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REPORT TO COMMON COUNCIL

September 14, 2015

His Worship Mayor Mel Norton
And Members of Common Council



The City of Saint John

Your Worship and Members of Council,

SUBJECT: UPDATE – PREPARATIONS FOR THE FORTHCOMING NATIONAL ENERGY BOARD (NEB) ENERGY EAST REGULATORY PROCESS.

PURPOSE

The purpose of this report is to update Common Council with respect to preparations for the National Energy Board (NEB)'s forthcoming Energy East regulatory process, including the retention of an external project resource and a series of project meetings scheduled for September 28-30.

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 potential export terminals in Quebec and Saint John.

TransCanada has indicated to the NEB that it anticipates filing and amending project in the fall of 2015 (Q4), including a final decision with respect to the inclusion of a Quebec marine terminal. Plans for a marine terminal at Cacouna, QC were put on hold earlier this year due to concerns over potential impacts to the region's Beluga whale population.

For more information on the current status of the Energy East Project visit:

<http://www.energyeastpipeline.com/>

Further information on the NEB's regulatory process can be found in the [National Energy Board Hearing Process Handbook](#).

BACKGROUND

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."

Details on the Energy East project and the anticipated Energy Board hearing process were provided in a previous report to Council dated February 2 2015. At that time, Council approved a resolution to seek formal intervenor status for the upcoming Energy Board hearings to be held in relation to the Energy East Project.

As part of the NEB regulatory process, it will be necessary for the City to present its interests as it relates to a specific “List of Project Issues” (see **Attachment A**) to be evaluated by a panel representing the NEB as part of its formal review of the Energy East project. The City’s formal application for Intervenor status (see **Attachment B**) addresses eight of the NEB’s issues under the following broad themes:

- optimizing local economic, social and community benefits;
- land use planning authority including managing / mitigating project risk (construction, operation and decommissioning);
- public safety planning, preparedness and response; and
- on-going engagement to ensure long-term community sustainability (managing overall community fiscal, operational and environmental impacts over the lifespan of the project).

STATUS

A City of Saint John Working Group (NEB Working Group) was established in February 2015 to provide coordination and advice to the City Manager and Council with respect to the Energy East Project and associated NEB regulatory process. The Working Group includes multi-disciplinary leadership as provided by the Commissioner, Growth and Community Development Services; the City’s Fire Chief / Director SJEMO; the Commissioner of Strategic Services; the City Solicitor; the CEO of Enterprise Saint John and the City’s Manager of Corporate Planning. Additional project support is being provided by the Common Clerk’s Office and City Manager’s Office.

In preparation for the forthcoming Energy East regulatory process, the Working Group is monitoring Energy East project developments and participating in the True Growth Energy East Partners Forum and Energy East Community Liaison Committee. In addition, the Working Group continues to conduct research on related economic development, public safety and land use planning issues, and engage (indirectly and directly) key project stakeholders, including the project proponents (TransCanada and Irving Oil).

The forthcoming NEB Hearing process will provide an opportunity for the City of Saint John to present evidence to a NEB Board Panel. The hearing process represents 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. Assuming that the City of Saint John is 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.

Given the quasi-judicial and inter-provincial (multi-jurisdictional) nature of the NEB’s regulatory review process, it was previously recommended to Council that the City retain external energy regulatory expertise. This expertise is deemed essential in helping the City prepare, review, present, cross-examine and defend evidence as introduced during the forthcoming hearing process.

As such, the NEB Working Group and City Manager recommend the retention of Gaétan Caron as an external resource in support of preparations for the forthcoming NEB regulatory process. Mr. Caron's unique work experience and qualifications, as well as his current research in the field of social acceptability of energy infrastructure, make him uniquely qualified to support the City's regulatory planning efforts (see Attachment C).

