



Office of the Chair and CEO

Bureau du président et premier dirigeant

4 November 2015

The Honourable James Carr, P.C., M.P.
Minister of Natural Resources
580 Booth Street, 21st Floor, Room: C7-1
Ottawa, Ontario K1A 0E4

Dear Minister:

On behalf of the National Energy Board (NEB or the Board), welcome to the Natural Resources portfolio.

The NEB is an independent agency created by Parliament to regulate pipelines, power lines, and energy development and trade in the public interest. Our mandate is guided by legislation, including the *National Energy Board Act* (NEB Act), the *Canada Oil and Gas Resources Act* (COGOA), and the *Canadian Environmental Assessment Act, 2012* (CEAA, 2012). The Board is accountable to Parliament through you, the Minister of Natural Resources.

We are very proud of the work we do at the NEB and we have a critically important responsibility to provide regulatory oversight to approximately 73,000 kilometers of interprovincial and international pipelines. This amount is nearly enough pipeline to wrap around the earth twice. Last year, NEB-regulated pipelines, which are owned by over 100 companies, shipped approximately \$159 billion worth of crude oil and petroleum products, natural gas liquids and natural gas to Canadians and export customers. The NEB also regulates approximately 1,400 kilometres of international power lines, almost the distance between Yellowknife to Regina. These are owned by over 30 companies who transmitted approximately \$3.6 billion of electricity into and out of Canada.

Our priority is to ensure that energy transportation and development is safe for Canadians and protects the environment. Our core programs foster safety and environmental protection throughout the lifecycle of the facilities we regulate. The Board:

- Makes decisions and recommendations in the public interest on issues and applications related to pipelines and powerlines, energy development and trade.
- Holds regulated companies accountable to conduct all activities safely to eliminate or reduce risk to the public, workers, the environment and property.
- Promotes awareness of Canadian energy markets and the NEB's role as a full-lifecycle regulator.

.../2

In 2014, the NEB conducted 353 compliance activities related to public safety, security and environmental protection.

Public trust in our role as a regulator is critical. Recently, I conducted a national engagement tour and what I heard from Canadians was that they were concerned about how the NEB is protecting their water and land. Canadians either do not know the NEB or misunderstand it, and that fault lies with us. There is a heightened public expectation that we will address many issues in the debate around fossil fuels, including climate change and the pace of oil and gas development. These issues are legitimate concerns of the public; however they fall outside our mandate. The result is unprecedented interest in our reviews of new pipeline projects, and scrutiny of the actions we take to hold regulated companies accountable for safety and the protection of the environment.

The NEB is stepping up to meet this challenge. The NEB understands that trust comes from demonstrating clear intent, transparent actions and predictability. We must clearly define our role to the public as a decision-maker and life-cycle regulator. We must demonstrate concrete actions on safety and transparency and we must be inclusive of Canadians and support their desire to be informed. To guide these actions, I have taken the NEB on a new direction and we are advancing three strategic priorities to support it.

Our first strategic priority is to continue to take action on safety. We are focusing our efforts and resources on developing, refining, and communicating our actions on safety and environmental protection.

Our second priority is to lead regulatory excellence and to continue to improve as a regulator.

Our third priority is to engage with Canadians through the life of our regulated facilities. This includes the project application review, construction, operation and abandonment. This requires broad engagement across Canada, including a more responsive focus on regional issues. We are also committed to improving the public accessibility of information about regulated facilities and the NEB's activities. The Prime Minister has stated that while governments grant permits, communities grant permission. I strongly believe this occurs when communities are actively engaged, heard and their concerns are considered.

The Government has committed to taking action on climate change, and the NEB is supportive of this objective. In the near future, the NEB will release *Canada's Energy Future 2015: Energy Supply and Demand Projections to 2040*. This is the NEB's flagship energy information product

s.21(1)(a)

Publicly accessible information on the linkage between climate change and energy demand is an important input to the public discourse and will assist with evidence-based policy-making.

.../3

We welcome increased transparency and embrace constructive scrutiny. In 2015, the NEB and Natural Resources Canada underwent a performance audit by the Office of the Auditor General's Commissioner for Environment and Sustainable Development. [REDACTED]

s.21(1)(a)

[REDACTED]

s.21(1)(b)

[REDACTED] I look forward to a more fulsome conversation with you on this file.

The NEB also looks forward to working with the Government to implement measures to improve the credibility of the environmental assessment and project review processes. The NEB, like the Government, is resolved to work hard on behalf of Canadians to build greater trust in our processes and to improve safety and environmental protection throughout the lifecycle of NEB-regulated facilities.

Building public trust is not optional, it requires concerted effort and the NEB is committed to being part of that solution.

I look forward to meeting with you at your earliest possible opportunity to discuss important and timely matters that the NEB can undertake to assist the Government in implementing its vision. The NEB looks forward to collaboration on the continued modernization of the Board.

I have enclosed a briefing binder to provide you with information about the NEB and our key activities, as well as information about major projects currently before the Board, including the Trans Mountain Expansion and Energy East Project. [REDACTED]

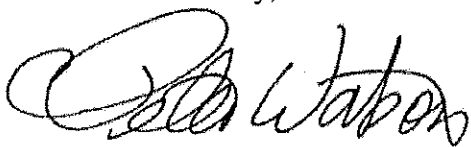
s.21(1)(a)

[REDACTED]

s.21(1)(b)

I look forward to working with you in your new role.

Yours sincerely,



C. Peter Watson, P. Eng. FCAE
Chair and CEO

Enclosure

c.c.: Bob Hamilton, Deputy Minister, Natural Resources Canada



ADVICE TO THE MINISTER

2.1

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

THE NEB IN BRIEF

Who we are:

The NEB is an expert tribunal, comprised of 9 permanent¹ and 5 temporary Board Members, who are supported by a staff of highly skilled engineers, environmental specialists, auditors, inspectors, lawyers and engagement specialists, among others.

We are very proud of the work that we do at the NEB—whether it's managing complex public hearings, assessing environmental impacts and pipeline integrity, engaging Canadians, carrying out pipeline inspections and audits, or the myriad of other tasks that we perform daily to ensure that Canada's energy infrastructure is safe and reliable.

The NEB is headquartered in Calgary and we have small regional offices in Yellowknife, Vancouver and Montréal.

What we do:

Our Raison d'être:

The NEB is an independent federal, quasi-judicial regulator established in 1959 to promote safety and security, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament that includes the regulation of pipelines, energy development and trade.

The main responsibilities of the NEB are established in the National Energy Board Act (NEB Act) and include regulating:

- The construction, operation and abandonment of pipelines that cross international borders or provincial/territorial boundaries, as well as the associated pipeline tolls and tariffs;
- The construction and operation of international power lines and designated interprovincial power lines; and

¹ There will be nine permanent members as of 23 November when the appointment of Keith Chauk becomes effective.

**ADVICE TO THE MINISTER****2.1****FOR INFORMATION/POUR INFORMATION**

- Imports of natural gas and exports of crude oil, natural gas liquids (NGL), natural gas, refined petroleum products and electricity.

Additionally, in specified areas² the Board has regulatory responsibilities for oil and gas exploration and production activities under the NEB Act, *Canada Oil and Gas Operations Act* (COGOA), the *Canada Petroleum Resources Act* (CPRA), and the *Northwest Territories Oil and Gas Operations Act* (OGOA) and *Petroleum Resources Act* (PRA).

The NEB conducts environmental assessments during its review of applications for projects under its jurisdiction. For certain projects, the Board also conducts environmental assessments as required by federal legislation, such as CEAA 2012, the *Mackenzie Valley Resource Management Act*, and the Inuvialuit Final Agreement or the Nunavut Land Claims Agreement. Certain Board inspectors are appointed Health and Safety Officers by the Minister of Labour to administer Part II of the *Canada Labour Code* as it applies to NEB-regulated facilities and activities.

The Board also monitors aspects of energy supply, demand, production, development and trade. The Board reports to Parliament through the Minister of Natural Resources.

The Industry we Regulate:

We have a critically important responsibility to provide regulatory oversight to approximately 73,000 kilometers of interprovincial and international pipelines. This amount is nearly enough pipeline to wrap around the earth twice. Last year, NEB-regulated pipelines, which are owned by over 100 companies, shipped approximately \$159 billion worth of crude oil and petroleum products, natural gas liquids and natural gas to Canadians and export customers.

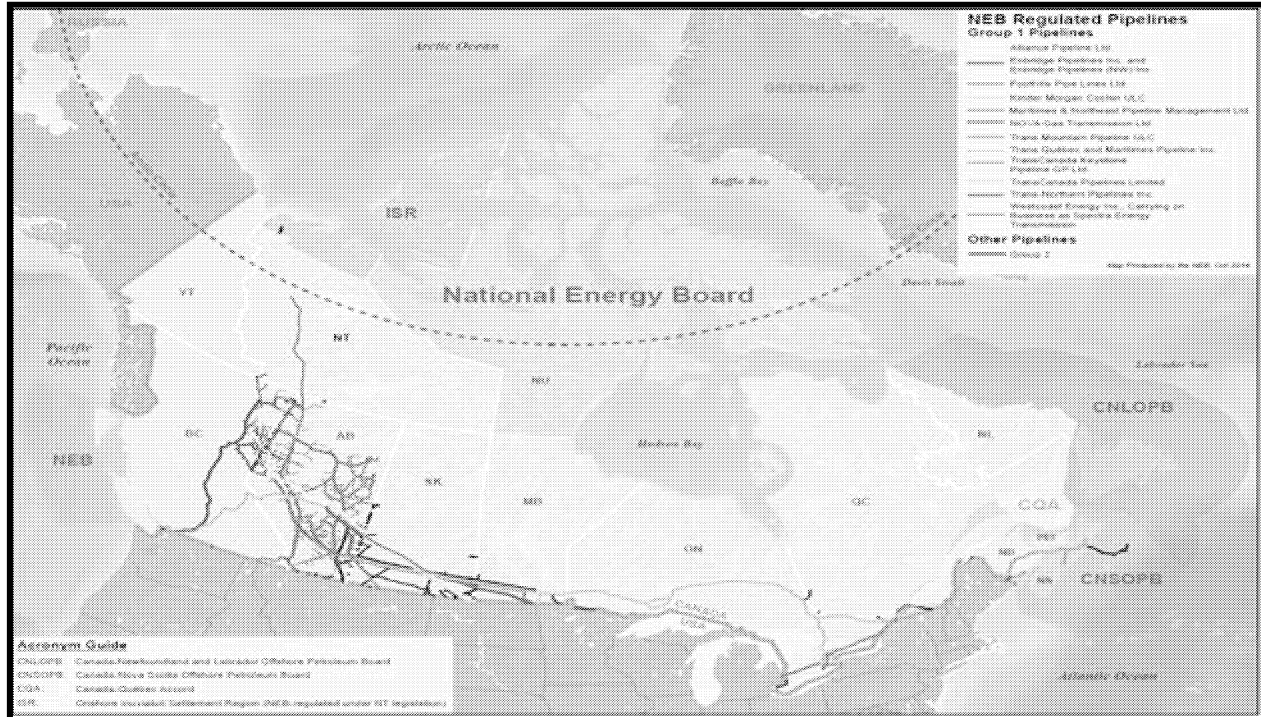
The NEB also regulates approximately 1,400 kilometres of international power lines, almost the distance between Yellowknife to Regina. These are owned by over 30 companies who transmitted approximately \$3.6 billion of electricity into and out of Canada.

A map of the pipelines regulated by the NEB is provided in Figure 1 below.

² Areas to which such responsibilities relate include Nunavut; Sable Island; the Inuvialuit Settlement Region onshore; that part of the onshore that is under the administration of a federal minister (including Normal Wells Proven area and other miscellaneous parcels); that part of the internal waters of Canada or the territorial sea of Canada that is not situated in a province other than the Northwest Territories, or in that part of the onshore that is not under the administration of a federal minister; and the continental shelf of Canada, but does not include the adjoining area as defined in section 2 of the Yukon Act.

**ADVICE TO THE MINISTER**

2.1

FOR INFORMATION/POUR INFORMATION**FIGURE 1: Major NEB Regulated Pipelines*****Our Strategic Priorities:***

We are working hard at the Board to build our credibility and trust with the Canadian public. The NEB understands that trust comes from demonstrating clear intent, transparent actions and predictability. We must clearly define our role to the public as a decision-maker and lifecycle regulator. We must demonstrate concrete actions on safety and transparency and we must be inclusive of Canadians and support their desire to be informed. To guide these actions, the NEB is advancing three strategic priorities:

1. We will continue to take action on safety. We are focusing our efforts and resources on developing, refining, and communicating our actions on safety and environmental protection.
2. We will lead regulatory excellence through continual learning, innovation, enhanced evaluation and improved management systems.
3. We will increase engagement with Canadians through the life of our regulated facilities. This includes the project application review, construction, operation and abandonment. This requires broad engagement across Canada, including a more responsive focus on

***ADVICE TO THE MINISTER*****2.1****FOR INFORMATION/POUR INFORMATION**

regional issues. We are also committed to improving the public accessibility of information about NEB-regulated facilities and the NEB's activities.

Our Focus on Safety:

The Board is committed to strengthening and improving industry wide performance and awareness of the role that safety culture plays in contributing to or building defences against incidents.

Companies' executive and senior management can foster the development of an organizational culture in which safety is a core value demonstrated by all personnel at all times. This involves reflecting the importance of safety in companies' strategies, business plans, processes and safety management systems.

Culture influences what people see, hear, feel, and say. It influences the decisions and actions of people in an organization, and these behaviors ultimately drive safety outcomes and performance.

A strong safety culture is one in which:

- leaders demonstrate that safety is their overriding value and priority;
- everyone is aware of known hazards while remaining vigilant to new threats;
- every employee feels empowered and recognized for making safe decisions;
- employees feel encouraged to report safety hazards, including instances where they have committed an error and introduced a threat themselves;
- everyone, including the most junior employee would not hesitate to take action in response to a safety concern without fear of disciplinary action or reprisal;
- people work safely regardless of whether or not someone is watching;
- the organization is continually learning from its own and others' experiences with the goal of advancing safety; and
- A strong safety culture can achieve our goal of 'zero incidents' from NEB regulated companies.

Our Lifecycle Responsibilities:

The NEB maintains continual regulatory oversight throughout all phases of a regulated facility:

- Planning and application assessment
- Construction
- Operation
- Deactivation / Decommissioning / Abandonment



ADVICE TO THE MINISTER

2.1

FOR INFORMATION/POUR INFORMATION

The Board monitors and enforces compliance with requirements concerning the safety and protection of employees, the public, and the environment. Requirements include statutes and regulations, commitments made by regulated companies, terms and conditions to approvals, and other direction provided by the NEB from time to time. The Board also investigates compliance as a result of complaints, reports of high-risk activity or incidents.

The Board conducts audits, inspections, and compliance meetings to oversee companies' management systems and system effectiveness.

The Board has a robust toolkit to obtain compliance, deter future non-compliance, and prevent harm which includes: notices of non-compliance, inspection officer orders, Board-issued safety orders, administrative monetary penalties, and revocation of a company's authorization to operate.

In 2014 the Board undertook:

- 230 Inspections
- 13 Emergency Exercises
- 19 Emergency Procedures Manual Review
- 64 Compliance Meetings
- Six Management Systems Audits
- 21 Report Reviews

Our Funding Profile:

The NEB is funded through parliamentary appropriations. The NEB (on behalf of the Government of Canada) currently recovers approximately 95 per cent of the appropriation from the regulated industry. The revenues are deposited directly into the Consolidated Revenue Fund. This process is regulated by the *National Energy Board Cost Recovery Regulations*.³

The Board expects to recover its fees or charges for regulating under the COGOA and CPRA once the Governor in Council makes regulations allowing it to do so pursuant to Bill C-22, the *Energy Safety and Security Act*. Upon the implementation of those regulations, the Board will recover 100 per cent of the parliamentary appropriation from the regulated industry.

Base-level Funding

The Board's current base level funding is 76.8 million (Main Estimates 2015-16).

TABLE: Planned Expenditures (from 2015-15 Report on Plans and Priorities)

Budgetary Financial Resources			
2015-16 Main Estimates	2015-16 Planned Spending	2016-17 Planned Spending	2017-18 Planned Spending

³ 2015-2016 RPP

**ADVICE TO THE MINISTER****2.1****FOR INFORMATION/POUR INFORMATION**

Budgetary Financial Resources			
2015-16 Main Estimates	2015-16 Planned Spending	2016-17 Planned Spending	2017-18 Planned Spending
\$76.8 million	\$77.6 million	\$71.6 million	\$59.1 million

Sunsetting Funding

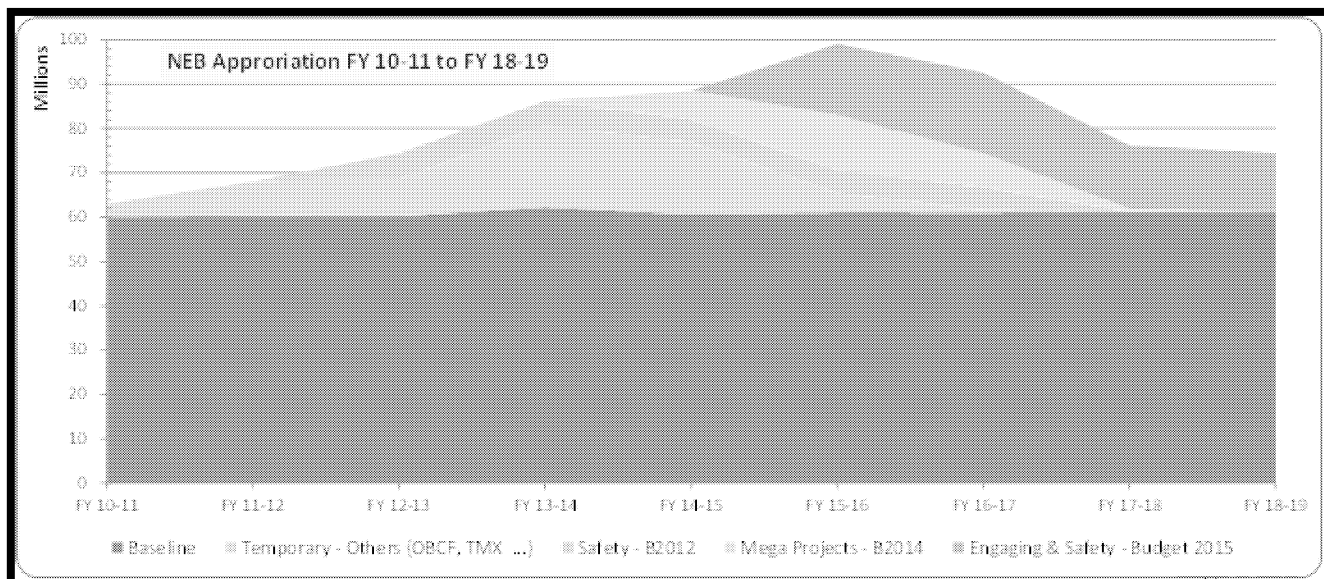
The Board received temporary funds in 2012-13 to enhance NEB safety and security programs as well as public awareness. These funds will expire at the end of 2016-17. Temporary funding for two fiscal years was also received in 2014-15 to support a high level of applications and hearings workload which was re-profiled over fiscal years 2015-16 to 2017-18 with the funding expiring in 2017-18.

In addition, Budget 2015 committed \$80 million over five years in for:

- Safety and environmental protection, and
- Enhanced engagement with Canadians in relation.

The funding will contribute to safer operation of Canada's energy infrastructure, greater protection of the environment and increased understanding of the NEB's regulatory role and responsibilities.

The NEB will be seeking renewal of its temporary funding through the sunsetter process.

FIGURE 2: NEB Appropriations Fiscal Year 2010/11 to 2018/19**ADVICE TO THE MINISTER****Peter Watson, Chair/CEO of the National Energy Board****PHONE NUMBER: (403) 299-2724**



ADVICE TO THE MINISTER

3.1

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

***STATUS: NEB REVIEW OF THE PROPOSED KINDER MORGAN
TRANS MOUNTAIN EXPANSION PROJECT***

ISSUE

- The proposed Trans Mountain Expansion (TMX) Project is currently being reviewed by an NEB Panel in accordance with the requirements of the *National Energy Board Act* (NEB Act) and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).
- The hearing has been underway from 2 April 2014 until present, with 21 days of oral submissions.
- Oral final arguments are scheduled for late January and early February 2016.
- The review is subject to a legislated time limit. The deadline for the Board to provide its report to the Governor-in-Council is 20 May 2016.

