



# Regulatory Agenda

The period covered in this *Regulatory Agenda* is the month of September 2003

## National Energy Board Workshop 2003

The NEB will be holding a Workshop at the Telus Convention Centre in Calgary, Alberta, from 2 to 4 December 2003. Session development is underway and discussion topics will include NEB regulatory initiatives related to pipeline integrity, environmental protection and safety.

### Goals of the Workshop

**Communicate** - The workshop will encourage direct interaction between NEB staff and attendees.

**Refine Initiatives** - The workshop will be structured to provide clear deliverables where practical.

**Consult** - The workshop will be structured as such that discussions between NEB staff and

representatives from targeted attendee stakeholder groups are meaningful and constructive.

**Inform** - The workshop will include sessions designed to improve working relationships by explaining NEB expectations, processes and procedures.

### Registration Information

Registration is free and will commence in mid-October. Space is limited to 300 attendees. For further information, please contact Kym Hopper-Smith at (403) 299-3890 or by e-mail at [khoppersmith@neb-one.gc.ca](mailto:khoppersmith@neb-one.gc.ca) or visit our Website at [www.neb-one.gc.ca](http://www.neb-one.gc.ca).

## Public Hearing Applications

### Decision Rendered

1. **EnCana Ekwan Pipeline Inc. (EnCana Ekwan) – Pipeline Construction – GH-1-2003 (File 3200-E127-1)**

Reasons for Decision issued on 18 September 2003.

The Board approved an application from EnCana Ekwan to construct and operate a sweet natural

gas pipeline. The proposed pipeline would run from the EnCana Oil & Gas Partnership's Sierra Plant near Fort Nelson, British Columbia to a tie-in point on Nova Gas Transmission Ltd.'s northwest mainline, approximately four kilometres east of the Alberta/British Columbia border near Rainbow Lake, Alberta.

## In This Issue

### Preface

The purpose of this agenda is to provide information on the Board's activities. Except where otherwise noted, jurisdiction over the items listed in the agenda is exercised pursuant to the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended.

*"We promote Safety,  
Environmental Protection and  
Economic Efficiency"*

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EnCana Ekwan will construct 82.5 kilometres (51 miles) of 610 millimetre (24 inch) sweet dry natural gas pipeline, and associated facilities, during the winter of 2003/2004 with a proposed in-service date in April 2004. The design capacity of the Ekwan Pipeline will be approximately 11.8 million cubic metres (418 million cubic feet) per day. The estimated cost of the proposed project is \$55 million.

The Board considered the application at a public hearing held on 28 and 29 July in Fort St. John, British Columbia.

## Hearings Completed

### 1. *Georgia Strait Crossing Pipeline Limited (GSCPL) - GSX Canada Pipeline Project - GH-4-2001 (File 3200-G049-1)*

On 30 July, the Joint Review Panel for the GSX Canada Pipeline released its report and recommended that the GSX Canada Pipeline project proceed to the next level of decision making. The Panel concluded that the project is not likely to result in significant adverse environmental effects provided its recommendations are implemented and appropriate mitigation identified during the course of the review is applied.

The report describes the results of the Panel's review of an application by Georgia Strait Crossing Pipeline Limited to construct and operate the Canadian portion of the Georgia Strait Crossing Project, a new natural gas pipeline from Sumas, Washington to Vancouver Island. The proposed pipeline is a joint undertaking by BC Hydro and Williams Gas Pipeline Company.

The Government of Canada is considering the Panel's recommendations on the GSX Canada Pipeline project and will prepare a response.

The joint panel review was conducted under the *Canadian Environmental Assessment Act* and the *National Energy Board Act*. The review was carried out in accordance with an agreement between the federal Minister of the Environment and the Board. The review included a public hearing that was held in Sidney, British Columbia from 24 February to 19 March.

