



Regulatory Agenda

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

Public Hearing Applications

Decisions Rendered

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

Reasons for Decision issued on 27 November.

The Board approved an application from TNPI to relocate one section and lower two other sections of its 406.4 millimetre (16 inch) refined petroleum products pipeline in the City of Hamilton, Ontario. This application was made in order to accommodate the construction of the Red Hill Creek Expressway in King’s Forest Park in Hamilton.

The Board considered the application by way of a written public hearing.

(Also refer to item 2 under *Appeal and Reviews*)

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

Reasons for Decision issued on 28 November.

The Joint Review Panel has approved an application by GSCPL on behalf of GSX Canada Limited

Partnership to construct and operate a natural gas pipeline to Vancouver Island. The Panel was established under the *Canadian Environmental Assessment Act* (CEA Act) and the *National Energy Board Act* (NEB Act) to conduct a joint review of the GSX Canada Pipeline project.

Approval of the pipeline is subject to fulfillment of a number of conditions, including the receipt of regulatory approvals for the proposed Vancouver Island Generation Project facility to be located at Duke Point, near Nanaimo, British Columbia.

The pipeline is the Canadian portion of the Georgia Strait Crossing Project, a new international pipeline that would enable natural gas to be transported to markets in northwestern Washington and on Vancouver Island.

The pipeline consists of approximately 60 kilometres (37.2 miles) of 406 millimetre (16 inch) natural gas pipeline and related facilities starting from a point on the Canada-United States border in Boundary Pass, east of Saturna Island, British Columbia, to an interconnection with the existing Terasen Gas (Vancouver Island) Inc. pipeline at a point west of Shawnigan Lake and south of Duncan

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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on Vancouver Island.

Under the CEA Act, the Panel conducted a review of the environmental effects of the project and the appropriate mitigation measures. The Panel's conclusions and recommendations, including mitigation measures, follow-up programs and its rationale, are set out in the Joint Review Panel Report (the JRP Report) which was issued on 30 July 2003. The response of the Government of Canada to the JRP Report was approved by Governor in Council and released on 21 November 2003. The Panel took into consideration the JRP Report and the government response before making its decision under the NEB Act.

The Georgia Strait Crossing Project is jointly sponsored by British Columbia Hydro and Power Authority and Williams Gas Pipeline Company LLC. The estimated capital cost of the combined Canadian and US portions of the Georgia Strait Crossing Project is \$322.3 million. The estimated capital cost of the Canadian portion is \$139.3 million.

The review included a public hearing that was held in Sidney, British Columbia from 24 February to 19 March.

Hearing Completed

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

The Board held 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, British Columbia. The public hearing was held from 18 January 2001 to 23 September 2003 (39 days) in Abbotsford. 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 commence. But at the request of SE2, the Board it was adjourned
- 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.

Non Hearing Applications

Electricity Matters

Matters Pending

1. *PPL EnergyPlus, LCC (PPL) – Electricity Export (File 6200-P121-1)*

On 14 October, PPL applied for permits to export up to 4 380 gigawatt hours of combined firm and interruptible electricity per year for a period of 10 years.

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

On 24 September, NYPA applied for permits to export electricity, for a period of 10 years, 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.

3. *Teck Cominco Metals Ltd. (Teck) – Electricity Export (File 6200-T096-2)*

On 24 October, Teck applied for permits for export transfers of up to 3 500 gigawatt hours of firm and interruptible energy per year and up to 250 gigawatt hours of firm carrier transfer energy per year for a period of 10 years.

Frontier Matters

1. *Geophysical Service Incorporated (GSI) – Western Gulf of St. Lawrence Marine Seismic Program (File 9180-G705-38)*

In November 2002, GSI applied for approval to conduct a seismic survey in the west-central Gulf of St. Lawrence. GSI proposes to conduct the survey in November and December 2003. The Board received expert advice from the Department of Fisheries and Oceans (DFO) and Environment Canada and comments from the Group for Research and Education on Marine Mammals and the Mingan Island Cetacean Study on the proposed Project.

On 5 November, GSI responded to the key issues raised by the above parties. In its response, GSI stated that it had concentrated on mitigation and improvements for the Project which are necessary to overcome uncertainties and further address any residual impacts. GSI proposed to:

- (i) modify/reduce components of the Project;
- (ii) undertake additional field monitoring; and
- (iii) implement additional mitigation measures.

On 12 November, the Board sent a letter to DFO stating that it was of the view that many of the outstanding concerns about the Project had now been adequately addressed by GSI and that before taking a decision on the application, the Board was seeking specialist advice from DFO on certain questions.

On 26 November, DFO responded to the Board's letter of 12 November. In its response, DFO stated that while the revisions to the Project would reduce the anticipated effects on several species, they are insufficient to reduce the risk at an acceptable level for the marine mammals in the sensitive zones. Consequently, DFO recommended that the Board not approve the project as proposed.

2. *Devon ARL Corporation's "Well Termination Record" for the well Itiginkpak F-29 was approved on 7 November pursuant to section 203.(1) of the Canada Oil and Gas Drilling Regulations.*

3. *Canadian Forest Oil Ltd.'s "Well Termination Record" for the well Mount Coty 2K-02 was approved on 18 November pursuant to section 203.(1) of the Canada Oil and Gas Drilling Regulations.*

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 Tariffs Matters

Matters Completed

1. *Rate of Return on Common Equity (ROE) for 2004 (File 4750-A000-11)*

On 28 November, the Board approved, pursuant to the ROE adjustment mechanism approved in the Multi-Pipeline Cost of Capital Decision (RH-2-94), as amended, a ROE of 9.56 per cent for the year 2004. The ROE for 2003 was 9.79 per cent.