Mr. Caron was a recent keynote speaker at the inaugural East Coast Energy Connection conference held here in Saint John in early June, and impressed City staff with his experience, thoughtful and informed approach to explaining regulatory issues, and strong personal interest in our community's efforts to prepare for the forthcoming Energy East project hearing. It is our view that Mr. Caron will provide significant value and benefit to the City's regulatory planning efforts.

Subject to Council approval of his Professional Consulting Agreement, Mr. Caron will be in Saint John from September 28-30. The NEB Working Group will schedule a series of project meetings, including information gathering sessions focused on three key themes:

- economic development
- public safety
- land use planning

We would also like to use Mr. Caron's visit to the City to directly engage Council with respect to:

- the NEB regulatory process (overview and what to expect)
- the City's potential participation in the NEB's Energy East regulatory hearings
- Council's expectations and next steps

Finally, Mr. Caron will participate as facilitator in a community focus group, hosted by the NEB Working Group. The focus group will be comprised of a broad cross-section of representatives from the economic, social, environmental, academic and cultural communities. The session will include a discussion of:

- The NEB regulatory process (overview and what to expect)
- Opportunities for the community to effectively prepare for the NEB's Energy East regulatory hearings
- The importance of respecting diversity in community views and positions (key inputs into the regulatory process)
- Community expectations and next steps

Work completed during and as a follow-up to the September 28-30 meetings will provide an important foundation for the City's participation as a fully informed and engaged Intervenor in the forthcoming Energy East regulatory hearing process.

In addition, the City, through Common Council, will need to formalize the “conditions” by which our community can support the Energy East Project, recognizing Council’s previous direction 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.*”

FINANCIAL CONSIDERATIONS

Preparation by the City of Saint John for the forthcoming NEB Energy East hearing involves a significant on-going internal resource commitment and a coordinated planning and engagement approach by the entire NEB Working Group and City Manager.

External advisory services, including the retention of Gaétan Caron, are anticipated to cost in the range of \$20,000 to \$30,000 for the remainder of 2015 (including consulting fees and travel expenses). Mr. Caron’s work would be funded through existing expense categories from multiple Departments in fiscal 2015. The Working Group will incorporate anticipated 2016 NEB project expenditures as part of the City’s 2016 operating budget. It should also be noted that Mr. Caron is charging the City of Saint John (as a not-for-profit / government entity) a reduced hourly rate of \$180. His service proposal, through JEMF-X Inc., is attached as **Attachment D**.

RECOMMENDATIONS FOR COUNCIL

1. Approve the retention of Gaétan Caron as per the Professional Consulting Services Agreement from JEMF-X Inc. (**Attachment D**), and authorize its execution by the Mayor and Common Clerk.
2. Request that the Common Clerk schedule an opportunity for Gaétan Caron and the City’s NEB Working Group to present to Council on September 28, 2015.

ATTACHMENTS:

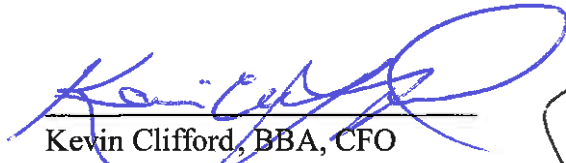
Attachment A: TransCanada Energy East Pipeline Project – NEB List of Issues

Attachment B: City of Saint John Application to the National Energy Board – Energy East Project Intervenor Status (As Approved By Saint John Common Council)

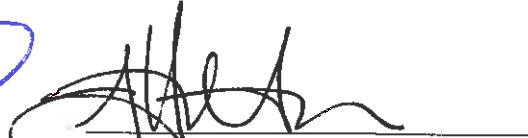
Attachment C: Gaétan Caron - Biography

Attachment D: JEMF-X - Proposed Professional Consulting Services Agreement

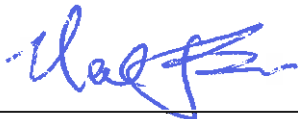
Respectfully submitted,



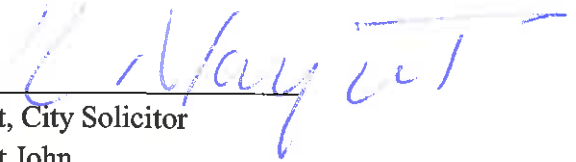
Kevin Clifford, BBA, CFO
Fire Chief / Director SJEMO
City of Saint John



