



INFORMATION SHEET FOR THE FIRST NATIONS OF QUEBEC AND LABRADOR

THE ENBRIDGE PIPELINE PROJECT INC.: FLOW REVERSAL AND INCREASE OF THE 9B PIPELINE'S CAPACITY



1. PROJECT DESCRIPTION

- Enbridge is an oil corporation based in Calgary (Alberta). It submitted a two-phase project to the National Energy Board (NEB) intended to reverse the flow of its '9' pipeline¹.

The main changes to the existing *pipeline* requested by Enbridge:

- Send oil to Quebec coming from western Canada and the U.S. mid-west. Since 1999, the flow runs from east to west, with oil coming mainly from the North Sea, East Africa and the Middle East². From 1976 (implementation of pipeline) to 1999, the flow ran from west to east³.
- Increase pipeline capacity from 240,000 to 300,000 barrels/day.
- Allow the transport of heavy crude (viscous oil with a high level of carbon and sulfur).

Goal: Meet commercial demand by sending oil⁴. Send oil from western Canada and the U.S. mid-west towards refineries in eastern Canada.

Phase I: Reverse the flow of the 9A pipeline, between Sarnia and North Westover (Ontario). Reversal approved by the NEB in July 2012.

Phase II: Reverse the flow of the 9B pipeline, between Sarnia (Ontario) and Montreal. Reversal approved by the NEB in March 2014.



- Overview of the project's progress:
 - The National Energy Board received Enbridge's request for the approval of its project on the 9B line in November 2012. The hearings concluded in October 2013.
 - ✓ The Mohawk Council of Kahnawá:ke took part in the NEB hearings⁵.
 - ✓ The Mohawk Council of Kahnawá:ke deposited a resolution adopted by its chiefs to the NEB⁶.
 - A parliamentary commission was held at the Quebec National Assembly from November 26 to December 4, 2013:
 - ✓ The Government of Quebec has not conducted an environmental assessment of the project. Instead it asked the *Commission de l'agriculture, des pêcheries, de l'énergie and des ressources naturelles* to study the acceptability of the Enbridge project⁷. The commission recommended the completion of the project, but set a list of conditions (See Section 2 of the present sheet).
 - ✓ The Mohawk Council of Kahnawá:ke and the traditional Mohawk Council each deposited a position paper to the commission⁸.
 - On March 6, 2014 the NEB publicly announced its decision to approve the 9B line project; this decision was issued with conditions⁹. In this project's case, the NEB holds the power on the final decision on the project's approval, and not the government¹⁰.

2. POSSIBLE ACTIONS WITH THE NEB FOLLOWING THE DECISION

- According to the NEB hearing process guide¹¹, there are two kinds of remedy before a final decision issued by the NEB:
 - ✓ The decisions made by the NEB can be the subject of an appeal in the Federal Court of Appeals.
 - ✓ There is also the possibility that the NEB reviews or modifies its decisions. The parties at the hearing have the right to ask the NEB to review a decision, but only if certain very specific requirements are met (See infra):
- Here is some information regarding the requirements to be met in order to request the review of an NEB decision according to the 'Practice and procedure rules of the National Energy Board'¹²:
 - Any request for review or a new hearing is formulated in writing, signed by the applicant or their duly appointed representative, submitted to the board and mentioned to each party in the initial procedure. The request contains the following elements:
 - ✓ A concise presentation of the facts;
 - ✓ The reasons that the applicant considers sufficient to question the soundness of the decision or order, in the case of a request for review, or to justify the holding of a new hearing, in the case of a request for a new hearing, namely:
 - An error in law or jurisdiction;
 - New facts or circumstances that have occurred since the closing of the initial procedure;
 - Facts that weren't presented as evidence during the initial procedure and which could not, with all due diligence, be discovered at that time.
 - ✓ The nature of the prejudice or damage resulting from the decision or order;
 - ✓ The nature of the requested reparation.



- When receiving a request for review or a new hearing, the Board can:
 - ✓ Reject the request if it judges that the applicant:
 - Has not raised doubt about the soundness of the Board decision or order, in the case of a request for review;
 - Has not demonstrated the necessity of a new hearing, in the case of a request for a new hearing.
 - ✓ Render an order acceding to the request for review or new hearing and renders any other order it considers fair and reasonable.

- Before rendering the decision on the request for review or new hearing, the Board can:
 - ✓ Provide instructions inviting those interested to present position papers and indicating the procedural terms of their presentation; these position papers specify:
 - In the case of a request for review, if a doubt has been raised about the soundness of the Board decision or order or, in the case of a request for a new hearing, if a new hearing is required;
 - If applicable, confirm, modify or overrule the Board decision or order or hear the request again;
 - If applicable, grant the requested decision or order.
 - ✓ Determine that a review or new hearing is required and provide instructions inviting those interested to present position papers and indicating the procedural terms of their presentation; these position papers specify:
 - In the case of a request for review, if applicable, confirm, modify or overrule the Board decision or order or, in the case of a request for new hearing, if applicable, hear the request again;
 - If applicable, grant the requested decision or order.

