

**DRAFT AGREEMENT BETWEEN THE NATIONAL ENERGY BOARD
AND THE MINISTER OF THE ENVIRONMENT CONCERNING
THE JOINT REVIEW OF THE ENBRIDGE GATEWAY PROJECT**

1.0 PREAMBLE

WHEREAS the National Energy Board (the Board) has regulatory responsibilities for inter-provincial and international natural gas, oil and commodity pipelines pursuant to the *National Energy Board Act* (the NEBA) and for environmental assessment pursuant to the NEBA and the Canadian *Environmental Assessment Act* (the CEAA);

WHEREAS the Minister of the Environment has statutory responsibilities pursuant to the CEAA and the Canadian Environmental Assessment Agency (the Agency) has administrative responsibilities under the CEAA;

WHEREAS an application for a Certificate of Public Convenience and Necessity is expected to be filed with the Board pursuant to Part III of the NEBA by Gateway Pipeline Inc. in respect of the Enbridge Gateway Project (the Project);

WHEREAS certain components of the Project are within the jurisdiction of the Board and the CEAA applies to all aspects of the Project;

WHEREAS the Board, Fisheries and Oceans Canada, Transport Canada and Indian and Northern Affairs Canada are responsible authorities for the Project under the CEAA and Environment Canada and Natural Resources Canada may be responsible authorities for the Project under the CEAA;

WHEREAS the Board and the responsible authorities recommended that the Minister of the Environment refer the Project to a review panel pursuant to section 25 of the CEAA;

WHEREAS the Project, if filed, requires a public regulatory hearing pursuant to the NEBA;

WHEREAS the Minister of the Environment has determined that a Joint Review Panel should be established pursuant to paragraph 40(2)(a) of the CEAA to consider the Project;

WHEREAS the Board, the Agency, and the responsible authorities recognize that a TERMPOLE Review Process, which will be coordinated by Transport Canada, will occur separately from this Joint Review Panel process;

WHEREAS the Parties to this Agreement wish to avoid unnecessary duplication that could arise from carrying out the environmental assessment requirements separately

while maintaining a high quality environmental assessment process under the CEAA and the NEBA;

NOW THEREFORE, the Parties agree to undertake to establish a Joint Review Panel as outlined below and in accordance with the Terms of Reference attached as an Appendix to this Agreement, for the environmental assessment of the Project as described in the Project Description.

2.0 DEFINITIONS

In this Agreement:

"Agency" means the Canadian Environmental Assessment Agency;

"Board" means the National Energy Board;

"Board's Procedures" means the *National Energy Board Rules of Practice and Procedure, 1995*, as amended and made pursuant to section 8 of the NEBA;

"Board's Public Hearing Process" means the public hearing process followed by the Board under the NEBA to assess a proposed Project and the environmental effects of a Project;

"CEAA" means the *Canadian Environmental Assessment Act*;

"Environment" has the same meaning as set out in section 2 of the CEAA;

"Environmental Effect" has the same meaning as set out in section 2 of the CEAA;

"Federal Authority" has the same meaning as set out in section 2 of the CEAA;

"Follow-up Program" has the same meaning as set out in section 2 of the CEAA;

"Government Participant" means a Federal Authority or a Provincial Department who has an environmental assessment responsibility and who has filed a declaration to have a role of Government Participant, which is distinct from interventions, letters of comments, or written or oral statements.

"Intervenor", as defined in the Board's Procedures, means a person who establishes an interest in a proceeding by filing a written intervention in accordance with the Board's Procedures;

"Joint Review" means the assessment of the environmental effects of the Project to be conducted pursuant to the CEAA and the consideration of the Project application under the NEBA.

"Joint Review Panel" means a joint review panel established pursuant to section 6 of this Agreement;

"Joint Review Panel Report" means the report set out in section 6.5 of this Agreement;

"Jurisdiction" has the same meaning as set out in subsection 40(1) of the CEAA;

"Letter of Comment" means a letter as referred to in section 30 of the Board's Procedures and means an unsworn written or oral submission that comments on the Project or on any issue related to the review, that describes the nature of that submitter's interest in the Project and provides any relevant information explaining or supporting the submitter's comments. It does not give the submitter an Intervenor status in the review so the submitter cannot cross-examine witnesses or present final argument.