### 2. *Sumas Energy 2, Inc. (SE2) - International Power Line (IPL) - EH-1-2000 (File 2200-S040-1)*

The Board has completed a public hearing on an application from SE2 to construct a proposed 230 kilovolt IPL originating in the United States and crossing the international boundary near Abbotsford.

The Board considered the application at a public hearing held from 18 January 2001 to 23 September 2003 (39 days) in Abbotsford, British Columbia. Sequence of events from January 2001 to September 2003:

- 18 to 20 January 2001 – Public hearing on preliminary matters and motions
- 19 February 2001 – Public hearing was scheduled to commence. At the request of SE2, the Board adjourned the hearing.
- 4 June 2002 – SE2 requested that the Board reconvene the public hearing
- 18 to 23 October 2002 – Public hearing on preliminary motions
- 26 May to 11 July 2003 – Hearing of evidence, oral presentations and some arguments
- 11 July 2003 – Hearing adjourned until 15 September
- 15 to 23 September 2003 – Hearing of final arguments and reply argument
- 23 September 2003 – Hearing closed.

## Hearing in Progress

### 1. *Trans-Northern Pipeline Inc. (TNPI) – Pipeline Replacement and Lowering in Hamilton, Ontario – OHW-1-2003 (File 3400-T002-57)*

The Board is holding a public hearing, by way of written submissions, on an application from TNPI to relocate one section and lower two other sections of its 406.4 millimetre (16 inch) refined petroleum products pipeline. This application is made in order to accommodate the construction of the Red Hill Creek Expressway in King's Forest Park in Hamilton, Ontario.

(Also refer to item 3 under *Appeal and Reviews*)

# Non Hearing Applications

## Electricity Matters

### Matters Completed

1. *Avista Energy, Inc. (Avista) – Electricity Export (File 6200-A161-1)*

On 19 September, the Board approved an application dated 30 June from Avista for permits to export up to 2 500 megawatt hours of interruptible energy and up to 500 megawatts of firm power and up to 47 500 megawatt hours of firm energy per year for a period of 10 years.

2. *Duke Energy Marketing Canada Corp. (Duke Energy) – Electricity Export (File 6200-D068-1)*

On 9 September, the Board approved an application dated 27 June from Duke Energy for permits to export up to 2 000 gigawatt hours of interruptible energy and up to 1 000 megawatts of firm power and up to 2 000 gigawatt hours of firm energy per year for a period of 10 years.

3. *Northern States Power Company (NSPC) - Export of Electricity (File 6200-N099-1)*

On 22 September, the Board approved an application dated 16 June from NSPC for permits to export up to 800 gigawatt hours of interruptible energy and up to 100 megawatts of firm power and up to 800 gigawatt hours of firm energy per year for a period of 10 years.

4. *Public Service Company of Colorado (PSCC) – Export of Electricity (File 6200-P114-1)*

On 25 September, the Board approved an application dated 16 June from PSCC for permits to export up to 800 gigawatt hours of interruptible energy and up to 100 megawatts of firm power and up to 800 gigawatt hours of firm energy per year for a period of 10 years.

### Matters Pending

5. *Direct Commodities Trading (DCT) Inc. (DCT) – Electricity Export (File 6200-D069-1)*

On 24 July, DCT applied for permits to export up to 600 gigawatt hours of interruptible energy per year for a period of 10 years.

6. *New York Power Authority (NYPA) – Electricity Export (File 6200-N100-1)*

On 24 September, NYPA applied for permits to export electricity on a firm or interruptible basis up to the interchange capability on the connection between the electric grid operated by Ontario's

Independent Market Operator and the grid operated by the New York Independent System Operator, Inc. for a period of 10 years.

## Frontier Matters

1. *Chevron Canada Resources* was given approval on 29 September to alter the condition of a well pursuant to section 80(1)(b) of the *Canada Oil and Gas Drilling Regulations* for the well Liard 2K-29.
2. *Geological, geophysical or geotechnical operations*: one application was approved pursuant to section 5(1)(b) of the *Canada Oil and Gas Operations Act*. No applications were received or approved in September.