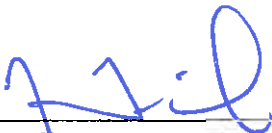
Jacqueline Hamilton, MCIP, RPP
Commissioner, Growth and
Community Development Services



Neil Jacobsen, MBA
Commissioner,
Strategic Services



John Nugent, City Solicitor
City of Saint John



Jeff Trail
City Manager
City of Saint John

Attachment A: 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.

Attachment B: City of Saint John Application to the National Energy Board – Energy East Project Intervenor Status (As Approved By Saint John Common Council)

1. As per a resolution adopted by Saint John Council on November 24 2014, the City supports the proposed Energy East project being developed in a sustainable and responsible manner. Construction of the tank and marine terminals is estimated by the project proponents to have a capital cost of \$805 million with an additional \$4.6 million spent by the approximately 470 construction workers. Once operational, 50 person-years of employment, \$38 million in expenditures, and \$5 million in municipal property taxes is anticipated annually. This project provides a key piece of infrastructure in the further development of the Saint John Energy Hub.
 2. The City is applying via the AP process as a Group (impacted Municipality) to be an Intervener at any hearing(s) before the National Energy Board (NEB), with respect to the Energy East Pipeline Ltd. proposed Energy East Project, and is presently considering the appointment of an Authorized Representative.
 3. The City considers itself to be a Directly Affected Person with respect to Issues no. 7,8,9,12,13,14,15 & 16 on the official NEB List of Issues.
 4. The City has an interest in ensuring the project maximizes the social, economic, and overall future community benefits. For example, the City seeks to ensure local industrial training and skill development programs are directly supported and to examine opportunities to create a legacy by accommodating temporary workers in existing accommodations in the community during the construction phases.
 5. The New Brunswick Marine Terminal Complex is located within the City's boundaries. The Tank Terminal component is proposed on land zoned Heavy Industrial and Rural. The City is the Land Use Approving Authority and would normally require a rezoning of Rural lands to permit construction of a significant portion of the Tank Farm.
 6. The City's Municipal Plan calls for a risk assessment to be completed for new heavy industrial facilities. There are approximately 181 residences located within 1.5km of the proposed Tank Terminal. Table A-3 in the NEB Filing Manual calls for detailed socio-economic information for Human Occupancy where a project is not proposed on a previously-developed facility site or on land currently zoned for industrial purposes. Demonstrating that adequate separation distances exist and/or appropriate mitigative measures can be adopted to accommodate the proposal, and protect public safety and the human and natural environment, are key considerations for this community.
 7. The City supports an integrated and comprehensive approach to the development of the Energy East Emergency Response Plan (ERP) which would ensure
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cumulative risk in the community, from the intensification of heavy industrial uses, is addressed. Understanding the existing and future response capability needs of our public safety services is fundamental to ensuring the ERP identifies and appropriately addresses all future service gaps, such as training and equipment. This approach is essential to ensure the emergency services can plan, prepare, and respond in order to protect public safety.

8. The City intends to engage the project proponents to enable ongoing and cooperative dialogue and ensure the City's long term interests are protected.

Attachment C: Gaétan Caron - Biography

Gaétan Caron joined the School of Public Policy of the University of Calgary as an Executive Fellow in July 2014. He also provides independent consulting services on energy and regulatory matters. This follows his seven-year tenure (2007 to 2014) as Chair and CEO of the National Energy Board (NEB) of Canada. Prior to his role as Chair and CEO, he served as Vice-Chair (2005 to 2007), Board Member (2003 to 2005) and member of the executive in various staff functions throughout the NEB, notably as Chief Operating Officer, Director of Financial Regulation and Director of Pipeline Engineering.

