



INFORMATION SHEET FOR THE FIRST NATIONS OF QUEBEC AND LABRADOR

TRANSCANADA PIPELINES LTD.: ENERGY EAST PIPELINE PROJECT



1. PROJECT DESCRIPTION

- TransCanada is a company specializing in the transport of hydrocarbons, based in Calgary (Alberta). In August 2013, TransCanada announced its intention to proceed with its Energy East project:
 - The Energy East pipeline project will transport oil by pipeline from west to east. The proposed 4,500 km pipeline route runs through six Canadian provinces, from Hardisty (Alberta) to Saint John (New Brunswick).
 - Currently, the project is in a preliminary stage, as TransCanada has not yet submitted its application for formal authorization with the National Energy Board (NEB). As of now, TransCanada has filed the “pre-project” project description with the NEB, that is to say, a summary of preliminary information. Note that it is the NEB’s responsibility to evaluate the project and present a report with its recommendations to the federal government.
 - The pipeline would carry 1.1 million barrels of crude oil per day, including oil from tar sands (viscous oil with a high content of carbon and sulphur) and conventional oil (generally less viscous oil with a lower content of sulphur and carbon).
 - Of the 4,500 km of proposed pipeline, 3,000 km already exist in Alberta, Saskatchewan, Manitoba and Ontario, as pipeline transporting gas. For this part of the route, the bulk of the planned work will be aimed at modifying the existing pipeline from transporting gas to transporting oil.
 - ✓ The project will nevertheless require the construction of new pipelines to link up with the converted pipe.
 - ✓ Construction of associated facilities (pumping stations, terminals) is also planned.



- The rest of the proposed route (about 1,500 km) will be new construction, running from Cornwall (Ontario), through nine administrative regions in Quebec and terminating at St. John (New Brunswick).
 - ✓ The project will enable the delivery of oil to refineries in Montreal, Lévis and Saint John.
 - ✓ Approximately 11 pumping stations will be built in Quebec.
 - ✓ Marine terminals will be built in Cacouna and near Saint John, including the construction of reservoirs and facilities for loading tankers. (See Appendix).

- Project milestones:
 - April 2013: TransCanada produced its first information brochure and began communicating with about 155 Métis and First Nations groups, 500 communities and 5,500 landowners who will be affected by the project.
 - March 4, 2014: Submission of the project description (“pre-project” stage) to the NEB. Information sessions will be organized by the NEB beginning March 26, 2014.
 - July 2014 (forecast): Submission of formal application for authorization and therefore the beginning of the NEB hearing process.
 - Winter 2015 (forecast): Final NEB regulatory approval (if the project is allowed).
 - 2017 (forecast): Beginning of the commissioning of the pipeline and facilities in Quebec (if the project is allowed).

- TransCanada has established a list of 23 First Nations and organizations of the First Nations of Quebec and Labrador concerned by the project. (See Appendix)

2. KEY STAGES IN THE NEB COMMUNICATION AND HEARING PROCESS AND OTHER PROCESSES

- Process Description:¹
 1. The NEB requires the project applicant (TransCanada in this case) to communicate with Aboriginal communities, well before filing its formal application for authorization. The NEB requires the applicant to provide the following information:
 - A list of communities affected by the project and the means used to identify them.
 - The means used to contact them.
 - Evidence that the applicant provided Aboriginal groups a project overview, including potential impacts on the natural and socio-economic environment as well as measures to be taken to mitigate them.
 - Documentation and summaries of any meetings.
 - Information on the concerns raised by Aboriginal people specifying whether or not those concerns have been addressed by the applicant.
 - An analysis of the potential impacts of the project on the exercise of traditional activities including hunting, fishing, trapping and gathering.

 2. TransCanada filed a project description on March 4, 2014. The project description is a summary of the project. It’s purpose is to provide preliminary information to the NEB to allow it to prepare for the application and begin outreach activities. Information sessions have been scheduled by the



NEB from March 26 to April 24, 2014 to explain the hearing process, how to participate and the program of financial assistance to participants.²

3. Once TransCanada files its formal application with the NEB (scheduled for July 2014), the NEB will begin holding hearings :

3.1 The Hearing Order and requests to participate

- The NEB issues a Hearing Order:
 - ✓ Brief description of the project.
 - ✓ List of issues to be considered.
 - ✓ Details of the hearing process.
 - ✓ Schedule of the various steps.
- Dissemination of a news release and posting of the Hearing Order:
 - ✓ The NEB may send out a news release and post the Hearing Order on its website.
 - ✓ A company may also publish notice of the hearing in newspapers that serve the area around the proposed project or send the notice directly to persons that may be affected. (For example, in the case of the Hearing Order for Enbridge Line 9B, the NEB asked Enbridge to send the Order directly to a predetermined list of Aboriginal groups and to Aboriginal groups who were recognized as being affected).
- The order contains information on how to participate. Groups interested in participating must make application to the NEB. Once the hearing participants are determined, they will receive additional details.