BACKGROUND:

The Application

- The Trans Mountain Expansion Project (TMX) is a proposal by Trans Mountain Pipeline ULC (a subsidiary of Kinder Morgan Canada) to expand the existing Trans Mountain pipeline system between Edmonton, AB and Burnaby, BC. See map below.
- Kinder Morgan Canada operates a number of pipeline systems and terminal facilities including the Trans Mountain pipeline, the Cochin pipeline, the Puget Sound and the Trans Mountain Jet Fuel pipelines, the Westridge marine terminal, the Vancouver Wharves terminal in British Columbia and the North Forty terminal in Edmonton, Alberta.
- The Trans Mountain pipeline currently transports approximately 350,000 barrels per day (b/d) of crude oil and refined petroleum from the oil sands in Alberta to Burnaby, BC. From Burnaby, some of the oil is loaded onto tankers for Pacific Rim destinations such as Washington State, California and Asia.
- Expansion of the Trans Mountain pipeline would increase capacity from 300,000 b/d to 890,000 b/d. The Proponent values the TMX proposal investment at about \$5.4 billion.
- The proposed expansion would include:
 1. approximately 987 km of new pipeline,
 2. new and modified facilities, such as pump stations and tanks,
 3. the reactivation of 193 km of existing pipeline, and

Page 1 of 5

ADVICE TO THE MINISTER

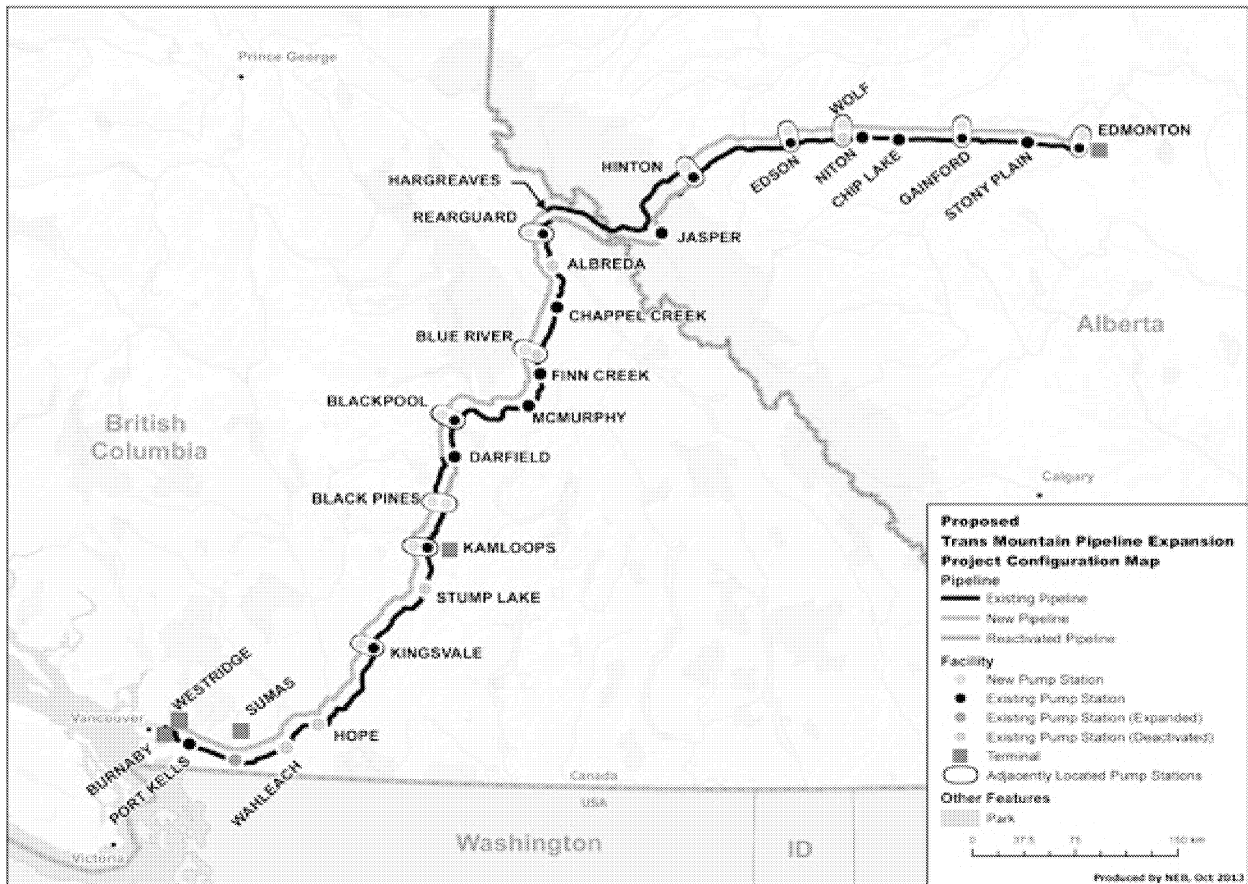
Peter Watson, Chair/CEO of the National Energy Board

PHONE NUMBER: (403) 299-2724

A0010776_41-000041

**ADVICE TO THE MINISTER****3.1****FOR INFORMATION/POUR INFORMATION**

4. the expansion of the Westridge Marine Terminal in Burnaby.

MAP 1: The Proposed Route**The NEB Application Process**

- Since 2012, section 55.2 of the NEB Act requires the NEB to make a determination as to whether applicants who seek to participate in a hearing are “directly affected” by the project proposal or whether they have “relevant information or expertise.” The NEB Act says the Board *must* hear from those who are directly affected and *may* hear from those who have relevant information or expertise.
- The Board received 2,118 applications to participate in the TMX hearing. The three-member Panel, acting on behalf of the Board, ruled that of those, 1,650 (or 78%) would be granted the opportunity to participate in the hearing process (400 intervenors and 1,250 commenters).

**ADVICE TO THE MINISTER****3.1****FOR INFORMATION/POUR INFORMATION**

- The Panel determined that it will consider the following issues as part of the hearing process:
 1. The need for the proposed project.
 2. The economic feasibility of the proposed project.
 3. The potential commercial impacts of the proposed project.
 4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project.
 5. The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur.
 6. The appropriateness of the general route and requirements for the proposed project.
 7. The suitability of the design of the proposed project.
 8. The terms and conditions to be included in any approval the Panel may issue.
 9. Potential impacts of the project on Aboriginal interests.
 10. Potential impacts of the project on landowners and land use.
 11. Contingency planning for spills, accidents or malfunctions, during construction and operation of the project.
 12. Safety and security during construction of the proposed project and operation of the project, including emergency response planning and third-party damage prevention.
- The Panel determined it would 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.
- The evidentiary record for the hearing is currently estimated at 100,000 pages, including the Proponent's original application which totalled approximately 15,000 pages.

Legislated Time Limit

- Since 2012, subsection 52(4) of the NEB Act has required the Board to conduct its review and submit its Recommendation to Governor in Council (GIC) by the time limit specified by the Chairperson, which is to be no longer than fifteen months from the date the application is determined to be complete (the time limit for the TMX project is 15 months). However, the Board Chairperson and the Minister/GIC have the authority to grant "excluded periods" (or "time outs") or extend the time limit in certain circumstances.

CURRENT STATUS:

- The hearing has been underway from 2 April 2014 until present, with 21 days of oral submissions (1 day for a constitutional argument and 20 days for the Panel to gather oral traditional evidence from Aboriginal people). Oral evidence is typically non-technical

**ADVICE TO THE MINISTER****3.1****FOR INFORMATION/POUR INFORMATION**

information that describes the potential impacts of a project on Aboriginal communities' rights and interests.

- Since 2012, regardless of the Board's recommendation, as part of its report to GIC, the Board must include a list of all conditions it considers necessary and desirable in the public interest. With this in mind, in August 2015, the Panel released 145 draft conditions for comment by all participants. The conditions are intended to mitigate the risks and effects posed by the project so that it is designed, constructed and operated in a safe manner that protects human health and the environment. Conditions set out the requirements that the Proponent must meet in relation to the project if it is approved, and would be enforced by the Board.
- In July 2015, it was announced by the then-Minister of Natural Resources, that Steven Kelly, an engineer, would be appointed as a permanent Board Member to the NEB. Mr. Kelly and his then-firm, IHS, had submitted expert evidence, on behalf of the Proponent, as part of the TMX hearing.
- The Panel considered this matter and ruled that the evidence in question should be struck from the record in order to avoid any apprehension of bias, given Mr. Kelly would be joining the NEB in the near future.
- The Panel, with the Chair's approval, has implemented two excluded periods. The first was initiated because the Proponent changed its route through Burnaby Mountain and the second was to collect replacement evidence following the decision to strike the evidence of Mr. Kelly. In both cases, the excluded period was set so that the Proponent and the other hearing participants could submit and test relevant evidence. The first timeout was for seven months, the second is for five months.
- As a result of the second excluded period, oral final arguments – originally scheduled for August 2015 - have been postponed.
- The NEB's Participant Funding Program (PFP) provides modest funding to facilitate public participation in hearings. For TMX, the Board has awarded \$3M in participant funding to 71 applicants to date. In response to requests to provide additional funding to those intervenors impacted by the 21 August 2015 decision to strike evidence prepared by Mr. Kelly from the hearing record, the PFP will provide up to an additional \$10,000 per eligible intervenor for expert and legal fees.

NEXT STEPS:

- Oral final arguments are scheduled for late January and early February 2016.
- The revised deadline – as a result of the excluded periods – for the Board to provide its report to GIC is 20 May 2016.
- The Board's Report to GIC will contain the Board's detailed assessment pursuant to its mandates under the NEB Act and CEAA 2012. It will also include the Board's Recommendations to GIC under CEAA 2012 on whether TMX is likely to result in significant adverse environmental effects; and under the NEB Act on whether to issue a Certificate of Public Convenience and Necessity.



ADVICE TO THE MINISTER

3.1

FOR INFORMATION/POUR INFORMATION

APPENDICES:

- *October 24, 2015 letter from Robyn Allan to Prime Minister-Designate Justin Trudeau.*
- *Briefing Note to DM-NRCAN For Information with respect to the Allan letter (RDMIS #892486).*
- *NEB's response to letter from Robyn Allan.*

October 24, 2015

Prime Minister Trudeau
House of Commons
Ottawa Ontario
K1A 0A6

Dear Mr. Prime Minister,

Re: National Energy Board and Kinder Morgan's Trans Mountain Expansion

As you know from your extensive election campaign, the National Energy Board (NEB) has lost the public's trust. This is regrettable. Canadians need the NEB to operate as an effective and efficient institution that fosters responsible economic growth and development in the long term interests of Canadians and the environment.

As a professional economist with a long career in both the private and public sector, I was an expert intervenor on behalf of the public interest in the Kinder Morgan Trans Mountain expansion project review. I was also an expert witness at the Enbridge Northern Gateway hearing.

Although the Northern Gateway hearing had its flaws—as numerous court challenges to the Board's review by First Nations and environmental groups attest—the unfortunate erosion of the NEB as an agent of sound decision making has intensified during the Kinder Morgan review. The Board's violations of the basic principles of natural justice and procedural fairness, along with its inability, or unwillingness, to duly consider the Canadian public interest, has turned the review process into a farce and exposed the Board as the industry-captured regulator it has become.

After more than eighteen months of intensive participation in the Trans Mountain review I withdrew. Direct experience with the Board process led me to conclude that the outcome of its deliberations would not be fair or balanced. I have attached, for your information, my letter to the Board detailing my concerns and reasons for withdrawal.¹ In particular, it explains how the NEB has designed the scope of its review so narrowly, restricted participation so profoundly, and removed essential features of quasi-judicial inquiry—such as cross examination—so completely, that it pre-determines an outcome that favours Kinder Morgan and puts the rest of us at risk.

Certainly the appointment of Trans Mountain's consultant to the Board immediately prior to the election campaign is indicative of the former government's complete disregard for due process and contempt for the Canadian public interest. In order to return it to the important role it was intended to play, the NEB needs the clear and decisive direction you promised during your campaign, particularly as outlined in the Liberal policy statement on making Environmental

¹ Robyn Allan, Letter of Withdrawal, NEB, May 19, 2015, [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451015/2776410/C9%2D31%2D1%2D%2DWithdrawal Letter %2D A4L3S6.pdf?nodeid=2776227&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451015/2776410/C9%2D31%2D1%2D%2DWithdrawal%20Letter%20A4L3S6.pdf?nodeid=2776227&vernum=-2)

Assessments credible again.² As you accurately characterize the issue, “governments might grant permits, but only communities can grant permission.”

Under the current NEB process Trans Mountain will never be granted a social license to expand. Numerous local mayors have been quite direct and vocal in expressing their concern.³ In an open letter last March they called on senior government to step in and fix the broken process. The call, to date, has gone unheeded. The only avenue for reasoned intervention capable of setting the NEB process back on a considered and trusted path lies with your government.

That is why I am writing to you today. I wish to bring to your attention the fact that both the NEB and Kinder Morgan continue to operate as if they are unaware, or doubt the intent, of commitments you, and your candidates, made during the campaign.

Liberal election campaign commitments were clear

In Esquimalt, BC on August 20, 2015 you were very clear when asked if the overhaul of the NEB applied to Kinder Morgan’s application. You answered, “Yes, yes. It applies to existing projects, existing pipelines as well...because we’re going to change the government and that process has to be redone.”⁴

At campaign events and in interviews you explained how the Harper government tried to accelerate resource projects by minimizing environmental oversight and marginalizing voices that have legitimate concerns, but that this, ironically, resulted in a lack of progress on pipeline projects. The gutting of environmental legislation and politicization of the NEB by the former government undermined the Board’s legitimacy. People don’t believe or trust the NEB the way they used to. If elected you confirmed your government would understand the need for both environmental oversight and economic development, and the first step toward this end would be to restore the public’s trust by making the NEB process credible.⁵

Numerous Liberal candidates underscored your commitments during the campaign and recently reconfirmed the need to redo the Trans Mountain review. North Vancouver newly elect MP, Jonathan Wilkinson, explained on his website that, “The current National Energy Board regulatory approval process has lost the trust of Canadians. A new, independent, evidence-

² Liberal Platform, Environmental Assessment, <http://www.liberal.ca/realchange/environmental-assessments/>

³ Mayors’ Declaration on Kinder Morgan National Energy Board Process, March 31, 2015, <https://www.burnaby.ca/Assets/TMEP/Mayors+Stand+Together+Against+Kinder+Morgan+Pipeline+Proposal.pdf>

⁴ <https://www.youtube.com/watch?v=gldTbJ0nGIQ> Justin Trudeau on Kinder Morgan, August 20, 2015, Dogwood Initiative

⁵ Liberal Leader Justin Trudeau talks energy and environment: wants NEB returned to pre-conservative state, CBC, Saskatoon radio, August 13, 2015. <http://www.cbc.ca/news/canada/saskatoon/liberal-leader-justin-trudeau-talks-energy-and-environment-1.3189726>

based process must be established. The Kinder Morgan expansion project must satisfy this new rigorous review that its environmental and social impacts can be effectively addressed.”⁶

In an interview with the Burnaby Now on October 21, 2015, newly elected MP for Burnaby North –Seymour, Terry Beech confirmed that, “We are going to redo the National Energy Board process. We’re going to broaden the scope. We’re going to make sure it’s objective, fair and based on science. We’re going to make sure proponents of any major energy projects, including Kinder Morgan, have to work towards getting community support and support from partner First Nations,” he said, reiterating pre-election promises. “We’ve already said there will be no decision on Kinder Morgan in January (sic). Kinder Morgan will have to go through a new, revised process.”⁷

Kinder Morgan believes its business as usual

In stark contrast, Kinder Morgan is dismissive of Liberal promises to fix the system. The company maintains that under a Liberal government it will be business as usual—effectively the same as when the Conservatives behaved as cheerleaders for pipeline projects, rather than referees.

Kinder Morgan Inc., (KMI) is the US parent of Trans Mountain Pipeline ULC. During its third quarter earnings conference call in Houston, Texas on October 21, 2015, an analyst asked KMI executives how the new Liberal majority might impact Trans Mountain’s application. Ian Anderson, president of Kinder Morgan Canada Inc., and V-P of KMI, fielded the question.

“I’m wearing...I’m wearing my Liberal red tie.” After audible laughter, Mr. Anderson continued. “Um...it’s too early to speculate on what a Liberal government is going to mean for us. You know we’re going to continue to focus on the NEB process that we’re involved in and all the requirements of that while we continue our project planning and preparation. We’ll certainly be briefing the Liberal government in due course on the project and kind of the progress we’ve made but I don’t yet have any comment on what a Liberal government may do to us with respect to the project. We’ll just keep working very hard and keep them informed and plan to execute the project as soon as we get approval.”⁸

It is important to understand what Kinder Morgan means when it says it will “brief” your government. Mr. Anderson and his staff are intensely engaged in, and skilled at, lobbying government. During the Conservative reign they held numerous meetings with the former

⁶ Jonathan Wilkinson, Where I stand on Kinder Morgan, <https://jonathanwilkinson.liberal.ca/where-i-stand-on-kinder-morgan/>

⁷ Burnaby’s newest MP says Liberals will redo NEB process, Burnaby Now, Jennifer Moreau, October 21, 2015, <http://www.burnabynow.com/news/burnaby-s-newest-mp-says-liberals-will-redo-neb-process-1.2092298> “January” was the expected release date for the NEB’s report and recommendation. The relevant date is now May 20, 2015. The schedule was revised due to the appointment of Steven Kelly to the NEB. Mr. Kelly’s evidence was struck. Trans Mountain filed new evidence on September 25, 2015 to replace it.

⁸ Kinder Morgan 3rd Quarter 2015 Earnings Results, October 21, 2015, <http://ir.kindermorgan.com/presentations-webcasts>, minute 1:26:15. KMI removes audio casts within 90 days of posting.

Minister of Natural Resources responsible for the NEB—Joe Oliver—and his senior staff. Included in some of those meeting were staff from the Prime Minister’s Office.

Under Freedom of Information I petitioned the substance of the discussion in 20 meetings held during 2013 and 2014.⁹ While Kinder Morgan was actively pursuing the expansion of its Trans Mountain system at what was supposed to be an independent NEB hearing it was meeting with the government to lobby its cause. I was shocked to learn that there were no records, no agenda, no minutes or briefing notes from those meetings—just the required indication on the lobby registry that a meeting to discuss their pipeline interests had taken place.

Not only is the absence of a paper trail irresponsible administration and puts the government at risk, it is also a betrayal of the public trust. All Canadians know is that the meetings were held. What was said, and what promises were made, are effectively secret back-room agreements between a Texas based multinational and the former Harper government known for championing the cause of pipeline projects before they are assessed.

NEB dismissive of campaign promises

With respect to the NEB, you may be unaware as to how your Trans Mountain review commitments are being treated. As reported by the Burnaby Now, when asked how the Liberal majority changes the NEB process, NEB “spokesperson Craig Loewen said the Liberal majority doesn’t change anything for the pipeline at the moment because the process the board follows falls under a legislated mandate. “That doesn’t change unless the legislation changes or we’re ordered to do things differently,” he explained. “The reality is **there were a lot of things said in the campaign.**”¹⁰ (emphasis added).

The NEB cynically regards your promises as campaign rhetoric. What Canadians heard as important statements confirming that a Liberal government would restore the credibility of a broken process, the NEB summarily throws into a basket along with “a lot of things said in the campaign.”

The NEB requires clear direction. You have promised an overhaul of the process, you have considered policy direction for the future, and, you will require legislative amendments and regulatory changes to enforce your vision. It is understood that these substantive issues take time to consider and implement. However, unless clear direction is communicated, vested corporate and bureaucratic interests will endeavour to get out in front of promised Liberal policy changes making real change—meaningful change—difficult.

If the NEB review of Trans Mountain is allowed to continue it will undermine the credibility of your election promises while sending a message to the NEB and Kinder Morgan that it’s business as usual. More significantly, First Nations, communities, organizations and individuals engaged in the review will further incur a significant waste of time and money.

⁹ Meetings between Kinder Morgan and feds leave no paper trail, Vancouver Observer, Jenny Uechi, February 23, 2015, <http://www.nationalobserver.com/2015/02/23/news/meetings-between-kinder-morgan-and-feds-leave-no-paper-trail>

¹⁰ Burnaby’s newest MP says Liberals will redo NEB process, op. cit.

Unlike the unprecedented NEB sanctioned \$136 million fund Kinder Morgan is able to draw on to finance its application, many intervenors do not have access to adequate funding. Forcing intervenors to continue when the process is to be overhauled and the application redone adds insult to injury already sustained during this deeply flawed process. Taking action now is especially important. The NEB has announced an aggressive time schedule for the preparation of evidence and written argument-in-chief during November and December¹¹ with delivery of oral summary argument during late December and into February 2016. Subsequent to oral summary argument the process is finalized but for the delivery of the Board's report to Cabinet by May 20, 2016.¹²

I respectfully suggest that as soon as practicable an order to suspend the current NEB Trans Mountain review process be issued. This suspension will ensure no further waste of time and resources by any of the parties involved and will provide the assurance that a credible process will be applied to Trans Mountain's application. Canadians need this reassurance. It will also enable an opportunity for your government to properly address, and fully consider, the policy and legislative changes necessary to reinstate a credible environmental review process that authentically respects First Nations, the broader public interest and the environment.

