
REPORT TO COMMON COUNCIL

February 2, 2015

His Worship Mayor Mel Norton
And Members of Common Council



The City of Saint John

Your Worship and Members of Council,

SUBJECT: RECOMMENDATION TO SEEK FORMAL INTERVENOR STATUS IN THE FORTHCOMING NATIONAL ENERGY BOARD (NEB) ENERGY EAST PROJECT HEARING.

PURPOSE

The purpose of this report is to update Common Council with respect to the National Energy Board (NEB)'s forthcoming Energy East project hearing and recommend that the City of Saint John seek formal Intervenor status.

BACKGROUND

On 30 October 2014, Energy East Pipeline Ltd. (EEPL), a wholly owned subsidiary of TransCanada Oil Pipelines (Canada) Ltd., submitted an application to the NEB for the proposed Energy East project:

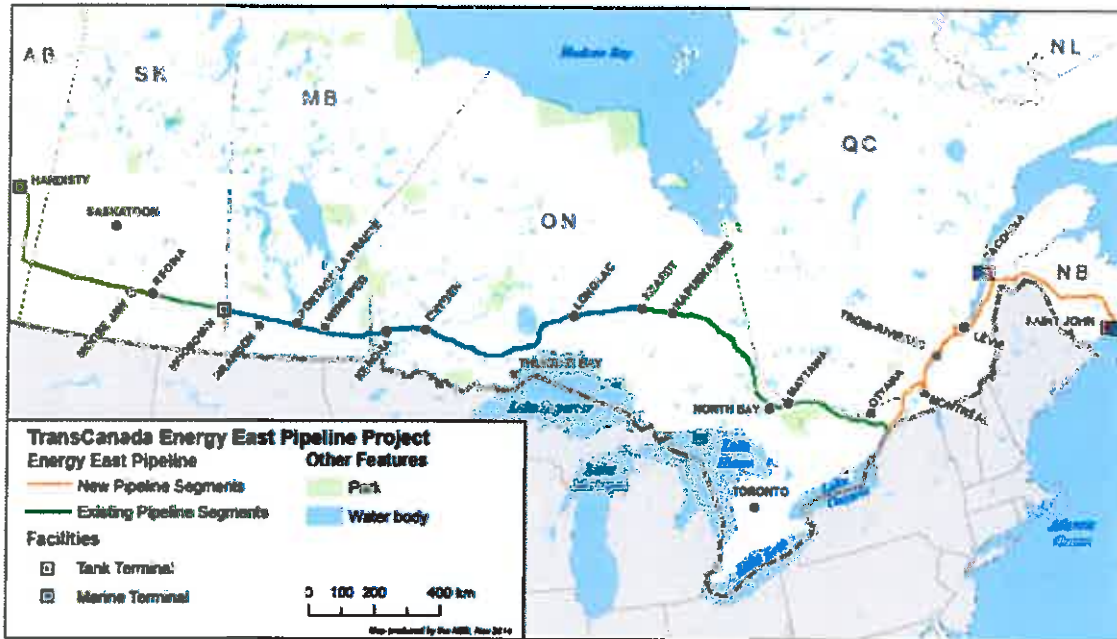
The proposed project would include:

- Converting an existing natural gas pipeline to an oil transportation pipeline;
- Constructing new pipeline in Alberta, Saskatchewan, Manitoba, Eastern Ontario, Québec and New Brunswick to link up with the converted pipe; and
- Constructing the associated facilities, pump stations and tank terminals required to move crude oil from Alberta to Québec and New Brunswick, including marine facilities that enable access to other markets by ship.

Saint John, New Brunswick will serve as the eastern terminus for the pipeline and be home to a large tank storage facility and marine terminal. Irving Oil and TransCanada previously announced the formation of a joint venture to develop and construct the new Canaport Energy East Marine Terminal at Irving Canaport in Saint John. The 4,600-kilometre pipeline will carry 1.1-million barrels of crude oil per day from Alberta and Saskatchewan to refineries in Eastern Canada and export terminals in the Quebec City region and Saint John.

For more information visit: <http://www.energyeastpipeline.com/>

Energy East Pipeline Route:



Current Status of the NEB Energy East Regulatory Review Process:

The NEB Board is currently reviewing the Energy East Application for completeness – the Board has not yet made any determination on completeness.

Those who wish to participate in the hearing process for the Energy East project must apply to participate using the Application to Participate (ATP) form. The ATP form will be available online from the Board’s website for a period of four weeks from 3 February - 3 March 2015.

