

November 30, 2010

Mr. Gaétan Caron—Chairman  
National Energy Board  
444-7 Avenue SW  
Calgary, Alberta T2P 0X8

Dear Mr. Caron:

Today I am writing to you about the NEB's most recent pattern of dealings with landowners, and about its LMCI (Land Matters Consultation Initiative) process.

As you know, the NEB has an established track record of implementing policies that impose duty of care and liability upon landowners, while at the same time, avoiding formal consultation with affected landowners, or with their representative organizations, prior to the implementation of such policies.

(By way of background and as evidence that this is very much the case, I have attached an excerpt of a recent presentation CAEPLA made to the House of Commons Energy Committee.)

Prior to LMCI, as a condition of CAEPLA's participation, landowners and their representative organizations put forward two principles. The first was that landowners must be fully and completely absolved of liability and obligation with respect to abandoned pipelines. As you know, we are not pipeline landowners by choice. Pipelines are imposed upon landowners. We hold no economic interest in pipelines. This means any policy that shifts liability to landowners after, or at the time, that these pipelines are abandoned, is unfair and purely arbitrary.

Second, prior to LMCI, it was acknowledged that landowners would be at an extreme disadvantage if they were not afforded participant funding. Many aspects of the LMCI process are highly technical, requiring professional witnesses and extensive research.

Landowners hold no financial interest in NEB-regulated pipelines. As such, any notion that landowners have an obligation to participate in NEB processes, without the NEB paying for the financial obligations associated with that participation, is highly inappropriate and most unreasonable.

Prior to LMCI, the NEB specifically told landowners and their representative organizations that by means of LMCI, policies would be amended in such a way that would see landowners absolved of all liability for abandoned pipelines. We accepted that statement. (Unwisely, we didn't dig in at the time with respect to participant funding. It is a mistake we will never again make.)

Our decision to put good faith in what we had been told by the NEB, turned out to be an error in judgment on our part. When CAEPLA attended the LMCI round table session to specifically discuss the issue of pipeline abandonment, contrary to what we had been led to believe earlier, we were then told that NEB policy is that landowners would have to accept "some liability" for abandoned pipelines.

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Immediately recognizing that the NEB had misrepresented the situation earlier, and knowing there is absolutely no way landowners should be compelled to accept liability for something they do not own, and never planned to own, there was no option available for us but to walk away. We left the meeting.

Even so, as CAEPLA had invested heavily to produce professional witnesses and evidence for the formal hearing on pipeline abandonment, we followed through by participating in that event. You will know that prior to that hearing, CAEPLA had been told by your staff that the NEB didn't think our group, or our people, should be there. After attending, we learned why this was likely the case.

At the NEB hearing, although the pipeline companies the NEB kept publicly referring to as its "partners," insisted their policy position was zero landowner liability for abandoned pipelines, many nevertheless admitted under cross examination that their policies and positions would in fact result in landowner liability.

Subsequent to this, CAEPLA, and all its affiliated organizations, walked away from LMCI. We had no money to go further, and no willingness to accommodate the NEB's double talk. We also came to understand that the NEB's desire to hold a hearing to address the abandonment funding issue, before it even addressed the technical aspects of abandonment, meant a type of *maskirovka* was under way.

Surely you acknowledge that there is no way an informed decision about the cost of pipeline abandonment can be reached, without first addressing the technical aspects of that process, including all that such a process may or may not entail.

No one can decide how much money he or she needs to come up with in order to build a home, or embark upon a journey, unless he or she first knows the size of the house to be built, or the journey's destination. Yet this is exactly what the NEB did when it held a hearing to determine funding issues for pipeline abandonment, when the very processes that needed to be funded had never been discussed or defined. Additionally, landowners had never been afforded the opportunity to be in the room when the technical issues were discussed, and it is landowners, more than anyone else in the country, who will be most affected by the policies.

This is not the first time the NEB has knowingly trampled or ignored legitimate landowner interests.

At the NOVA jurisdictional hearing, CAEPLA and its affiliates spent hundreds of thousands of dollars to accurately present the landowner condition on that matter, including the severely negative impact of such a shift upon individual landowners and their families. After receiving evidence and professional testimony, the NEB knowingly and quite deliberately ignored it. You and your colleagues ruled in favour of expanding your own sphere of influence by bringing the 24,000 km Alberta NOVA provincial system within the NEB's regulatory portfolio.

When you did this, you stripped thousands of landowners of the longstanding legislative and regulatory protections they had enjoyed for decades, by extinguishing their rights under provincial law. Landowners invested hundreds of thousands of dollars to be at that NOVA hearing, and to state their case, only to be ignored.

The notion that upon the heels of being trampled by the NEB at the NOVA hearing, and misled by the NEB at the LMCI process, that we should go out and raise hundreds of thousands of after-tax dollars from people who hold no financial interest in pipelines, to further discuss pipeline policy with the NEB, wasn't an option.

You at the NEB knowingly put informed landowners and their representative organizations in a place where we had no choice but to walk away, which is what we did.

As you know, CAEPLA is an affiliation of landowner associations. There are four provincial pipeline landowner associations in Canada, and only four. Each is a member and affiliate of CAEPLA. There are numerous regional landowner associations throughout the country that are concerned about NEB policy. Dozens of these associations and local committees, from Vancouver Island through to the Atlantic coast, are members and affiliates of CAEPLA. These formally constituted groups are all non-participants in the NEB's LMCI process, not because they don't want to participate, but because of the NEB's own actions and policies.

After CAEPLA, along with its regional and provincial affiliates were compelled to walk away from LMCI, the NEB sought other participants, ostensibly to present and represent the interests of affected landowners. While the NEB has every right to do this, it has every appearance of simply being an effort to maintain the illusion of NEB consultation with landowners.

I am writing today to ask if you would kindly provide CAEPLA with the specific criteria the NEB used when selecting LMCI participants, subsequent to the only national landowner body; the only provincial pipeline landowner associations in the country; and dozens of affiliated regional groups, coming to a clear understanding that the NEB process was skewed against landowners in such a way that they were prohibited from participation.

Also, please provide documentation regarding exactly how and why the NEB believes the outcome of such a skewed process is going to resolve these important issues, in light of the fact that the landowners and their representative associations that are most affected, were crowded out of any meaningful participation by the NEB's own actions.

Yours truly,



David R. Core  
CAEPLA

- c. Members of Parliament and the Senate of Canada;
- c. Members of the Press;
- c. Mr. Pradeep Kharé.