Company	Area	Operation ID	Date
Anadarko Canada Energy Ltd.	Liard NWT	9238-A070-001E	29 August

## Gas Matters

### Matters Completed

1. *ProGas Limited (ProGas) – Amend Gas Export Contract – Natural Gas Export Licence GL-195 (File 7200-N151-1-1)*

On 11 September, the Board approved an application dated 14 August from ProGas for amendments to the gas sales contract between ProGas and the New York State Electric and Gas Corporation (NYSEG) underpinning natural gas exports under Licence GL-195. The amendment consists of replacing the current commodity charge calculation with the AECO-C monthly index as reported within the *Canadian Gas Price Reporter*.

In 1992, NYSEG was issued Licence GL-195 to export up to 255 000 cubic metres (9 million cubic feet) per day of natural gas via points of export near Napierville, Quebec and Niagara Falls, Iroquois and Chippawa, Ontario.

2. *ProGas Limited (ProGas) – Amend Gas Purchase Contract – Natural Gas Export Licence GL-129 (File 7200-P038-5-2)*

On 11 September, the Board approved two applications dated 7 July and 14 August from ProGas for amendments to the gas sales contract between ProGas and Northeast Energy Associates, a Limited Partnership (NEA) and North Jersey Energy Associates, a Limited Partnership (NJEA) underpinning natural gas exports under Licence GL-129. The 7 July application

is to bifurcate the contract into separate volume-based components. The 14 August application is to reduce the contracted volumes.

In 1989, ProGas was issued Licence GL-129 to serve two cogeneration plants, one operated by NEA and one operated by NJEA, and to meet a portion of Texas Eastern Transmission Corporation's system supply requirements. Over the years the contracted volumes have been adjusted between the two cogeneration plants in accordance with prevailing market conditions. At this time, the underpinning contract provides for delivery of approximately 1.4 million cubic metres (49.6 million cubic feet) per day to the NEA Bellingham facility.

### 3. *ProGas Limited (ProGas) – Amend Gas Export Contract – Natural Gas Export Licence GL-178 (File 7200-P038-7-1)*

On 18 September, the Board approved an application dated 14 August from ProGas for amendments to the gas sales contract between ProGas and Lockport Energy Associates L.P. underpinning natural gas exports under Licence GL-78. The amendments will consist of a change to the Adjusted Base Price component of the Commodity Charge for a period of two years and to not initiate renegotiation or arbitration of the Commodity Charge for a period to two years.

Under Licence GL-178, ProGas is authorized to export up to 340 000 cubic metres (12 million cubic feet) per day of natural gas at the Niagara Falls.

## Pipeline Matter

### 1. *Section 58 Applications*

The Board has approved applications under section 58 of the *National Energy Board Act* involving routine pipeline facilities or the construction of pipelines not exceeding 40 kilometres in length. See Appendix I.

## Traffic, Tolls and Tariff Matters

### Matter Completed

#### 1. *Maritime & Northeast Pipeline Management Ltd. (M&NP) – Tolls Settlement for 2004-2006 (File 4200-M124-4)*

On 17 September, the Board approved an application dated 31 July from M&NP for approval of the 2004-2006 Tolls Settlement it has reached with members of the Tolls and Tariff Working Group.

### Matters Pending

#### 2. *TransCanada Pipelines Limited (TCPL) – Mainline Open Season, Complaints (File 4775-T001-1-12)*

Several complaints were received by TCPL and the Board concerning TCPL's approach to its Mainline Open Season announced on 17 July. In its Open Season, TCPL offers service from receipt points that are not listed in its Tariff.

Complaints were received from Gaz Métropolitain and Company, Limited Partnership, Cargill Power & Gas Markets (Cargill), Coral Energy, the Canadian Association of Petroleum Producers (CAPP) and the Industrial Gas Users Association (IGUA). These parties argue that the new receipt points are not contained within the Tariff, and thus, contravene the *National Energy Board Act*. IGUA also asserts that TransCanada is offering short-haul transportation from Dawn, even though it does not have the physical capacity on Union Gas to support this service. Finally, the parties allege that TCPL has disregarded the established regulatory procedure in how it introduced the new receipt points. CAPP, Cargill and IGUA request that the Board intervene in the Open Season to disallow these service offerings until such time as they receive adequate regulatory scrutiny.