- Application for suspension:
 - ✓ Any party can ask the Board to render an order to suspend the execution of the decision or order for which the review is requested or suspend the initial procedure, according to the case, until completion of the review or the new hearing.
 - ✓ When an authorization request for appeal is presented at the Federal Court of Appeals, any party can ask the Board to render an order to suspend the execution of the decision or order targeted by the appeal until the appeal has been settled.
 - ✓ The request for suspension is formulated in writing, signed by the applicant or their authorized representative, deposited to the Board and intimated to each party in the initial procedure.
 - ✓ When receiving a request for suspension, the Board can, according to the case:
 - Order a suspension of the decision, order or initial procedure;
 - Reject the request for suspension;
 - Provide instructions on the procedural terms of the presentation of position papers by interested parties, in which it indicates if it will grant a suspension.



3. PORTRAIT OF CERTAIN LEGAL ASPECTS ADDRESSED BY OTHER FIRST NATIONS FOR SIMILAR PROJECTS

- The Haisla and Gitxaala First Nations (British Columbia) and their lawsuit against the approval of the Enbridge Northern Gateway pipeline project:
 - Class action suit led (among others) by the Haisla and Gitxaala First Nations, by the organization Écojustice, by the University of Victoria Environmental Law Centre (2014).
 - To consult the application notice deposited by the Haisla Nation to the Federal Court of Appeal:
<http://nwcoastenergynews.com/wp-content/uploads/2014/01/Fed.-Court-of-Appeal-Filed-Notice-of-Application.pdf>

- The *Yinka Dene Alliance* brings together First Nations of Alberta and British Columbia to mobilize and use legal means in order to prevent the completion of the Enbridge Northern Gateway pipeline project:
<http://www.holdthewall.ca/>

- The opportunities raised by the report “Forging Partnerships, Building Relationships: Aboriginal Canadians and Energy Development”¹³ and the participation of First Nations in the development of the energy sector... What can the First Nations of Quebec learn from this? What could we learn from the case of Enbridge’s 9B line? Here are some recommendations proposed in the report:
 - ✓ Canada should promote a principled dialogue about resource development with Aboriginal communities in Alberta and British Columbia. This can be accomplished, in conjunction with provincial and local governments and industry, by convening conferences, workshops, and community forums to improve knowledge about the energy sector and major projects.
 - ✓ Where federal jurisdiction is engaged, Canada should participate in regional planning with provincial governments, Aboriginal communities, local governments, and other stakeholders to effectively assess cumulative effects and encourage sustainable development.
 - ✓ Canada should coordinate and convene the participation of key stakeholders including Aboriginal groups, governments, industry, non-governmental organizations, and scientists, to advance pipeline and marine safety and strategies to mitigate potential impacts of oil spills on the terrestrial and marine environment.
 - ✓ Canada should engage, and conduct consultations in addition to those in regulatory processes, as may be required, to address issues and facilitate resolutions in exceptional circumstances, including where:
 - Aboriginal territorial disputes are intractable;
 - Despite reasonable efforts, industry is unable to meet Aboriginal expectations in relation to a matter under federal jurisdiction, or;
 - For other strategic reasons, Canada determines it is necessary to engage with a particular Aboriginal group.
 - ✓ Canada, in conjunction with industry and provincial governments, should support:
 - Aboriginal participation in marine traffic management and emergency response planning;
 - Training and coordination of Aboriginal communities in terrestrial and marine monitoring and emergency response, using existing organizations where appropriate;



- Acquisition of appropriate equipment and infrastructure by Aboriginal communities for terrestrial and marine monitoring and emergency response, and;
 - Invest in technologies for oil spill clean-up.
- ✓ Etc.