Sincerely,

(original signed by Robyn Allan)

Robyn Allan
Independent Economist

s.19(1)

Whistler BC

cc: Terry Beach, MP, Burnaby North-Seymour
Kennedy Stewart, MP, Burnaby South
Ron McKinnon, MP, Coquitlam-Port Coquitlam
Carla Qualtrough, MP, Delta
Peter Julian, MP, New Westminster-Burnaby
Jonathan Wilkinson, MP, North Vancouver
Dan Ruimy, MP, Pitt Meadows-Maple Ridge
Fin Connelly, MP, Port Moody-Coquitlam
Joyce Murray, MP, Vancouver Quadra
Murray Rankin, MP, Victoria
Pam Goldsmith-Jones, MP, West Vancouver-Sunshine Coast-Sea to Sky
Peter Watson, Chair, National Energy Board

¹¹ NEB Procedural Direction No. 18, September 24, 2015, <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449981/2825510/A217%2D1%2D%2D%2D%2D Procedural Direction No. 18 %2D A4T5R5.pdf?nodeid=2825626&vernum=-2>

¹² NEB Procedural Direction 19, October 22, 2015, <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449981/2839425/A224%2D1%2D%2D%2D%2D Procedural Direction No. 19 %2D A4U5X0.pdf?nodeid=2839186&vernum=-2>

MEMORANDUM / NOTE DE SERVICE

Security/Sécurité: Protected B

Date: October 27, 2015

RDIMS: 892486

From/De: Peter Watson, Chair and CEO

To/À: Bob Hamilton, Deputy Minister, Natural Resources Canada

Subject/Objet: NEB Response on letter to Prime Minister Elect Trudeau regarding the NEB and Kinder Morgan's Trans Mountain Expansion Project

Summary

- Robyn Allan, an independent economist, wrote a letter on 24 October to Prime Minister Elect Trudeau regarding the NEB's process on the Trans Mountain Expansion Project
- The letter offers critiques of the NEB's process. In particular, calling attention to: the scope of the review; the credibility of environmental assessments; the need for a new process; meetings between Kinder Morgan and members of PM Harper's cabinet, as well as the Board's schedule for the project.
- The Board must act within the scope of the powers delegated to it by its enabling legislation, the *National Energy Board Act*.

Purpose:

To provide you with an overview of the NEB's position on key issues presented in Ms. Allan's letter, dated 24 October 2015. This briefing note does not address matters that fall outside of the NEB's legislated mandate.

Consultations:

Margaret Barber, Hearing Manager, Kinder Morgan	403-299-3652
Nick Thomas, Hearing Manager, Kinder Morgan	403-617-3886
Laura Maclean, Director, Kinder Morgan	403-299-3360
Paul Johnston, Counsel	403-292-6495
Nicole Godbout, Counsel	587-538-2170

Key Messages/Considerations:

- Under the NEB Act, once the Board has determined an application to be complete, it has 15 months to assess the application and provide its recommendation to the Governor in Council (GiC). The legislated time limit for the Board to issue its report on TMX to the GiC is 20 May 2016.

- In accordance with the legislated time limit, the Panel is proceeding with next steps in the ongoing hearing process, including oral summary argument, to ensure the Panel has the information required to prepare the report.
- 1,650 applicants were granted the opportunity to participate (400 applicants were granted intervenor status, with the remainder being granted commenter status) and an estimated 100,000 pages of evidence placed on the record.
- Should there be a change in future to the NEB Act, the Board would examine the implications for the hearing process at that time.

Issues:

1) “*The NEB has lost the public’s trust...*”

- There have been a number of court challenges already relating to the Panel’s process for TMX. One appeal is currently being heard by the Federal Court of Appeal (Tsilieil-Waututh Nation) and none of the other court challenges were granted leave to appeal by the Federal Court of Appeal or the Supreme Court of Canada.
- Details include,
 - L. Quarmby – challenge to the constitutionality of the standing test in the NEB Act or alternatively the Board’s application of it in the TMX hearing and whether it violated subsection 2(b) of the Charter. Both the Federal Court of Appeal and the Supreme Court of Canada dismissed the leave application.
 - City of Burnaby – argument that the Board erred in law and jurisdiction in the exercise of the NEB’s jurisdiction relating to Burnaby bylaws. The Federal Court of Appeal dismissed the leave application. Proceedings continue before the BC Supreme Court. Previous applications before the BC Supreme Court and BC Court of Appeal were dismissed.
 - L.D. Harvey – argument that not including certain issues relating to upstream and downstream effects violated section 7 of the Charter. The Federal Court of Appeal dismissed the leave to appeal application.
 - Vancouver – dismissal by the Federal Court of Appeal of Vancouver’s leave to appeal application requesting an amendment to the list of issues to include environmental and social-economic effects associated with certain upstream and downstream activities including the development of oil to be transported.

2) “*How the NEB has...restricted participation...*”

- When assessing Applications to Participate in a certificate hearing, the NEB applies section 55.2 of the *National Energy Board Act* (NEB Act), the list of issues, and the Guidance Document on Section 55.2 – Participation in a Facilities Hearing.

- Section 55.2 states:

“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.”
- It is up to the person applying to participate to provide enough information to demonstrate to the Panel’s satisfaction that they are either directly affected by a proposed project or are in possession of relevant information or expertise. The Panel makes its decision under section 55.2 of the NEB Act on a case-by-case basis, taking into account the specific facts and circumstances of each project application, and the information provided in the completed Application to Participate (ATP).
- Approximately 1,650 (78%) applicants have been granted participation. 468 were denied standing during the initial ATP process as their applications did not demonstrate to the Panel’s satisfaction that they met section 55.2.
- The matters raised in the denied ATPs related to issues outside of the Board’s mandate (e.g. oil sands development, climate change, sustainable energy alternatives), or were related to issues that were not specific to the particular applicant or the project (e.g. the effects from facilities that are not part of the project application, such as the Chevron tank farm).
- Under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the Board must consider the representation of any person with relevant information and expertise.

3) “...removed essential features of quasi-judicial inquiry...” [Cross-examination]

- The Board is an administrative tribunal established by Parliament under the *National Energy Board Act* (NEB Act). As with any administrative tribunal, the Board must act within the scope of the powers delegated to it by its enabling legislation – the NEB Act.
- The Board operates within a system of checks and balances. The Board’s decisions are subject to independent and impartial judicial oversight, generally through the Federal Court of Appeal (FCA) and Supreme Court of Canada, and the Board is bound to act in accordance with the courts’ decisions.
- As part of our commitment to transparency, we share information on our website about court challenges^[1] to the Board’s decisions and recommendations to the Governor in Council (GIC). This serves to provide Canadians with up-to-date information about the status of these legal challenges, regardless of the outcome.
- Ms. Allan (and others) filed a motion requesting the Panel to amend the Hearing Order for the Application to include a phase for the oral cross-examination of witnesses. The Panel denied these motions in a single ruling.
- In its ruling to deny the motions, the Panel stated:

^[1] www.neb-one.gc.ca → Applications & Filings → [Court Challenges](#)

“In the Board’s view, the legislation makes it clear that the Board is master of its own procedure and can establish its own procedures for each public hearing with regard to the conduct of hearings. This includes the authority to determine for a particular public hearing the manner in which evidence will be received and tested. In the circumstances of this hearing, where there are 400 intervenors and much of the information is technical in nature, the Board has determined that it is appropriate to test the evidence through written processes. All written evidence submitted will be subject to written questioning by up to 400 parties, and the Board.”

- It is estimated that a hearing utilizing oral cross-examination for all active intervenors will require 124 hearing days, or about 9 months, excluding argument. The TMX panel had to consider this factor, along with many other issues including the legislated timelines when making its process decisions.
- In the current process, Aboriginal Oral Traditional evidence was heard in 6 cities for a total of 20 days. Some participants said that allowing oral traditional evidence is unfair to other, non-Aboriginal intervenors that did not get to provide oral evidence. The Panel did not find that concern to be persuasive. Aboriginal people have an oral tradition that cannot always be shared adequately in writing. In this light, the current process provides an opportunity for Aboriginal people to bring project-related concerns before the Board, should they wish.
- The scheduled process will also include oral summary argument phases in Calgary and Burnaby.

4) “The NEB has designed the scope of its review so narrowly...”

- In July 2013, the Panel decided on a list of 12 issues it will consider during the hearing process. The Panel does not intend to 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.
- The issues are:
 - The need for the proposed project.
 - The economic feasibility of the proposed project.
 - The potential commercial impacts of the proposed project.
 - The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's *Filing Manual*.
 - The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed Project, including the potential effects of accidents or malfunctions that may occur.

- The appropriateness of the general route and land requirements for the proposed project.
- The suitability of the design of the proposed project.
- The terms and conditions to be included in any approval the Board may issue.
- Potential impacts of the project on Aboriginal interests.
- Potential impacts of the project on landowners and land use.
- Contingency planning for spills, accidents or malfunctions, during construction and operation of the project.
- Safety and security during construction of the proposed project and operation of the project, including emergency response planning and third-party damage prevention.

5) ***“A new, independent, evidence-based process must be established”***

- Section 52 requires the Board, when making a recommendation to Governor in Council, to have regard to all considerations that appear to the Board to be directly related to the pipeline and to be relevant.
- An estimated 100,000 pages of evidence has been placed before the Panel by intervenors and the applicant. Some key figures are:
 - The original application was 15,000 pages
 - Trans Mountain’s responses to the first round of intervenor information requests (IRs) was 15,000 pages
 - Trans Mountain’s responses to the second round of IRs was 10,000 pages in response to 5,700 questions
 - Substantive written evidence provided by 104 intervenors, with IRs exchanged on much of this evidence
 - In 6 main rounds of IRs and on replacement evidence, the NEB issued 462 IRs

6) ***“The NEB has announced an aggressive time schedule...”***

- The Panel’s process must follow the legislation set out in the NEB Act.
- Section 11 of the NEB Act requires the Board to determine an application as expeditiously as the circumstances and considerations of fairness permit but in any case within time limits.
- Under the NEB Act, once the Board has determined an application to be complete, it has 15 months to assess the application and provide its recommendation to the GiC.
- The legislated excluded period for the Panel to issue its report to the GiC, is 20 May 2016, and is in accordance with the process steps taken to this point. This schedule to

AUTHOR: Andrew Stropole

TITLE AND TEAM: Market Analyst, Regulatory Approaches

PHONE NUMBER: 403-292-8634

arrive at the legislated excluded period complies with the legislated assessment period of 15 months, inclusive of two time-outs to gather more information from Trans Mountain, which are per section 52(5) of the NEB Act.

7) ***“Unlike the unprecedented NEB sanctioned \$136 million fund Kinder Morgan is able to draw on...many intervenors do not have access to adequate funding”***

- This statement is incorrect. The NEB has only approved a toll methodology, which allows Kinder Morgan to charge a service fee that, over time, allows it to advance capital projects and conduct activities in the support of a potential expansion of the pipeline.
- Based on Trans Mountain’s filings in the RH-1-2012 proceeding, the \$136 million appears to be a projection of how much it anticipated it will have collected from the Firm Service Fee and allotted to TMX when the project goes into service.
- To be clear, in 2011, the NEB approved Trans Mountain’s proposed treatment of the Firm Service Fee to “advance incremental capital projects and conduct preliminary activities in support of a potential expansion of the Pipeline”. Firm Service Fees are paid by a subset of Trans Mountain’s shippers for “firm service” (priority shipments) to the Westridge Dock for export from Burnaby. The issue of capacity allocation on the Trans Mountain pipeline has been the subject of multiple hearings and negotiated settlements in the past decade. Shippers have been willing to pay a premium to acquire capacity and to explore other solutions to the capacity constraint. As of December 2013, over \$31 million of the \$53 million in firm service fees collected had been spent on expanded services at the Edmonton Terminal, which benefits all shippers on the existing Trans Mountain pipeline. It is not unusual for shippers to contribute to costs associated with new projects.
- The NEB has a Participant Funding Program (PFP), which provides funding to facilitate public participation in hearings. For TMX, the Board has awarded \$3M in participant funding to 71 applicants to date.
- The total PFP of the NEB budget is approved by Parliament through the annual budgetary process. While the NEB has asked that this envelope be increased, these requests were not approved.
- In response to requests to provide additional funding to those intervenors impacted by the 21 August 2015 decision to strike evidence prepared by Mr. Kelly from the hearing record, the NEB’s PFP will provide up to an additional \$10,000 per eligible intervenor for expert and legal fees.



Robyn Allan

[REDACTED]
Whistler, BC

s.19(1)

Dear Ms. Allan:

The National Energy Board (the Board) acknowledges your letter of October 24, 2015 to Prime Minister Elect Justin Trudeau regarding the Board's ongoing consideration of the proposed Trans Mountain Expansion Project.

As you are aware, a Panel of the Board is currently reviewing the proposed project in accordance with the requirements of the *National Energy Board Act* (NEB Act) and the *Canadian Environmental Assessment Act, 2012*. Additional information about the Board's hearing process is available at: <http://www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/index-eng.html>.

The Board is an independent, quasi-judicial regulatory tribunal established by Parliament under the NEB Act. We are guided by the principles of natural justice and fairness. As with any regulatory tribunal, the Board must act within the scope of the powers delegated to it by its enabling legislation. The Board's decisions are subject to independent and impartial judicial oversight, generally through the Federal Court of Appeal and the Supreme Court of Canada. The Board is bound to act in accordance with the courts' decisions.

.../2

I appreciate your interest in the Board and the review process.

Yours sincerely,



Josée Touchette, LLL, CPA (CMA), MBA
Chief Operating Officer

cc. Justin Trudeau, Prime Minister Elect
Terry Beech, MP, Burnaby North-Seymour
Kennedy Stewart, MP, Burnaby South
Ron McKinnon, MP, Coquitlam-Port Coquitlam
Carla Qualtrough, MP, Delta
Peter Julian, MP, New Westminster-Burnaby
Jonathan Wilkinson, MP, North Vancouver
Dan Ruimy, MP, Pitt Meadows-Maple Ridge
Fin Donnelly, MP, Port Moody-Coquitlam
Joyce Murray, MP, Vancouver Quadra
Murray Rankin, MP, Victoria
Pam Goldsmith-Jones, MP, West Vancouver-Sunshine Coast-Sea to Sky

**ADVICE TO THE MINISTER****3.2****FOR INFORMATION/POUR INFORMATION**

Security/Sécurité: Protected B

Date: 4 November 2015

***STATUS: NEB REVIEW OF THE PROPOSED
TRANSCANADA ENERGY EAST PROJECT*****ISSUE**

- The proposed Energy East Pipeline Project (Energy East) is currently being reviewed by an NEB Panel in accordance with the requirements of the *National Energy Board Act* and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).
- The application was filed with the NEB in October 2014. The Proponent announced in April 2015 there would no longer be a marine terminal in Quebec, and that it would file its amendments to the project application in late 2015.
- The Panel has not yet deemed the Application to be complete, so the 15-month time limit has not yet started.
- If the application is determined to be complete, a Hearing Order will be issued to establish all hearing steps for participants and the Proponent.

BACKGROUND:***The Application***

- Energy East is a proposal by Energy East Pipeline Ltd. for a 4,500 km crude oil pipeline from Alberta and Saskatchewan to refineries in Eastern Canada. The Proponent is a wholly-owned subsidiary from TransCanada Pipelines Limited (TransCanada). See map below.
- TransCanada currently owns and operates a natural gas transmission system that extends from the Alberta border across Saskatchewan, Manitoba and Ontario, through a portion of Québec, and connects to various downstream Canadian and international pipelines (TransCanada Mainline or Mainline). TransCanada began its foray into crude oil transport with Keystone and Keystone XL. The Proponent is a second oil subsidiary of TransCanada.
- The Energy East pipeline is proposed to carry 1,100,000 b/d of crude oil. The Proponent values the Energy East proposal investment at about \$14.4 billion.
- The proposed project would include:
 - a purchase and conversion of a portion of the existing TransCanada Mainline from gas to oil service for approximately 3,000 km of existing pipeline;

Page 1 of 5

ADVICE TO THE MINISTER**Peter Watson, Chair/CEO of the National Energy Board****PHONE NUMBER: (403) 299-2724****A0010776_59-000059**



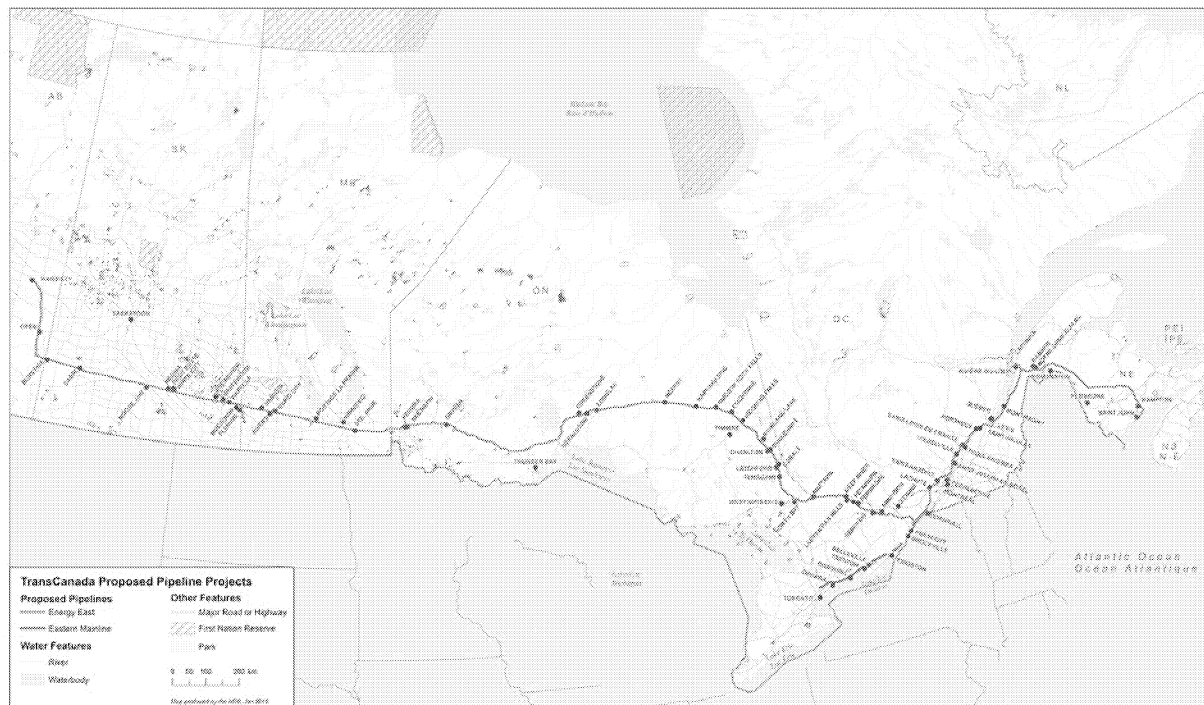
ADVICE TO THE MINISTER

3.2

FOR INFORMATION/POUR INFORMATION

- approximately 1,500 km of newly constructed pipeline and facilities including laterals and connections, pump stations, and custody transfer metering stations;
- new marine facilities that will enable access to other markets by ship; and
- the construction and operation of four oil storage tank terminals.
- The application was filed with the NEB in October 2014. The Proponent announced in April 2015 there would no longer be a marine terminal in Quebec, and that it would file its amendments to the project application in late 2015.

MAP 1: The Proposed Project Route



Proactive Engagement

- The NEB has been proactive to engage and communicate with Canadians on the assessment process for Energy East and how the public can apply to participate in this process:
 - A team of bilingual NEB process advisors is available by phone or email to provide procedural assistance to persons wishing to participate.
 - The NEB increased its web-based presence to augment regular engagement practices, which are also available (more accessible website, easier filing and service of documents, increased plain language information, use of social media).
 - The NEB is leveraging its office in Montreal to provide a French language spokesperson and work with municipalities.

**ADVICE TO THE MINISTER****3.2****FOR INFORMATION/POUR INFORMATION**

- The NEB conducted a mail out of NEB postcards to 20,000 potentially affected persons/groups along the proposed pipeline route.
- The NEB hosted 8 open house sessions along the proposed route in Ottawa and the provinces of Québec and New Brunswick.
- The NEB delivered 122 online information sessions to educate the public on the Board's role and help the public understand how they can meaningfully participate.
- The NEB has conducted more than 40 meetings with Aboriginal groups as part of its enhanced Aboriginal engagement activities.
- An envelope of \$5M has been made available for participant funding to facilitate the participation of Intervenor in the Energy East process.

The NEB Application Process:

- Since 2012, section 55.2 of the NEB Act requires a determination to be made as to whether persons applying to participate are directly affected by the project proposal or whether they have "relevant information or expertise." The NEB Act says the Board *must* hear from those who are directly affected and *may* hear from those who have relevant information or expertise.
- The Panel received approximately 2,300 applications to participate in February – March 2015.
- The Panel announced its decision on Aboriginal Intervenor in July of 2015 and also ruled to admit some late Aboriginal Intervenor. Currently, there are 112 Aboriginal Intervenor on the List of Parties. The Panel has not announced any other decisions on participation as of this date.
- The Energy East Panel determined that it will consider the following issues as part of the hearing process:
 1. The need for the Project.
 2. The economic feasibility of the Project.
 3. The commercial, economic, supply and market impacts of the Project.
 4. The appropriateness of the tolling methodology, and the method of toll and tariff regulation, including whether Energy East should be regulated as a Group 1 or Group 2 company.
 5. The commercial, economic, supply and market impacts of the Asset Transfer, including the need, economic feasibility and commercial impacts of the Eastern Mainline Project. This includes the appropriateness of the proposed capacity of the Eastern Mainline.
 6. Transfer of Assets:
 - a. The tests to be used to assess the sale and purchase of the assets.
 - b. The assets to be transferred and any terms to be included.
 - c. The value which should be assigned to the facilities for the purposes of:

**ADVICE TO THE MINISTER****3.2****FOR INFORMATION/POUR INFORMATION**

- i. removal from the rate base of the TransCanada PipeLines Limited's natural gas mainline; and
 - ii. inclusion in Energy East's toll calculation.
7. The potential environmental and socio-economic effects of the Project, including the environmental effects of accidents or malfunctions that may occur in connection with the project, and any cumulative effects that are likely to result from the Project, as considered under the *Canadian Environmental Assessment Act, 2012*.
 8. The potential environmental and socio-economic effects of increased marine shipping.
 9. The appropriateness of the general route and land requirements for the Project.
 10. The engineering design and integrity of the Project.
 11. Potential impacts of the Project on Aboriginal interests.
 12. Potential impacts of the Project on directly affected landowners and their land use.
 13. Safety and security associated with the construction and operation of the Project, including emergency response planning and third-party damage prevention.
 14. Contingency planning for spills, accidents, or malfunctions during construction and operations of the Project.
 15. Financial implications of contingency planning for spills, accidents, or malfunctions during construction and operations of the Project.
 16. The terms and conditions to be included in any recommendation or approval the Board may issue for the Project.
- The Panel determined it would not consider matters related to upstream activities associated with the development of oil sands, or the downstream and end use of the oil transported by Energy East.
 - The Panel (which is also the same Panel for Eastern Mainline) established a separate List of Issues for the Eastern Mainline Project. The Eastern Mainline Project is proposed to replace some of the existing gas capacity to be converted to oil. Energy East and Eastern Mainline are interlinked through the asset transfer. The asset transfer would enable the purchase and conversion of the existing TransCanada Mainline from gas to oil service.
 - The application filed by the Proponent was approximately 20,000 pages and supplemental filings have increased this total to approximately 35,000.