3.2 Participation by letters of comment or as an intervenor

- Letters of comment:
 - ✓ Letters of comment are a way of sharing your views on the project with the NEB in writing.
 - ✓ Participation by letter does not, however, enable you to ask questions about other people's evidence or make a final argument.
- Intervenor status:
 - ✓ Ability to present written evidence (reports, records, photos and other information or material that supports the view advocated).
 - ✓ Opportunity to examine others on their written evidence, cross-examine other witnesses at the oral portion of the hearing (ask questions about written evidence).
 - ✓ Present a final argument (after cross-examination and any reply evidence is completed. Involves telling the NEB your position on the project and what you think the NEB should decide or recommend.).

*An intervenor may also be questioned on any evidence he or she has presented. In some cases, Aboriginal Intervenors may also provide oral traditional evidence.

* An Intervenor may also submit an information request (also called an IR) to ask questions or request additional information about the application from the company or from others who have filed written evidence.



4. After the Hearing

- Final decision:

- ✓ If the NEB finds that a project is in the Canadian public interest, it will recommend approval of the application to the government.
- ✓ The NEB will send the report and its recommendations to the government which will decide whether a certificate or license should be issued by the NEB.
- ✓ If the government approves a major pipeline project, it will order the NEB to issue the certificate that allows the company to construct and operate the project. If the government denies a project, it will order the NEB to dismiss the application.

- Remediating the final decision:

- ✓ Decisions made by the NEB may be appealed to the Federal Court of Appeal.
- ✓ There is also the option for the NEB to review or modify its decisions. The parties involved in the hearing have the right to ask the NEB for a review of a decision, but only if certain specific requirements are met.

□ Other processes:

- The Energy East project will also be subject to a federal environmental assessment, under the authority of the NEB.
- TransCanada has indicated that it intends to take the necessary measures to engage in the hearing processes conducted by the Bureau d'audiences publiques sur l'environnement (BAPE) and the Commission de protection du territoire agricole (CPTAQ).³

*The decision to approve or reject the Energy East project does not fall within provincial jurisdiction. In this case, the Quebec assessment processes are not required. However, they will help to determine the social acceptability of the proposed project. If the project bypasses the Quebec assessment processes, the industry and the Government of Quebec could be criticized (for example, in the case of Enbridge Line 9B, both Enbridge and the government have been criticized for their lack of public information and consultation).

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

□ First Nations rights and title / Obligation to consult / Heritage protection

The Haisla and Gitxaala First Nations (British Columbia) went before the Federal Court of Appeal⁴ in January 2014 to overturn the approval of the Enbridge Northern Gateway project. They cited, among other things:

- Legal errors were made by the panel of the Canadian Environmental Assessment Agency.
- The panel did not properly consider Aboriginal rights and title and did not properly weigh the public interest.
- The panel did not properly consider the potential impact on heritage and did not assess the adequacy of Crown consultations with First Nations.



- Aboriginal Laws / Traditions and values / Inherent rights of indigenous peoples under international law / Responsibility to protect lands and waters

First Nations in British Columbia have come together and produced two statements in 2010 that prohibit the transportation of tar sands oil in their territory:

- *Save the Fraser Declaration:*⁵ First Nations signatories prohibit the proposed Northern Gateway pipeline project and other similar tar sands projects to cross their lands, territories and watersheds, or the ocean migration routes of Fraser River salmon.
- *Coastal First Nations Declaration:*⁶ First Nations signatories state that vessels carrying oil from the Alberta tar sands will not be allowed to pass through their lands and waters.

- Rights of First Nations in relation to development plans

In the 1970s, the report⁷ of Justice Thomas Berger led to the abandonment of the Mackenzie Valley Pipeline project, a pipeline for the transportation of gas from the Yukon and Northwest Territories to northwestern Alberta.

- This report has been described by some as a charter of rights of the First Nations of Canada.
- The report predicted that the social consequences of the pipeline would not only be serious, but devastating.
 - ✓ Justice Berger was particularly concerned about the rights of First Nations to have some say in relation to development plans.
 - ✓ Justice Berger recommended that negotiations between First Nations and governments over land claims be settled before considering the proposed pipeline.
- In 2004, the pipeline project was revived, but met with resistance as negotiations between First Nations groups, governments and pipeline builders stalled.
- In 2005, the federal government announced it would spend \$500 million over ten years to address the socio-economic issues of the northern First Nations.

