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INSPIRING CHANGE

May 3, 2017

National Energy Board
517 Tenth Avenue SW
Calgary, AB T2R 0A8

Attention: Sheri Young, Secretary of the Board

CC: Don Ferguson, Board Member
Carole Malo, Board Member
Marc Paquin, Board Member
The Hon. James Gordon Carr, Minister of Natural Resources
The Hon. Catherine McKenna, Minister of Environment and Climate Change
Theresa McClenaghan, Executive Director and Counsel, Canadian Environmental Law Association

**RE: National Energy Board Ruling No.1
NEB File Of-Fac-Oil-E266-2014-01 02
Energy East Project, Asset Transfer and Eastern Mainline
Project**

Dear Ms. Young,

On January 27, 2017, the new Hearing Panel ("Panel") assigned to review the Energy East and Eastern Mainline ("the Projects") applications voided all decisions made by the previous Hearing Panel, including the previous panel's decision that established the Lists of Issues for consideration in any upcoming proceeding with respect to the Projects.¹

EDC was granted intervenor status by the previous panel in relation to the Energy East project ("the Project"). In anticipation of a revised issues list, EDC takes this opportunity to provide the Panel with our recommendations on how best to ensure a fair, inclusive, transparent, and thorough review process that instills and maintains public confidence. While the principles that guide the following submissions must also be applied to the Eastern Mainline application, EDC's submissions focus on Energy East.

¹ A81494-1 *Ruling No 1 - How to recommence the Energy East Hearing*, Ruling 1.3.

As a preliminary matter, EDC notes that this submission is not an endorsement of the National Energy Board's ("NEB") current review process and submits that the NEB's review of the Projects should be postponed until the modernization of the NEB and the review of Canada's environmental laws and processes are complete and the new legislation is in force.

EDC requests that the Panel include an assessment of the Projects' climate impacts as part of the list of issues and as part of the factors and scope of factors for the environmental assessment ("EA") of the Project. This includes an analysis of the Project's climate impacts in the context of international, federal and provincial climate commitments, as well as the economic need and feasibility of the project in the context of oil demand and supply scenarios in line with these climate commitments. We also request that the following items be included in the list of issues, in addition to the issues previously identified by the former panel, which we endorse:

- Upstream and downstream greenhouse gas ("GHG") emissions associated with the full life-cycle of the Project
- Psychological and social impacts and the social acceptability of the Project
- A study of the impacts of Energy East on the St. Lawrence River, the Gulf of St. Lawrence, and the Bay of Fundy;
- GHG emissions and other socio-economic and environmental impacts of pumping stations, evaluated on a life-cycle basis, including the necessary infrastructure required to power the operation of the Projects, and their alignment with provincial and national climate commitments.

We submit that the Memorandum of Understanding ("MOU") between the NEB and Environment and Climate Change Canada which currently addresses upstream emissions must be terminated. The Panel is required to consider the climate impacts of the Project, including the upstream and downstream GHG emissions, under both the *National Energy Board Act* as well as the *Canadian Environmental Assessment Act*. The Panel can only provide a balanced review of the Project if the climate impacts of the proposed Project are thoroughly assessed in relation to Canada's national and international climate commitments, including the economic viability of the Project using global oil demand and supply scenarios in line with the Paris Agreement to limit the increase in global warming to well below two degrees Celsius and pursue efforts to limit the temperature increase to 1.5 degrees Celsius above preindustrial levels.

1. The Memorandum of Understanding should be terminated

EDC submits that the MOU signed by Environment and Climate Change Canada ("ECCC") and the NEB, which established an additional public engagement process for the purpose of assessing the upstream greenhouse gas emissions related to the

Energy East Project, must be terminated.² Continued reliance on this MOU would bring the new Panel's review of the Project into disrepute, and undermine the ability of the Panel to conduct a thorough review process on issues much broader than simply the environmental impacts of the Project.

As requested by Belanger Avocats in a letter filed with the NEB on March 23, 2017, the Panel should issue a ruling on this matter.³ EDC echoes and supports this request.