"NEBA" means the *National Energy Board Act*;

"Parties" mean the signatories to this Agreement;

"Pipeline" has the same meaning as set out in section 2 of the NEBA;

"Project" means the Project as described in the Appendix to this Agreement, and may also be referred to as the Enbridge Gateway Project;

"Proponent" means Gateway Pipeline Inc. who, on behalf of the Gateway Pipeline Limited Partnership, proposes to construct the Project. Gateway Pipeline Inc. is an entity established by Enbridge Inc.

"Public Registry" means the registry established under section 55 of the CEAA, to facilitate public access to records relating to the environmental assessment of the Project;

"Responsible Authority" has the same meaning as set out in section 2 of the CEAA; and

"TERMPOL Review Process" refers to the Technical Review Process (TRP) of Marine Terminal Systems and Transshipment Sites. The TRP focuses on a dedicated design ship's selected route in waters under Canadian jurisdiction to its berth at a proposed marine terminal or transshipment site and, specifically, to the process of cargo handling between vessels, or off-loading from ship to shore or vice-versa.

3.0 INTERPRETATION

This Agreement:

- a) establishes an administrative framework within which the Parties can cooperatively exercise their respective powers and duties established by the CEAA and the NEBA;

- b) is a public document that is to be read with and interpreted in a manner consistent with the statutes referenced in a) and the regulations made pursuant to those statutes; and
- c) does not create any new legal powers or duties, nor does it alter in any way the powers and duties established by the statutes referenced in a) and the regulations made pursuant to those statutes, and is not legally binding on the Parties.

4.0 GENERAL

- 4.1 Purpose** - The primary purpose of this Agreement is to coordinate the environmental assessment required under the CEAA and the NEBA by providing for a review of the environmental effects likely to result from the Project and the appropriate mitigation measures. Nothing in this Agreement should be construed as limiting the ability of the Joint Review Panel to have regard to all considerations that appear to it to be relevant pursuant to section 52 of the NEBA.
- 4.2 Public Registry** - As part of the Joint Review, a Public Registry will be maintained in accordance with the requirements of the CEAA.
- 4.3 Participant Funding Program** - Participant funding for matters and issues relating to the CEAA will be arranged for the Joint Review and will be administered and managed by the Agency through the Participant Funding Program. The public will be notified of any funding allocation once the list of Intervenor has been established.

5.0 REVIEW UNDER A JOINT REVIEW PANEL PROCESS

- 5.1 Terms of Reference** - The Joint Review Panel will conduct a Joint Review of the Project in accordance with the Terms of Reference attached as an Appendix to this Agreement.
- 5.2 Joint Review Panel Responsibilities** - The Joint Review Panel will meet the requirements of the CEAA and the NEBA in the Joint Review of the Project.
- 5.3 Powers of the Joint Review Panel** - The Joint Review Panel, when appointed, will issue a Hearing Order in accordance with the Board's Procedures and the procedures outlined in article 6.3 of this Agreement. The Joint Review Panel will have the powers set out in the NEBA and section 35 of the CEAA.

6.0 PROCEDURES FOR THE JOINT REVIEW PANEL

6.1 Joint Review Panel Composition and Appointment

The Joint Review Panel will consist of three members.

The Joint Review Panel will be composed of no less than two permanent members of the Board.

The Minister of the Environment will jointly with the Chairman of the Board, approve the selection of and appoint the Chair of the Joint Review Panel who will be a permanent member of the Board.

The second permanent member of the Board will be appointed by the Chairman of the Board.

The remaining Joint Review Panel member shall, unless a temporary or permanent member of the Board, satisfy the eligibility requirements for temporary members of the Board and shall be appointed to the Joint Review Panel by the Minister of the Environment. A joint request shall be made by the Minister of the Environment and the Chairman of the Board to the Minister of Natural Resources to recommend to the Governor in Council the appointment of the proposed member as a temporary member of the Board.

The members of the Joint Review Panel are to be unbiased and free from any conflict of interest in relation to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project.

6.2 Secretariat to the Joint Review Panel

A secretariat will be formed consisting of all relevant and necessary Board staff and persons designated by the Agency to provide administrative, technical and procedural support to the Joint Review Panel.

The Agency will designate Agency staff to assist the Joint Review Panel and work cooperatively with the staff to be assigned by the Board.

The Agency will ensure that all other activities performed by the Agency staff while assigned to the secretariat are conducted in a way so as to avoid a conflict of interest with this Joint Review. Likewise, the Board will ensure that all other activities performed by the Board staff while assigned to the secretariat are conducted in a way so as to avoid a conflict of interest with this Joint Review.