On 14 August, the Board sent a letter to TCPL requesting additional information and directing it to respond to all of the concerns and issues raised in the letter filed by the complainants.

On 25 August, TCPL advised interested parties that it will be filing an application with the Board by 15 September for approval to establish certain points in domestic delivery areas as receipt points and to establish corresponding tolls for services from these areas.

On 15 September, TCPL applied for approval to establish North Bay as a new receipt and delivery point and for approval of the associated tolls for services to and from this point. The Board noted that this application varied from what was originally contemplated in TCPL's 22 August proposal. In determining how to handle this application, the Board invited parties to make submissions on what process would best be suited for dealing with the application. The Board received nine letters of comments.

On 26 September, the Board decided to hold a facilitated workshop to discuss the issues raised in the aforementioned letters of comments. The workshop will be open to all of the TCPL Mainline stakeholders.



3. *Westcoast Energy Inc. (Westcoast) – Final 2003 Transmission Tolls (File 4200-W005-15)*

On 25 July, Westcoast applied for approval of final tolls for the year 2003. Westcoast has been on

interim tolls since January 2003. On 14 August and 24 September, the Board sent letters to Westcoast requesting additional information.

## Appeal and Reviews

### Appeal

1. *TransCanada PipeLines Limited (TCPL) – NEB Decision RH-R-1-2002*

On 21 March, TCPL applied to the Federal Court of Appeal for leave to appeal the Board's RH-R-1-2002 Decision issued on 20 February 2003. In this Decision, the NEB dismissed TCPL's September 2002 request for a Review and Variance of the Board's June 2002 RH-4-2001 Decision on the company's Fair Return application. In May, the Federal Court of Appeal granted TCPL leave to appeal.

### Reviews

2. *Communications, Energy and Paperworkers Union of Canada (CEP) - Trans-Northern Pipelines Inc. (TNPI) - Capacity Expansion and Pipeline Flow Reversal – OH-1-2003*

In September, CEP applied to the Board for review of its Reasons for Decision dated July, issued on 7 August, in which it approved an application from TNPI to increase the pipeline capacity on its petroleum products pipeline system from Montréal, Quebec to Farran's Point near Ingleside, Ontario and to reverse the direction of flow between Farran's Point and the Clarkson Junction in Mississauga, Ontario. CEP is asking the Board to review its

decision in total and, in the interim, to stay the decision pending the outcome of the review.

CEP represents 140 people who will be put out of work when the Oakville refinery is closed by Petro Canada. The company announced the closing following the Board's decision allowing a reversal in the flow of oil in the TNPI's pipeline which will bring refined products into Ontario from Montreal.

3. *City of Hamilton – Judicial Review - Trans-Northern Pipeline Inc. (TNPI) – Pipeline Replacement and Lowering in Hamilton, Ontario – OHW-1-2003*

On 18 August, the City of Hamilton filed a Notice of Application for Judicial Review with the Federal Court of Appeal. The Notice seeks, among other things, a declaration that the *Canadian Environmental Assessment Act* (CEA Act) does not apply to the TNPI application and that no environmental screening is or was required to be carried out by the Board under the CEA Act in respect of the application.

The Board filed with the Court a Notice of Appearance. The Application has been put into abeyance until 30 days after the Board's decision on the TNPI application as a result of a consent motion to the court.

## Amendments to Regulations and Guidelines

### Regulatory Initiatives Pursuant to the National Energy Board Act

1. *National Energy Board Processing Plant Regulation (Regulations) – Guidance Notes*

On 17 September, the Board published Guidance Notes to bring additional clarity to the Regulations and to provide non-mandatory guidance to assist companies in achieving compliance.

