

National Energy Board



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## **Answers to your Questions**

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# National Energy Board

## Answers to your Questions

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### What is the National Energy Board?

The National Energy Board (NEB or Board) is an independent federal agency established in 1959 by the Parliament of Canada to regulate international and interprovincial aspects of the oil, gas and electric utility industries. The purpose of the NEB is to promote safety, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade. These principles guide NEB staff to carry out and interpret the organization's regulatory responsibilities. The NEB is accountable to Parliament through the Minister of Natural Resources Canada.

The NEB regulates the following aspects of the energy industry:

- construction and operation of interprovincial and international pipelines;
- traffic, tolls and tariffs of interprovincial and international pipelines;
- construction and operation of international and designated interprovincial power lines;
- export and import of natural gas;
- export of oil, propane, butanes, ethane and electricity; and
- oil and gas activities on frontier lands and offshore areas not covered by federal/provincial management agreements.

Other responsibilities include:

- providing energy advice to the Minister of Natural Resources Canada;
- carrying out studies and preparing reports when requested by the Minister;
- conducting studies into specific energy matters;
- holding public inquiries when appropriate; and
- monitoring current and future supplies of Canada's major energy commodities.

In addition to its responsibilities under the *National Energy Board Act* (NEB Act), the NEB also has responsibilities under the *Canada Oil and Gas Operations Act*, the *Canadian Environmental Assessment Act*, the *Canada Labour Code*, the *Northern Pipeline Act* and certain provisions of the *Canada Petroleum Resources Act*. As a result of the *Canada Transportation Act*, which came into effect on 1 July 1996, the NEB's jurisdiction has been broadened to include pipelines that transport commodities other than oil or natural gas.

### **Why was the NEB created?**

Soon after World War II, western Canadian oil and gas resources were discovered and developed for interprovincial and international use. Important policy issues arose regarding the conditions for the construction of new pipelines and the approval of long-term exports, particularly of natural gas. In November 1959, the NEB Act was proclaimed.

The NEB Act transferred responsibility for pipelines from the Board of Transport Commissioners and responsibility for oil, gas and electricity exports from the Minister of Trade and Commerce to the new NEB. In addition, the NEB was granted responsibility for regulating pipeline tolls and tariffs.

During the following years, the NEB developed its expertise in energy matters and enjoys a respected national and international reputation. In 1994, legislative amendments expanded the NEB's

jurisdiction to include decision making authority for frontier lands not administered through existing federal/provincial management agreements.

### **How does the Board operate?**

The NEB is an independent tribunal. When the Board considers an application its procedures are similar to a civil court. Its powers include swearing in and examining witnesses and taking evidence. The Board holds public hearings and makes decisions as a result of applications it receives. From time to time, the Board also holds public inquiries into important regulatory issues.

These applications can be for any of the activities that the NEB regulates (e.g. building or expanding pipelines, building international power lines, exporting energy, assessing pipeline tolls and tariffs). In fact, the NEB makes an average of 1000 regulatory decisions annually.

For major applications the NEB holds oral public hearings. Applicants and other interested people can participate in these public hearings. Normally, a panel of three Board Members is assigned to make a decision on an application. The oral hearings are usually held at locations where there is a specific interest in the application. On occasion the Board will conduct public hearings in writing.

## Who makes up the NEB?

Under the NEB Act, up to nine Board Members may be appointed by the Governor in Council.<sup>1</sup>

A member is appointed initially for a seven-year term and can be reappointed for seven years or less until the age of seventy. In addition, temporary Board Members may be appointed according to the terms and conditions set out by the Governor in Council. Members are selected from the private and public sector with knowledge and expertise in economics, engineering, environment, finance, law, public participation, safety and science.

The Governor in Council designates the Chairman and Vice-Chairman of the Board from among the Members. The Chairman is also the chief executive officer of the organization.

Members are assisted by approximately 280 employees who possess the diverse skills required to provide expert advice and support the work of the Board. Employees include administrative staff, computer specialists, communication specialists, economists, engineers, environmental specialists, financial analysts, human resource specialists, geologists, geophysicists, lawyers, librarians and many others.

