



# PIPELINES AND THE CHANGING FACE OF PUBLIC PARTICIPATION

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# Public Participation



## □ Pros:

- Generate buy-in, managing/preempting social conflict
- Opportunity for “mutual learning” [Sinclair & Diduck]
- Better decision-making
- Empowerment of affected actors

## □ Cons:

- Who has the sharpest elbows
- NIMBY-ism
- Create antagonism; discourage thoughtful participation; create ambivalence among decision makers
- Process may not escape (and may lend legitimacy to) existing power imbalances, patterns of inequality

# Pipelines: conduits for more than just hydrocarbons...

- “Upstream” activities and impacts
- “Downstream” activities impacts
- Climate impacts



[blogs.windsorstar.com/](http://blogs.windsorstar.com/) Bloomberg files

# Pipelines: conduits for more than just hydrocarbons... (con't)

- Distribute benefits and burdens
  - ▣ “Pipelines distribute pollution” [Scott]
  - ▣ Risk of spills
  - ▣ Economic benefit (revenue, royalties)
  - ▣ Climate change impacts (local, regional, national, global)
- Permanent
  - ▣ Lock in accruals of benefits, distribution of risks and effects [Scott]

# CEAA 2012

- “Designated Projects” are subject to review (ss 13-15):
  - ▣ Associated with responsible authority (e.g., NEB) or
  - ▣ Includes a designated physical activity
  
- For designated projects requiring issuance of a certificate under s 54 of the *NEB Act*, the RA must “ensure that **any interested party** is provided with an opportunity to participate in the environmental assessment of the designated project” (s. 28)
  
- “Interested party” : a person who, in the opinion of the RA or panel “is directly affected by the carrying out of the designated project or if, in its opinion, the person has relevant information or expertise” (s. 2(2))
  
- EAs of designated projects must take into account “**comments from the public**” or “with respect to a designated project that requires a certificate be issued in accordance with an order made under section 54 of the *National Energy Board Act*, **any interested party**” (s19)

# Changes to the *NEB Act*



- Section 55.2:

On an application for a certificate, the Board **shall** consider the representations of any person who, **in the Board's opinion**, is **directly affected** by the granting or refusing of the application, and it **may** consider the representations of any person who, **in its opinion**, has **relevant information** or expertise. A decision of the Board as to whether it will consider the representations of any person is conclusive.

# Exclusion: lists of issues & the determination of “directly affected”

The NEB “will **not consider** the environmental and socio-economic effects **associated with upstream activities, the development of oil sands, or the downstream use** of the oil transported by the pipeline” [NEB, Line 9B Hearing Order, List of Issues]



“When the Board assesses the directly affected status of an applicant, the Board looks at how the person **uses the area where the project will be located**, how the project will affect the environment, and **how the effect on the environment will affect the person’s use of the area**. The closer these elements are connected (their proximity), the more likely the person is directly affected. An effect that is too remote, speculative, or is not likely to impact the applicant’s interests will not lead to finding that an applicant is directly affected.” [NEB, Line 9B Procedural Order No. 2]

# De-legitimization & Vilification



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