6.3 Joint Review Panel Procedures

The Joint Review will follow the *National Energy Board Rules of Practice and Procedure, 1995*, as amended and made pursuant to section 8 of the NEBA.

The Joint Review Panel will:

- Ensure that open sessions are held with the public, including Aboriginal people, to assist in the formulation of issues that should be considered in the Joint Review, to receive comments on the information to be requested of the Proponent, and to assist individuals and groups in understanding the ways in which they can participate in the hearing process. The location and timing of the sessions will be determined by the Joint Review Panel.
- Take into consideration comments or submissions received during the sessions held with the public, including Aboriginal people, referred to above, and may, at its discretion, broaden the assessment to reflect these comments and submissions.
- Require the Proponent to provide evidence regarding potential concerns of Aboriginal people. In addition, evidence may come from Aboriginal people, the Crown, other intervenors, Federal Authorities and Provincial Departments, so that the Joint Review Panel may be fully informed of potential impacts and mitigation when making its decision about the Project.
- Conduct its Joint Review in a manner which will promote and facilitate the participation of the public, including Aboriginal people, by allowing informal opportunities for the public, including Aboriginal people, to convey their views to the Joint Review Panel, including written and oral statements. Government Participant status will also be afforded to Federal Authorities and to Provincial Departments with an environmental assessment responsibility and who file a declaration to this effect.
- Ensure that the public, including Aboriginal people, have a minimum of 60 days to review the environmental assessment documentation submitted by the Proponent in its initial application and to submit written comments to the Joint Review Panel on it.
- Provide the public, including Aboriginal people, with the opportunity to review and comment on any additional information submitted to the Joint Review Panel by the Proponent prior to the commencement of final argument, through Letters of Comment.
- Provide the public, including Aboriginal people, with the opportunity to appear before the Joint Review Panel at a public hearing.
- Ensure a minimum of 45 days notice of the public hearings from the deadline for requesting Intervenor status to the commencement of the public hearings.
- Ensure that all information produced or received by the Joint Review Panel is made available to the public, including Aboriginal people, pursuant to section 4.2

of this Agreement unless specific procedural rulings or legislative provisions prevent the disclosure of the information.

- Ensure that public hearings will not proceed until the Joint Review Panel has determined that the documentation appearing on the public record, in the Panel's view, constitutes adequate information to proceed to public hearings.

6.4 Aboriginal Crown Consultation

The manner in which the Crown proposes to consult with Aboriginal people whose potential or established Aboriginal rights could be adversely affected by the Enbridge Gateway Project will be the subject of a separate and more detailed communication, independent of the Joint Review Panel, with all participants.

6.5 Reporting and Decision Making

The Joint Review Panel will prepare a report setting out its rationale, conclusions and recommendations relating to the environmental assessment of the Project, including any mitigation measures and follow-up programs and a summary of any comments received from the public, including Aboriginal people.

The Joint Review Panel Report shall be prepared in both official languages and submitted to the Minister of the Environment and the Joint Review Panel Report will be published.

The Minister of the Environment will forward the Report to all responsible authorities.

For the Project to be reviewed under the Joint Review Panel process, the Board and other responsible authorities will together develop a schedule for taking a course of action under subsection 20(1) or 37(1) of the CEAA and for making a recommendation to the Governor in Council under subsection 5(2) of the CEAA.

7.0 AMENDMENTS AND TERMINATION

Amendments to this Agreement may be made upon written notice by a Party to the other Party and upon the mutual consent of the Chairman of the Board and the Minister of the Environment.

Any Party may terminate this Agreement upon one month's written notice to the other Party.

Subject to section 27 of the CEAA, a Party's eligibility to withdraw from or terminate this Agreement will end at the commencement of the public hearings.

The attached Appendix forms an integral part of this Agreement.

WHEREAS the Parties hereto have put their signatures this _____ day of
_____ 2006.

Original signed by:

The Honourable Rona Ambrose
Minister of the Environment

Kenneth W. Vollman
Chairman, National Energy Board

APPENDIX

Terms of Reference

The definitions in the Agreement between the National Energy Board and the Minister of the Environment Concerning the Joint Review of the Enbridge Gateway Project will apply to this Appendix.

The Joint Review Panel will conduct a review of the environmental effects of the Project and the appropriate mitigation measures based on the Project Description and consideration of the Project application under the NEBA.