CURRENT STATUS:

- When the Panel released its decision on the List of Aboriginal Intervenors in July 2015 it also announced plans to undertake oral traditional evidence in 2015. This innovative approach to collect oral traditional evidence before the application is determined complete is used to optimize the time available to hear from Aboriginal Intervenors.
- Oral traditional evidence will be heard from approximately 35 Aboriginal Intervenors scheduled in Alberta, Saskatchewan, Manitoba, and Western Ontario from 9 November to 12 December 2015.



ADVICE TO THE MINISTER

3.2

FOR INFORMATION/POUR INFORMATION

- The Panel has not yet deemed the Application to be complete, so the 15-month time limit (time limits are discussed in NEB Act, subsection 52(4)) has not yet started.
- The Panel is moving forward with the assessment, collecting additional information from the Proponent by asking information requests on parts of the project that will likely not change as a result of amendments.

NEXT STEPS:

- The Panel is expecting amendments to the project application from the Proponent in late 2015.
- Once the content of the amendments are known, the Panel will decide if another application to participate process is required and whether it can determine if the application is now complete.
- Additional dates for oral traditional evidence are planned for 2016 for additional groups to present in Ontario, Quebec and New Brunswick.
- If the application is determined to be complete, a Hearing Order will be issued to establish all hearing steps for participants and the Proponent. The Hearing Order will communicate when Intervenors will be allowed to file evidence with the Panel and ask written questions of the Proponent. Participants accepted by the Panel as Commenters will also have an opportunity to file letters of comments with the Panel.



ADVICE TO THE MINISTER

3.3

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

***STATUS: NEB REVIEW OF THE PROPOSED ENBRIDGE LINE 9
REVERSAL***

ISSUE

- This note provides a status update on the operation of the Enbridge Line 9 pipeline, including the NEB's public review of the project applications for capacity expansion and reversal of oil flow, in accordance with the requirements of the *National Energy Board Act* (NEB Act).

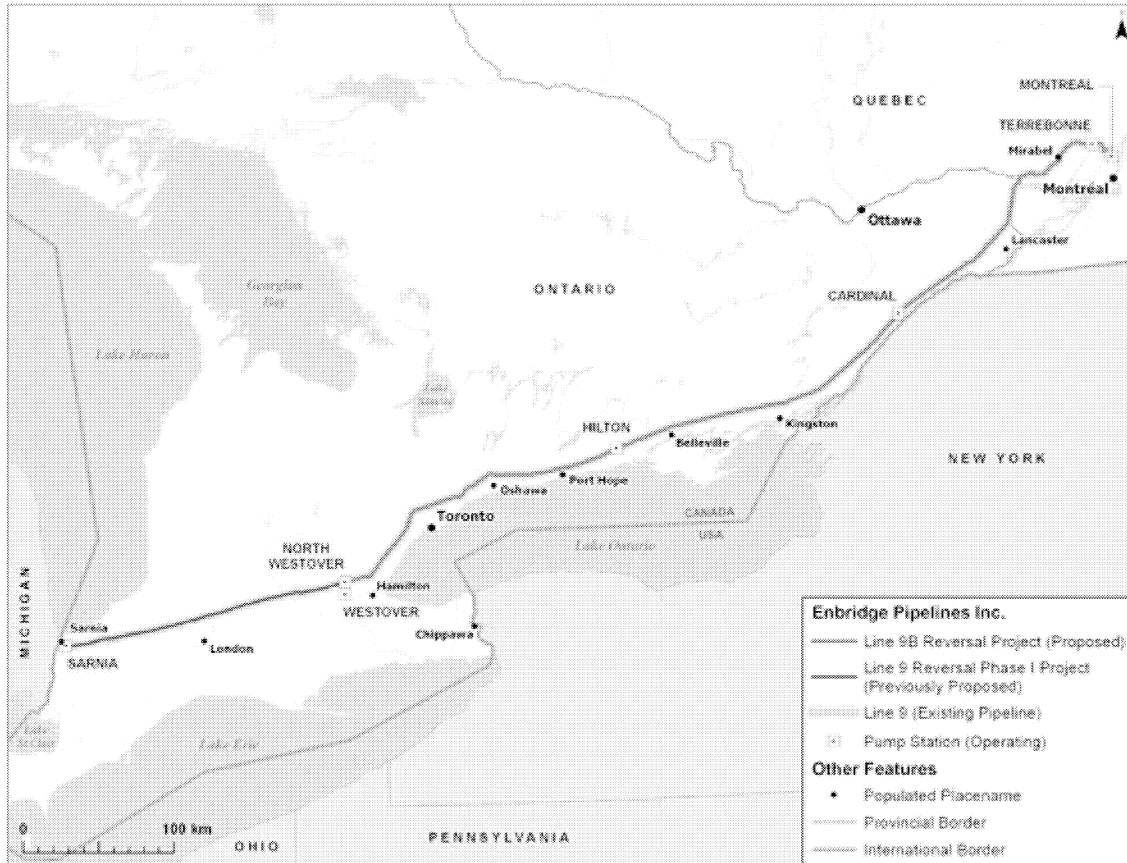
BACKGROUND:

The Project

- The project is a re-reversal of flow of Enbridge's 830 km Line 9 pipeline located between Sarnia, Ontario and Montreal, Quebec. See map below.
- The project will allow for an increase in capacity from approximately 240,000 to 300,000 barrels per day (b/d), and will revise the Line 9 Rules and Regulations Tariff to allow transportation of heavy crude.
- Enbridge's Line 9 has been subject to NEB oversight, compliance and legislative requirements since it was originally approved in 1975. The pipeline was originally constructed in 1976 to provide transport of crude oil from western Canada to refineries in Quebec.
 - Line 9 was reversed in 1998 as oil from areas such as West Africa and the Middle East became more affordable than Canadian crude oil sources.
- Due to lower prices of western Canadian crude in recent years, refineries sought access to Canadian and United States Bakken crude oil, and Enbridge proposed the project to meet that market demand.
- Line 9 consists of two sections:
 - Line 9A between from Sarnia to North Westover, ON.
 - Line 9B between North Westover, ON and Montreal, QC.

**ADVICE TO THE MINISTER**

3.3

FOR INFORMATION/POUR INFORMATION**MAP 1: Enbridge's Line 9 Pipeline****Application and NEB Decision Processes**

- On 8 August 2011, Enbridge applied under section 58 of the NEB Act to reverse flow of oil on the approximately 194 km long segment of Line 9A between Sarnia and North Westover, ON (Phase I of the overall Line 9 reversal).
- While the NEB does not normally hold a hearing for projects applied for under section 58 of the NEB Act,¹ in response to a letter from a suite of environmental non-government organizations, the Board sought public comments on the project and the process it should undertake to review the application. During the comment process, the Board received Letters of Comment on the Project from landowners, the general public, non-governmental organizations, First Nations groups, government authorities, and industry.

¹ The NEB Act only requires public hearings for pipelines proposals greater than 40 km or for abandonment proposals, among other things; however the Act gives discretion to the Board to hold public hearings for other applications if it considers advisable to do so.

**ADVICE TO THE MINISTER****3.3****FOR INFORMATION/POUR INFORMATION**

- After considering all submissions, the Board approved a process for a public hearing. The Board also offered Participant Funding, consistent with its usual approach for facility-related hearings. Of note, section 58 applications do not automatically require a public hearing. The Board chose to undertake a public hearing in this case given the nature of public concerns and suggestions regarding public processes.
 - The public hearing process was a combination of a written phase, including the filing of written evidence and two rounds of information requests, followed by oral final argument. The oral argument portion allowed for Intervenors to present their views on the project to the NEB Panel 'in-person'.
 - The oral portion of the hearing took place on 23 and 24 May 2012 in London, ON. There were 18 registered Intervenors as part of the hearing process.
 - On 27 July 2013 the Board authorized the reversal and issued a letter decision and Order, including 15 conditions.
- On 29 November 2012, Enbridge filed the project application for Phase II, requesting approval to reverse the 639 km segment of Line 9B from North Westover, ON to Montreal, QC, and to increase pipeline operating capacity for all of Line 9, while maintaining a maximum design capacity of 333,333 b/d. The application also included a request to revise the Line 9 Rules and Regulations Tariff to allow for the transportation of heavy crude.
 - On 19 December 2012, the Board determined that the application was complete to proceed to assessment.
 - On 19 February 2013, the Board approved a process for a public hearing consisting of written evidence, two rounds of information requests, and oral final argument. Again, the Board was not obligated to hold a public hearing, but did so pursuant to its authority under the NEB Act.
 - Participant Funding was again made available for this proceeding.
 - The Hearing Order included a List of Issues that the Board proposed for consideration during its assessment of the application. The List of Issues was revised after a comment period, and the final List of Issues was released on 4 April 2013.
 - To assist interested persons with the hearing process, the Board held seven information sessions for people with an interest in participating in the hearing. Any member of the public was welcome to attend. Sessions in French and English were held 19-21 February 2013 in Hamilton, Toronto and Montreal. Additional sessions were requested by members of the public and were held 3-9 April 2013 in Kingston, Rigaud, Ajax, and Longueuil. The purpose of these sessions was to provide a general overview of the Board's hearing process and how to effectively participate. Board Staff were also available to provide information about the NEB's role in promoting safety and environmental protection and to answer questions regarding the Board's Participant Funding Program.

**ADVICE TO THE MINISTER****3.3****FOR INFORMATION/POUR INFORMATION**

- Additional meetings were held with three Aboriginal groups through the Board's Enhanced Aboriginal Engagement process.
- Since 2012, section 55.2 of the NEB Act requires the Board to make a determination as to whether applicants who seek to participate in a hearing are "directly affected" by the project proposal or whether they have "relevant information or expertise". The NEB Act says the Board *must* hear from those who are directly affected and *may* hear from those who have relevant information or expertise.
 - This was the first application for which the NEB evaluated standing for participants under the new legislative requirements. The Board received requests to participate from 178 interested persons. Of the 178 applications, 171 Participants were provided the opportunity to participate (either as an Intervenor or Commenter), while seven persons were not granted standing.
 - The Board's decision on the parties included a fact sheet that described the Board's mandate and jurisdiction under the NEB Act, as well as what the Board considers when it exercises its authority under the NEB Act in the Canadian public interest.
- Oral final argument was held during 8-11 October 2013 in Montreal, Quebec, and during 16-18 October 2013 in Toronto, Ontario. The Board received 76 letters of comment and 45 written evidence submissions from Intervenors. Enbridge and 40 Intervenors provided oral final argument.
- During the oral portion of the hearing, the Board's Montreal and Toronto hearing dates were open to the public, and audio was streamed live via the Board's website. Most days were well attended, not only by participants, but by interested members of the public and media.
- Oral final argument was ended early in Toronto, Ontario, due to disruptions during final argument. Those disruptions increased in severity until a safe environment was no longer assured for all parties, and ongoing effective participation was significantly inhibited. The Board directed Enbridge, the final party that had yet to provide argument, to do so in writing.
- On March 2014 the Board approved the reversal of Line 9B. The approval included 36 conditions.

Compliance Processes

- There have been several process steps related to condition compliance, primarily related to valve requirements near water crossings and the need for extensive hydrostatic testing.
 - 6 March 2014: The Board issued a decision approving the project subject to conditions and commitments made during and a result of the hearing process.
 - 6 February 2015: Enbridge applied to the Board to commence operation, advising the Board it believed it had complied with all pertinent conditions/commitments necessary. Up to and after Enbridge's application, a suite of public concerns were

**ADVICE TO THE MINISTER****3.3****FOR INFORMATION/POUR INFORMATION**

raised to the NEB with regard to safety and compliance expectations, including requests for extensive hydrostatic testing of the pipeline.

- 18 June 2015: The Board acknowledged conditions had been satisfied, and imposed hydrotesting requirements for 3 segments of the pipeline to validate existing integrity information. A representative of the Board met with the Communauté métropolitaine de Montréal (Montreal Metropolitan Community) in-person at the time of the decision to explain the other requirements included in the Order.
- 16 September 2015: Enbridge provided results of testing to the NEB.
- 30 September 2015: The Board approved the results of testing, allowing the line to begin operating. This was the final outstanding condition to allow for pipeline operation.

CURRENT STATUS:

- Line 9A is currently operating in accordance with the terms and conditions of an NEB Order.
- Line 9B is being filled with oil in anticipation of regular operation in the near future (1 to 3 months).

NEXT STEPS:

- The NEB approved the operation of the pipeline and reversal of oil flow for both sections of Line 9 as the Board has determined that the project is in the public interest of Canada, and Enbridge has met NEB-imposed safety requirements.
 - Strict regulatory oversight continues, which may include bi-weekly ground patrols, quarterly integrity testing, and in-line inspections during operations.
- Significant public interest remains in the Enbridge's compliance of conditions, particularly related to emergency response and integrity testing. The public interest shown includes that from Mayors in the Montreal area. Notably, some do not consider the hydrotesting carried out to be sufficient.
- The NEB continues its regionally-based outreach to communities to assist in resolving stakeholder concerns, and to increase public confidence in the federal oversight of the project.
- The NEB is leveraging its office in Montreal to provide ongoing engagement opportunities for stakeholders and municipalities along the route of Line 9B. NEB staff have met numerous times with various municipalities and Municipalités régionales de comtés to explain the Board's approach to pipeline safety and integrity, and emergency management. Of note, the NEB initiated the development of a 'Joint Committee on Emergency Preparedness for Quebec' where the Montreal Metropolitan Community, the oversight committee (unité de vigilance) of the Government of Quebec and Enbridge are active participants. This committee would oversee the development of a coordinated approach to Emergency Management in the Montreal area, increased capacity for local



ADVICE TO THE MINISTER

3.3

FOR INFORMATION/POUR INFORMATION

First Responders and continuous sharing of information between the company and regional municipalities.



ADVICE TO THE MINISTER

4.1

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

***MODERNIZING THE NATIONAL ENERGY BOARD:
BUILDING TRUST WITH CANADIANS***

ISSUE

- The NEB has identified three strategic priorities to help guide our actions moving forward. These are:
 - Taking action on safety;
 - Leading regulatory excellence; and
 - Engaging with Canadians.
- These strategic priorities will help the NEB modernize and continually improve over the next three years.
- They will also assist the government to implement its vision to provide for fair and more open government, more accessible information, and more credible, science based reviews.

BACKGROUND:

- Historically, the NEB has operated with little public involvement in its work as Canada's national energy regulator.
- In recent years, however, several external factors have changed. Pipeline safety and environmental issues have come to the forefront of Canadian interest and, as a result, the NEB's work is undergoing unprecedented public scrutiny.
 - The NEB has seen record numbers of intervenors in its application process and an influx of media requests and articles questioning the NEB's credibility.
 - Canadians are questioning the inclusiveness of the NEB's processes, its competency as a lifecycle regulator, and its independence.
- In order to position the NEB for the future, trust in its ability to regulate in the public interest is vital. Status quo in NEB operations will no longer suffice.
- The NEB has revised its strategic priorities to expand the scope of its activities to evolve and respond to these new challenges.

CURRENT STATUS:

- The NEB's strategic priorities were set by the Board in the fall/winter of 2014 with the collective goal to enhance public confidence in the NEB's ability to fulfill its core mandate.

**ADVICE TO THE MINISTER****4.1****FOR INFORMATION/POUR INFORMATION*****Strategic Priority 1: Taking Action on Safety***

- The NEB's main focus is to see to it that its regulated facilities are safe and secure.
- Through this priority the NEB is strengthening the actions it takes on pipeline safety and environmental protection and it is putting a stronger focus on root cause analysis and systemic issues.
- The NEB will use that information to drive broader, more proactive compliance by companies and enforcement by the NEB.
- Implementation activities include:
 - *Safety Culture:*
 - Working with other regulators, associations and companies in the development of enhanced safety culture frameworks and technical knowledge sharing, as well as stronger internal data tracking, trending and root cause analysis.
 - As part of the NEB's work on safety culture, the Board has released a *Statement on Safety Culture*, which included a definition and framework intended to promote learning and shared understanding of safety culture; and released a suite of draft indicators for public consultation and comment.
 - *Data:*
 - An example of the work the NEB is doing on improving the quality, timeliness, and integrity of its regulatory data is the deployment of its Operations Regulatory Compliance Application (ORCA) to allow field inspectors to produce an on-site report remotely. These reports are posted to the NEB website.
 - *Safety Forum:*
 - In June 2015, the NEB hosted a Safety Forum that provided an open exchange among expert stakeholders on technical pipeline issues and addressed specific issues to improve the safety of regulated facilities.
 - *Canadian Energy Pipeline Association (CEPA):*
 - The NEB works, where appropriate, with CEPA on issues related to NEB-regulated pipelines. For example, as part of its public consultation process, the NEB has asked CEPA to comment on the draft safety culture indicators. Other examples where future work is necessary include building a better understanding on the NEB's expectations for management system audits.

**ADVICE TO THE MINISTER****4.1****FOR INFORMATION/POUR INFORMATION*****Strategic Priority 2: Leading Regulatory Excellence***

- This priority reaches broadly across the entire organization and is based on continual learning, innovation, enhanced evaluation and improved management systems on a long-term basis.
- Implementation activities include:
 - The NEB has been a part of the Alberta Energy Regulator's initiative on Best-in-Class, which has resulted in a generic framework for regulatory excellence.
 - Through the AER's project and our own research the NEB is working to develop a Regulatory Excellence Framework. This Framework will be used to develop the metrics to align with the framework and evaluate internal and regulatory processes and allow for benchmarking, resulting in improvement priority areas for the Board to focus on.
 - The Board continues to work with other regulators around the world to examine the concept of regulatory excellence and learn from each other's experiences.

Strategic Priority 3: Engaging with Canadians

- The NEB fosters greater public confidence and trust through broad stakeholder engagement. The NEB must build trust by demonstrating clear intent, transparent actions and predictability. To continue building trust with Canadians, the NEB is:
 - Proactively reaching out to key audiences about energy matters and the NEB's lifecycle role;
 - Strengthening its understanding of stakeholder issues, concerns and questions; and
 - Positioning itself to be the objective provider of reliable energy information to Canadians.
- Implementation activities include:
 - The NEB opened regional offices in both Montreal and Vancouver in April 2015, adding to the regional office in Yellowknife. The offices strengthen the NEB's regional presence, raise awareness about its work, and build stronger relationships with regional public and local institutions, communities, landowners and Aboriginal groups.
 - The Chair/CEO launched a National Engagement Initiative (NEI) in 2014-2015 where he, along with other NEB staff, met with and listened to community leaders, first responders, Aboriginal groups, provincial and municipal leaders, academics, industry and environmental groups across Canada.
 - One clear outcome of the initiative was that Canadians desire more information on how the NEB regulates and opportunities to be included in its processes.

**ADVICE TO THE MINISTER****4.1****FOR INFORMATION/POUR INFORMATION**

- A second clear outcome of the initiative was that the public desires increased transparency for both regulators and companies alike, especially with regards to companies' emergency response plans.
- To address both of these concerns, the Chair/CEO responded by initiating the launch of a public consultation process to solicit the views of Canadians about the type and level of detail in pipeline company emergency management information they believe should be public.
- In the spirit of transparency, the NEB launched its interactive *Pipeline Incident Map* on its website in April 2015. The map graphically documents pipeline incidents from 2008 to present day.
- The NEB and the Communauté métropolitaine de Montréal (CMM) CMM have agreed on a draft Memorandum of Understanding (MOU), the intent of which is to establish a relationship to share information and promote cooperation on matters related to NEB-regulated pipelines.
- NEB staff facilitated the creation of a 'Joint Committee on Emergency Preparedness for Quebec' where the CMM and government of Quebec, and Enbridge are active participants This committee would oversee the development of a coordinated approach to Emergency Management in the Montreal area, increased capacity for local First Responders and continuous sharing of information between the company and regional municipalities.

ANALYSIS:

- These priorities, and the associated plans, are aimed at continuing to deliver on our strategic outcome, which is that the regulation of pipelines, power lines, energy development and energy trade contributes to the safety of Canadians, the protection of the environment and efficient energy infrastructure and markets, while respecting the rights and interests of those affected by NEB decisions and recommendations.