If the Board determines that the application is sufficiently complete, it will issue a Hearing Order along with the list of participants. The Hearing Order is a key document that outlines how the review will take place, the roles and responsibilities of participants and any associated timelines.

From the time that the Hearing Order is issued, the Board has up to 15 months to deliver its recommendation report to the government who then has another three months to review the recommendation and make the final decision.

During the hearing process, the Board will collect relevant information from those who are participants in the Board's process. Additional information with respect to the NEB's mandate and function is provided in **Attachment A**.

ANALYSIS

On 24 November 2014, Saint John Common Council passed the following resolution:

***WHEREAS** Council of the City of Saint John consider the TransCanada Energy East Pipeline project to be of the utmost importance to the Saint John Area by providing the area with the possibilities of economic and community development;*

***WHEREAS** Council of the City of Saint John feel that it is in the best interest of the citizens of Saint John to endorse said project;*

***WHEREAS** Safety and the environment are of utmost importance to Council and the City of Saint John;*

***BE IT RESOLVED** that the City of Saint John support the TransCanada Energy East Pipeline project;*

***AND BE IT FURTHER RESOLVED** that the City of Saint John work with TransCanada and the regulator to ensure that the pipeline is safely constructed in such a way as to protect the environment.*

The intent of Council's resolution was to illustrate the City's support in principle for the Energy East project and its anticipated economic and community benefits, but also clearly indicate that development cannot proceed without properly addressing associated project, environmental and public safety risks. The resolution also commits the City to work with both TransCanada and the regulator (NEB) to "*ensure that the pipeline is safely constructed in such a way to protect the environment.*"

City staff continues to engage the project proponents (TransCanada and Irving Oil) through direct and indirect means, including one-on-one meetings, attending public information sessions, representation on the Saint John True Growth Energy East Partners' Forum and representation on the recently established Energy East Community Liaison Committee.

Key staff observations include:

- TransCanada, in cooperation with Irving Oil, have held three local open houses with respect to the Energy East project and remain committed to on-going community and stakeholder engagement.

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- The City continues to engage with the proponents (TransCanada and Irving Oil) to seek clarity on the municipal land use planning issues and approvals.
 - There is on-going and positive dialogue with the Saint John Fire Department with respect to Energy East emergency preparedness and response issues, although primary emergency planning issues remain largely unresolved.
 - The Energy East Community Liaison Committee is now active, but the exchange of detailed project information remains limited.
 - The True Growth Energy East Partners Forum is largely focused on community-based project advocacy and the dissemination of project information / updates. The Partners Forum meets regularly and recently organized two special meetings focused specifically on land-based and marine public safety issues. The Energy Partners Forum model has now been duplicated in a number of other communities throughout New Brunswick and beyond.

The forthcoming NEB hearing process provides the City of Saint John with a critical opportunity to develop and present a strong and unified position with respect to (1) the optimization of community benefits, and (2) the mitigation of project risks.

Primary Energy East project considerations for the City of Saint John can be organized in five key themes:

1. land use planning;
2. managing / mitigating project risk (construction, operation and decommissioning);
3. public safety planning, preparedness and response;
4. optimizing local economic benefits; *and*
5. long-term community sustainability (managing overall community fiscal, operational and environmental impacts over the lifespan of the project).

The forthcoming NEB Hearing process provides a unique opportunity for the City of Saint John to present evidence to a Panel made up of three NEB Board Members. The Panel will consider all relevant information and evidence filed in reference to the Energy East Project. The Panel has over 16 years of regulatory leadership and experience with the NEB. Throughout the Energy East hearing process, the Panel will study the applications and all relevant information and evidence placed on the record.

NEB Energy East Panel Members are:

- Roland George (Presiding Member)
- Lyne Mercier
- Jacques Gauthier

Based on the 24 November 2014 Council resolution and the information we have received to date, including TransCanada's Energy East project application as filed with the NEB, staff recommend that the City of Saint John apply for formal Intervenor status within the 3 February – 3 March 2015 timeframe.

Should the City of Saint John be successful in its application for Intervenor status, the City will have the right to present evidence, actively participate in the hearing process and cross-examine the project applicant and other Intervenors.

There is also a critical requirement to directly align the City's interests with the NEB's list of Energy East Pipeline Project issues (as provided in **Attachment B**).