The MOU outlines the process by which the interim measures for assessing upstream greenhouse gas emissions will be actualized during the Energy East review.⁴ The first principle which guides the interim process is that "no proponent will be asked to return to the starting line."⁵ Now that the previous panel has recused itself and all previous orders, including the publication of the List of Issues and the Hearing Order, have been declared void, the concerns about the impact of restarting the review process are moot. The purpose of the interim measures would not be frustrated by terminating the MOU and including all upstream and downstream emissions in the review of the Project.

The MOU signatory on behalf of the NEB was Peter Watson, the Chair and CEO of the Board. In its first ruling, the new Panel voided all decisions made by the previous Hearing Panel.⁶ The new Panel must also now take steps to terminate the MOU. It is signed by Mr. Watson following the meetings that gave rise to the reasonable apprehension of bias, and prior to his recusal on September 9, 2016 from such administrative duties regarding the Project.⁷ The MOU directly affects the issues and the factors and scope of factors of the new Panel's review of the Project, thus extending the apprehension of bias and further undermining public confidence in the review of Energy East.

Moreover, the NEB and its review processes has lost the confidence of the Canadian public⁸ The federal government has acknowledged this and is in the midst of a public process to modernize the NEB. The federal government appointed an NEB Modernization Expert Panel to oversee this process. The Expert Panel conducted public hearings in ten cities across Canada, and collected feedback and reports from

² Canada, National Energy Board, *Memorandum of Understanding between Environment and Climate Change Canada and the National Energy Board for the Establishment of a Public Engagement Process for the Assessment of Upstream Greenhouse Gas Emissions related to the Energy East Project*, (Calgary: National Energy Board, 2016), online: National Energy Board <www.neb-one.gc.ca/bts/ctr/mmrndm/2016nvrnmntclmtchngcnd-eng.pdf> [MOU]. The MOU excludes the Eastern Mainline Project.

³ Letter from Belanger Avocats to NEB, 23 March 2017, A82234-1.

⁴ MOU at 1; Natural Resources Canada, Statement, "Government of Canada Moves to Restore Trust in Environmental Assessment" (27 January 2016), online: <<http://news.gc.ca/web/articleen.do?nid=1029999>>.

⁵ *Ibid.*

⁶ A81494-1 *Ruling No 1 - How to recommence the Energy East Hearing*, Ruling 1.1.

⁷ A79373-1 *Ruling No 28 - Notices of motion from Stratégies Énergétiques and the Association québécoise de lutte contre la pollution atmosphérique, and Transition Initiative Kenora (TIK)*.

⁸ See Ekos Research Associates, *Canadian Attitudes toward Energy and Pipelines: Survey Findings* (Ekos Research Associates Inc, 2016) online: <http://www.ekospolitics.com/wp-content/uploads/full_report_march_17_2016.pdf>.

members of the public, civil society, and Indigenous groups. EDC stresses that the review of the Project must only be conducted only after the NEB Modernization and the reform of federal EA laws are completed and the new assessment regime is in force.

In the alternative, the Panel must take steps to terminate the MOU. The restarting of the Energy East review process is a much-needed opportunity for the Panel to incorporate the recommendations of the Expert Panel on for the Review of Environmental Assessment Processes⁹ and the advice heard by the NEB Modernization Expert Panel. Continuing the assessment of upstream GHG emissions related to the Project under the terms of the MOU would further undermine public confidence in the NEB.