NEXT STEPS:

- The strategic priorities were prepared with a three-year timeframe, starting in 2015.
- As the NEB moves forward, it will continually strive for improvement in regulating in the public interest.



ADVICE TO THE MINISTER

4.2

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

***APPLICATION PROCESS: MAKING DECISIONS OR
RECOMMENDATIONS IN THE PUBLIC INTEREST***

ISSUE

- To describe to the Minister the NEB's facilities application process, including the Crown's process for Aboriginal consultation for NEB facilities, and to identify impacts from changes made in 2012's *Jobs, Growth and Long-term Prosperity Act (JGLTPA)*.

BACKGROUND:

- An important part of the NEB's job is to review and assess new project applications. Using the evidence that is placed before it during a public hearing, the NEB determines whether the project is in the public interest. A general overview of the process for the assessment of pipeline projects follows.
- While the NEB's application process generally garners the most media and public attention, it is important to note that it is only one part – and merely the beginning – of our role. In fact, the NEB's regulatory oversight spans the entire life of the pipeline – from the design of a project and the review process, and, if the project is approved, to construction, operation and ultimately until the pipe is safely removed from the ground

Pre-Application and Application

- The NEB guidance on what is expected from a company is described in our Filing Manual. Pre-application meetings are sometimes also held with proponents to answer questions about the NEB process and filing manual requirements.
- A company may file a project description before it files an application. This is used for project specific public and Aboriginal engagement as well as the Participant Funding Program (PFP).
 - The PFP provides modest funding to facilitate the participation of the public in hearings with respect to new or abandonment projects for pipelines or powerlines. PFP was expanded in June 2015 to include environmental assessments of designated projects set out in the *Regulations Designating Physical Activities* (these regulations, which are often referred to as the “project list” are made under the *Canadian Environmental Assessment Act, 2012*).
- When the company files its application for the construction and operation of a pipeline, the NEB reviews it to see if the proposed pipeline can be built and operated safely, and whether it is in the public interest. Under the *National Energy Board Act* (NEB Act), the

Page 1 of 10

ADVICE TO THE MINISTER

Peter Watson, Chair/CEO of the National Energy Board

PHONE NUMBER: (403) 299-2724

**ADVICE TO THE MINISTER****4.2****FOR INFORMATION/POUR INFORMATION**

Board must hear from directly affected people and groups (including Aboriginal groups), and may hear from those with relevant information or expertise. At the completion of the hearing process for major projects (i.e., pipeline projects greater than 40 km in length), the Board makes a recommendation to the Governor-in-Council (with or without conditions). For smaller projects, at the completion of the hearing process the Board may issue an approval along with any necessary conditions.

- Major projects cannot be constructed until the detailed route has approved by the Board. Once a major project has received an approval, the company is required to file an application for the detailed route of the project. The Board may approve the application if there is no opposition to it. If there is opposition, the Board must have a public hearing. In either case, the Board will review the information presented and decide whether the company has proposed the best possible detailed route and the most appropriate methods and timing for construction. Smaller pipeline projects do not require detailed route approval.

Construction and Operation

- If a project is approved, the Board sends inspectors to the construction site to verify that the company is building the project according to the Board's conditions, applicable regulations and commitments that the company made during the application process. The Board has a suite of enforcement tools to obtain the company's compliance with NEB requirements. This includes Notices of Non-Compliance, Safety Orders, and Administrative Monetary Penalties (AMPs).
- The NEB reviews reports provided by the company to check on compliance and safety. Board staff also verify company compliance in the field during construction activities.
- During construction and after a project is built, landowner concerns can be addressed through the NEB's Issue Resolution process. This may involve a field visit or individual follow up in person with the landowner and company.
- The NEB's compliance verification activities include six comprehensive audits and at least 150 inspections of regulated companies. This is in addition to the 100+ technical meetings and exercises conducted each year. These tools proactively detect and correct non-compliances before they become issues.
- The NEB publicly posts all compliance and enforcement actions it takes on its website.
- Subsequent additions or modifications to pipelines are regulated by the NEB and some require further Board approvals.
- The NEB requires companies to strive for zero incidents. Should an incident occur that creates a risk to public safety or protection of property and the environment, the Board responds and has the authority to order the company to take immediate actions to address the risk. The NEB then investigates the incident and reports on the results. Companies must remediate the effects resulting from a pipeline leak or rupture as well as put in place preventative actions to prevent future occurrences.



ADVICE TO THE MINISTER

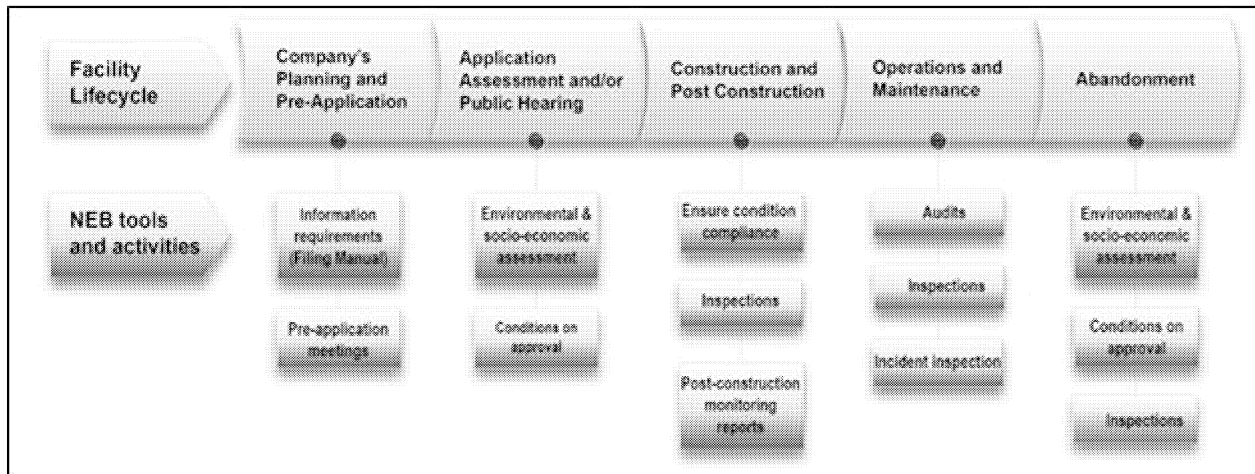
4.2

FOR INFORMATION/POUR INFORMATION

Abandonment

- If a company wishes to abandon a facility, it must submit an application, which includes details on the company's proposed abandonment activities. In particular, the company must describe the safety and environmental impacts of the proposed abandonment activities, and also the consultations undertaken with affected landowners.
- The NEB reviews the application. If the application is approved, the Board may impose conditions and inspect the abandonment activities.
- The NEB holds companies responsible for having the funds available to address any issues during and after abandonment.
- Currently, the NEB oversight typically ends when the pipeline abandonment project work is completed and all NEB-ordered conditions are met. When recent amendments to the NEB Act come into force in June 2016, this will not be the case. The NEB will have additional authority to make orders and regulations related to abandoned pipelines.

FIGURE 1: NEB Process Map: Pre-application, Application, Construction, Operation and Abandonment



Environmental Assessment at the NEB

- An environmental assessment (EA) is a review of the environmental effects likely to be associated with an energy project. This assessment is completed before the NEB makes a decision or recommendation on whether or not to approve an application.
- Both the NEB Act and the *Canadian Environmental Assessment Act, 2012* provide the NEB with a mandate to consider potential environmental effects and conduct environmental assessments when making regulatory decisions and recommendations. In fact, environmental effects have been considered in Board decisions under the NEB Act since the Board was established.
- The NEB considers many factors when conducting an EA, including:
 - physical and meteorological environment;

**ADVICE TO THE MINISTER****4.2****FOR INFORMATION/POUR INFORMATION**

- soil, soil productivity and vegetation;
- wetlands, water quality and quantity;
- fish, wildlife, and their habitat;
- species at risk or species of special status and related habitat;
- heritage resources;
- traditional land and resource use; and
- human health, aesthetics and noise.
- The EA considers the likely environmental effects, the adequacy of proposed mitigation measures to protect the environment, and the significance of effects after mitigation measures would be implemented.
- The Board commonly imposes additional conditions on projects to ensure environmental protection measures will be implemented and will be sufficient.

Aboriginal Consultation and the Crown's Duty to Consult

- The Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights, such as the Board issuing a permit or a certificate. The Courts have stated that the NEB does not hold a duty to consult, though the Crown may rely on our processes in discharging its duty.
- The Crown has stated that it will rely on the NEB process to the extent possible to meet any duty it may have to consult with Aboriginal groups. In support of this objective, the NEB created its Enhanced Aboriginal Engagement program, which assists the Crown in discharging its duty to consult for major projects processes before the NEB. This is in addition to the NEB's robust requirements and its application assessment process, which are described in following paragraphs.
- The NEB requires a proponent to have a consultation program with potentially impacted Aboriginal groups to obtain their comments and views about the proposed project. The proponent is then required to tell the Board how it has addressed any concerns that were raised by the potentially impacted groups, and which issues are outstanding. The Board, or any other party to the proceeding – including Aboriginal participants – may ask questions on any of the information that has been filed.
- During the NEB's application process, the NEB examines:
 - potential impacts of the project;
 - the appropriateness of the applicant's consultation program;
 - how impacts of a project were addressed in the application; and,
 - whether conditions are necessary to mitigate any impacts.
- Aboriginal groups are encouraged to participate in the NEB process, and measures are taken to make our hearing processes accessible to them. For example, the Board:
 - incorporates traditional practices into the hearing process where possible;
 - hears oral traditional evidence in Aboriginal communities; and,



ADVICE TO THE MINISTER

4.2

FOR INFORMATION/POUR INFORMATION

- provides funding to facilitate public participation, including participation of Aboriginal groups, in the hearing process.
- Where there are issues that are raised by Aboriginal groups during an NEB hearing process that fall outside of the NEB's mandate, additional consultation is undertaken by the Crown under the leadership of the Major Projects Management Office (MPMO) of Natural Resources Canada.



s.21(1)(a)
s.23

-
-

Jobs, Growth and Long-term Prosperity Act (Bill C-38)

- In 2012, Parliament passed the JGLTPA, which amended the NEB Act and other legislation. Certain aspects of the pipeline assessment process changed as a result.

**ADVICE TO THE MINISTER****4.2****FOR INFORMATION/POUR INFORMATION****CURRENT STATUS:**

- All necessary changes to the NEB processes as a result of the JGLTPA have been implemented.

ANALYSIS:

- Recent political discourse regarding the NEB, pipelines and environmental assessments has referred to the 2012 JGLTPA changes to the NEB Act.
- Some of the more controversial changes from the JGLTPA included:
 - Legislated time limits for NEB applications: Applications for major projects were made subject to a fixed 18-month beginning-to-end time limit (no more than 15 months for the NEB review, and three months for the Governor-in-Council (GIC) review).
 - Participating in a Hearing: A new legislative test was added to the NEB Act governing participation in hearings. Under the new test, the Board must hear from those who are “directly affected” by a proposed project, and may hear from those who have relevant expertise or information. The test applies to intervenors¹ and to those who simply wish to submit a letter of comment about the proposed project.
 - Navigable waters: The Board was given responsibility for navigation and navigation safety for NEB regulated projects. Transport Canada previously had this responsibility.
 - Environmental assessments: The *Canadian Environmental Assessment Act*, in force since 1995, was repealed, and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) came into force. While the NEB continued to have responsibility for carrying out environmental assessments of projects regulated by it, the number of projects subject to an assessment under CEAA 2012 was reduced.
 - Decisions on Certificates: NEB *denial* of a major project application became subject to Governor-in-Council approval.² The NEB Act now also contains an additional process which allows Governor-in-Council to request that the NEB reconsider its recommendation and/or any condition proposed by the Board for a major pipeline project.
 - Fish and fish habitat: While not a direct result of the JGLTPA, on December 16, 2013, the Board and Fisheries and Oceans Canada (DFO) signed an MOU where the Board became responsible for assessing potential impacts to fisheries from proposed NEB regulated applications. The Board and DFO stated that the MOU

¹ An intervenor is a participant who may, among other things, submit written evidence and ask questions during the hearing process.

² Prior to the legislative changes, the NEB could decide, without Governor-in Council approval, to reject a project application. With the changes, the Board is now required to make a recommendation to Cabinet whether or not the project should be approved.



ADVICE TO THE MINISTER

4.2

FOR INFORMATION/POUR INFORMATION

better integrates the Government of Canada's initiative to streamline application processes by eliminating the requirement for duplicate reviews.

- Other changes were made to the NEB's processes in 2015, via the *Energy, Safety and Security Act* and the *Pipeline Safety Act*. Changes made under these Acts received broad political support and had a much more positive reception than the 2012 legislative update.

NEXT STEPS:

- Changes under the *Energy, Safety and Security Act* come into force in February 2016, while the changes under the *Pipeline Safety Act* are scheduled to come into force by June 2016. The NEB is working to implement the changes by the coming into force dates. In some cases changes to regulations will be required. Regulatory changes required to implement the Board's new Damage Prevention program are described in Item 4.1.



ADVICE TO THE MINISTER

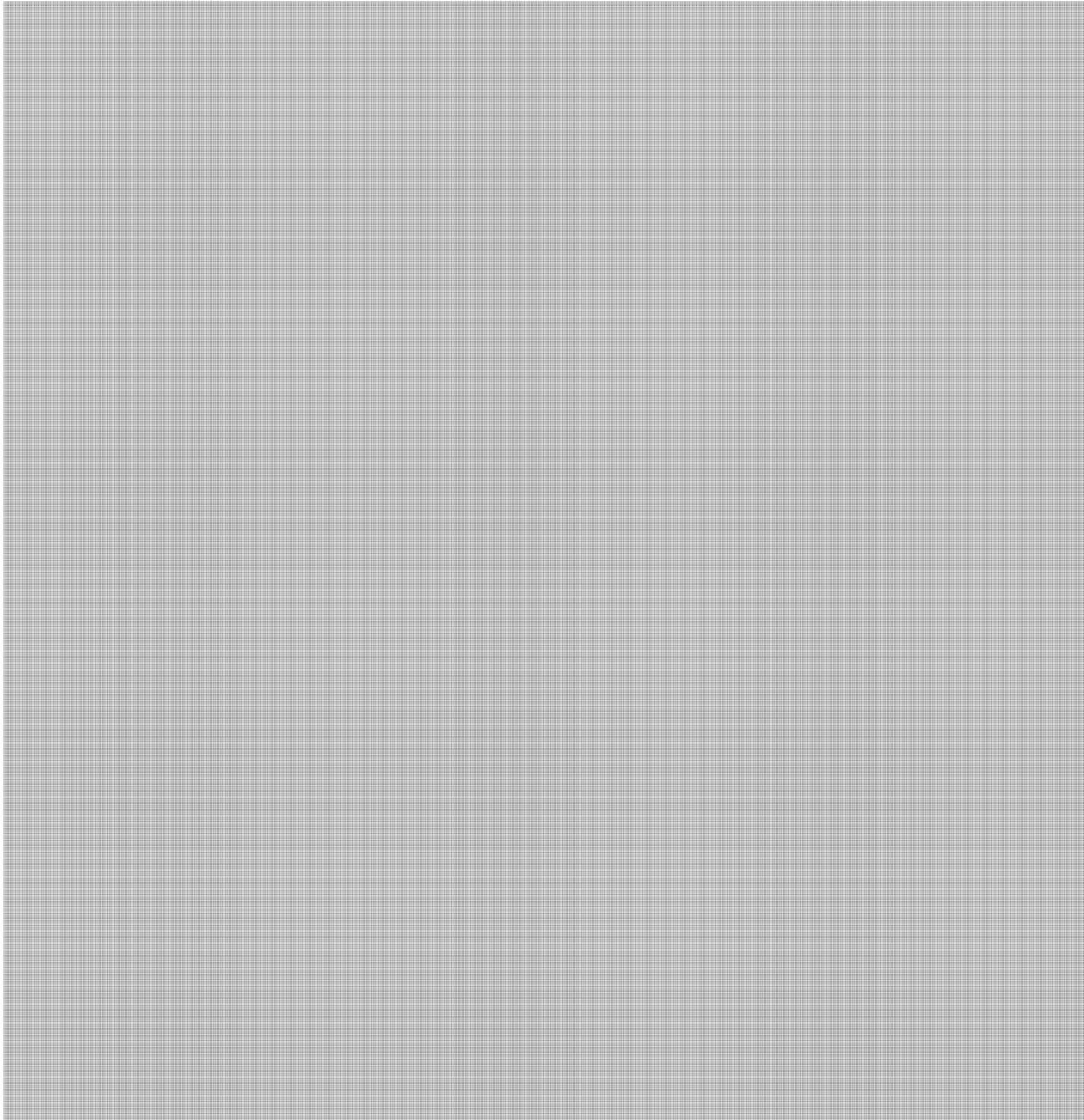
4.2

FOR INFORMATION/POUR INFORMATION

Annex A

s.21(1)(a)

s.23

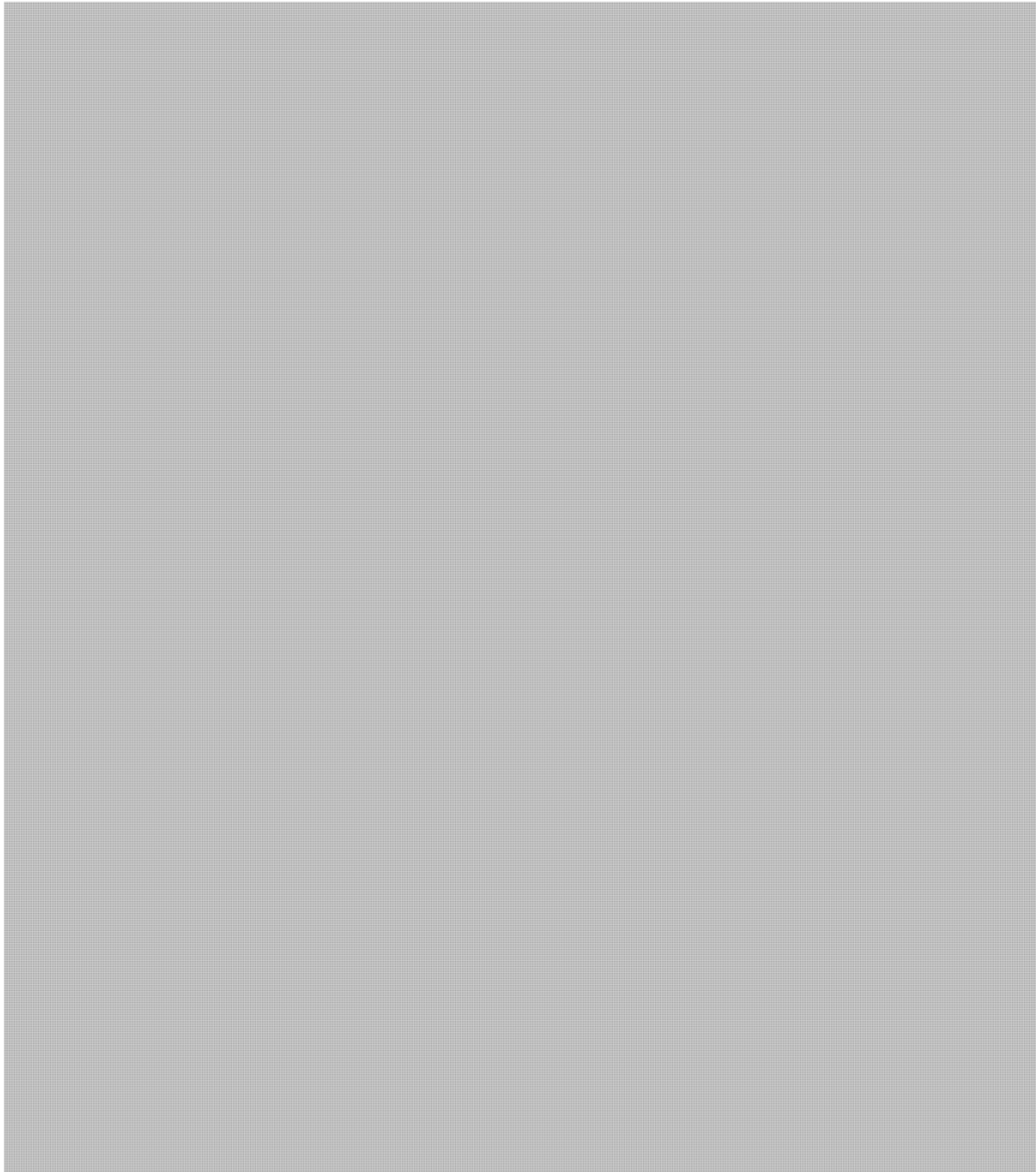




ADVICE TO THE MINISTER

4.2

FOR INFORMATION/POUR INFORMATION



s.21(1)(a)

