

**THE
JOINT PUBLIC
REVIEW
PANEL
REPORT**

**SABLE
GAS
PROJECTS**

**Canadian Environmental
Assessment Agency**

**Nova Scotia Department
of Environment**

National Energy Board

Natural Resources Canada

**Nova Scotia Department
of Natural Resources**

**Canada-Nova Scotia
Offshore Petroleum Board**

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ABORIGINAL ISSUES

Three main areas of concern were raised by aboriginal representatives. The first concern is the alleged inadequacy of the public participation process as it pertains to aboriginal peoples. The second issue deals with an alleged failure of the environmental and socio-economic assessments to take into account potential impacts on aboriginal peoples. Related to this issue was the need for compensation programs and for benefits such as aboriginal employment opportunities. Finally, there was the overarching issue of the manner and extent to which the Panel and government agencies must exercise a fiduciary responsibility to protect traditional land uses and resources.

Early and meaningful public consultation is a fundamental objective of the environmental assessment process. Concern was expressed that the Proponents' consultation process with aboriginal people was inadequate. As a result aboriginal representatives did not feel that aboriginal concerns and issues had been properly or adequately taken into consideration in the Proponents' environmental assessments. A concern was also expressed that government agencies had not generally intervened with the Proponents to ensure that due regard be given to aboriginal issues.

The early public notification phase for the Projects was primarily aimed at government authorities and the public most directly affected. However, certain special interest groups, such as the fisheries industry, were also consulted. Since the Project did not directly impinge on reserve lands and areas that were the subject of claims negotiations, the Proponents did not initially target aboriginal communities as special interest parties, as they had done for other interest groups. In final Argument the Proponents stated that they were admittedly "slow off the mark" in dealing with First Nations. The Panel believes that this delay was regrettable.

From the outset, the public participation program that should have ensured that consultation was carried out with the main aboriginal organizations and the communities that they represented. The proposed gas production and transportation indus-

tries are new to the Maritimes and so there is a particular onus on the part of the Proponents to communicate effectively with all potentially impacted parties. SOEP has as a principle, "to strive to establish good, long-term relationships with the communities with whom we interact" and this was clearly not met in its initial way of dealing with the aboriginal community.

Direct, face-to-face contact with aboriginal communities at the Project outset would likely have gone a long way toward alleviating aboriginal peoples' concerns, and avoided mistrust and misunderstanding. The Proponents have belatedly recognized this. Consultations have been initiated and have achieved positive results. For example, SOEP has agreed to avoid situations where, if an aboriginal archaeological site was uncovered, work on the site would continue in the absence of consultation with affected parties. Work will be halted pending consultation. The Proponents have also agreed along with aboriginal representatives to review specific environmental mitigation procedures. Discussions are underway between the Proponents and aboriginal representatives with respect to a protocol or agreement on future consultation, particularly for areas such as land use, rare and medicinal plants and archaeological resources. During Argument, two of the three aboriginal intervenors expressed satisfaction with the progress made to date. The Panel feels strongly that the best approach to achieve effective communications is through a written protocol or agreement that spells out responsibilities and roles for the cooperative study, the monitoring of potential impacts, and the development of appropriate mitigation, when required. Notwithstanding, the Panel would stress that any approach must be cost effective, efficient and timely.

The second issue was that specific Project impacts on aboriginal land use were not studied and hence are unknown. The Proponents maintained that their assessment processes gave careful consideration to all potential environmental and socio-economic impacts. They feel that the weight of the assessment evidence suggests that any adverse impacts would be minimal, temporary and/or mitigable, and thus

Recommendation 45

The Panel recommends that the appropriate regulatory authorities condition their approvals to require the Proponents to submit a written protocol or agreement spelling out Proponent Aboriginal roles and responsibilities for cooperation in studies and monitoring.

not qualify as significant adverse impacts. The Proponents noted that these findings apply to all those potentially affected, including aboriginal people. Moreover, additional studies will be prepared at the detailed route planning stage, which will include studies of rare and medicinal plants, soils, archaeology and geotechnical matters, among others. Based on these studies, measures will be taken to avoid or mitigate site specific adverse impacts along the detailed route. Potential impacts on aboriginal interests will be further defined and dealt with in this context.

The Panel observes that aboriginal people may have special insights on particular cultural, social, economic and environmental impacts of a project and on traditional ways to mitigate these. Such insights would best be incorporated at the detailed field work stage, and tested as required during the construction phase. There should be ample opportunity for both parties to develop concrete, effective and feasible ways to achieve this under the umbrella of a protocol or agreement.