4. CONDITIONS IMPOSED UPON THE PROJECT

- The *Commission de l'agriculture, des pêcheries, de l'énergie and des ressources naturelles* of the Quebec National Assembly issued 18 conditions. Here are some of them:
 - ✓ The implementation of a vigilance unit with the mandate to ensure that any information relative to the oil pipeline's security and environmental protection be transmitted to all the stakeholders directly concerned by the flow reversal of the Enbridge 9B pipeline. This vigilance unit would bring together Enbridge, the NEB along with certain ministries of the Government of Quebec;
 - ✓ That Enbridge submits to the *ministère du Développement durable, de l'Environnement, de la Faune and des Parcs* its inspection data in order for an independent expert to assess the integrity of oil pipeline 9B and Enbridge's maintenance and inspection practices;
 - ✓ That Enbridge render the stations of the 9B line situated on Quebec's territory compliant with the regulations applicable before the reversal of the oil pipeline;
 - ✓ Require that the Enbridge company have a financial guarantee plan sufficient to cover all the damage in the event of a disaster, even after the cessation of oil pipeline 9B's operation;
 - ✓ Require that Enbridge render public, on its Internet site, all the commitments made by the company, namely regarding the National Energy Board recommendations, and that the follow-up of these commitments be updated every three weeks;
 - ✓ That Enbridge financially support municipalities for the upgrading of equipment associated with emergency interventions on oil pipeline 9B;
 - ✓ That Enbridge share information on its emergency plan, ensure the ongoing training of first-line interveners and strengthens joint effort with municipalities and the Government of Quebec and hold annual simulation exercises;
 - ✓ That Enbridge entrusts an independent organization with the acquisition mandates for knowledge and sampling of surface and ground water quality, in order to test for compliance and water quality in the wells, namely to analyze the state of individual and collective artesian wells near the oil pipeline route;
 - ✓ That Enbridge set up specific protection measures for water crossings, for example manual and automatized valves upstream from each water crossing;
 - ✓ That Enbridge maximize local benefits within its works.
 - ✓ Etc.



In the appendix to its recommendation report, the NEB issued 30 conditions. Here are some of the issued recommendations:

- ✓ Enbridge shall file with the Board, at least 90 days prior to applying for leave to open (LTO), an updated pipeline engineering assessment (updated EA) in a similar format to that of the Line 9B engineering assessment.

* Note: According to the follow-up of the file listed on *Line 9 Communities*¹⁴: «This information should have been provided as part of the NEB hearing process. The Engineering Assessment Enbridge submitted as part of their Application to the Board was based on pipeline integrity data from 2004-2006. Enbridge had results of the 2012-2013 integrity dig details in January 2013 and said it would take a few months to analyze. Therefore, Enbridge should have submitted the updated integrity details to the NEB and participating parties when it was available in summer 2013. This would have ensured that the most recent pipeline integrity data was weighed as part of the hearing».

- ✓ Enbridge shall file with the Board, at least 60 days prior to applying for LTO, the leak detection system (LDS) manual for the project.
- ✓ Enbridge shall file with the Board at least 60 days prior to applying for LTO, a plan to update and implement Enbridge's continuing education program (including emergency management exercises), liaison program and consultations activities on emergency preparedness and response for the project.
- ✓ Enbridge shall file with the Board, at least 30 days prior to LTO and every six months thereafter for the first three years of operation, an ongoing engagement report for the continued operation of Line 9.

The ongoing engagement report will include, at minimum:

- The persons or groups with whom Enbridge offered or sought to consult during the previous six month period ;
 - The persons or groups actually consulted during the previous six month period;
 - Confirmation that Enbridge consulted or offered to consult at least once each year with, at minimum, a representative of each Landowner, Municipality, Conservation Authority, and Aboriginal group whose land, jurisdiction or traditional territory is traversed by Line 9;
 - The methods, dates and locations of consultation activities ;
 - The information that was distributed to persons or groups (for example, health, safety and environmental performance of Line 9); a summary of the comments and concerns expressed by potentially affected persons or groups;
 - A summary of the response made regarding each of the concerns or comments;
 - How outstanding concerns will be addressed;
 - How input from persons or groups has influenced the operation of the Project;
 - Details regarding discussions with Aboriginal groups;
 - The details and results of the consultation undertaken with all persons who may be affected by any changes to the Project; and
 - Details regarding discussions with municipal emergency responders.
- ✓ Etc.



5. FOLLOWING ACTIONS

- A follow-up must be done to see if Enbridge will accept to comply with the conditions issued by the National Assembly's commission. Équiterre, *l'Union des producteurs agricoles* (UPA) and the *Communauté métropolitaine de Montréal* (CMM) also require that the conditions issued by the commission constitute a minimum that must be respected by Enbridge¹⁵. Note that Enbridge has already asserted that it is not legally bound to approval by the provincial government¹⁶. Nonetheless, even though trans-boundary oil pipelines are under federal jurisdiction, this issue involves several parties for a long-term period and has impacts in Quebec.

- Enbridge must take several actions before implementing the 9B line. The company must meet the conditions before conducting certain works on the 9B line, before depositing an implementation authorization, etc. (among other things) and as mentioned in the conditions imposed by the NEB, it must contact Aboriginal communities.

If you have any questions or comments, do not hesitate to contact FNQLSDI.