The terms of the MOU create a process of assessing the climate impacts of the Project that is inadequate:

- The Engagement Process established under the MOU provides for a limited assessment of GHG emissions. First, it is limited to upstream emissions, which do not provide a full accounting of the climate impacts of the Project. Downstream GHG emissions must also be considered. One way to undertake an assessment of downstream emissions would be to assess the economic viability of the Project using global oil demand and supply scenarios in line with the Paris Agreement. Second, the Engagement Process does not require an evaluation of how the proposed Project will impact Canada's ability to meet its commitment under the Paris Agreement to limit the increase in global warming to well below two degrees Celsius and pursue efforts to limit the temperature increase to 1.5 degrees Celsius above preindustrial levels, or the stated federal and provincial GHG emission reduction targets. An assessment of upstream emissions must be evaluated in the context of enacted and anticipated future emission reduction policies in order to be meaningful.
- The lack of a formal procedural framework also underlines the inadequacy of the Engagement Process. The features of a quasi-judicial hearing that are afforded to the parties and intervenors in the course of an NEB hearing, including the opportunity to submit interrogatories regarding expert evidence and to cross-examine parties on the substance of their submissions, are essential to ensuring a fair and just decision-making process. The climate impacts of the proposed Project are of significance to all participants in the review, and the Canadian public at large, and there is no cogent reason why participants should not be afforded the same rights of a quasi-judicial hearing with regards to this issue. The public interest is not adequately served by a limited technical assessment of upstream emissions lacking the formal procedural elements.

⁹ Canada, Expert Panel for the Review of Environmental Assessment Processes, "Building Common Ground: A New Vision for Impact Assessment in Canada" Final Report (Ottawa, Minister of Environment and Climate Change, 2017) at 61 [*Building Common Ground Report*].

- The Engagement Process is also inadequate as it does not lead to a “review or assessment” of the Project, nor a “decision or a recommendation on the Project.”¹⁰ If an assessment of the related GHG emissions is to be conducted separately from the NEB Panel hearing, it must form a part of the record before the Hearing Panel, and an element of the factors the NEB is to consider pursuant to subsection 52(2) of the *National Energy Board Act* (“NEB Act”)¹¹ The potential climate impacts associated with the proposed Project, including upstream and downstream GHG emissions, strongly engage the broad public interest of all Canadians.

An assessment of GHG emissions that is inadequate, an engagement process that does not grant procedural rights to parties, and a result that is not binding on the Hearing Panel undermines public confidence in the NEB’s Project review, and frustrates the substance and spirit of NEB Modernization and the recommendations of the Expert Panel for the Reform of Environmental Assessments. This is especially clear in light of the MOU stating that the Panel “will not consider upstream or downstream GHGs in its review of the Project or in the final recommendation report.”¹² The MOU therefore undermines the ability of the Panel to conduct a thorough review process on a number of issues that speak to more than simply the environmental impacts of the Project. The impact of upstream and downstream GHG emissions is relevant and necessary for the full consideration of a number of the issues that were included in the now-void previous Panel’s List of Issues, such as the need for the Project, the economic feasibility of the Project, the commercial, economic, supply, and market impacts of the Project, and the potential environmental and socio-economic effects of the Project.

2. The review of the Project must include a climate test

EDC has prepared a *Climate Test White Paper* for the NEB Modernization Expert Panel where it outlines both the need for a climate test and the framework for applying it to major energy projects.¹³ Environmental Defence submits that this climate test, as summarized below, must be explicitly recognized in the list of issues.

A climate test would consist of two main steps:

- The economic viability of energy projects in a carbon constrained world: The viability of the Project must be evaluated in light of the future price of carbon and the future supply and demand for oil, rooted in the constraints

¹⁰ MOU at 2.

¹¹ *National Energy Board Act*, RSC 1985, c N-7, s 52(2) [*NEB Act*].

¹² MOU, page 1.

¹³ Duncan Noble & Kevin Brady, *NEB Modernization: Aligning Energy Project Assessment with Climate Policy*, (Environmental Defence Canada, 31 March 2017), online: <<http://environmentaldefence.ca/report/climate-test-aligning-energy-project-assessment-climate-policy>>.

of domestic and international climate policy. The evaluation of the Project must be based on the full length of its useful life.

- The impact of the Project on carbon budgets: The projected GHG impact of the Project must fit within all national, provincial, and sectoral carbon budgets.