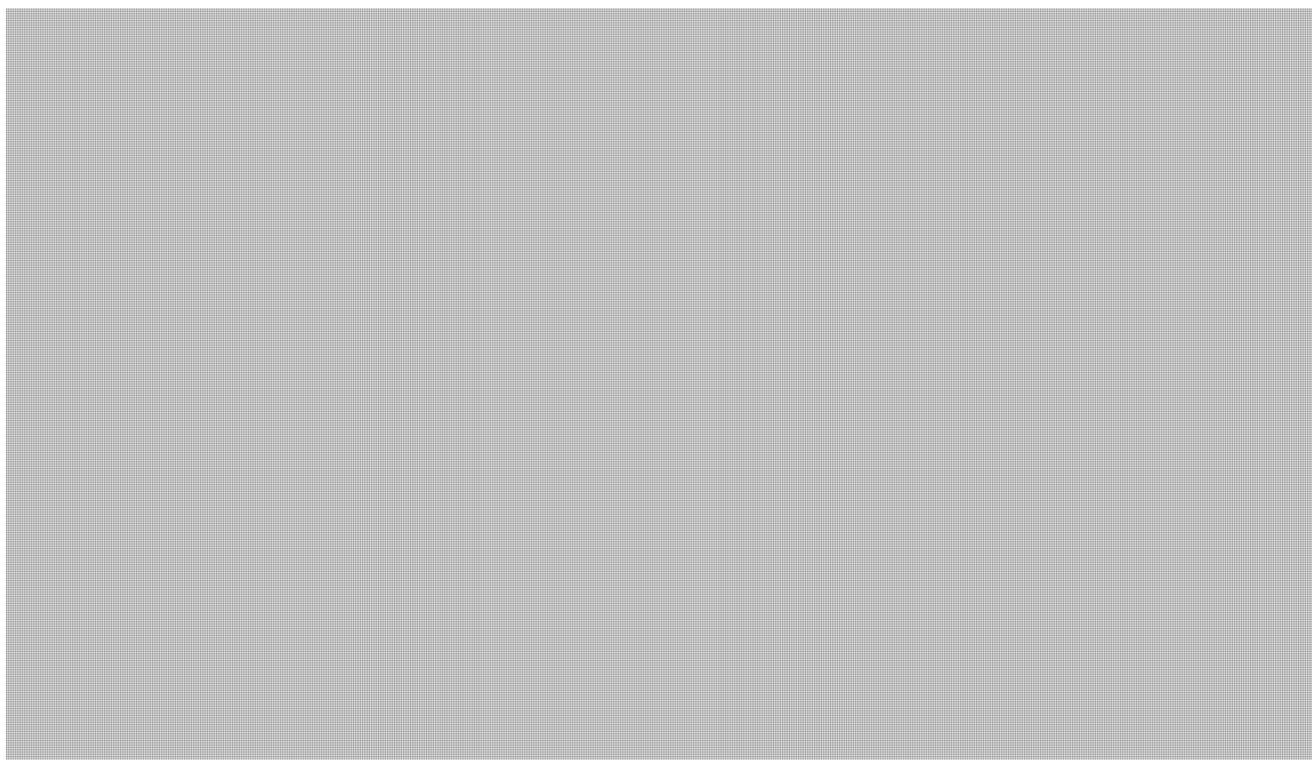
s.23



ADVICE TO THE MINISTER

4.2

FOR INFORMATION/POUR INFORMATION



s.21(1)(a)

s.23



ADVICE TO THE MINISTER

4.3

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

FULL LIFECYCLE PIPELINE OVERSIGHT: DEMONSTRATING ACTION ON SAFETY AND TRANSPARENCY

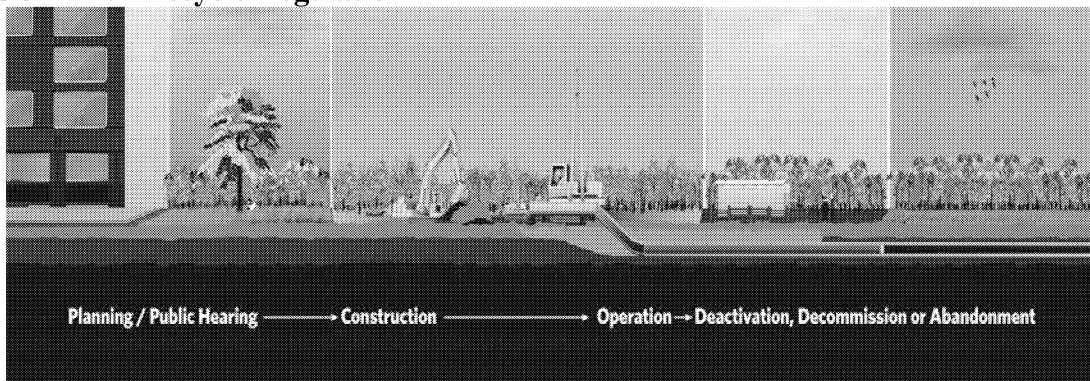
ISSUE

- The NEB's regulatory oversight spans the entire life of a pipeline. This includes the application review process, construction, operation and ultimately abandonment.
- We have strict requirements that companies must follow in order to build, operate and abandon their pipelines, and we will never hesitate to take strong enforcement action as required.
- We also recognize the need to build greater public trust that our regulatory oversight activities will keep people safe and protect the environment.
- We are focusing on building greater public trust by improving pipeline safety, leading regulatory excellence, and engaging Canadians more effectively.

BACKGROUND:

- An important part of the NEB's job is to review and assess new project applications. Using the evidence that is placed before it during a public hearing, the NEB determines whether the project is in the public interest.
- However, this is only one part – and merely the beginning – of our role. Our regulatory oversight spans the entire life of the pipeline – from the design of a project and the review process, and, if the project is approved, to construction, operation and ultimately until the pipe is safely removed from the ground (as shown in Figure 1).

FIGURE 1: Lifecycle Regulation



**ADVICE TO THE MINISTER****4.3****FOR INFORMATION/POUR INFORMATION**

- In its assessment of new project applications, the NEB considers a wide variety of environmental, social and economic factors. Examples include pipeline safety, environmental and socio-economic impacts, engineering integrity, security, emergency response capability, impacts on Aboriginal communities and landowners, and traditional land uses.
- If a project is approved, the Board sends inspectors to the construction site to verify that the company is building the pipeline according to the Board's conditions and applicable regulations.
- Through the life of the pipeline, the Board uses tools such as audits, inspections, compliance meetings, and field exercises to hold companies accountable for operating in a manner that is safe and protects the environment.
- Once a pipeline is no longer needed, a company must submit an application for abandonment. The Board holds a public hearing to determine the conditions that must be met in order for the pipeline to be safely taken out of service.
- Once the *Pipeline Safety Act* comes into force (June 2016), the NEB will also have oversight over abandoned pipelines.

CURRENT STATUS / NEXT STEPS:*Open and Transparent Government*

- The NEB is in the process of implementing a new and robust engagement program that will increase trust in the regulator by focusing on building public awareness of the activities we take to protect the public and the environment throughout the entire life of a pipeline. A hallmark of this initiative was the recent opening of regional offices in Montréal and Vancouver to facilitate relationship-building and issue resolution on an ongoing basis.
- A regionally-focused and nimble engagement approach will help us to more effectively and efficiently address public concerns and continuously improve as a regulator. For example, we are taking steps to proactively engage the public outside of the application assessment process (e.g., targeted engagement of first responders, municipalities and other parties involved in emergency response; enhanced public awareness regarding third party damage prevention; and promotion of a national one call number).

More Accessible Information

- In order to better engage Canadians about the NEB's activities, we must ensure that the public has access to information they need about pipelines.
- We recently conducted a consultation to seek Canadians' views on the information they require about pipeline emergency management. The availability of company emergency management information has become a high-profile public concern, particularly in regions where there is significant proposed or ongoing pipeline development (e.g., Lower Mainland of BC and Montréal Area).



ADVICE TO THE MINISTER

4.3

FOR INFORMATION/POUR INFORMATION

- The NEB is now clarifying emergency information requirements that will be publicly available at various project stages. In addition, the NEB and the *Communauté métropolitaine de Montréal* (CMM) have agreed on a draft memorandum of understanding (MOU), the intent of which is to establish a relationship to share information and promote cooperation on matters related to NEB-regulated pipelines.
- The NEB has also committed to making more information about its compliance verification activities publicly accessible. The NEB will soon be publicly posting its inspection reports on our website.

Life-cycle Regulation based on Evidenced-based analysis

- Board Members are supported by approximately 490 staff of highly skilled engineers, environmental specialists, auditors, inspectors, lawyers, and engagement specialists.
- We are committed to applying our resources in a manner that ensures strong science-based and rigorous regulatory oversight throughout the life of a pipeline.



ADVICE TO THE MINISTER

4.4

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

**ENGAGING WITH CANADIANS:
MAKING MORE INFORMATION ACCESSIBLE**

ISSUE

- The NEB is resolved to foster greater public confidence and trust through broad stakeholder engagement. Canadians need to trust that the NEB is doing its job and doing it well. The NEB is significantly improving how it engages with Canadians to:
 - Proactively reach out to key audiences about energy matters and the NEB's lifecycle role;
 - Strengthen the NEB's understanding of stakeholder issues, concerns and questions; and,
 - Position the NEB to be the objective provider of reliable energy information to Canadians.
- This allows for bilateral learning – for the NEB to more fully understand public and stakeholder concerns, and for Canadians to better understand the NEB's processes and mandate.
- This mutual understanding is necessary for the NEB to operate in the Canadian public interest, which is continually evolving.

BACKGROUND:

- The NEB finds itself in new territory, with heightened public expectation to address many issues in the energy debate around fossil fuels, including climate science, GHG management, and the pace and location of oil and gas development. The result is unprecedented interest in our review processes, and scrutiny of our activities to hold the industry the NEB regulates to account for the safety of its operations and the protection of the environment.
- The NEB is working to demystify its role and become a known entity, in an effort to earn the trust and credibility that comes from being open and transparent.
- This means broad and bold engagement across the whole of Canada, including a responsive focus on regional issues. It also means more effective communication that is tailored to the intended audience and readily accessible by any stakeholder who wants it.
- Engagement is not an end in itself, but rather a means by which the NEB intends to achieve its strategic outcome. The NEB's strategic outcome for 2015-2016 is: "the regulation of pipelines, power lines, energy development and energy trade contributes to

**ADVICE TO THE MINISTER****4.4****FOR INFORMATION/POUR INFORMATION**

the safety of Canadians, the protection of the environment and efficient energy infrastructure and markets, while respecting the rights and interests of those affected by NEB decisions and recommendations” (NEB Report on Plans and Priorities). Meaningful public engagement is an increasingly important factor in achieving all aspects of the NEB’s strategic outcome.

CURRENT STATUS:

- Engagement has become particularly relevant because of the rapidly changing external environment. The NEB is bolstering its efforts to meaningfully engage Canadians to:
 - facilitate understanding between the public and the NEB;
 - allow the public to apply to participate in decisions that affect them; and
 - enhance decisions affecting the Canadian energy system (specifically, lifecycle regulatory decisions and organizational decisions).

National Engagement Initiative & More Accessible Information

- The Chair/CEO launched a National Engagement Initiative (NEI) in 2014-2015 where he, along with other Board Members and NEB staff, met with and listened to community leaders, first responders, Aboriginal groups, provincial and municipal leaders, academics, industry and environmental groups across Canada.
- One clear learning from this initiative was that Canadians desire more information on how the NEB regulates and greater opportunities to be included in NEB processes.
- A second clear outcome of the initiative was that the public desires increased transparency for both regulators and companies alike, especially with regards to companies’ emergency response plans.
- To address both of these concerns, the Chair/CEO responded by launching a public consultation process to solicit the views of Canadians about the type and level of detail in pipeline company emergency management information they believe should be public.
- In the spirit of transparency, the NEB launched its interactive Pipeline Incident Map on its website in April 2015. The map graphically documents pipeline incidents from 2008 to present day.

Regional Engagement

- To further support key regional engagement needs, NEB opened two regional offices in April 2015. The offices strengthen the NEB’s regional presence, raise awareness about its work, and build stronger relationships with regional public and local institutions, communities, landowners and Aboriginal groups.

NEXT STEPS:

- The Board has endorsed a whole-of-NEB Strategic Engagement Program that will build upon and lever existing NEB engagement processes to foster greater public confidence

***ADVICE TO THE MINISTER*****4.4****FOR INFORMATION/POUR INFORMATION**

and trust through broad stakeholder engagement, and will begin implementation immediately. This approach will:

- Increase proactive engagement with key audiences about energy matters and the NEB's lifecycle role.
 - Strengthen the NEB's understanding of stakeholder issues, concerns and questions.
 - Position the NEB to be the objective provider of reliable energy information to Canadians.
- The Board is also improving the energy information products it publishes for Canadians. The Government has committed to taking action on climate change, and the NEB is supportive of this objective. In the near future, the NEB will release Canada's Energy Future 2015: Energy Supply and Demand Projections to 2040. This is the NEB's flagship energy information product and will, for the first time, include greenhouse gas emission projections associated with energy demand projections. Publicly accessible information on the linkage between climate change and energy demand is an important input to the public discourse and will assist with evidence-based policy-making.
 - The NEB will continue to improve public access to data on all aspects of its activities by transforming data into valuable information through relevant user-friendly visualizations.



ADVICE TO THE MINISTER

4.5

FOR INFORMATION/POUR INFORMATION

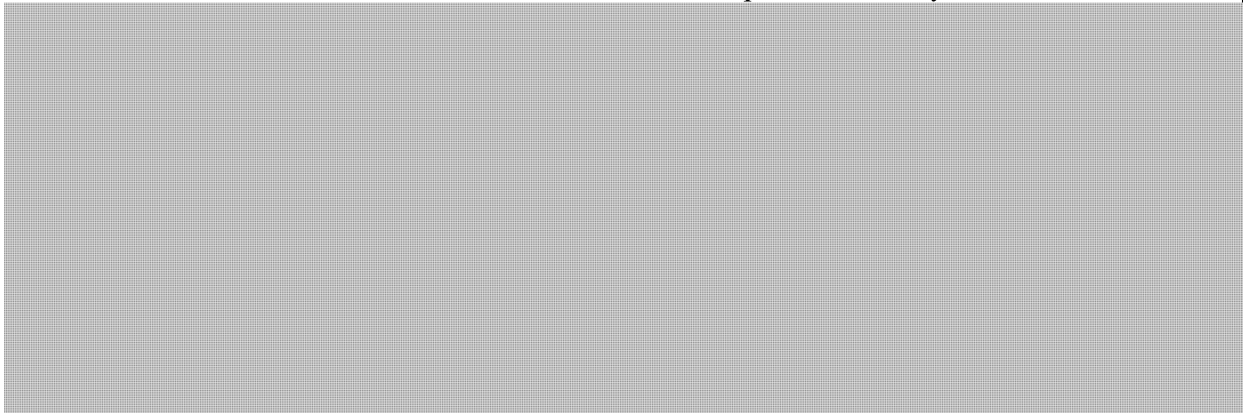
Security/Sécurité: Protected B

Date: 4 November 2015

**2015 OAG/CESD PERFORMANCE AUDIT:
OVERSIGHT OF FEDERALLY REGULATED PIPELINES – NEB/NRCAN**

ISSUE

- The Office of the Auditor General's Commissioner for Environment and Sustainable Development (CESD) will table an Audit on the oversight of federally-regulated pipelines when the 42nd Canadian Parliament is in session and sent to the Standing Committee on Environment and Sustainable Development for study.

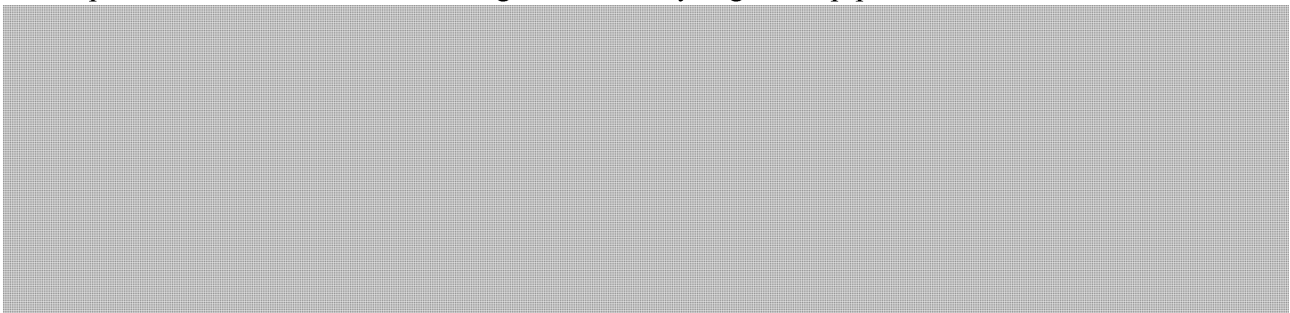


s.21(1)(a)

s.21(1)(b)

BACKGROUND:

- The OAG conducted an Audit on the *Transportation of Dangerous Goods* in 2011, involving the NEB and, in 2014 the then-Commissioner of the Environment and Sustainable Development (CESD) conducted an Audit on the Implementation of the *Canadian Environmental Assessment Act, 2012*, also involving the NEB.
- On September 19, 2014, the NEB was notified that the OAG was commencing a performance audit on the oversight of federally-regulated pipelines.



s.21(1)(a)

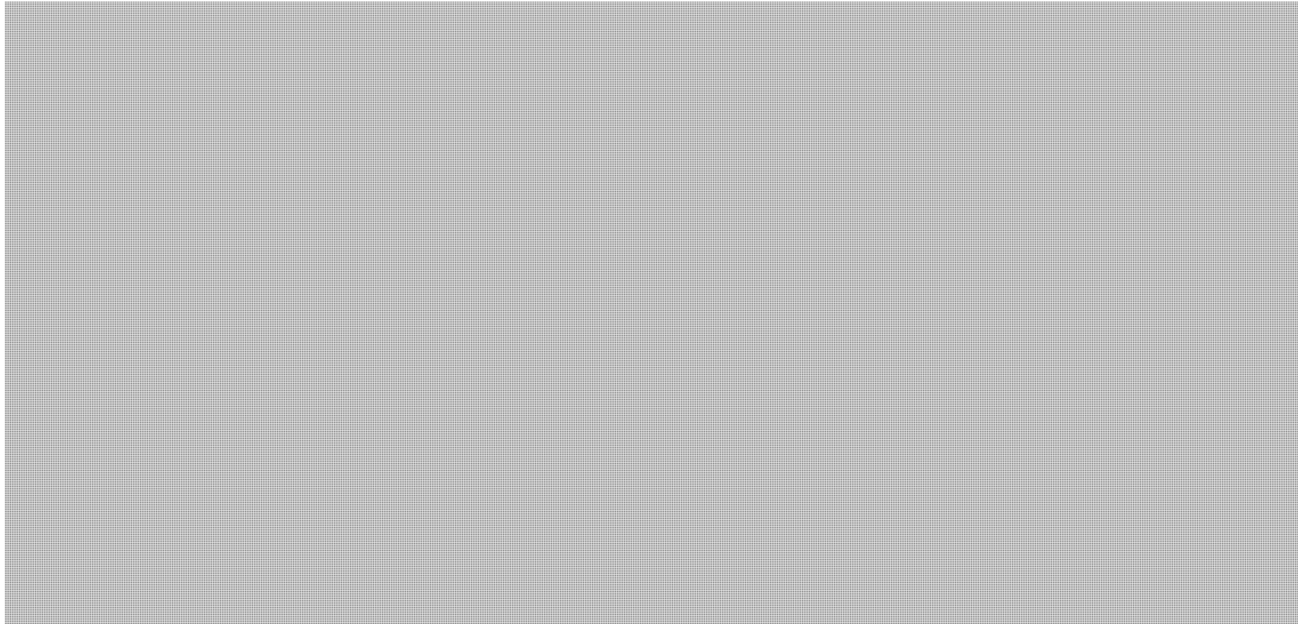
s.21(1)(b)



ADVICE TO THE MINISTER

4.5

FOR INFORMATION/POUR INFORMATION



s.21(1)(a)

s.21(1)(b)

CURRENT STATUS:

- The audit is in its final stages.



NEXT STEPS:

- The OAG-CESD 2015 Fall Report will be tabled in Parliament and sent to the Standing Committee on Environment and Sustainable Development for study between December 2015 and February 2016 (public after date tabled).
- NEB officials may be called to testify before the Standing Committee.
- Should the Standing Committee request it, the NEB will provide the CAP.