## What kinds of energy projects does the Board regulate?

### 1) The construction and operation of pipelines and power lines.

#### *Pipelines*

Interprovincial and international oil and gas pipelines, as well as additions to existing pipeline systems under federal jurisdiction, require the Board's approval before they can be built. Oral or written public hearings are held for pipeline construction applications exceeding 40 km in length or for any other applications at the

discretion of the Board. Pipelines which lie completely within the borders of a single province are regulated by that province's energy regulator.

To determine whether a pipeline project should proceed, the Board satisfies itself that the proposed facilities are required by the present and future public convenience and necessity. This test involves such things as the economic, technical and financial feasibility as well as the potential environmental and socio-economic impacts of the project.

If a pipeline project is approved by the Board, the NEB audits and inspects pipelines during and after construction to ensure that engineering, safety and environmental requirements are met. The NEB also regulates excavation activity by third parties near pipelines to ensure public and environmental safety.

Since 1987, NEB inspectors have also been responsible for enforcing Part II of the *Canada Labour Code*. The code applies to the occupational safety and health of pipeline workers in the field.

The NEB shares responsibility with the Transportation Safety Board for incident investigation. The Transportation Safety Board investigates the cause and contributing factors of a pipeline incident, while the NEB investigates whether its regulations have been followed and if those regulations may need to be changed.

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<sup>1</sup> The Governor in Council is the Governor General acting on the advice of the Committee of Council. Orders and Minutes of Council are signed by the Governor General and thus give legal force to Cabinet decisions taken pursuant to a statutory authority or (less frequently) the royal prerogative.

### ***Power lines***

Most electric power lines and facilities fall within provincial jurisdiction. However, the Board has jurisdiction over the construction and operation of international power lines and designated interprovincial lines. All provinces bordering the United States have interconnections with neighbouring American utilities, except for Alberta which interconnects through British Columbia.

When reviewing an application, the Board looks at, among other things, the technical feasibility of the project, its effect on adjacent provinces and its environmental impact.

### ***Traffic, tolls and tariffs***

The NEB regulates tolls and tariffs for pipelines under its jurisdiction to ensure that they are just and reasonable and that there is no undue discrimination in tariffs or services. A toll is the price charged by the pipeline company for the use of its facilities, while a tariff contains the conditions under which transportation service is provided. Tolls set by the NEB cover the cost of service plus a fair and reasonable return to investors.

For major toll applications, the Board normally holds a public hearing. Due to the advent of negotiated multi-year settlements, however, the number of oral public hearings has declined. In 1995, the NEB republished its Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs. The guidelines are intended to assist the negotiated settlement process by allowing pipeline companies, producers, shippers, consumers, governments and other interested people to resolve toll and tariff matters through consensus building and negotiation, without resorting to a lengthy hearing process. Negotiated settlements must still be approved by the NEB.

The NEB requires pipeline companies to operate according to the principle of open access. This means that companies are allowed to transport energy without unjust discrimination. These companies are subject to the same tolls, providing similar circumstances and routes. The NEB conducts audits to ensure compliance in these areas.

## **II) The export and import of energy**

### ***The NEB regulates the followings commodities:***

#### ***Natural gas***

Exports and imports are authorized by the NEB under either long-term licences, long-term orders or short-term orders. Following a public hearing, long-term licences may be issued for up to 25 years subject to Governor in Council approval. Short-term orders can be issued for a maximum period of two years without a public hearing and do not require Governor in Council approval.

Natural gas exports occur at several major export points along the Canada/United States border. The volume exported depends on supply and demand as well as available pipeline capacity. Canada's imports of natural gas are relatively small, compared to its exports, and are used primarily to serve markets in southern Ontario and British Columbia.

The NEB monitors the supply and demand of natural gas by tracking volumes, prices and location of exports and imports.

#### ***Oil, propane, butanes and ethane***

The NEB authorizes exports by issuing short-term orders for periods less than one year for light crude oil and less than two years for heavy crude oil. These exports occur under short-term orders. Oil imports are not regulated.

Canada produces enough oil to meet its own needs and has been a net exporter of oil for some time; however, oil is imported to supply the Atlantic provinces, Quebec and Ontario. Most Canadian oil exports are to the American Midwest and Rocky Mountain markets. Smaller volumes are shipped to the United States west and Gulf coasts.