EDC maintains that the trust in the legitimacy of the Panel's review of Energy East significantly depends on the Panel addressing the climate impacts of the Project through a comprehensive climate test, such as the one proposed in the *Climate Test White Paper*. The current review of the Project must be delayed until the NEB Modernization process and the review of EA laws and processes are completed and the new assessment regime is in force. If the Panel chooses to proceed with this review without a formal climate test in place, integrating elements of the climate analysis is essential in fully addressing many of the other issues related to the Project, and these elements must be explicitly included in the issues list.

3. Climate change impacts must be explicitly included in the List of Issues considered under the *National Energy Board Act*

The Panel's mandate pursuant to the *NEB Act* cannot be fulfilled without considering climate impacts, including upstream and downstream GHG emissions related to the Project. Section 52(1) requires the Panel to issue a report setting out its recommendation, taking into account "whether the pipeline is and will be required by the present and future public convenience and necessity."¹⁴ The Federal Court of Appeal approved an approach of the NEB in determining the public convenience and necessity as including a determination of the relevant considerations, assigning weight to the considerations, and a "balancing of the benefits and burdens" determined to result from the project.¹⁵ The Panel's review of the Energy East application will not be complete without considering upstream and downstream burdens, in addition to the economic benefits described in the proponent's application.¹⁶

The *NEB Act* gives the NEB broad exclusive jurisdiction to determine matters arising under the Act "in the public interest."¹⁷ The power of the NEB to issue a report setting out the recommendation whether the Project should be issued a certificate also includes a consideration of public interest.¹⁸ The mandate of the NEB is based on carrying out its purpose for the Canadian public interest.¹⁹ In order to fulfil its

¹⁴ *NEB Act*, s 52(1)(a).

¹⁵ *Sumas Energy 2 Inc. v Canada (National Energy Board)*, 2005 FCA 377, [2006] 1 FCR 456, at para 33.

¹⁶ See A76905-5, *Consolidated application*, Vol. 1: Application and Project Overview, Section 3: Project Justification and Benefits, Energy East Pipeline Ltd, TransCanada Pipelines Limited, OH-002-2016 [*Application, Project Justification and Benefits*].

¹⁷ *NEB Act*, s 12(1)(a).

¹⁸ *NEB Act*, s 52(2)(e).

¹⁹ "National Energy Board –Fact sheet" (2016) National Energy Board, online: <<https://www.neb-one.gc.ca/bts/whwr/nbfcstst-eng.html>>; "Regulating in the Public Interest" (2016) National Energy Board, online:

mandate and engage in the necessary balancing of both the positive and negative potential aspects of a proposed project the NEB must include the upstream and downstream GHG emissions that are attributed to the proposed project, the economic and social cost of those emissions, and the impacts of international and domestic climate change mitigation commitments on the project.

The NEB routinely engages in an assessment of the upstream and downstream impacts of proposed projects. While the NEB does not regulate the activities that occur upstream of the proposed Project, TransCanada's application for the Energy East Project includes assessments of the economic benefits to the Western Canadian oil industry, the increase in gross domestic product, and the increase in governmental revenues from income taxes, royalty payments, and property tax as a result of higher netbacks to oil producers.²⁰ These economic benefits necessarily depend on Energy East facilitating continued and increased extraction and production of oil in Western Canada. The NEB must consider these benefits along with the corresponding economic, environmental, and social impacts of the oil production. The Canadian public interest can only be served if both the positive and negative impacts are assessed side by side.

The NEB has also previously engaged in an assessment of downstream environmental impacts. The List of Issues for Energy East prepared by the previous Hearing Panel includes "the potential environmental and socio-economic effects of increased marine shipping."²¹ EDC supports the inclusion of this issue in the new List of Issues, to be released by the new Panel. In addition, the GHG emissions associated with the downstream use of the oil transported through the pipeline must also be included.