Gaétan has chaired major public hearings evaluating pipeline projects and offshore exploration for oil and gas, as well as tolls and tariffs of pipelines. He has spoken regularly at national and international conferences on the role of regulatory agencies in promoting safety, environmental protection and economic efficiency related to energy infrastructure. He has visited Aboriginal communities in the Canadian Arctic, seeking to understand Northern ways of life and incorporating Northern concerns about potential energy exploration and development in the NEB's regulatory actions. He has appeared before Parliamentary Committees to explain the NEB's activities and answer questions from elected officials on a broad range of energy and regulatory matters.

Gaétan has a Bachelor of Applied Sciences (Rural Engineering) from Laval University and an MBA from the University of Ottawa. He is a member of the Quebec Order of Engineers. He is Honorary Lifetime Member of the Canadian Association of Members of Public Utility Tribunals (CAMPUT) and Commissioner Emeritus with the National Association of Regulatory Utility Commissioners (NARUC). He has been active in campaigns, on the Board of Directors, and on a number of Committees of the Calgary United Way.

His current area of research at the School of Public Policy is social acceptability of energy infrastructure. He speaks publicly at various public events, and often responds to media queries on behalf of the School. He participates in the Extractive Resources Governance Program. He enjoys being engaged with students in the Masters' program as a sounding board helping students with their capstone projects and their career plans.

Attachment D: JEMF-X - Proposed Professional Consulting Services Agreement



1311 - 4001 49 ST NW
Calgary, AB T3A 2C9
gcaron@shaw.ca

September 9, 2015

Mr. Neil Jacobsen
Commissioner
City of Saint John
Strategic services - services stratégiques
PO Box 1971
Saint John, NB E2L 4L1

Re: Proposed Professional Consulting Services Agreement

Dear Mr. Jacobsen:

I understand that you are seeking consulting services with respect to the participation of the City of Saint John in the National Energy Board's regulatory review of the Energy East Project.

JEMF-X Inc. is pleased to submit the following proposal for the provision of professional consulting services. JEMF-X will provide advice and recommendations, as well as team facilitation services, on the following:

- informing the City of Saint John (Mayor, Council and Senior Staff) and key community stakeholders on the NEB regulatory process;
- defining key project risks and risk mitigation efforts;
- identifying and optimizing project benefits;
- shaping the conditions by which the community could support the project;
- assisting the City in:
 - negotiating a potential MOU with the project proponents; and,
 - participating in the regulatory process as an Intervenor.

The hourly rate for my professional consulting services is CAD \$180, plus Goods and Services Tax (GST). JEMF-X will issue a monthly electronic invoice accompanied by a timesheet, summary of work along with receipts for pre-approved expenses incurred (invoiced at cost) to you.

Expenses may include:

- when in travel status providing services to the City of Saint John outside of Calgary;
- travel by air (economy flex fare or equivalent);
- accommodation;

- local transportation;
- meals;
- copying, scanning, printing and courier services; and
- other reasonably incurred incidental costs.

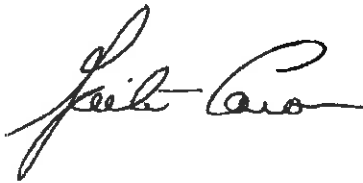
With a view to minimizing travel costs and time under this contract, JEMF-X proposes to use, when effective and available, video-conference, FaceTime, Skype or equivalent technologies.

I understand and agree that any information and documents which are shared with me concerning this engagement that are not otherwise public will be treated as confidential.

I suggest our agreement remain in effect until such time as either party chooses to terminate it subject to a 30-day advance written notice provided to the other party.

For the remainder of calendar year 2015, I estimate a range of 100-150 hours of professional services to be provided to the City of Saint John.

JEMF-X looks forward to working with you on this endeavour.



Gaétan Caron
President, JEMF-X Inc.

GST #: 82149 1834 RT0001

City of Saint John Approval of this Professional Consulting Service Agreement:

Common Clerk

Date

Mayor

Date