The Guidance Notes are structured for easy use. Sections of the Regulations are grouped (where appropriate) under logical headings and (where appropriate) the goal of the Regulations (or these

groupings of different sections of the Regulations) is provided. In all cases, this is followed by guidance which provides information that may be of use to companies in ensuring the design, construction, operation and abandonment of their processing plants is carried out in accordance with the Regulations.

The Regulations reflect the Board's progression towards the development of goal oriented regulations and clearly place the onus on companies for ensuring the safety of persons and the protection of property and the environment.

The actual methods used to meet the specific requirements of the Regulations are at the

discretion of the company. The onus is on the company to maintain adequate records and demonstrate to the Board the adequacy and effectiveness of the methods employed to achieve compliance.

## **2. *Guidelines for Filing Requirements, 1995 (GFR)***

On 5 September, the Board sought comments from the public on draft sections of the GFR. Comments were due on 3 October. The final revised GFR will be released by the end of 2003.

In late 2002, the Board initiated a project to review and revise its GFR. Originally developed in 1995, the GFR were intended to help companies prepare complete applications and address components of an application. This review and resulting modifications will ensure that information in the GFR is clear, accurate and complete so that the Board's expectations are understood and can be applied consistently by applicants.

## **3. *Onshore Pipeline Regulations, 1999 (OPR) - Decommissioning of Pipelines***

The Board is proposing to amend its OPR to provide for a regulatory process for applications to take pipelines permanently out of service but where this would not result in the discontinuation of service to end users.

## **4. *National Energy Board Pipeline Crossing Regulations, Part I and Part II - Damage Prevention Regulations***

The Board intends to replace the existing *Pipeline Crossing Regulations, Part II* with regulations targeted at damage prevention (to be known as *Damage Prevention Regulations*). The Board has been holding meetings with stakeholders and plans to continue consultation with interested persons by holding focus meetings and open houses at various locations across Canada.

## **Regulatory Initiatives Pursuant to the *Canada Oil and Gas Operations Act***

### **5. *Canada Oil and Gas Diving Regulations and Guidance Notes***

For more information on this matter, refer to item 4 under *Amendments to Regulations and Rules* in the May 2001 issue of the *Regulatory Agenda*.

### **6. *The Canada Oil and Gas Drilling Regulations and the Canada Oil and Gas Production and Conservation Regulations***

For more information on this matter, refer to item 5 under *Amendments to Regulations and Rules* in the May 2001 issue of the *Regulatory Agenda*.

## **Regulatory Initiatives Pursuant to the *Canada Labour Code***

### **7. *Regulations and Guidance Notes Pertaining to Canada Labour Code, Part II***

For more information on this matter, refer to item 6 under *Amendments to Regulations and Rules* in the February 2003 issue of the *Regulatory Agenda*.

## **Other**

### **8. *Species at Risk Act – Effect of Certain Provisions on Applications before the National Energy Board***

On 11 September, the Board informed companies under its jurisdiction and companies who file applications under the *Canada Oil and Gas Operations Act* that on 5 June, sections 2 to 31, 37 to 56, 62, 65 to 76, 78 to 84, 120 to 133 and 137 of the Federal *Species at Risk Act* came into force. The Board advised the companies to familiarize themselves with the provisions of the *Species at Risk Act* now in force and, specifically, to be familiar with sections 2, 79 and 137 as those sections may pertain to applications before the Board.

For further information regarding the *Species at Risk Act*, refer to Environment Canada's Website at [www.speciesatrisk.gc.ca](http://www.speciesatrisk.gc.ca).

# Administrative Matters

## Instructions for Filing

All correspondence with the Board should be addressed to the Secretary, National Energy Board, 444 Seventh Avenue SW, Calgary, AB T2P 0X8 - Fax: (403) 292-5503.

## Applications - Copies Required to be Filed

For a list of the number of copies required for the different types of applications, see our Internet site under the heading *Submit a Document*.