4. REFERENCES

- ¹ NATIONAL ENERGY BOARD. *Pipelines Enbridge Inc. – Line 9B reversal and Line 9 capacity expansion project*, [online], <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/nbrdgl9brvrsl/nbrdgl9brvrsl-eng.html>.
- ² ENBRIDGE PIPELINES INC. « Line 9 reversal phase I Project Application », *National Energy Board*, [online], August 8, 2011, https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/92263/706191/706437/770257/706045/B%2D01A_%2D Line_9_Reversal_Phase_I_Project_Application%2D_A2C0U9.pdf?nodeid=705901&vernum=-2.
- ³ NATIONAL ENERGY BOARD. «Letter decision», [online], July 27, 2012, https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/92263/706191/706437/834328/834582/A2V3K2_%2D Letter_Decision_OH%2D005%2D2011.pdf?nodeid=834303&vernum=-2.
- ⁴ ENBRIDGE PIPELINES INC. « Line 9 reversal phase I Project Application», *Op. Cit.*
- ⁵ NATIONAL ENERGY BOARD. *Transcript of Wednesday, 9 October 2013 proceeding*, [online], October 9, 2013, https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/92263/790736/890819/1045209/1045480/A3L8X8_%2D_13%2D10%2D09_%2D_Volume_2.pdf?nodeid=1045593&vernum=-2.
- ⁶ NATIONAL ENERGY BOARD. *Transcript of Thursday, 17 October 2013 proceeding*, [online], October 17 2013, https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/92263/790736/890819/1045209/1050178/A3Q0Y6_%2D_13%2D10%2D17_%2D_Volume_6.pdf?nodeid=1050225&vernum=-2.
- ⁷ NATIONAL ASSEMBLY OF QUÉBEC. «Special consultations and public hearings to examine the acceptability for Québec of Enbridge Pipelines Inc.'s proposed project to reverse the flow of pipeline 9B eastward between North Westover and Montréal, as described in the document entitled "Inversion du flux de l'oléoduc 9B d'Enbridge"», *Commission de l'agriculture, des pêcheries, de l'énergie et des ressources naturelles*, [online], 2013, <http://www.assnat.qc.ca/en/travaux-parlementaires/commissions/CAPERN/mandats/Mandat-24553/index.html>.
- ⁸ MOHAWK COUNCIL OF KAHNAWAKE. *Briefs*, [online], November 2013, <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/CAPERN/mandats/Mandat-24553/memoires-deposes.html>.
- ⁹ NATIONAL ENERGY BOARD. «Reasons for decision», [online], March 6 2014, https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/92263/790736/890819/2431831/2428616/Reasons_for_Decision_OH%2D002%2D2013_%2D_A3V1E4.pdf?nodeid=2431830&vernum=-2.
- ¹⁰ NATIONAL ENERGY BOARD. «Ceo and Chair of the NEB responds to article in Ottawa citizen», *What's new? Archives 2014*, [online], February 28 2014, <http://www.neb-one.gc.ca/clf-nsi/whstnwrchv/whstnwrchv2014-eng.html>



¹¹ NATIONAL ENERGY BOARD. «Hearing process handbook», [online], 2013, <http://www.neb-one.gc.ca/clf-nsi/rthnb/pblcprcptn/pblchrng/pblchrngpmphlt-eng.pdf>.

¹² *National energy board rules of practice and procedure*, 1995, part III, a. 44-47, [online], <http://laws-lois.justice.gc.ca/eng/regulations/SOR-95-208/FullText.html>.

¹³ DOUGLAS R. EYFORD. «Forging partnerships, building relationships : Aboriginal Canadians and energy development», [online], November 2013, <https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/www/pdf/publications/ForPart-Online-e.pdf>.

¹⁴ LINE 9 COMMUNITIES. «Line 9B conditions», [online], March 2014, <http://line9communities.com/line-9b-conditions/>.

¹⁵ ÉQUITERRE. «Ligne 9B d'Enbridge: Équiterre, la CMM et l'UPA demandent qu'Enbridge respecte les conditions de la CAPERN et rassure la population», *Press release*, [online], February 2014, <http://www.equiterre.org/communiqueligne-9-b-denbridge-equiterre-la-cmm-et-lupa-demandent-queenbridge-respecte-les-conditions>.

¹⁶ MICHEL CORBEIL. «Les élus passent aux recommandations... auxquelles Enbridge répète ne pas être lié», *Le Soleil*, [online], December 4 2013, <http://www.lapresse.ca/le-soleil/actualites/environnement/201312/04/01-4717695-les-elus-passent-aux-recommandations-auxquelles-enbridge-repete-ne-pas-etre-liee.php>.