

Kinder Morgan Trans Mountain Review Process Flaws

BACKGROUND

November 2, 2016

Sierra Club BC
Environmental Defence Canada
Equiterre

Introduction

The Ministerial Panel on the Kinder Morgan Trans Mountain pipeline and tanker proposal is due to report its findings to the Minister of Natural Resources Jim Carr this week.

Key Questions:

- Was the National Energy Board (NEB) review of the Kinder Morgan proposal a credible process?
- Does the NRCan Ministerial Panel remedy the many shortcomings of the original NEB process?
- Will the Ministerial Panel report provide the basis for a Cabinet decision on the pipeline proposal?

National Energy Board Review Process

The original NEB review of Kinder Morgan was widely criticized for failures in process, for limiting participation, and for a lack of accountability and fairness. It was not structured to undertake a robust environmental assessment, discharge the Crown's Duty to consult with First Nations, or evaluate projects with regard to Canada's domestic and international commitments to climate action.

Summary of flaws in the NEB review process:

- Public participation severely curtailed.
- Participants denied adequate and timely funding.
- Upstream and downstream impacts, particularly on climate change, not considered.
- Kinder Morgan allowed to submit incomplete information.
- The only evidence subject to cross-examination was First Nations oral evidence.
- No cross examination of Kinder Morgan permitted.
- Kinder Morgan allowed to ignore or provide incomplete responses to written Information Requests.
- Panel accepted 80 per cent of Kinder Morgan's motions, but only 11 per cent of intervenor motions.
- Panel failed to ensure Kinder Morgan's environmental and risk assessment conformed to accepted best practices.

For an in-depth examination of each of these flaws, see the Sierra Club B.C. report [Credibility Crisis](#).

Ministerial Panel Process

The Ministerial Panel on Kinder Morgan, intended as a supplementary process to the NEB review, was inadequate as well. It was poorly organized and its terms of reference were never made public. There was a significant perception of bias surrounding at least one of the three panel members.

Despite this, the panel held 44 meetings with 2,400 people attending and 650 presentations. In B.C., 418 speakers (91.4 per cent) were opposed, with only 39 in favour. Additionally, 17 First Nations were opposed, as were 22 local governments.

The Ministerial Panel gave people a forum to express their dissatisfaction with the Kinder Morgan project and the NEB review process, but did nothing to remedy the failings of the NEB process. It does not provide a sufficient basis for a Cabinet decision on the Kinder Morgan pipeline proposal.

Summary of flaws in the Ministerial Panel process:

Lack of clear mandate

- Panel had no mandate to make recommendations based on their findings, and therefore no clarity for participants on how the government would use the information it compiled, how it would be compiled, or how it might impact Cabinet decision-making.

Inadequate outreach to key participants

- Some local First Nations leaders and municipal officials only heard about the meetings through Facebook and other unofficial channels, while others were informed on short notice.
- Meetings of “experts” were scheduled, but no outreach was made to experts who had concerns about the project. They were left to self-identify.

Panelist conflict of interest/perception of bias

- Panel Chair Kim Baird had a past business relationship with the proponent, was a registered LNG lobbyist, and penned a pro-pipeline op-ed in a national newspaper while the panel process was underway.

Unreasonable, late stage interference in submissions process

- Approximately 55,000 people submitted comments and letters, but 2 days before the comment deadline, the Panel sent letters to numerous individuals and citizens’ groups that said they would not consider repetitive letters initiated by third parties.
- The B.C. Civil Liberties Association found this dismissal is an unreasonable interference in expression of freedom of individuals and their participation in a public consultation process.
- After the BCCLA letter, the NEB reversed its decision, but the experience left participants with a continued sense of government bias against citizens opposed to the proposal.

Poor meeting organization

- Meetings were announced on short notice in the middle of summer. The online process to register was cumbersome and a deterrent to participation.
- Locations in many communities were difficult to access and no provisions were made to make access easier.
- Due to time and room capacity limitations, hundreds of attendees were not able to participate.
- No translation was available for French-speaking participants until the last 2 days of meetings.
- No official records (no stenographer or audio-video recordings) were taken and the Panel’s mandate was broad and poorly defined, amplifying concerns of process bias.

As the Trans Mountain Ministerial Panel tables its report to the Minister of Natural Resources, it is clear that the credibility of the NEB's review has been compromised by a flawed process and the Ministerial Panel failed to remedy the shortcomings of the NEB review.

With the federal government promising to restore public confidence in the pipeline review process and overhaul the NEB, the Ministerial Panel report does not provide the basis for a Cabinet decision on Kinder Morgan.