FINANCIAL CONSIDERATIONS

Active participation by the City of Saint John in the forthcoming NEB Energy East hearing will require a significant internal resource commitment and a coordinated planning and engagement approach by the City's Senior Leadership Team. A project review and planning team has been established, with leadership provided by the Commissioner, Growth and Community Development Services; the City's Fire Chief / Director SJEMO; and Commissioner, Strategic Services, with on-going support from the City Solicitor's Office and City Manager's Office.

Given the quasi-judicial and inter-provincial (multi-jurisdictional) nature of the NEB's regulatory review process, it is also recommended that the City retain external energy regulatory expertise should its application for Intervenor status be successful. This expertise is deemed essential in helping the City prepare, review, present, cross-examine and defend evidence as introduced during the hearing process. The City Solicitor's Office will be responsible for identifying, screening and securing external regulatory (legal) expertise using appropriate City of Saint John procurement procedures.

RECOMMENDATIONS FOR COUNCIL

The City Manager be directed to apply for formal Intervenor status for the City of Saint John in the forthcoming National Energy Board (NEB) Energy East project hearing.

The City Manager be directed to return to Council with regular NEB hearing updates, including advance notification of planned City of Saint John regulatory filings.

ATTACHMENTS

Attachment A: National Energy Board (NEB) Fact Sheet

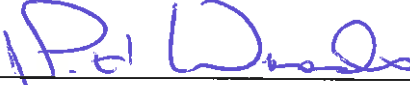
Attachment B: TransCanada Energy East Pipeline Project – NEB List of Issues

Respectfully submitted,

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Fire Chief / Director SJEMO
City of Saint John

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Attachment A: National Energy Board Fact Sheet

What is the National Energy Board?

The National Energy Board (NEB) is an independent federal agency established in 1959.

The NEB has quasi-judicial powers, with the rights and privileges of a superior court, established by the *National Energy Board Act* (NEB Act), and its decisions are all enforceable in law. For major applications and inquiries, the NEB holds public hearings at which parties must submit evidence into the public record and decisions must be based on the evidence submitted.

The National Energy Board does not create or debate federal energy policy. The Parliament of Canada and the elected officials therein have that mandate. The only way the NEB participates in the government's energy policy is if it is asked to provide expert opinion on energy matters that are subsequently used by the government in setting energy policy.

What is the NEB's mandate?

The NEB's purpose is to promote safety and security, environmental protection and efficient energy infrastructure and markets in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade.

The NEB's main responsibilities include regulating the construction and operation of interprovincial and international oil and gas pipelines, international power lines and designated interprovincial power lines. The NEB also regulates the tolls and tariffs for pipelines under its jurisdiction. With respect to the specific energy commodities, the NEB regulates the export of natural gas, oil, natural gas liquids (NGLs) and electricity, and the import of natural gas. In an advisory function, the NEB publishes periodic assessments to inform Canadians on trends, events and issues which may affect Canadian energy markets. Additionally, the NEB regulates oil and gas exploration and development on frontier lands and offshore areas not covered by provincial or federal management agreements.

The NEB's regulatory oversight extends over 71,000 kilometres of pipeline that crisscross most of our country, and approximately 1,400 kilometres of international power lines.

How does the NEB operate?

Applications are made to the NEB for any of the activities that the NEB regulates. After an application is submitted, the NEB will review it and determine whether a hearing is required and if so, whether it is to be a written or an oral hearing. A hearing will typically be held for certain types of applications, such as for new interprovincial or international pipelines over 40 kilometres in length (these are known as s. 52 facility applications or Part III applications, referring to the section and part of the NEB Act under which they are submitted).

To convene a hearing, the NEB issues a Hearing Order providing details on the hearing process, including how persons who are directly affected or who have relevant information or expertise can participate and the deadline to apply to participate. Further information is available on the

NEB's website in the [National Energy Board Hearing Process Handbook](#). Applications filed under s. 58 or Part IV of the NEB Act do not automatically trigger a public hearing.

The NEB's involvement in a project does not end with an approval. The NEB can attach any number of conditions to project approvals which it then monitors and enforces throughout the lifecycle of the project, from approval to abandonment.

What does the NEB consider when reviewing an application?

During the review of an application, the NEB considers all information that is relevant to the question of whether or not the application should be approved as it relates to the NEB's mandate and jurisdiction. For an application where a Hearing Order is issued, the NEB will typically include a List of Issues outlining what the NEB will consider.

How does the NEB protect the environment and ensure public safety of NEB-regulated projects?

Environmental Assessment

Since its inception in 1959, the NEB has always considered the environment when making regulatory decisions. The NEB's environmental responsibility includes ensuring environmental protection during planning, construction, operation and abandonment of facilities within its jurisdiction.