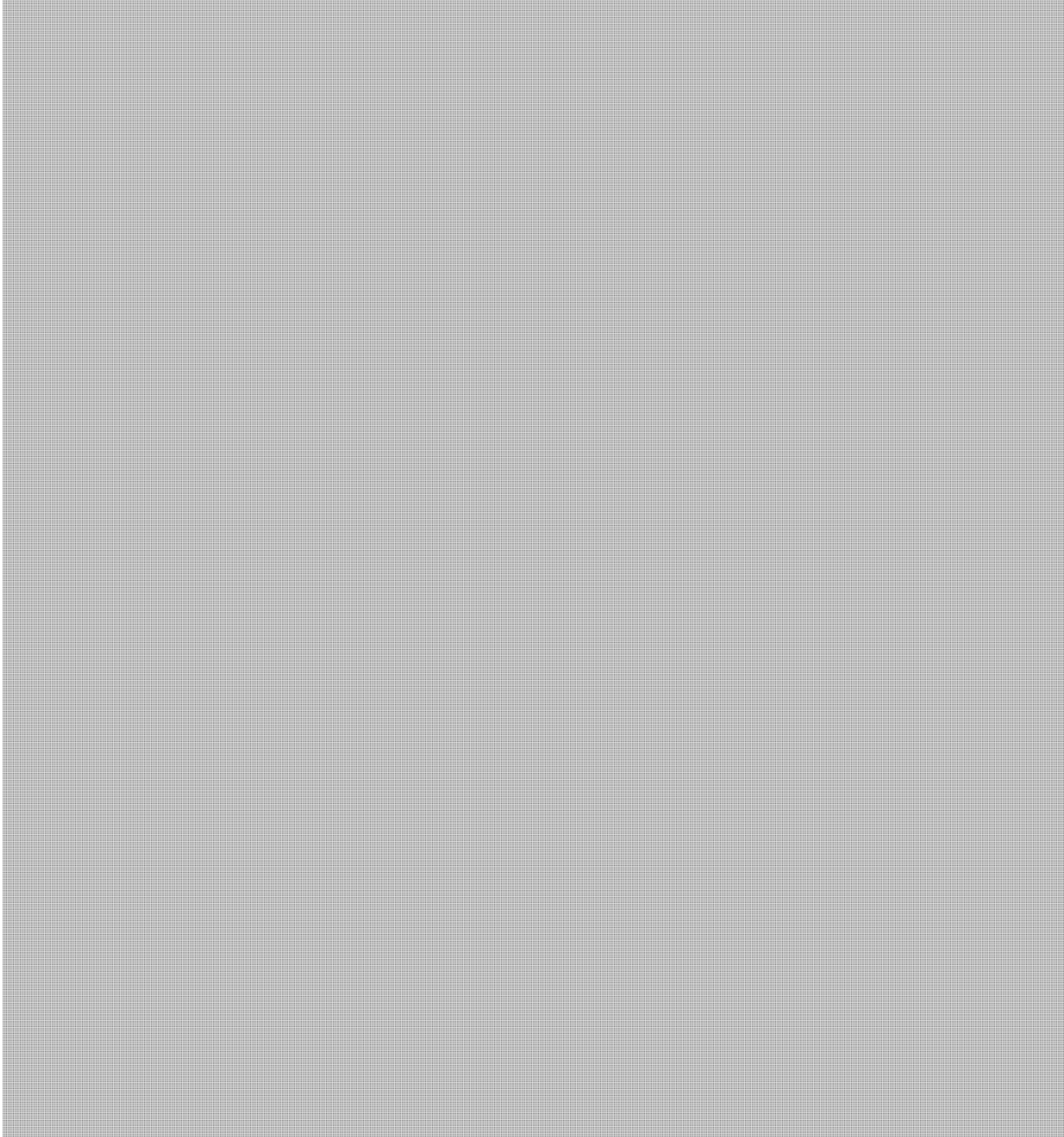


ADVICE TO THE MINISTER

4.5

FOR INFORMATION/POUR INFORMATION

APPENDIX:



s.21(1)(a)

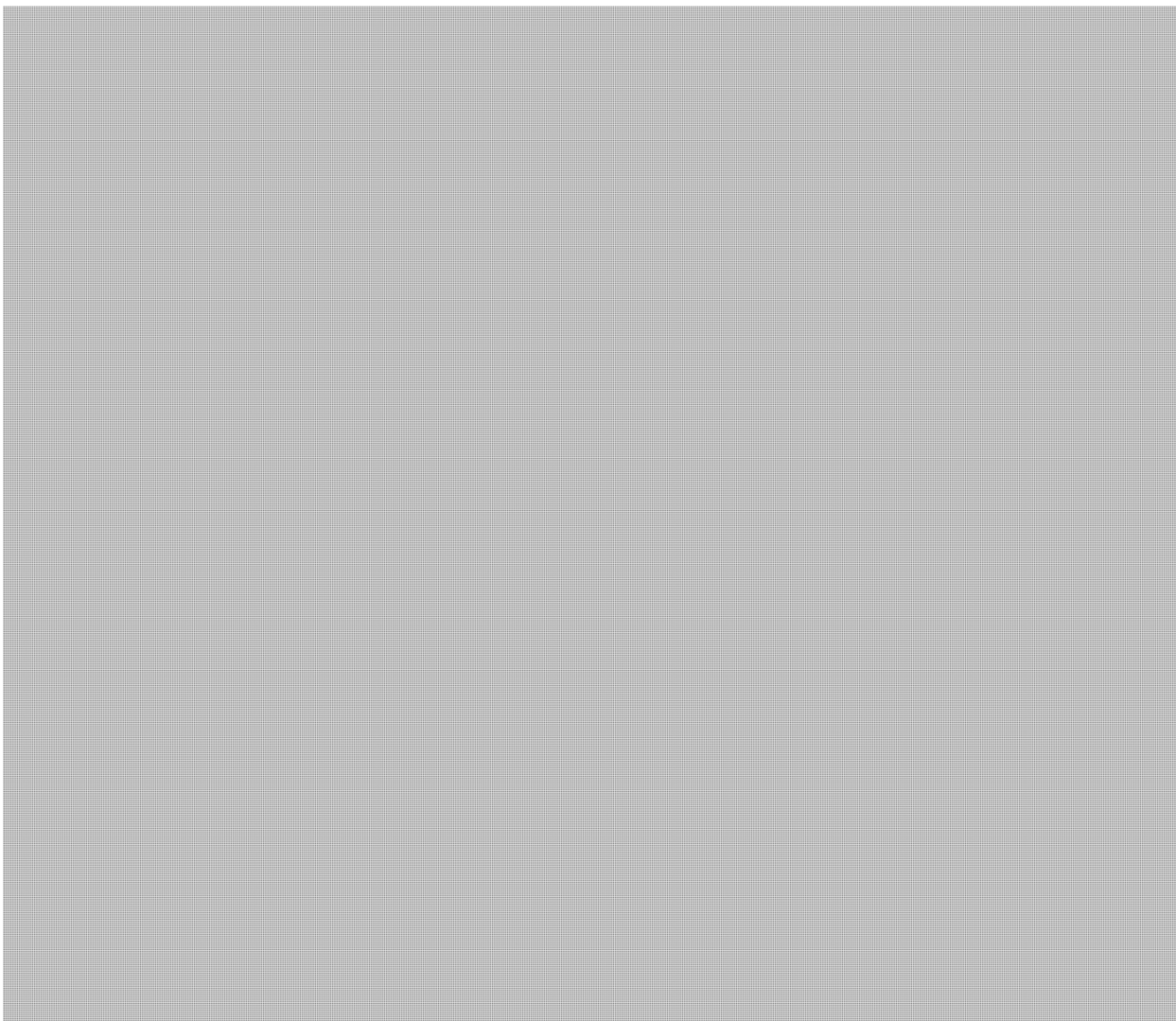
s.21(1)(b)



ADVICE TO THE MINISTER

4.5

FOR INFORMATION/POUR INFORMATION



s.21(1)(a)

s.21(1)(b)



ADVICE TO THE MINISTER

4.6

FOR INFORMATION/POUR INFORMATION

Security/Sécurité: Protected B

Date: 4 November 2015

***WHISTLEBLOWER:
BACKGROUND ON TRANSCANADA WHISTLEBLOWER INVESTIGATION***

ISSUE

- The NEB has a Whistleblower section on its website on how to report issues to the NEB. While reports are rare, the NEB investigates when they do happen.
- The NEB has tracked Whistleblower complaints since 2012. No reports prior to that were tracked as formal Whistleblower reports.
- The NEB recently investigated TransCanada PipeLines Limited (TransCanada) based on complaints from a Whistleblower that the company was not following regulatory direction, and found that there was no reason to take any enforcement actions.
- The Board has issued a public report to indicate its findings.

BACKGROUND:

- If an individual has information about a company not complying with NEB requirements, they are encouraged to contact us.
- The first Whistleblower report submitted to the National Energy Board occurred in 2012. A procedure was established at that time to follow up on the reported concerns. As the number of reports were relatively few through 2012 and 2013 (5 of the 6 reports made during that time were allegations against the same company), the procedures in place were sufficient to follow up on the allegations. In 2014, in light of the increase of Whistleblower reports received at the Board and continual improvement of our processes, the NEB made a decision to move forward with a review and enhancement of the current Whistleblower procedures.
- Since 2012, the NEB received 23 Whistleblower reports:
 - 2015 – 9 reports
 - 2014 – 8 reports
 - 2013 – no reports
 - 2012 – 6 reports
- To date, there have been reviews by the NEB into allegations received from complainants:
 - The first review was integrated into an audit of TransCanada, and was published on the NEB website in February 2014.



ADVICE TO THE MINISTER

4.6

FOR INFORMATION/POUR INFORMATION

- The second review (formal investigation), also involved TransCanada and the Board has finalized its review of the allegation.
- Both of these whistleblowing files have generated media interest.
- All other whistleblowing allegations have been followed-up by staff through inspection activities.

CURRENT STATUS:

- Regarding the Board's second review of TransCanada, the Board has found there is no reason to take any enforcement action against TransCanada following a thorough investigation. There has been media interest in this issue since the investigation started.

ANALYSIS:

- The NEB takes all reports of non-compliance seriously, and will never hesitate to take strong enforcement action if we discover that our regulations are not being followed.
- The NEB has developed procedures and protocols for dealing with Whistleblower complaints and revisions to the Whistleblower process are being implemented.

NEXT STEPS:

- The Board has issued its report on its recent investigation of TransCanada.
- The Board expects the report to garner media attention. NEB will liaise with NRCan communications staff as per existing protocol.



ADVICE TO THE MINISTER

5.1

ISSUES REQUIRING EARLY ATTENTION

Security/Sécurité: Protected B

Date: 4 November 2015

**ENACTMENT OF DAMAGE PREVENTION REGULATIONS:
UPDATED DAMAGE PREVENTION REGULATIONS MUST BE IN PLACE
BY 18 JUNE 2016**

ISSUE

- The *Pipeline Safety Act* (PSA), or Bill C-46, received Royal Assent on 18 June 2015. It contains provisions that amend the damage prevention framework by making amendments to the *National Energy Board Act* (NEB Act) to clarify damage prevention requirements (details provided below). New NEB regulations must be in force within one year of Royal Assent, by 18 June 2016.

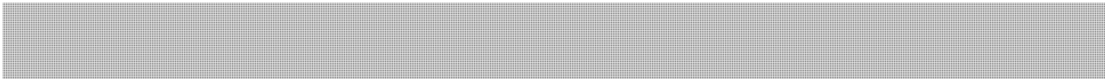


s.21(1)(a)

s.21(1)(b)

BACKGROUND:

- Bill C-46 received Royal Assent on 18 June 2015. It requires that all amendments to the NEB Act be in force within one year – that is, by 18 June 2016.
 - It changes the pipeline damage prevention scheme in the NEB Act, and requires the NEB to:
 - define the “safety zone”, or distance from the pipeline, where no activity can take place unless certain rules are followed; and
 - provide the rules for planned activities near a pipeline in regulations.
- To be able to implement this new scheme, new NEB regulations for pipeline damage prevention must be developed and in force by 18 June 2016.
 - The NEB’s current damage prevention regulations will be null and void as of 18 June 2016.



s.21(1)(a)

- The NEB has developed a detailed and specific plan in order to meet the timeframe set out in the PSA.



s.21(1)(b)



ADVICE TO THE MINISTER

5.1

ISSUES REQUIRING EARLY ATTENTION

CURRENT STATUS:

- To date, the NEB is on target with its plan to update the regulations. The NEB is working with the Department of Justice, [REDACTED]

s.21(1)(a)

ANALYSIS:

- The Minister's signature is required for recommending the regulations for *Canada Gazette*, Part I (for a 30 day comment period), and then for *Canada Gazette*, Part II.

s.21(1)(b)

NEXT STEPS:

- The NEB will continue to work with NRCan staff and provide all of the briefing material and information required.
- Should the Minister wish a briefing prior to the regulations being completed and submitted, the NEB can provide this.



ADVICE TO THE MINISTER

5.2

ISSUES REQUIRING EARLY ATTENTION

Security/Sécurité: Protected B

Date: 4 November 2015

***UPDATE ON THE MACKENZIE GAS PROJECT SUNSET CLAUSE
EXTENSION***

ISSUE

- On 26 August 2015, the National Energy Board (NEB) received a request from Imperial Oil Resources Ventures Limited (IORVL) to extend the sunset clauses in the Board's approvals of the Mackenzie Valley Pipeline and the Mackenzie Gathering System from 31 December 2015 to 31 December 2022.

BACKGROUND:

- The purpose of the Mackenzie Gas Project is to transport natural gas from three natural gas fields located in the Mackenzie Delta to the NOVA Gas transmission system located in Alberta.
- The Mackenzie Gas Project includes the development of three natural gas fields, the Mackenzie Gathering System, and the Mackenzie Valley Pipeline.
- The NEB's approvals of the Mackenzie Gathering System and Mackenzie Valley Pipeline both contain a sunset clause. This means that these approvals will expire on 31 December 2015, unless construction has started before then.
- As of 1 April 2014, regulatory responsibility over certain projects in the Northwest Territories (NWT) changed through devolution. This includes some, but not all, of the Mackenzie Gas Project. Specifically, some parts of the Mackenzie Gathering System and the development of the natural gas fields will either be regulated by the Board under NWT territorial legislation (which mirrors federal legislation), or by NWT itself under territorial legislation.

CURRENT STATUS:

- On 26 August 2015, IORVL has applied to extend the sunset clauses to 31 December 2022.
- On 26 August 2015, IORVL applied to the Board to extend the sunset clauses for the Mackenzie Valley Pipeline and the Mackenzie Gathering System to 31 December 2022.
- IORVL indicated that material changes to the projects are not planned.
- IORVL's application was accompanied by a letter from the Premier of the NWT encouraging IORVL to consider seeking an extension, as well as letters of support from



ADVICE TO THE MINISTER

5.2

ISSUES REQUIRING EARLY ATTENTION

the Inuvialuit Regional Corporation, Gwich'in Tribal Council, and the Tulita Land/Financial Corporation.

ANALYSIS:

- A Panel, a quorum of three Board Members, has been established to review this request.
- On 26 October 2015, the Board sent a letter to IORVL explaining that NWT now has jurisdiction with respect to certain components of the Mackenzie Gas Project.

NEXT STEPS:

- NEB Staff will brief NRCan prior to any major decisions being publically released.

**NEB REGULATED COMPANIES****APPENDIX 6.1****BACKGROUNDER**

	COMPANY NAME	COMMODITY	OWNERSHIP (PUBLIC/PRIVATE)
1	1057533 Alberta Ltd.	Oil	Private
2	Aurora Pipe Line Company Ltd.	Oil	Public
3	Canadian Natural Resources Limited	Oil	Public
4	Enbridge Bakken Pipeline Company Inc., on behalf of Enbridge Bakken Pipeline Limited Partnership	Oil	Public
5	Enbridge Pipelines (NW) Inc.	Oil	Public
6	Enbridge Pipelines (Westspur) Inc.	Oil	Public
7	Enbridge Pipelines Inc.	Oil	Public
8	Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP	Oil	Public
9	Express Pipeline Ltd.	Oil	Public
10	Genesis Pipeline (Canada) Ltd.	Oil	Private
11	Glencoe Resources Ltd.	Oil	
12	Husky Oil Operations Limited	Oil	Public
13	Imperial Oil Resources Ventures Limited	Oil	Public
14	ISH Energy Ltd.	Oil	Private
15	Kinder Morgan Cochin ULC	Oil	Public
16	Montreal Pipe Line Limited	Oil	Private
17	NOVA Chemicals (Canada) Ltd.	Oil	Private
18	Pembina Energy Services Inc.	Oil	Public
19	Plains Midstream Canada ULC	Oil	Public
20	Pouce Coupé Pipe Line Ltd.	Oil	Public
21	Ruger Energy Inc.	Oil	Public
22	SCL Pipeline Inc.	Oil	Public
23	Spectra Energy Empress Management Inc. as General Partner and Agent for Spectra Energy Empress LP	Oil	Public
24	Strategic Transmission Ltd.	Oil	Public
24	Sunoco Logistics Partners Operations GP LLC on behalf of Sunoco Pipeline LP	Oil	Public
25	Trans Mountain Pipeline ULC	Oil	Public
26	TransCanada Keystone Pipeline GP Ltd.	Oil	Public
27	Trans-Northern Pipelines Inc.	Oil	Private
28	Venturion Oil Limited	Oil	Private

**NEB REGULATED COMPANIES****APPENDIX 6.1****BACKGROUNDER**

29	Whitecap Resources Inc. (pipeline purchased from Imperial Oil Resources Limited)	Oil	Public
30	1057533 Alberta Ltd.	Natural Gas	Private
31	2193914 Canada Limited	Natural Gas	Public
32	6720471 Canada Ltd. (ATCO)	Natural Gas	Public
33	Alliance Pipeline Ltd.	Natural Gas	Public
34	AltaGas Holdings Inc. for and on behalf of AltaGas Pipeline Partnership	Natural Gas	Public
35	Apache Canada Ltd.	Natural Gas	Public
36	ARC Resources Ltd.	Natural Gas	Public
37	Bellatrix Exploration Ltd	Natural Gas	Public
38	Bonavista Energy Corporation	Natural Gas	Private
38	Bow River Energy Limited	Natural Gas	Private
40	Canada Border Services Agency	Natural Gas	Crown
41	Canadian Natural Resources Limited	Natural Gas	Public
42	Canadian-Montana Pipe Line Company	Natural Gas	Private
43	Centra Transmission Holdings Inc.	Natural Gas	Public
44	Champion Pipe Line Corporation Limited	Natural Gas	Public
45	Chief Mountain Gas Co-op Ltd.	Natural Gas	Public
46	ConocoPhillips Canada Operations Ltd.	Natural Gas	Public
47	County of Vermilion River No. 24 Gas Utility	Natural Gas	Crown
48	Crescent Point Energy Corp.	Natural Gas	Public
49	Delphi Energy Corporation	Natural Gas	Public
50	DR Four Beat Energy Corp.	Natural Gas	Private
51	Emera Brunswick Pipeline Company Ltd.	Natural Gas	Public
52	EnCana Corporation	Natural Gas	Public
53	Enerplus Corporation acting on behalf of the Enerplus Partnership	Natural Gas	Public
54	ExxonMobil Canada Properties	Natural Gas	Private
55	Foothills Pipe Lines Ltd.	Natural Gas	Public
56	Fortis B.C. Huntingdon Inc.	Natural Gas	Public
57	Glenogle Energy Inc. (previous owner Bonavista Energy Corporation)	Natural Gas	Private
58	Husky Oil Operations Limited	Natural Gas	Public
59	Ikkuma Resources Corporation	Natural Gas	Public
60	Lone Pine Resources Canada Limited	Natural Gas	Private
61	Many Islands Pipe Lines (Canada) Limited	Natural Gas	Public

**NEB REGULATED COMPANIES****APPENDIX 6.1****BACKGROUNDER**

62	Maritimes & Northeast Pipeline Management Ltd.	Natural Gas	Public
63	Mid-Continent Pipelines Limited	Natural Gas	Public
64	Minell Pipeline Limited	Natural Gas	Crown
65	Murphy Oil Company Ltd.	Natural Gas	Public
66	Niagara Gas Transmission Limited	Natural Gas	Public
67	Northern Blizzard Resources Inc.	Natural Gas	Public
68	NOVA Gas Transmission Ltd.	Natural Gas	Public
69	NuVista Energy Ltd.	Natural Gas	Public
70	Omimex Canada, Ltd.	Natural Gas	Private
71	ONEOK Rockies Processing Company (Canada) Ltd.	Natural Gas	Public
72	Paramount Transmission Ltd.	Natural Gas	Public
73	Pengrowth Corporation	Natural Gas	Public
74	Penn West Petroleum Ltd.	Natural Gas	Public
75	Pine Cliff Border Pipelines Limited (formerly Spur Border Pipelines Limited)	Natural Gas	Public
76	Plains Midstream Canada ULC	Natural Gas	Public
77	Portal Municipal Gas Company Canada Inc.	Natural Gas	Crown
78	Seaview Energy Inc.	Natural Gas	Public
79	Shiha Energy Transmission Ltd.	Natural Gas	Private
80	Spectra Energy Midstream Canada Partner Corporation	Natural Gas	Public
81	Spyglass Resources Corp.	Natural Gas	Public
82	St. Clair Pipelines Management Inc.	Natural Gas	Public
83	Tamarack Acquisition Corp. (formerly Echoex Energy Ltd)	Natural Gas	Public
84	TAQA North Ltd.	Natural Gas	Public
85	Terra Energy Corp.	Natural Gas	Public
86	Trans Québec and Maritimes Pipeline Inc.	Natural Gas	Public
87	TransCanada PipeLines Limited	Natural Gas	Public
88	Union Gas Limited	Natural Gas	Public
89	Vector Pipeline Limited Partnership	Natural Gas	Public
90	Venturion Oil Limited	Natural Gas	Private
91	Veresen Energy Infrastructure Inc.	Natural Gas	Public
92	Westcoast Energy Inc., carrying on business as Spectra Energy Transmission	Natural Gas	Public