## Communication Numbers

### *General Information:*

(403) 292-4800  
1-800-899-1265

### *Publications Office:*

Telephone: (403) 299-3562  
Telecopier: (403) 292-5576  
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### *Web Site:*

[www.neb-one.gc.ca](http://www.neb-one.gc.ca)

### *Telephone Numbers:*

For a current list of the telephone numbers of Board Members and key staff, see our Internet site under the heading: *About Us, Our People*.

National Energy Board  
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# Appendix I

## Section 58 Applications

### Gas Pipelines

Applicant	File/Order	Application	Est. Cost
TransCanada PipeLines Limited	File : 3400-T001-224 Order: XG-T001-40-2003	Application dated 25 July; approved on 3 September. Decommission an auxiliary building and compressor plant at Station 13.	2 222 800
	File: 3400-T001-225 Order: XG-T001-41-2003	Application dated 14 August; approved on 11 September. Cathodic Protection Program No. 5 at nine sites in Saskatchewan.	271 500
	File : 3400-T001-219 Order : XG-T001-43-2003	Application dated 11 June; approved on 16 September. Contaminant Sampling and Remediation Program – Remediation at Compressor Station 21.	2 080 000
	File : 3400-T001-226 Order : XG-T001-46-2003	Application dated 15 September; approved on 25 September. Cathodic Protection Program No. 7 at a site in Ontario.	40 000
TransCanada PipeLines Limited, BC System	File: 3400-T054-9 Order: XG-T054-42-2003	Application dated 26 August; approved on 11 September. Cathodic Protection Program No. 6 on the BC System.	12 240
Westcoast Energy Inc.	File: 3400-W005-311 Order: XG-W005-44-2003	Application dated 28 July; approved on 18 September. Replace the liquid sulphur storage tank at the McMahon gas plant.	1 260 000
	File: 3400-W005-313 Order: XG-W005-45-2003	Application dated 5 September; approved on 19 September. Construct a revetment in Crassier Creek near Hasler Flat, British Columbia.	35 000

### Oil Pipelines

Applicant	File/Order	Application	Est. Cost
Plains Marketing Canada, L.P.	File: 3400-P077-2 Order: XO-P077-17-2003	Application dated 28 May; approved on 11 September. Deactivate a 5.3 kilometre section of the Bodo-to-Cactus-Lake Pipeline and relocate pig traps from the Murphy Oil battery to the South Bodo tie-in.	Not available
Trans-Northern Pipelines Inc.	File: 3400-T002-59 Order: XO-T002-16-2003	Application dated 8 August; approved on 11 September. Pipeline replacement in the Township of Thurlow, City of Belleville, Ontario.	1 070 000



## Profile

The National Energy Board is a federal regulatory tribunal that was created on 2 November 1959 by an Act of Parliament.

The Board's regulatory powers under the *National Energy Board Act* include the granting of authorizations for the exportation of oil, natural gas and electricity, the certification of interprovincial and international pipelines and designated interprovincial and international power lines, and the setting of tolls and tariffs for oil and gas pipelines under federal jurisdiction.

In addition to its regulatory functions, the Board is responsible for advising the government on the development and use of energy resources.

The Act also requires that the Board keep under review the Canadian supply of all major energy commodities, with emphasis on electricity, oil,

natural gas, and the by-products derived from oil and natural gas, as well as the demand for Canadian energy in Canada and in export markets.

The Board's responsibilities under the *Canada Oil and Gas Operations Act* and certain provisions of the *Canada Petroleum Resources Act* encompass the regulation of exploration for and the development and production of oil and gas on Frontier Lands in a manner that promotes safety of the worker, protection of the environment, and conservation of hydrocarbon resources.

The Board also has specific responsibilities under the *Northern Pipeline Act* and the *Energy Administration Act*. In addition, Board inspectors have been appointed safety officers by Human Resources Development Canada to administer Part II of the *Canada Labour Code*.

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