The Joint Review Panel will include in its review of the Project, consideration of the factors identified in this Appendix and the scope of the factors.

Project Description

The Project includes the construction, operation, decommissioning and abandonment of the following Project components proposed by the Proponent in its Preliminary Information Package and a subsequent submission¹ or likely to be carried out in relation to the physical works proposed by the Proponent, and which may require a federal approval or authorization including:

- An oil pipeline commencing near Fort Saskatchewan, Alberta and terminating at a new marine terminal located in Kitimat, British Columbia.
- A condensate pipeline commencing at a new marine terminal in Kitimat, British Columbia and terminating near Fort Saskatchewan, Alberta. There will be a common 30-m wide right-of-way (ROW) for the two pipelines plus extra temporary workspace required for construction.
- Associated pump stations, a pressure letdown station (oil) and a pressure initiation station (condensate).
- All-weather road access and electrical power requirements for the pump stations and all-weather road access to a new marine terminal in Kitimat, British Columbia. There will be temporary access roads, campsites, and other support facilities (e.g., borrow pits, stockpile sites) required for construction.
- Block valves to be situated at the pump stations, selected watercourse crossings, and other locations along the route, as appropriate.
- Pigging facilities at either end of the pipeline system and in selected intermediate locations.

¹ Gateway Pipeline Inc. submitted a Preliminary Information Package to the National Energy Board and the Canadian Environmental Assessment Agency on 1 November 2005. Subsequently, Gateway Pipeline Inc. submitted a letter to the National Energy Board and the Canadian Environmental Assessment Agency on 29 March 2006 outlining modifications to the proposed Project described in its earlier Preliminary Information Package.

- Cathodic protection system for pipelines and tanks, including anode beds at selected locations along the pipeline route.
- Two marine loading and unloading berths (one each for oil and condensate) that have the following common features:
 - Loading and unloading platforms;
 - Breasting dolphins;
 - Mooring dolphins;
 - Gangway tower;
 - Walkway bridges between platform and breasting dolphins;
 - Utility boat floating dock;
 - Oil contingency deployment system with storage platforms;
 - Fire fighting systems;
 - Offshore anchorages in Kitimat Arm or elsewhere; and
 - Pipeline interconnects between the berths and the tankage.

In addition to the Project components listed above, the potential environmental effects of, and the public comments related to the marine transportation of oil and condensate associated with the Project within the boundaries of Canadian waters will be considered by the Joint Review Panel.

The Parties to this Agreement recognize there will be overlap between the Joint Review Panel environmental assessment process and the TERMPOL Review Process coordinated by Transport Canada with respect to certain aspects of Project-related shipping activities.

Factors to be Considered During Joint Review

The Joint Review will include a consideration of the following factors listed in subsections 16(1)(a) to (d) and 16(2) of the CEEA:

- The environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
- The significance of the effects referred to above;
- Comments from the public, including Aboriginal people, that are received during the review;
- Measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
- The purpose of the Project;

- Alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
- The need for, and the requirements of, any follow-up program in respect of the Project; and
- The capacity of renewable resources that is likely to be significantly affected by the Project to meet the needs of the present and those of the future.

In accordance with subsection 16(1)(e) of the CEAA, the assessment by the Joint Review Panel will also include a consideration of the following additional matters:

- Need for the Project;
- Alternatives to the Project;
- Description of the present environment which may reasonably be expected to be affected, directly or indirectly, by the Project, including adequate baseline characterization;
- Measures to enhance any beneficial environmental effects; and
- Proposal for Environmental Protection, Environmental Monitoring, Contingency and Emergency Response Plans.

Scope of Factors

The Joint Review will consider the potential effects of the Project including those resulting from the construction, operation, decommissioning, abandonment or other undertakings and activities that are proposed by the Proponent or that are likely to be carried out in relation to the physical works proposed by the Proponent, within spatial and temporal boundaries which encompass the periods and areas during and within which the Project may potentially interact with, and have an effect on, components of the environment. These boundaries will vary with the issues and factors considered, and will reflect:

- the natural variation of a population or ecological component;
- the timing of sensitive life cycle phases in relation to the scheduling of the Project;
- the time required for an effect to become evident;
- the time required for a population or ecological component to recover from an effect and return to a pre-effect condition, including the estimated degree of recovery;

- the area affected by the Project and undertakings or activities associated with the Project; and
- the area within which a population or ecological component functions and within which a Project effect may be felt.