List of Issues

EDC urges the Panel to make the climate factors discussed above explicit in the new List of Issues for its consideration in the upcoming proceeding regarding the Project:

- The need for the Project. The need for Energy East should be analyzed in the context of international, federal and provincial climate commitments, in line with the Paris Agreement, and the contribution of each economic sector in Canada to reducing GHG emissions to meet those commitments. The Project review should also consider the need for Energy East in the context of global oil supply and demand forecasts that are aligned with the Paris Agreement and the need for the oil that would be transported by Energy East under those forecasts. The breadth of the analysis that is required to fully assess these impacts reinforces EDC's request that the

<<https://www.neb-one.gc.ca/bts/nws/rgltrsnpshts/2016/22rgltrsnpsht-eng.pdf>>; National Energy Board, "Pipeline Regulation In Canada: A Guide for Landowners and the Public" (Calgary: National Energy Board, 2010) online: <<https://www.neb-one.gc.ca/prtcptn/lndwnrgd/lndwnrgd-eng.pdf>>, at 1.

²⁰ *Application, Project Justification and Benefits*, at 3-5.

²¹ National Energy Board, *Hearing Order OH-002-2016*, Appendix I: Lists of Issues for Energy East and Eastern Mainline, 20 July 2016. This Hearing Order has been declared void.

Project review be postponed until NEB Modernization and the reform of EA laws and processes are in place, which would establish formal institutions and processes to facilitate this analysis.

- The economic feasibility of the Project. The economic feasibility of Energy East should also be analyzed in the context of the reduction in global demand for oil that is necessary to achieve the Paris agreement, and the corresponding reduction in oil supply required to meet that declining demand. The Project review should assess whether the Project is economically feasible in a carbon-constrained world that has committed to reduce GHG emissions by 80 per cent by mid-century. While the NEB is well-positioned to conduct this assessment, the mandate, data, tools, and processes required to inform this analysis are currently being considered as part of NEB Modernization and EA reform, again underscoring EDC's request for the postponement of the Energy East review.
- The commercial, economic, supply, and market impacts of the Project. Similarly, the Panel should assess these impacts in the context of domestic and international climate commitments, as well as the contribution of each economic sector in Canada to reducing GHG emissions to fulfil those commitments. With various projects under development that would increase Canada's GHG emissions and enable greater supply of fossil fuels to global markets, the Panel should consider the economic and commercial risks associated with that increased supply in a carbon-constrained future. In market forecasts that assume the success of the Paris Agreement and the fulfillment of Canada's climate commitments, Energy East risks becoming a stranded asset. Furthermore, the review should consider the increased price of carbon necessary to meet international and domestic climate commitments and the social costs of the upstream and downstream GHGs associated with the operation of the Project, including the costs of health impacts and climate change adaptation.
- The potential environmental and socio-economic effects of the Project, including the upstream and downstream GHG emissions associated with the full life-cycle of the Project, any environmental effects of accidents or malfunctions that may occur in connection with the project, and any cumulative effects that are likely to result from the project, as considered under the *Canadian Environmental Assessment Act, 2012*.

The List of Issues must also include the following:

- Psychological and social impacts and the social acceptability of the Project
- A study of the impacts of the Project on the St. Lawrence River
- GHG emissions and other socio-economic and environmental impacts of pumping stations, evaluated on a life-cycle basis, including the necessary infrastructure required to power the operation of the Project, and their alignment with provincial and national climate commitments²²

²² A76905-4, *Consolidated application*, Vol. 1: Application and Project Overview, Section 2: Project Overview, Energy East Pipeline Ltd, TransCanada Pipelines Limited, OH-002-2016, at 2-10. [*Application, Project Overview*].

- If an Engagement Process is undertaken as contemplated under the MOU, the contents and outcome of any report or work produced as part of that process

4. Climate change impacts must be addressed by the list of Factors and Scope of Factors pursuant to the *Canadian Environmental Assessment Act, 2012*

Pursuant to sections 2(1), 13, and 15(b) of the *Canadian Environmental Assessment Act, 2012* ("CEAA"), the Energy East Pipeline is a designated project that is subject to an EA. In addition to the environmental matters considered under the *NEB Act*, the Panel is the responsible authority under *CEAA*, and it has an obligation to consider upstream and downstream environmental effects, including greenhouse gas emissions, and the social and economic costs associated with these effects.