4. PORTRAIT OF SOCIO-ECONOMIC BENEFITS/IMPACTS OF THE PROJECT

- Benefits:
 - The construction and operation of the pipeline would create jobs and business opportunities as well as revenue (taxes) for the government. TransCanada has mandated the financial firm Deloitte to develop a picture of the economic impact⁸ of the Energy East project:
 - ✓ During the development phase, in 2013-2015, about 2,300 jobs will be created annually (all provinces combined).
 - ✓ During the construction phase, from 2016-2018, about 7,100 jobs will be created annually (all provinces combined).
 - ✓ The construction and engineering sectors would be the major beneficiaries of job creation during these first two phases.
 - ✓ During the operation phase, about 4,250 jobs would be maintained annually, especially in the area of pipeline management and operation.



- TransCanada has produced a booklet entitled *TransCanada Employment and Contracts Program for Aborigines*. Here are some details:
 - ✓ The brochure presents opportunities, not employment guarantees. One of the limitations to job creation in Quebec is the regulations of the Quebec Construction Commission. A representative of TransCanada stated that it will be another 6-12 months before the company can say more precisely what opportunities it can offer in Quebec.
 - ✓ The team responsible for the TransCanada jobs and contracts program has indicated that it would like to know how many First Nations individuals and companies are registered with the Quebec Construction Commission.
 - ✓ The team has also expressed the need to find out the specific needs and expectations of the First Nations with respect to jobs and contracts in connection with the pipeline.
 - ✓ TransCanada insists that contracts will be awarded to qualified individuals and companies. For now, TransCanada does not offer training in relation to the qualifications required for employment with Energy East.
 - ✓ The possible employment sectors for the First Nations mainly concern soil clean-up (ground, trees, vegetation), security (monitoring operations, surveillance) and participation in the construction and maintenance of temporary camps for pipeline workers.

- Impacts :
 - As a federal environmental assessment is required by law for this type of project, TransCanada was required to prepare a preliminary list of socio-economic aspects that must be evaluated, including among others:⁹
 - ✓ Noise: The construction and operation of the pipeline could cause temporary and localized increases in ambient noise levels.
 - ✓ Land Use: The construction and operation of the pipeline could affect local uses of the project area (agriculture, forestry, oil and gas and other industrial activities, fishing, hunting, trapping and recreation).
 - ✓ Marine Resources Use: Construction and operation activities of the project could affect the income of local commercial fishermen.
 - ✓ Human Health: Project construction and operation activities could result in local temporary increases in air quality contaminants which may result in health risks.

 - Health: Quality of the food chain, water and air
 - ✓ A press conference¹⁰ was held in February 2014 in the United States concerning the Northern Gateway pipeline project. The press conference highlighted the health concerns of people who are close to the Alberta tar sands operations and transportation. The organizers are concerned by the abnormally high cancer rates in Alberta communities, but also by reports of diseases and discomforts by people who live near a pipeline where there were leaks. Two U.S. senators have called for a study of the impact on the health of Americans of transporting Alberta oil through the Keystone XL pipeline.
 - ✓ A report¹¹ by the *National Transportation Safety Board* (United States) showed that people exposed to the spill in the Kalamazoo River (Michigan, United States) in 2010 have suffered a number of health symptoms and discomforts. A doctor who has treated some of the patients reported that it is too early to detect cancers, which may take 20 to 30 years to develop.