Propane, butanes and ethane are by-products extracted from natural gas processing and refinery processing of crude oil. NEB approval is required to export these products. Short-term orders are issued for periods of less than one year for propane and butanes, while orders for ethane are for less than two years. Ethylene is a compound produced from ethane and does not require approval for export purposes. All four products are classified as natural gas liquids.

The NEB monitors the supply and demand of oil and natural gas liquids by collecting data on volumes, prices and destinations.

### ***Electricity***

Usually permits are issued to export electricity without a public hearing unless the Governor in Council, after recommendation by the NEB, designates a particular application for licensing. Electricity imports are not regulated.

The NEB considers a number of issues when making its decision, including the effects of exports on adjacent provinces, the environment, and fair market access for Canadians.

The amount of electricity exported is influenced by several factors. First, the amount exported does not exceed the limits set in the permits and licenses issued by the NEB. Second, weather plays an important role because approximately 70 per cent of exports are generated by hydro-electric facilities. Low water levels in Canada reduce the amount of power available for generation and the amount available for export. Finally, the economics of export transactions influence the amount sold.

### **III) Frontier oil and gas activities**

The NEB regulates oil and gas activities on frontier lands and offshore areas not covered by provincial/federal management agreements. Responsibilities include regulating exploration, development and production, enhancing worker safety and protecting the environment. Other frontier activities include:

- calculating discovered and undiscovered hydrocarbon resources;
- developing emergency environmental contingency plans; and
- fostering programs which support and complement the NEB's regulatory responsibilities.

### **IV) Northern Pipeline Agency**

The NEB provides technical and administrative assistance to the Northern Pipeline Agency which, under the Northern Pipeline Act, has primary responsibility for overseeing the planning and construction of the Canadian portion of the proposed Alaska Natural Gas Transportation System by Foothills Pipe Lines Ltd.

### **V) Energy studies and advisory function**

The NEB conducts research into energy matters to meet its regulatory responsibilities and may hold inquiries when appropriate. With this knowledge and expertise, the NEB reports to and advises the Minister of Natural Resources Canada on energy issues.



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

### **I) Environmental assessment & protection**

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

The NEB’s environmental responsibility also includes ensuring environmental protection during planning, construction, operation and abandonment of facilities within its jurisdiction. When making its decisions, the Board may consider environmental concerns related to air, land and water pollution, disturbance of renewable and non-renewable resources, integrity of natural habitats, disruption of land and resource use.

Companies preparing an application to the NEB are usually required to anticipate the environmental issues and concerns of the proposed project and to address these concerns with all levels of government, public interest groups, aboriginal groups, and affected landowners.

If a project application is approved, the NEB ensures that the company continues to protect the environment, public health and safety by auditing and inspecting the company’s construction activities, the company’s routine maintenance and monitoring procedures during the operation of the pipeline and its procedures during abandonment.

### **II) Public safety**

Safety is a matter of primary public interest and has been included in the NEB’s mandate since 1959. The NEB is responsible for ensuring that companies comply with regulations concerning the safety of employees, the public and the environment as they may be affected by the design, construction, operation, maintenance and abandonment of a pipeline or international power lines. For more than 40 years, the NEB has worked with the Canadian Standards Association to establish safety regulations and technical standards for federally regulated pipelines.

In addition, through an agreement between the NEB and Human Resources Development Canada, NEB staff 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.

## **What other organizations regulate energy?**

The NEB is Canada’s federal energy regulator. Its counterpart organizations in the United States include the Federal Energy Regulatory Commission and, to a lesser degree, the Department of Energy and Transportation and the Mineral Management Service of the Department of the Interior.

At the federal level, the Department of Natural Resources Canada is the government’s primary source of energy policy advice. The NEB takes government energy policies into account when carrying out its regulatory functions.

Most provinces and territories have established energy regulatory bodies with specific mandates and responsibilities within their jurisdiction. The NEB works with a number of provincial and federal agencies to improve the regulatory process and is committed to exploring opportunities for further collaboration.

## **How can I get more information about the NEB and its activities?**

You can get more information through a series of information publications the NEB produces.

### **To contact the publications coordinator:**

Phone: (403) 299-3562 (in Calgary)

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