



9 September 2016

To: All OH-002-2016 Parties

Decision Statement of the NEB Chair and Vice-Chair

On 11 August 2016, Stratégies Énergétiques and Association Québécoise de lutte contre la pollution atmosphérique (AQLPA) filed a letter with the National Energy Board seeking various relief as a result of meetings conducted by National Energy Board Members and staff with individuals and organizations potentially interested in the Energy East and Eastern Mainline projects. Further detail regarding that AQLPA request is included in the decision of the OH-002-2016 Hearing Panel, also issued today.

The OH-002-2016 Panel decided to consider this AQLPA request as a motion, and established a written process by which hearing participants were allowed to file comments by 7 September 2016. The Board has received and considered comments on the motion.

Earlier today, Members George, Mercier and Gauthier recused themselves from any further involvement with the Energy East and Eastern Mainline applications and associated hearing process, as a result of apprehension of bias that may otherwise arise from their continued participation in the hearing process.

As Chair and Vice-Chair of the National Energy Board, the following constitutes our decisions in respect of the outstanding requests of the AQLPA and associated comments filed with the Board.

Chair and Vice-Chair Recusal

It is our strongly held view as Chair and Vice-Chair that it is both necessary and appropriate for the Board to engage actively with Canadians. Engagement meetings in Montreal on 15 and 16 January 2015 were undertaken in good faith in support of the Board's engagement activities.

Notwithstanding this, our participation in these meetings may have cast a doubt on our continued abilities as Chair and Vice-Chair to exercise the limited and specific administrative duties prescribed under sections 6, 15, 16, 52 and 58 of the *National Energy Board Act*, in relation to

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the Energy East and Eastern Mainline applications. Accordingly, we have decided to recuse ourselves from performing these functions for the purposes of the Energy East and Eastern Mainline applications.

Upon our recusal, an acting Chairperson is required to be identified for the purposes of these administrative functions in respect of the Energy East and Eastern Mainline applications. The process for authorizing an acting Chair in these circumstances is prescribed in subsection 6(4) of the *National Energy Board Act*.

The Energy East and Eastern Mainline applications require new Members who are not only free of any apprehension of bias but who are also proficient in both official languages. A government process is currently under way to select new Board Members. Once additional Members are appointed to the Board, the acting Chair for the purpose of the above provisions of the NEB Act in relation to these applications, will be in a position to assign a newly constituted hearing panel comprised of Members who are not only free of any apprehension of bias in respect of the Energy East and Eastern Mainline applications, but who are also proficient in both official languages.

Board Staff Who Participated in the Montreal Engagement Meetings on January 15 and 16, 2015

It has been requested that Board staff who participated in the 15 and 16 January 2015 engagement meetings in Montreal be removed from any further duties in relation to the Energy East and Eastern Mainline applications and hearing process.

We wish to underscore that Board staff who participated in these meetings do not have any decision-making authority in respect of the Energy East and Eastern Mainline applications; such authority rests solely with Board Members appointed by the Governor in Council. Accordingly, it is questionable whether removal of these staff from the future consideration of the applications is necessary or appropriate in order to ensure fairness in respect of any newly constituted hearing process. Nevertheless, we note that both Board staff members who attended the 15 and 16 January 2015 meetings in Montreal will be assigned to new projects with the Board and, consequently, will no longer be involved in the Board's assessment of the Energy East and Eastern Mainline applications.

Requested Publication and Investigation by a Future Hearing Panel

It has also been requested that additional information and documents associated with engagement meetings involving OH-002-2016 parties be placed on the hearing record, and that any newly constituted Panel conduct an investigation into circumstances associated with these meetings.

The recusal decisions of Panel Members and those of the Chair and Vice-Chair referred to above, are directed to avoiding any perception that comments made at these meetings would be communicated to, or considered by, the Energy East and Eastern Mainline hearing Panel.

Publication of information on the hearing record or investigation by a newly assigned Panel would, in part, frustrate the intended effect of the recusals and may introduce apprehensions associated with any newly constituted Panel. Accordingly, we do not consider the requested actions to be necessary.

A copy of this Decision Statement will be sent to OH-002-2016 parties, and placed on the OH-002-2016 hearing file.



Lyne Mercier
Vice-Chair



Peter Watson
Chair and CEO