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

On 27 November, the Board approved an application dated 25 July from Westcoast for approval of final tolls for the year 2003.

Matters Pending

3. *TransCanada PipeLines Limited (TCPL) – Mainline Open Season, Complaints – North Bay Junction (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.

On 15 September, TCPL applied for approval to

establish the North Bay Junction as a new receipt and delivery point and for approval of the associated tolls for services to and from this point. On 26 September, the Board decided to hold a facilitated workshop to discuss the issues raised in the aforementioned letters of complaint. The Board held the workshop on 23 October and the Facilitator's Report was issued on 13 November.

On 14 November, the Board decided to stay the processing of the North Bay Junction application.

The Board noted that the North Bay Junction application does not adequately address the issues identified in the original letters of complaint filed with the Board. By proceeding with the narrow scope proposed by TCPL, the Board was concerned that the original complainants will not have a meaningful opportunity to have their concerns heard.

The Board believed that there are broader toll design issues which are inextricably linked to the North Bay Junction application, many of which were identified at the workshop. Accordingly, the Board determined that any regulatory process established to consider the North Bay Junction proposal should address whether the Mainline's existing toll design remains appropriate and what changes, if any, are required.

Given that the evidence contained within the application only addresses the appropriateness of the proposal, the Board has decided to stay the processing of the application until such time as TCPL files sufficient information to address the broader toll design issues. The Board will then determine whether to consider the application and the related information in a stand-alone proceeding or in conjunction with a future application.

3. TransCanada PipeLines Limited (TCPL) – 2004 Interim Tolls – (File 4200-

On 12 November, TCPL applied for interim tolls to be effective on 1 January 2004 pending the filing and disposition of its 2004 Tolls Application, which it intends to file in the near future, for orders approving Mainline tolls and tariff for service commencing 1 January 2004. TCPL is requesting approval of an interim Eastern Zone toll of \$1.222 per gigajoule, which compares to the current Eastern Zone toll of \$1.195 per gigajoule. On 18 November, the Board sought comments from interested persons on the application.

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.

Review Completed

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

On 7 November, the Board decided to reject CEP's application for review of the Board's Reasons for Decision OH-1-2003. In the OH-1-2003 Decision, the Board 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 had asked 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 of the refinery 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.

The Board sought comments of interested parties on this matter.

Review Pending

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. *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 2003. 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.

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

On 5 February, the Board solicited comments from the public on a proposal to amend the OPR to include provisions regarding decommissioning and to establish a Decommissioning Exemption Order to exempt certain activities from the requirement to file decommissioning applications. The Board has considered the comments received.

The Board is of the view that many of the suggestions put forward could best be addressed in guidance notes to the regulations, or in an exemption order. Both of these instruments can be easily amended to adjust for changing situations, and can provide for more description and explanation than can regulations. The Board agrees with the comments by Canadian Energy Pipeline Association that a discussion with industry would be highly beneficial and would like to hold these discussions before proceeding any further to finalize the decommissioning exemption order and guidance notes. Therefore, the Board is adding the matter of decommissioning to the agenda for the NEB Workshop to be held from 2 to 4 December.

The Board is proposing that the changes also apply to the *National Energy Board Processing Plant Regulations*. Given that the process for amending regulations takes a considerable amount of time, the Board will start the procedure for amending both sets of regulations by sending the amendments to the Department of Justice for its

review. All parties will be given an opportunity to comment on the amendments when they are published in the *Canada Gazette, Part I*. The Board will also make amendments as needed as a result of discussions with industry.

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

On 14 November, the Board sought comments from the public on the *Draft Guidance Notes for the National Energy Board Damage Prevention Regulations*. The document contains the draft legal text of the Board's proposed *Damage Prevention Regulations* and the proposed guidance. The deadline for written comments is 31 March 2004.

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 held meetings with stakeholders and plans to continue consultation with interested persons by holding focus meetings and open houses at various locations across Canada.

4. *Guidance Notes for Applicants - Applications for Declaration of Significant Discovery and Commercial Discovery - Companies operating on National Energy Board Regulated Frontier Lands*

On 18 November, the Board issued a revised section 4 of the *Guidance Notes for Applications for Declaration of Significant Discovery and Commercial Discovery*. The revisions came into effect on 18 November.

The revisions establish a new process for the Board's determination of Directly Affected Persons (DAP) and are the result of consultations between Board staff, industry and government representatives, which took place in May and June of 2003.

The primary objective of this process is to assist the Board in reaching a fair and objective determination of DAP. In the Board's view, the process strikes an appropriate balance among the interests of, providing notice to potential DAP, transparency of process and maintaining privilege over information filed in respect of Significant and Commercial Discovery Declaration applications.

Information regarding the changes to the DAP process can be found at <http://www.neb-one.gc.ca>.

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*.

7. *The Canada Oil and Gas Geophysical Operations Regulation (Regulations)*

The Regulations are being amended in order to satisfy concerns raised by the Standing Joint Committee for the Scrutiny of Regulations and to reflect advances in electronic data storage and communications. Some of the changes are designed to render provisions of the Regulations consistent in both official languages and to reflect changes made since the adoption of the *Department of Canadian Heritage Act*.

Regulatory Initiatives Pursuant to the Canada Labour Code

8. *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*.

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*.

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Appendix I

Section 58 Applications

Oil Pipelines

| Applicant | File/Order | Application | Est. Cost |
|----------------------------------|--|--|-----------|
| Trans-Northern Pipelines Inc. | File: 3400-T002-59 Order: XO-T002-21-2003 | Application dated 29 September; approved on 12 November. Pipe replacement in the Township of Williamsburg, Ontario. | 450 000 |

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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