The *NEB Act* and *CEAA* are both undergoing modernization review processes. EDC maintains that in order to regain public confidence, the review of Energy East must be delayed until the new legislative regimes are in place. The NEB Panel's expertise is best suited for a regulatory role; the Panel review is not the proper venue for a full EA.

If the Panel decides to proceed with an EA of the Project, it must strive to incorporate the public interest principles that have been raised in the course of the EA reform process. Ensuring "meaningful public participation" is one of the stated purposes of *CEAA*.²³ *The Final Report of the Expert Panel for the Review of Environmental Assessment Processes* calls on the authority responsible for EAs to issue the document that outlines the scope of the EA process as a draft, and open it to public participation and Indigenous consultation.²⁴ Public interest would be best served if the NEB followed the process for inviting comments on a draft List of Issues under the *NEB Act*, and issued a draft EA Scope of Factors document on which it requested submissions from the Parties and Intervenors.

The scope of the factors to be considered under section 19 of *CEAA* must include upstream and downstream greenhouse gas emissions associated with the project, and the environmental, social, and economic impacts that may occur as a result. As a responsible authority pursuant to *CEAA*, the Panel is required to carry out the EA in furtherance of the purposes of the Act.

The purposes of *CEAA* include ensuring that designated projects are "considered in a careful and precautionary manner to avoid any significant environmental effects."²⁵ Upstream and downstream GHG emissions must be included in the assessment of the proposed Project in order to give effect to the precautionary

²³ *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 4(1)(e) [*CEAA*].

²⁴ *Building Common Ground Report* at 61.

²⁵ *CEAA*, s 4(1)(b).

principle, which requires that environmental policies “anticipate and prevent environmental degradation.”²⁶ In fact, the Panel is mandated to exercise its powers “in a manner that protects the environment and human health and applies the precautionary principle.”²⁷ Other purposes of *CEAA* include encouraging federal authorities, including the NEB, “to take actions that promote sustainable development in order to achieve or maintain a healthy environment and a healthy economy,”²⁸ and “to encourage the study of cumulative effects of physical activities” as part of EAs.²⁹ These purposes cannot be satisfied without considering the effects of upstream and downstream GHG emissions. The precautionary principle requires that these emissions that are tied to the approval of the Project be fully assessed, and the potential effects and cumulative impacts thereof are duly considered in the EA of the Project.

Upstream and downstream GHG emissions are also required to be considered by the provisions of *CEAA* that set out which environmental effects must be taken into account. This includes any “change that may be caused to the environment” in any province or outside Canada [emphasis added].³⁰ The term “environment” is defined broadly in the Act, including “land, water and air, including all layers of the atmosphere.”³¹ Subsection 5(2) further requires the Panel to consider a change “that may be caused to the environment and that is directly linked or necessarily incidental” to its exercise of power that would permit the carrying out of the project, as well as any effect such change may have on health and socio-economic conditions [emphasis added].³² These provisions require the Panel to take into consideration all possible changes to the environment, including those caused by GHG emissions, regardless of whether it can be shown that the changes will in fact occur.

Upstream and downstream GHG emissions are directly linked or necessarily incidental to the approval of the proposed Project. The purpose of the Project is to facilitate the increase in crude oil supply by providing shipping capacity.³³ The necessity of the project is dependent on the increase of crude oil extraction in the Alberta oil sands. As discussed above, the assessment of the benefits of the project relies on predictions of economic benefits to the communities and governments engaged in the growing oil sands extraction that will result from the proposed Project. The EA scope of factors must also include the environmental impacts of this expected increase.

The perceived difficulty in assessing the potential GHG emissions that would be associated with the proposed Project is not a satisfactory argument against accounting for the impact. The predictions of oil demand and supply and the

²⁶ *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52, [2013] 3 SCR 323, at para 20.

²⁷ *CEAA*, s 4(2).

²⁸ *CEAA*, s 4(1)(h).

²⁹ *CEAA*, s 4(1)(i).

³⁰ *CEAA*, s 5(1)(b).