**NEB REGULATED COMPANIES****APPENDIX 6.1****BACKGROUNDER**

93	Yoho Resources Inc.	Natural Gas	Public
93	Algonquin Tinker Gen Co	Electricity	Public
93	BC Hydro and Power Authority	Electricity	Crown
94	Canada Border Services Agency	Electricity	Crown
95	Canadian Niagara Power Inc.	Electricity	Private
96	Canadian Sandpoint Power Association	Electricity	Private
97	Canadian Transit Company	Electricity	Private
98	Cedars Rapids Transmission Limited	Electricity	Crown
99	Detroit & Windsor Subway Company	Electricity	Not available
100	FortisAlberta Inc.	Electricity	Public
101	FortisBC Inc.	Electricity	Public
102	Grand Trunk Western Railroad Company	Electricity	Public
103	H2O Power G.P. Inc. /Commandité H2O Énergie Inc. on behalf of H2O Power Limited Partnership /Société en Commandite H2O Énergie	Electricity	Private
104	Hydro One Networks Inc.	Electricity	Crown
105	Hydro-Quebec TransÉnergie	Electricity	Crown
106	Lac La Croix Power Authority	Electricity	Not available
107	Manitoba Hydro	Electricity	Crown
108	Montana Alberta Tie Ltd.	Electricity	Public
109	Mr. William C. Heydlauff and Mr. Joe Saville	Electricity	Private
110	New Brunswick Power Transmission Corporation	Electricity	Crown
111	Niagara Mohawk Power Corporation d/b/a National Grid	Electricity	Public
112	Ontario Power Generation Inc.	Electricity	Crown
113	Roseau Electric Cooperative Inc.	Electricity	Private
114	Saskatchewan Power Corporation	Electricity	Crown
115	Shawinigan Water & Power Company	Electricity	Crown
116	Southern Canada Power	Electricity	Crown
117	Teck Metals Ltd.	Electricity	Public
118	TransAlta Utilities Corporation	Electricity	Public
119	TransCanada Energy Ltd.	Electricity	Public
120	Twin Rivers Paper Company Inc.	Electricity	Private
121	West Kootenay Power Limited	Electricity	Public
122	Genesis Pipeline (Canada) Ltd.	Brine	Private

**NEB REGULATED COMPANIES****APPENDIX 6.1****BACKGROUNDER**

123	Souris Valley Pipeline Limited	Carbon Dioxide	Private
124	Domtar Inc. (formerly E.B. Eddy Company)	Effluent/Steam	Public
125	Genesis Pipeline (Canada) Ltd.	Ethane	Private
126	Vantage Pipeline (c/o Pembina Prairie Facilities Ltd.)	Ethane	Public
127	1057533 Alberta Ltd.	Fresh Water	Private
128	Whitecap Resources Inc. (pipeline purchased from Imperial Oil Resources Limited)	Fresh Water	Public
129	Plains Midstream Canada ULC	Natural Gas Liquids	Public
130	Shell Canada Limited (SCL) Pipeline Inc.	Natural Gas Liquids	Public
131	Spectra Energy Empress Management Inc.	Natural Gas Liquids	Public
132	TAQA North Ltd.	Natural Gas Liquids	Private
133	Penn West Petroleum Ltd.	Oil Emulsion	Public
134	Tundra Oil & Gas Limited for and on behalf of Tundra Oil & Gas Partnership	Oil Well Effluent	Private
135	Canadian Natural Resources	Other	Public
136	BlackPearl Resources Inc.	Produced Water	Public
137	Twin Rivers Paper Company Inc.	Pulp mill effluent	Private
138	Husky Oil Operations Limited	Salt Water	Public
139	Abitibi-Consolidated Company of Canada	Water, Steam	Public

***ADVICE TO THE MINISTER******APPENDIX 6.2*****BACKGROUND**

Security/Sécurité: Protected B

Date: 4 November 2015

NEB & PIPELINE TOLLS AND TARIFFS

- Pursuant to Part IV of the *NEB Act*, the NEB oversees and approves the tolls and tariffs¹ of pipelines to ensure that they are “just and reasonable”, and not unjustly discriminatory.
- The NEB has considerable latitude in setting tolls. For companies that operate larger, more extensive systems and typically have many customers (known as Group 1 companies), tolls are mainly set by:
 - Adjudication by the Board in a manner which allows the pipeline to recover all of its prudently-incurred costs including a reasonable return on investment (return on equity and return on debt); or
 - Approval by the Board of settlements that the companies have negotiated with their shippers and other stakeholders independently of the NEB.
- The NEB adjudication process requires a detailed tolls application to be filed by a company, which usually leads to a formal public hearing before a panel of the Board. After hearing the evidence and arguments of all parties, the panel will issue its Reasons for Decision on all matters examined during the hearing.
- If the company and its shippers are able to achieve a negotiated settlement outside of the hearing process, the pipeline company will file a document that details the terms of the settlement and request Board approval. The Board will assess the settlement against its *Guidelines for Negotiated Settlements* to ensure that the settlement yields just and reasonable tolls and that no terms are contrary to the Settlement Guidelines. The Board will also solicit comments from the company’s shippers and stakeholders to ensure that all parties support the settlement. The Board will then issue a decision approving or rejecting the settlement.
- The majority of Group 1 companies are currently operating under settlements that they have negotiated with their customers.
- For companies that operate smaller, less complex pipelines (known as Group 2 companies), tolls are regulated on a complaint basis. The tolls are set by the company and filed with the NEB. The company must provide its customers with financial information and copies of the tariff. If a complaint is received, a panel of the Board will then review the matter. Otherwise, the Board may presume the tolls to be just and reasonable.
- The Board does not oversee the tolls or rates on the international power lines that it regulates. That function falls under provincial jurisdiction.

¹ Tariffs contain the terms and conditions under which transportation service is provided.

**ADVICE TO THE MINISTER****APPENDIX 6.3****BACKGROUNDER**

Security/Sécurité: Protected B

Date: 4 November 2015

NEB & COST RECOVERY

- The NEB receives its annual appropriations from Parliament through the Main Estimates process. This includes baseline funding as well as temporary funding for specific purposes (e.g., sunsetters).
- The NEB then recovers most of its appropriations from NEB-regulated companies, on behalf of government.
- Cost recovered funds are deposited directly into government's Consolidated Revenue Fund.
- The NEB Act provides that the NEB may, subject to Treasury Board approval, make regulations for recovering the costs related to its work from companies it regulates under the NEB Act.
- Currently, the NEB recovers approximately 95 per cent of the appropriations that it receives from Parliament from companies regulated under the NEB Act.
- The NEB does not currently recover costs related to its work under the *Canada Oil and Gas Operations Act* (COGOA) and the *Canadian Petroleum Resources Act* (CPRa). The *Energy, Safety and Security Act*, which comes into force 26 February 2016, will allow regulations to be made for the NEB to recover these costs.

s.21(1)(a)

s.21(1)(b)

- The *National Energy Board Cost Recovery Regulations* (Cost Recovery Regulations) set out how the NEB can recover costs from companies regulated under the NEB Act.
- The Cost Recovery Regulations divide companies regulated under the NEB Act into large, medium and small categories. Large companies are those who have an annual cost of service (annual cost of providing the facilities to transport hydrocarbons) of \$1 million.
- The Cost Recovery Regulations provide for the following types of cost recovery:
 - Proportional levies for large companies calculated using a formula based on:
 - the amount of annual company throughput by commodity (oil, gas, electricity); and
 - the amount of time NEB staff spend working in a commodity area.
 - Fixed administrative levies for small and medium companies, as well as commodity pipelines (e.g., water, steam, and CO₂); and
 - A percentage levy (0.2% of estimated construction costs) for companies not previously regulated under the NEB Act.

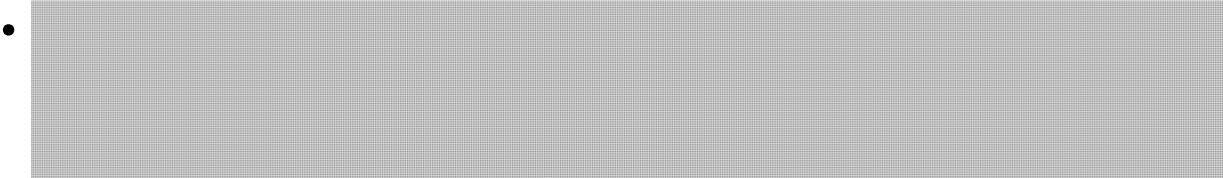
Page 1 of 2

ADVICE TO THE MINISTER**Peter Watson, Chair/CEO of the National Energy Board****PHONE NUMBER: (403) 299-2724**

A0010776_106-000106



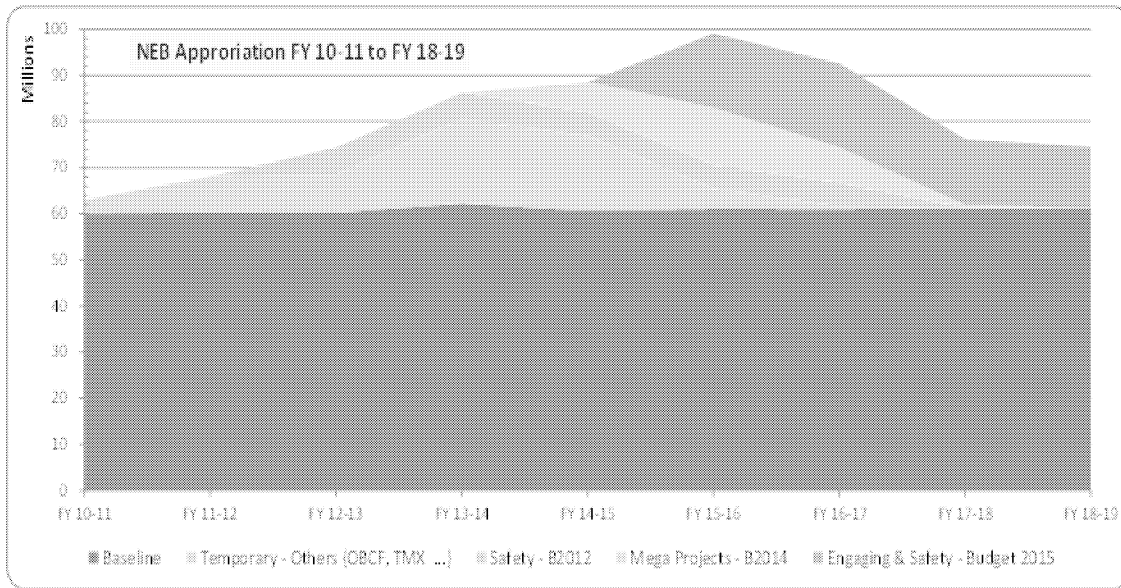
BACKGROUNDER



s.21(1)(a)

s.21(1)(b)

FIGURE 1: NEB Appropriation



**CURRENT LITIGATION (4 November 2015)****APPENDIX 6.4****BACKGROUNDER**

PROJECT NAME	Description of Challenge	Parties	Court Filing Date	Court and Docket Number	Summary	Current Status
TransCanada PipeLines Limited's Niagara Line	Leave to appeal, or alternatively, judicial review related to the Board's decisions on a landowner complaint.	<i>James Juras v. TransCanada PipeLines Limited</i>	2015-08-07	Federal Court of Appeal A-350-15	The applications cite concerns with, among other things, TransCanada's reclamation work on the applicant's property in Ontario, and the Board's decisions related to those activities.	No update
Enbridge Northern Gateway (OH-4-2011)	Applications for judicial reviews of the Joint Review Panel Report	<i>ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation (A-56-14); Haisla Nation (A-63-14); Gitxaala Nation (A-64-14); BC Nature (A-59-14); Gitga'at First Nation (A-67-14) v. Northern Gateway Pipelines Limited Partnership and others</i>	2014-01-17 2104-01-20	Federal Court of Appeal Consolidated file number: A-437-14 Consolidated short form name: Gitxaala Nation and others v. Canada (A-G) and others	The applicants filed judicial review applications related to the JRP report. The applications raise issues relating to findings of fact made by the Panel; upstream and downstream economic effects; alleged breaches of the CEAA, 2012 and the <i>Species at Risk Act</i> ; the adequacy of Crown consultation and First Nations rights and title	By order of the Court on 17 December 2014, the 9 applications for judicial review of the JRP report, the 5 applications for judicial review of the GIC decision, and the 4 appeals on the issuance of the NEB Certificates, were consolidated. The Court has set the consolidated matters down for a six-day

***CURRENT LITIGATION (4 November 2015)******APPENDIX 6.4*****BACKGROUNDER**

						hearing, which took place in early October 2015 in Vancouver, BC
Enbridge Line 9B (OH-002-2013)	Application for leave to appeal the NEB's decision on Line 9B	<i>Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., NEB, Canada (A-G)</i>	2014-04-07 (leave) 2014-08-01 (appeal)	Federal Court of Appeal A-358-14	The applicants applied for leave to appeal the NEB's decision on Line 9B. Issues raised include the Crown's duty to consult and accommodate. The Court granted leave on 4 June 2014	A one-day hearing was held in Toronto, ON, on 16 June 2015. Waiting for the Court's decision.
Trans-Mountain Expansion Project (OH-001-2014)	Leave to Appeal Hearing Order OH-001-2014	<i>Tsleil-Waututh Nation v. NEB, Trans Mountain Pipeline ULC, and Canada (A-G)</i>	2014-05-02 (leave) 2014-09-08 (appeal)	Federal Court of Appeal A-386-14	The applicants applied for leave to appeal the issuance of the Hearing Order for this project. Issues raised included errors of law or jurisdiction; the adequacy of Crown consultation and accommodation; compliance with CEAA, 2012; and duty of fairness owed to participants in the hearing. The Court granted leave on 10 July 2014.	One day hearing was held on 27 October 2015 in Vancouver, BC.

**CURRENT LITIGATION (4 November 2015)****APPENDIX 6.4****BACKGROUNDER**

Enbridge Northern Gateway (OH-4-2011)	Leave to appeal the NEB's issuance of Certificate	<i>ForestEthics Advocacy Association, Living Oceans Society and Raincoast Conservation Foundation (leave 14-A-38, appeal A-514-14); Haisla Nation (leave 14-A-51, appeal A-522-14); Gitxaala Nation (leave 14-A-50, appeal A-520-14); Unifor (leave 14-A-52, appeal A-517-14) v. Northern Gateway Pipelines Limited Partnership and others</i>	2014-07-11	Federal Court of Appeal Consolidated file number: A-437-14 Consolidated short form name: Gitxaala Nation and others v. Canada (A-G) and others	The applicants filed for leave to seek judicial review of the decisions of the GIC. Issues raised relate to alleged errors made by the JRP; the adequacy of Crown consultation and accommodation of First Nations; First Nations rights and title; and adequacy of GIC's reasons for its decision. The FCA granted the leaves on 26 September 2014	By order of the Court on 17 December 2014, the 9 applications for judicial review of the JRP report, the 5 applications for judicial review of the GIC decision, and the 4 appeals on the issuance of the NEB Certificates, were consolidated. The Court has set the consolidated matters down for a six-day hearing, which took place in early October 2015 in Vancouver, BC
Enbridge Northern Gateway (OH-4-2011)	Leave to seek a judicial review of the Governor-in-Council decision (The NEB is not a	<i>ForestEthics Advocacy Association, Living Oceans Society and Raincoast Conservation Foundation (leave 14-A-39, JR A-440-14); Haisla Nation (leave 14-A-45, JR A-447-14); Gitxaala Nation (leave 14-A-41, JR A-437-14); BC Nature</i>	2014-07-11	Federal Court of Appeal Consolidated file number: A-437-14 Consolidated short form	The applicants filed for leave to seek judicial review of the decisions of the GIC. Issues raised relate to alleged errors made by the JRP; the adequacy of Crown consultation and accommodation of First	By order of the Court on 17 December 2014, the 9 applications for judicial review of the JRP report, the 5 applications for judicial review of the GIC decision, and the 4 appeals on the

***CURRENT LITIGATION (4 November 2015)******APPENDIX 6.4*****BACKGROUNDER**

	respondent	<i>(leave 14-A-43, JR A-443-14); Unifor (leave 14-A-44, JR A-442-14); Gitga'at First Nation (leave 14-A-46, JR A-445-14); Kitasoo Xai'Xais Nation, and Heiltsuk Nation (leave 14-A-42, JR A-448-14); Nadleh Whut'en Band and Nak'azdli Band (leave 14-A-48, JR A-439-14); Haida Nation (leave 14-A-47, JR A-446-14) v. Northern Gateway Pipelines Limited Partnership and others</i>		name: Gitxaala Nation and others v. Canada (A-G) and others	Nations; First Nations rights and title; and adequacy of GIC's reasons for its decision. The FCA granted the leaves on 26 September 2014.	issuance of the NEB Certificates, were consolidated. The Court has set the consolidated matters down for a six-day hearing, which took place in October 2015 in Vancouver, BC.
--	------------	--	--	--	--	---



BACKGROUND

Security/Sécurité: Protected B

Date: 4 November 2015

NEB & PIPELINE SAFETY ACT

- The *Pipeline Safety Act* (Bill C-46) seeks to amend the *National Energy Board Act* (NEB Act) and, to a much lesser extent, the *Canada Oil and Gas Operations Act* (COGOA).
- Safety and environmental protection are the NEB's top priorities. Legislative changes that strengthen safety and environmental protection align well with the NEB's strategic goals, and the NEB supports measures that strengthen our processes and those of the companies we regulate.
- The Bill contains a variety of major components:

Financial Liability and Resources ("Polluter Pays Principle")

- Absolute liability of at least \$1 billion for companies authorized to construct and operate a pipeline or pipeline system that individually or in aggregate has the capacity to transport at least 250,000 barrels of oil per day. This is expected to capture all Group 1 companies.
- Absolute liability for all other NEB-regulated companies or classes of companies will be established in Governor-in-Council (GIC) regulations.
- Each company must maintain financial resources to pay the absolute liability limit that applies to it, or any greater amount that the Board specifies, until leave to abandon is granted. GIC may set in regulation the portion of a company's financial resources that must be readily accessible to the company.
- Companies may meet all or a portion of their financial resources obligations through participation in a pooled fund that is established by industry and subject to GIC regulations.
- The Board may order a company that has an unintended or uncontrolled release to reimburse any federal, provincial, or municipal government institution, any Aboriginal governing body, or any person reasonable costs and expenses incurred while taking actions or measures in relation to the release. This amount can exceed the absolute liability amount that applies to the company.
- These new financial obligations would apply to both existing pipelines and new applications.
- Companies still have unlimited liability when proven in the courts to be at fault or negligent.

**ADVICE TO THE MINISTER****APPENDIX 6.5****BACKGROUNDER*****Designated Companies***

- If a company does not have, or is unlikely to have, the financial resources to pay expenses related to a release or is not complying with Board Orders related to that release, GIC can “designate” that company. Upon designation, the NEB can take any action or measure it considers necessary in relation to the release or authorize a third party to do so.
- GIC may establish a pipeline claims tribunal to adjudicate compensation claims related to the release caused by a designated company. The NEB will provide administrative support for the tribunal and pay its costs and awards (with reimbursement from the federal budget).

Abandonment

- Currently, companies must apply to the NEB in order to abandon a pipeline. The NEB then holds a public hearing to decide whether the abandonment would be in the public interest. If so, the NEB issues an Order that usually includes conditions that must be met before abandonment is complete, which the NEB verifies through submissions, site-inspections, and audits. All costs associated with the abandonment are paid by the company, including clean-up of the surrounding area.
- Bill gives the NEB jurisdiction to prevent, mitigate, and remediate any post-abandonment impacts, and also provide that companies would remain liable for post-abandonment costs and damages.
- Authority for the NEB to assume control of abandonment or an abandoned pipeline if a company is not complying with a Board Order. Funds would be available from money or securities set aside by the company.
- New provisions include: new definition of “abandoned pipeline”, new authority for the Board to make regulations in this area, new powers and scope for Board Orders and conditions, and new powers for inspection officers.

Damage Prevention

- The Bill establishes a positive obligation: “no person shall construct a facility across, on, along or under a pipeline or cause a ground disturbance within the prescribed area unless it is authorized by the regulations and done in accordance with them.”
- 30 meter safety zone around pipelines will no longer be in the Statute. Instead, the regulations can specify the safety zone and, if desired, align with provincial regulations.
- The Bill gives the NEB authority to create damage prevention regulations for COGOA pipelines.
- The Bill’s damage prevention provisions will complement and build upon the process already underway for amending the *National Energy Board Pipeline Crossing Regulations, Parts I and II*. Only minor changes to the proposed regulatory amendments are expected to be needed in order to make them consistent with the Bill.



BACKGROUNDER

Inspection and Enforcement

- Inspection Officer powers expanded to include ability to direct a company or person causing a ground disturbance or constructing a facility to provide information orally or in writing.
- Bill confirms that inspection powers include the power to conduct audits.
- Current inspection and enforcement authorities in COGOA are limited to preventing “serious bodily injury.” The amendments would extend enforcement powers to environmental protection, safety, and security, and set a lower threshold for the use of those powers.

Additional Changes

- New 6 month time limit for consideration of oil and gas export licences upon receipt of a complete application (NEB determines when an application is complete). Clock stops when the NEB requires the company to provide additional information, and extensions are possible (i.e. Minister can extend by 3 months, and GIC can extend by another 3 months). To date, the NEB has processed oil and gas export licences in less than 6 months, and will work diligently to address the current influx of license applications in a timely manner.
- Eliminates GIC approval for name changes and ownership transfers of certificates and licences (except where terms and conditions are imposed).
- NEB reporting cycle amended to follow the fiscal year rather than the calendar year.
- Removal of mandatory retirement age for Board Members.