The NEB has approximately 50 Environment, Socio-Economic, Lands and Engagement Specialists deployed to teams throughout the organization. These specialists conduct environmental and socio-economic assessments, environmental inspections, audits of environmental management systems, lands administration and landowner complaint resolution.

Under the NEB Act, the NEB is required to consider matters of public interest as they may be affected by the granting of an application. The NEB has assumed a mandate for environmental protection as a component of the public interest and conducts environmental assessments as appropriate for each application. The *Canadian Environmental Assessment Act, 2012* (CEA Act 2012) provides an additional mechanism to ensure that projects receive appropriate levels of assessment before they proceed. The CEA Act 2012 sets out uniform requirements for environmental assessments by all federal government departments and agencies. As a "responsible authority" under the CEA Act 2012, the NEB ensures that appropriate environmental assessments are conducted for projects under its jurisdiction, according to standards prescribed by the legislation.

Environmental Protection & Safety

If a project is approved, the NEB expects the company to continue to protect the environment, public health and safety. The NEB confirms this by auditing and inspecting the company's construction activities, maintenance and monitoring procedures during the operation of the pipeline and its procedures during abandonment.

The NEB's environmental responsibility includes ensuring environmental protection during the planning, construction, operation and abandonment of energy projects within its jurisdiction.

When making its decisions, the NEB may take into consideration environmental concerns related to air, land and water pollution, disturbance of renewable and non-renewable resources, the integrity of natural habitats, the disruption of land and resource use, and the protection of landowner rights.

Safety is one of the top priorities at the NEB. The NEB is responsible for ensuring companies meet regulations on the safety of employees, public and environment as they may be affected by the design, construction, operation, maintenance and abandonment of a pipeline or international power line. The NEB works with the Canadian Standards Association to establish safety regulations and technical standards for federally regulated pipelines.

Additionally, through an agreement between the NEB and Human Resources and Social Development Canada, certain NEB staff members have been designated as Safety Officers for the occupational health and safety of pipeline company field staff. These health and safety duties are usually combined with other construction site and facility inspections.

To confirm that engineering, safety and environmental requirements are met, the NEB audits and inspects the construction and operation of pipelines. Since February 1987, NEB inspectors have also been responsible for enforcing Part II of the *Canada Labour Code*, applying to the occupational safety and health of pipeline workers in the field.

The NEB shares responsibility with the Transportation Safety Board (TSB) for incident investigation. The NEB investigates pipeline incidents to determine whether its regulations have been followed and if those regulations may need to be changed. The TSB investigates the cause and contributing factors. The NEB also monitors excavation activity by third parties near pipelines to ensure compliance with existing regulations.

The NEB holds companies accountable for results in the public interest using a rigorous compliance monitoring and enforcement program, which includes compliance audits and the inspection of construction and operating facilities. When a violation or an unsafe condition is detected, the NEB expects immediate correction and an assessment of the root causes in order to prevent the issue from happening again. Failure to address a violation or unsafe condition can result in further NEB sanction, such as suspension of operation.

What happens if there is a release?

The NEB's focus is on preventing accidents from happening in the first place. The NEB expects regulated companies to strive for zero spills or releases. However, should an incident occur, the NEB's top priority is the safety and security of people as well as the protection of the environment.

Each regulated company must maintain an up-to-date emergency procedure manual outlining the company emergency management procedures to be followed during an incident. The procedures must address emergency management, environmental protection, and worker and public safety. This plan must be on file with the NEB and the TSB.

Companies are responsible for reporting the incident to the TSB and the NEB and for implementing their emergency response plan. The NEB then initiates its incident response procedures, which may include activation of its Emergency Operations Centre where appropriate.

The NEB will verify that a company conducts an adequate and appropriate clean-up and remediation of any environmental effects resulting from the incident.

Attachment B: TransCanada Energy East Pipeline Project – NEB List of Issues

The National Energy Board (Board) has identified the following issues for its consideration in any upcoming proceeding with respect to the Energy East Pipeline Ltd (EEPL) proposed Energy East Project (Project).

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 of 575 TJ/d.
6. Transfer of Assets:
 1. The tests to be used to assess the sale and purchase of the assets.
 2. The assets to be transferred and any terms to be included.
 3. The value which should be assigned to the facilities for the purposes of:
 1. removal from the rate base of the TransCanada PipeLines Limited's natural gas mainline; and
 2. 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 Board will 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 the Project.