5. PORTRAIT OF ENVIRONMENTAL BENEFITS/IMPACTS OF THE PROJECT

- Benefits:
 - Some analysts¹² believe that compared to transporting oil by rail, pipeline transportation is more appropriate. However, they point out that:
 - ✓ There are risks: A leak from an Enbridge pipeline caused a spill of 3.2 million liters of oil into the Kalamazoo River in 2010. Several spills have occurred in Alberta.
 - ✓ Risk analysis depends on multiple variables. For example, if a pipeline is allowed to deteriorate, then the transportation of oil by pipeline may become more risky than by train.
- Impacts
 - As a federal environmental assessment is required by law for this type of project, TransCanada was required to prepare a preliminary list of socio-economic aspects that must be evaluated, including among others:¹³
 - ✓ Soil Capability: Project construction and operation activities could have an effect on soil capability.
 - ✓ Vegetation and Wetlands: Project construction and operation activities could affect the distribution/abundance of native vegetation and wetlands. Operation activities could result in the spread of invasive or non-native plant species from the project onto surrounding lands.
 - ✓ Surface Water Resources: Construction activities could affect surface water flow and surface water quality. No pathway of effect during operation. ([Except for a leak or a spill]).
 - ✓ Groundwater Resources: Construction activities could affect groundwater quantity, flow and quality. No pathway of effect during operation. ([Except for a leak or a spill]).
 - ✓ Fish and fish habitats: Construction and operation activities of the pipeline could affect fish and fish habitats as a result of construction activities near or through a fish bearing waterbody. No pathway of effect is anticipated for pump stations or tank terminals as facilities will be sited away from fish-bearing watercourses.
 - ✓ Wildlife and Wildlife Habitats: Construction and operation activities could affect wildlife species and their habitats. Tank terminal operations could result in sensory disturbance to wildlife species and their habitats in close proximity to the terminal locations.
 - ✓ Air Quality: Construction and operation activities could result in local increases in air quality contaminants.
 - ✓ Marine Wildlife and Habitat: Construction and operation activities of the marine terminals could interact with migratory birds and marine mammals and their habitats (e.g. sensory disturbance).
 - According to a statistical review by IRIS,¹⁴ apart from Nigerian oil (representing 4% of Quebec consumption), Canadian tar sands crude is responsible for the highest greenhouse gas emissions, contributing to climate change.
 - The Pembina Institute has produced a preliminary assessment¹⁵ of the Energy East project. Here are some observations:
 - ✓ Tar sands production is Canada's fastest-growing source of greenhouse gas emissions, which contribute to climate change. According to Environment Canada, tar sands greenhouse gas emissions are expected to triple between 2005 and 2020.



- ✓ The Pembina Institute has explained the links between pipeline projects and the production of oil from tar sands.

6. COURSES OF ACTION GOING FORWARD

- To receive project updates from the NEB by email:
<http://www.one-neb.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/nrgyst/fm/nrgystcntcts-eng.html>
- Information sessions have been scheduled by the NEB from March 26 to April 24, 2014 to explain the hearing process, how to participate and the program of financial assistance to participants.¹⁶
- Regarding pre-hearing communications between the First Nations and TransCanada required by the NEB (see Section 2.1, pp. 2-3), rest assured that:
 - TransCanada will present you a summary of the project, including potential impacts on the natural and socio-economic environment as well as measures to mitigate them.
 - You will be able to communicate your concerns to TransCanada and see whether or not they have been taken into account.
 - TransCanada must analyze the impact that the project may have on traditional activities including hunting, fishing, trapping and gathering.
- What can the Quebec First Nations learn from the report *Forging partnerships, Building relationships: Aboriginal Canadians and energy development*¹⁷ and the participation of the First Nations in the development of the energy sector?
 - The mandate given to the attorney (Douglas R. Eyford) responsible for the report: Identify approaches to finding common ground between expansion of Canadian energy markets and Aboriginal participation in the economy. Identify Aboriginal interests and opportunities related to the development of energy projects on the west coast of Canada.
 - Some recommendations (for the complete list, see pages 51-52 of the report):
 - ✓ Principled dialogue about resource development should be encouraged between the government and Aboriginal communities.
 - ✓ Canada should establish a joint initiative with Aboriginal groups for environmental stewardship and habitat enhancement to address concerns about the cumulative effects of development projects.
 - ✓ Canada should convene and coordinate the participation of Aboriginal groups, governments, industry, non-governmental organizations and scientists to address pipeline and maritime transport safety as well as strategies to mitigate impacts on the marine and terrestrial environment.
 - ✓ Canada, Aboriginal communities and industry should establish a forum to share best practices in training and employment.
 - ✓ Canada should define and articulate the respective roles of the Crown and industry as well as their responsibilities with regard to the obligation to consult.
 - ✓ Etc.



- To inquire about participation in the BAPE environmental assessment process:
http://www.bape.gouv.qc.ca/sections/participer/eng_participer-ind.htm

