without the additional upstream extraction and downstream combustion of the oil. Similarly, the Project would not be viable without the third-party electricity generation necessary for its operation, and therefore the EA must include the ancillary infrastructure in its scope.

The GHG emissions of oil extraction activities may also be considered under the applicable provincial licensing and EA provisions. However, as EDC noted in its May 3, 2017 letter,

[t]his concern highlights the need for deferring this Panel's review process until the *NEB Act* and *CEAA* modernization changes are implemented and strategic and regional impact assessments guide the project-specific impact assessment.³² Such a multi-tier impact assessment system would be better equipped to respond to the strategic issues of Canada-wide and provincial GHG emissions reduction targets, and the climate change impacts attributable to the proposed Project. If the Panel intends to proceed with the EA under the current *CEAA* legislation, it must integrate the strategic considerations as best as possible. The purposes of the Project as proposed demonstrate the extent to which it relies on, and would lock in, continued and increased oil sands extraction and production.³³

The spatial and temporal boundaries of the issues and factors considered must therefore be interpreted broadly in order to align with the public interest mandate of the Panel, and to give effect to the strategic considerations recommended by the expert panel for the *CEAA* review. The special and temporal boundaries that will determine the scope of factors must take into account the complexity of the proposed Project's potential impacts on climate change.

The Panel's statutory authority to apply a broad interpretation of the spatial and temporal boundaries proposed is further underlined by the requirement to exercise its powers "in a manner that protects the environment and human health and applies the precautionary principle."³⁴ The precautionary principle requires that environmental policies "anticipate and prevent

³¹ Canadian Environmental Law Association, *Modernizing the NEB: Using International Best Practices as a Benchmark for Regulator Reform* (March 31, 2017) at 10

³² Expert Panel for the Review of Environmental Assessment Processes, *Building Common Ground - A New Vision of Impact Assessment in Canada* (2017) at 22

³³ Environmental Defence Canada, Letter to the Board re Issues List, dated 3 May 2017, Filing No. A83105

³⁴ *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 4(2)

environmental degradation.”³⁵ EDC submits that the Panel must be guided by this principle when interpreting the scope of factors to be considered in the EA.

Thank you for the opportunity to comment on the draft List of Issues and the draft Environmental Assessment Factors.

Yours truly,



Kerrie Blaise
Counsel
Canadian Environmental Law Association



Barbora Grochalova
Counsel
Canadian Environmental Law Association



Patrick DeRochie
Climate & Energy Program Manager
Environmental Defence Canada

³⁵ *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52, [2013] 3 SCR 323, at para 20