³¹ *CEAA*, s 2(1) “environment.”

³² *CEAA*, s 5(2).

³³ *Application, Project Overview*, at 2-5.

corresponding financial benefits are based on economic modelling and forecasts that are inherently imprecise. The broad language of s. 5(2) of *CEAA* requires the Panel to consider all impacts that “may be caused” to the environment. It is certain that the approval of the Project would cause an increase in upstream and downstream GHG emissions; the uncertainty in the evaluation technique is not a persuasive reason not to undertake the evaluation.

In our submission, the Hearing Panel in the Trans Mountain Expansion Project Ruling No. 25 improperly made the decision not to include upstream and downstream emissions in the scope of factors under *CEAA* and the issues list under the *NEB Act*.³⁴ The Panel conceded that its recommendation to approve the Trans Mountain Expansion Project “may contribute to [the growth in oil sands] development,” but did not examine the degree of contribution because it would be dependent on other factors.³⁵ If the Panel insists on proceeding with review of Energy East before EA reform and NEB Modernization are complete, EDC urges the Panel in this case to fulfill the requirements of the *CEAA* provisions, and undertake a full EA that will include all possible environmental impacts. The Panel considers predicted economic benefit in the review of a Project, and the EA must also include predictions of the associated environmental impacts, in order to fulfill its mandate under *CEAA*.

It may be argued that the GHG emissions of oil extraction activities are properly considered under the applicable provincial licensing and EA provisions. This 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.³⁶ 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.

In addition to including the environmental effects of the upstream and downstream GHG emissions, EDC requests that the scope of factors to be considered pursuant to *CEAA* also includes the impacts of the Project on the St. Lawrence River, the Gulf of St. Lawrence, and the Bay of Fundy, as well as the GHG emissions and other socio-economic and environmental impacts of pumping stations, evaluated on a life-cycle basis, including the necessary infrastructure required to power the operation of the Project and its alignment with provincial and national climate commitments.

³⁴ A63-1, *Ruling 25*, Trans Mountain Pipeline ULC, OH-001-2014 (July 2014) [*Trans Mountain Ruling 25*].

³⁵ *Ibid.* at 3.

³⁶ *Building Common Ground Report* at 22.

5. Conclusion

EDC submits that the best way to ensure that the review of Energy East enjoys public confidence and is fair, inclusive, transparent and thorough would be to postpone Project review until the modernization of the NEB and the reform of EA laws and processes are complete and recommended changes are enacted in legislation. However, if the Panel chooses to proceed with the review of the Project before these reforms, EDC requests that the Panel take steps to terminate the MOU between the NEB and ECCC, and include a meaningful assessment of upstream and downstream GHG emissions as part of its review of the Energy East Project.

If the Panel continues with the review of the Project before NEB Modernization and EA reform are complete, the following must be included in the List of Issues to be considered under the *NEB Act*:

- Upstream and downstream greenhouse gas ("GHG") emissions associated with the full life-cycle of the Project, including a consideration of upstream and downstream emissions in other relevant issues, as described
- Psychological and social impacts and the social acceptability of the Project
- A study of the impacts of the Project on the St. Lawrence River
- GHG emissions and other socio-economic and environmental impacts of pumping stations, evaluated on a life-cycle basis, including the necessary infrastructure required to power the operation of the Project and its alignment with provincial and national climate commitments

The environmental effects that are included in the factors to be considered pursuant to *CEAA* must include the upstream and downstream greenhouse gas emissions associated with the project. The scope of factors to be considered under *CEAA* must also be inclusive of the impacts of the Project on the St. Lawrence River, the Gulf of St. Lawrence and the Bay of Fundy, as well as the GHG emissions and other socio-economic and environmental impacts of pumping stations, evaluated on a life-cycle basis, including the necessary infrastructure required to power the operation of the Project and its alignment with provincial and national climate commitments.

We look forward to your response in this matter.

Yours truly,

Sincerely,



Patrick DeRochie
Climate & Energy Program Manager
Environmental Defence