The availability of compensation for damages to aboriginal interests was also raised. Two mechanisms are now in place to resolve compensation claims. Project-related damages to aboriginal commercial fishers would be available under the SOEP-Fisheries compensation agreement that is being negotiated between SOEP and the fisheries industry. In the event of Project-related damages to non-commercial hunting, fishing or gathering activities, a legislated procedure exists whereby affected parties can seek compensation through a negotiator or arbitration committee appointed by the Federal Minister of Natural Resources Canada. Aboriginal spokespersons suggested two other alternatives. These are a specific compensation

program or a set of compensation criteria, both of which would be tailored to offset specific or unique impacts on the aboriginal community. To the extent that such additional compensation mechanisms are deemed necessary, these alternatives would have to be negotiated as an independent matter between the two parties. The Panel takes no position as to which, the existing or proposed approaches to compensation, would be best.

Aboriginal employment opportunities are an issue that was raised as a possible positive Project impact. In response, SOEP stated its commitment to remove barriers and provide training and other opportunities for all disadvantaged groups. In this regard, SOEP undertook to discuss directly with aboriginal representatives ways and means to enhance employment opportunities. It also suggested aboriginal participation on the Benefits Advisory Committee as an avenue to create or maximize aboriginal employment opportunities. The Panel believes that participation on the BAC would afford aboriginal representatives with a monitoring role, and would represent a significant opportunity. Should aboriginal people wish to participate in BAC, careful consideration should be given to how best to represent their collective interest through the BAC mechanism.

Finally, the matter of the Crown's obligation with respect to fiduciary rights was put forward by aboriginal groups as a central issue. Fiduciary rights relate to the legal obligation of the Crown to the aboriginal people including obligations to manage properly lands and other resources held in trust for aboriginal people. Typically, this obligation would apply where a government authority is responsible for administering reserve lands for a particular aboriginal band. The position taken by certain aboriginal intervenors was that the fiduciary role is more general in application than this, and covers all Crown lands and applies to both on and off reserve aboriginal people. In this view, all aboriginal people have a legal interest in any Project-related adverse impact on wildlife, fish, plants and heritage resources on Crown lands.

The federal Department of Justice, on behalf of DFO and DOE, argued that the Panel as a quasi-judicial body does not have fiduciary responsibilities. The Department of Justice also argued that there was no evidence on the record that would permit the Panel to decide on the existence, content and fulfilment of fiduciary responsibilities by other government authorities. Further, it was noted that aboriginal parties had access to and participated fully in the Panel proceedings and had not made any case to show any specific adverse effects of the Project on aboriginal use of Crown lands.

The Panel sees the general interpretation of the fiduciary obligations of government agencies as a legal matter, which is beyond its specific mandate. However, it believes that the Panel protected the rights of all parties by ensuring a fair, objective and unbiased public hearing process.

RURAL QUALITY OF LIFE

During the scoping sessions, certain intervenors expressed concerns that a pipeline would detract from the rural quality of life and should be denied on that basis. The main concerns centred on matters of safety, adverse wildlife impacts, intrusions by outsiders, and the physical appearance of the right-of-way. The Panel appreciates the high value that rural residents place on their lifestyle, and the fear that the pipeline could undermine this lifestyle. However, the Panel is not convinced that a properly designed, constructed and maintained pipeline would have the significant adverse effects that some intervenors fear.

Wildlife impacts were assessed in the Application and through cross-examination. To the extent that there might be adverse wildlife impacts, these are expected to be minor, temporary and mitigated to a level of insignificance. Increased intrusion by outsiders is a possibility, although agreement has been reached to build barriers where requested by landowners and to place appropriate signage. As well, most of the right-of-way will be in areas already accessible through forestry roads and as well as passing through Crown lands to which the public now has a right of access. As to the physical appearance of the right-

of-way, there is agreement that except for a six metre strip centred on the pipeline, the rest of the easement area could be replanted with bushes and small, shallow rooted trees. This would provide for both visual screening and support wildlife.

While the Panel shares the view that rural areas should be as natural as possible, it recognizes that existing settlement already compromises that status to some extent. Roads have been built and utilities installed. Land is cleared for housing and other activities. There is already a human footprint on the lands through which the pipeline will pass. It is a judgement call as to how much wider, longer or deeper the footprint will be with new pipelines. The Panel believes that with proper planning, construction and maintenance the change in the footprint will still be acceptable.

Landowners, tenants and other affected parties living along or near a pipeline have a procedural recourse if they feel that they have suffered measurable damage from pipeline activity or they believe that compensation for easement rights is inadequate. As discussed in several earlier sections, they can apply for a negotiator or an arbitration committee through the federal Minister of Natural Resources Canada.

CONCLUSION

The Panel concludes that SOEP and M&NPP are not likely to cause significant adverse environmental effects, provided that appropriate mitigation identified in the course of the review proceedings is applied to both Projects and that the Panel's recommendations are followed and implemented. As well, the Panel concludes that the socio-economic outcomes are favourable for the Maritimes and Canada.

Recommendation 46

The Panel recommends that the appropriate regulatory authorities proceed with all necessary approvals for SOEP and M&NPP without further delay.