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

7. REFERENCES

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- ¹ NATIONAL ENERGY BOARD. "Hearing Process Handbook," [online], 2013, <http://www.neb-one.gc.ca/clf-nsi/rthnb/pblcprcptn/pblchrng/pblchrngpmpht-eng.pdf>.
- See also:
NATIONAL ENERGY BOARD. "Consideration of Aboriginal Concerns in National Energy Board Decisions," [online], July 2008, [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90463/522930/771416/A2J6F1-Consideration of Aboriginal Concerns in National Energy Board Decisions.pdf?nodeid=771417&vernum=0](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90463/522930/771416/A2J6F1-Consideration%20of%20Aboriginal%20Concerns%20in%20National%20Energy%20Board%20Decisions.pdf?nodeid=771417&vernum=0).
- ² TRANSCANADA. "Project update Volume 1," National Energy Board, [online], March 2014, [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2432401/2428790/Volume 1 Energy East Project Description ENGLISH 4%20Mar%2014 %2D A3V0S2.pdf?nodeid=2428599&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2432401/2428790/Volume%201%20Energy%20East%20Project%20Description%20ENGLISH%204%20Mar%2014%20A3V0S2.pdf?nodeid=2428599&vernum=-2).
- ³ TRANSCANADA. "Project update Volume 1," National Energy Board, [online], March 2014, [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2432401/2428790/Volume 1 Energy East Project Description ENGLISH 4%20Mar%2014 %2D A3V0S2.pdf?nodeid=2428599&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2432401/2428790/Volume%201%20Energy%20East%20Project%20Description%20ENGLISH%204%20Mar%2014%20A3V0S2.pdf?nodeid=2428599&vernum=-2), (p. 1-5)
- ⁴ PIPE UP AGAINST ENBRIDGE. "Northern Gateway Lawsuit: Enbridge pipeline block sought by environmentalists," [online], January 2014, http://pipeupagainstenbridge.ca/blog/northern_gateway_lawsuit_enbridge_pipeline_block_sought_by_environmentalist.
- ⁵ SAVE THE FRASER GATHERING OF FIRST NATIONS. "Save the Fraser Declaration," [online], http://savethefraser.ca/fraser_declaration.pdf.
- ⁶ COASTAL FIRST NATIONS. "Coastal First Nations Declaration," [online], <http://wcel.org/sites/default/files/file-downloads/Coastal%20First%20Nations%20Tanker%20Ban%20Declaration.pdf>.
- ⁷ http://web.uvic.ca/~mharbell/a1/workshop2/mvp_inquiry.html.
- See also:
<http://www.colorado.edu/geography/blanken/GEOG%206181%20Fall%202003/ryen/berger.html> and
<http://www.cbc.ca/news/business/mackenzie-valley-pipeline-37-years-of-negotiation-1.902366>.
- ⁸ DELOITTE. "Energy East: The economic benefits of TransCanada's Canadian Mainline conversion project, [online], September 2013, <https://www.energyeastpipeline.com/wp-content/uploads/2013/09/Energy-East-Deloitte-Economic-Benefits-Report.pdf>.
- ⁹ TRANSCANADA. "Project update Volume 2," National Energy Board, [online], March 2014, [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2432401/2428790/Volume 2 Energy East Project Description ENGLISH 4%20Mar%2014 %2D A3V0S4.pdf?nodeid=2431081&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2432401/2428790/Volume%202%20Energy%20East%20Project%20Description%20ENGLISH%204%20Mar%2014%20A3V0S4.pdf?nodeid=2431081&vernum=-2), (pp. 1.1-1.7)
- ¹⁰ CBC. "Keystone XL would endanger health of Americans, U.S. senators say, [online], February 26, 2014, <http://www.cbc.ca/news/world/keystone-xl-would-endanger-health-of-americans-u-s-senators-say-1.2552425>.
- ¹¹ Report cited in:
AQLPA-GREENPEACE. "Ce que vous devez savoir sur la venue du pétrole de l'Ouest au Québec," *Op. Cit.*, pp. 10-12).
- ¹² ALEXANDRE SHIELDS. "Un feu vert aux projets de pipelines?," *Le Devoir*, [online], July 9, 2013, <http://www.ledevoir.com/environnement/actualites-sur-l-environnement/382539/un-feu-vert-aux-projets-de-pipelines>.
- ¹³ TRANSCANADA. "Project update Volume 2," *Op. Cit.*
- ¹⁴ IRIS. "Note socio-économique: projet d'oléoduc de sables bitumineux Ligne 9B, le Québec à l'heure des choix," [online], September 2013, <http://www.iris-recherche.qc.ca/wp-content/uploads/2013/09/Note-pétrole-WEB-03.pdf>.
- ¹⁵ PEMBINA INSTITUTE. "Climate implications of the proposed Energy East Pipeline," [online], February 2014, <http://www.pembina.org/pub/2519>.
- ¹⁶ NATIONAL ENERGY BOARD. *TransCanada – Energy East Pipeline Project, Op. Cit.*



¹⁷ DOUGLAS R. EYFORD. "Forging partnerships, Building Relationships: Aboriginal Canadians and energy development», *Natural Resources Canada*, [online], November 2013, <https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/www/pdf/publications/ForPart-Online-e.pdf>.

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