



LETTER DECISION

File OF-Fac-Gas-T211-2017-01 01
24 November 2017

Ms. Elaine Liddiard
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Dear Ms. Liddiard:

**TransCanada PipeLines Limited (TransCanada)
Application for the Iroquois Export Bi-Directional Modification Project
(Iroquois Project)
Application for the Ottawa Sales Meter Station Upgrade Project (Ottawa Project)
Application for the Richmond North Sales Meter Station Project (Richmond
Project) pursuant to section 58 of the National Energy Board Act and section 45.1 of
the National Energy Board Onshore Pipeline Regulations
Hearing Order GHW-001-2017**

The National Energy Board (Board) has considered the evidence and submissions made in the GHW-001-2017 proceeding, including TransCanada's applications, dated 17 February 2017 and 23 February 2017, as well as subsequent filings. Having considered and weighed all of the evidence before it, the Board has decided that the Iroquois Project, the Ottawa Project and the Richmond Project are all in the public interest.

The Board has decided to issue Order XG-T211-026-2017 (Iroquois Order) pursuant to section 58 of the NEB Act, the effect of which is to approve the Iroquois Project. A copy of the Iroquois Order and its Schedule A, which together outline the specifics of the Project as approved, is attached (Appendix A). The Board reminds TransCanada to apply for Leave to Open pursuant to section 47 of the NEB Act, prior to the facilities being placed in operation.

The Board has decided to issue Order XG-T211-025-2017 (Ottawa Order) pursuant to section 58 of the NEB Act, the effect of which is to approve the Ottawa Project. A copy of the Ottawa Order and its Schedule A, which together outline the specifics of the Project as approved, is attached (Appendix B).

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TransCanada has requested a partial exemption from the requirements of sections 30(1)(b) and 47(1) of the NEB Act to obtain leave to open from the Board for the customer tie-in tee assembly prior to its installation and in-service. TransCanada's partial leave to open request is approved.

The Board has decided to issue Order XG-T211-024-2017 (Richmond Order) pursuant to section 58 of the NEB Act, the effect of which is to approve the Richmond Project. A copy of the Richmond Order and its Schedule A, which together outline the specifics of the Project as approved, is attached (Appendix C). TransCanada has requested a partial exemption from the requirements of sections 30(1)(b) and 47(1) of the NEB Act to obtain leave to open from the Board for the customer tie-in and the compressor station tie-in tee assemblies prior to their installation and in-service. TransCanada's partial leave to open request is approved.

The Board reminds TransCanada that it is required to comply with Order MO-08-2000 dated 28 April 2000, regarding non-destructive examination of welds. The Board also reminds TransCanada that it must comply with the pressure testing requirements of CSA-Z662-15 and the required pressure and time duration for ship tested fabricated assemblies (to be tested with their associated components including valves).

The Board grants TransCanada an exemption from the provisions of paragraph 30 (1)(a) and section 31 of the NEB Act for the above-noted Projects (Iroquois, Ottawa and Richmond).

Pursuant to Conditions 2 and 4 of the Orders, TransCanada must file all technical specification updates for the proposed facilities concurrently with its Leave to Open applications. Technical specification updates are limited to differences in pipe length, diameter, and/or pipe grade material that do not impact any other information provided in the Applications. Any other changes will require advance approval from the Board. The Board will issue final Amending Orders for the Projects, as necessary.

Aboriginal Matters

TransCanada identified the Algonquins of Ontario (AOO), the Huron Wendat Nation, and Mohawk Council of Akwesasne, as having known or asserted traditional territory in the one or more of the three Project areas.

TransCanada stated that it couriered and emailed Iroquois Project information packages to all three organizations between 8 December 2016 (Mohawk Council of Akwesasne) and 15 February 2017 (Huron-Wendat Nation and Algonquins of Ontario Consultation Office).

In its response to the Board's Information Request No.1.1, which identified the Métis Nation of Ontario as also having asserted traditional territory in the Iroquois Project area, TransCanada confirmed that it forwarded Iroquois Project information to the Métis Nation of Ontario on 16 and 17 March 2017 via courier and email respectively.

TransCanada stated that it further conducted a follow up phone call on 20 March 2017, that no concerns have been raised to date and that Métis Nation of Ontario has been added to TransCanada's list of Aboriginal communities and organizations potentially impacted by or interested in the Iroquois Project. TransCanada stated that it followed up with emails and phone calls to all four Aboriginal groups.

TransCanada stated in its application for the Iroquois Project that the Huron-Wendat Nation responded on the same day to TransCanada's 15 February 2017 email inquiring whether any archaeological assessments were conducted for the Iroquois Project. TransCanada responded to the Huron-Wendat Nation. TransCanada further committed to continue to engage the First Nation to address any Project-related concerns that they may have with respect to archaeology. TransCanada also confirmed that its engagement with Aboriginal groups is ongoing and that it remains available to respond to any issues or concerns that may arise.

TransCanada stated that it couriered and emailed Ottawa Project information package to the AOO on 13 January 2017. In its response to the Board's Information Request No.1.1, which identified the Métis Nation of Ontario as also having asserted traditional territory in the Ottawa Project area, TransCanada provided a Project information package to the Métis Nation of Ontario on 16 and 17 March 2017 via courier and email respectively. TransCanada stated that it followed up with emails and phone calls to both Aboriginal groups.

TransCanada stated that it couriered and emailed a Richmond Project information package to the AOO on 13 January 2017.

TransCanada confirmed that its information packages for the Iroquois, Richmond and Ottawa Projects included a description of: the Project, the potential impacts of the Project, its dispute resolution process, information about the NEB and its application review process and how outstanding Project-related concerns can be raised with the NEB.

The Board notified Natural Resources Canada (NRCan) that the Board had received applications for the Projects, and that these applications may involve Aboriginal matters. The Board notes that Guiding Principle No. 6 of the Government of Canada's Updated Guidelines for Federal Officials to Fulfil the Duty to Consult (March 2011) states that the Government of Canada will use and rely on existing consultation mechanisms, processes and expertise, such as environmental assessment and regulatory approval processes. The Guidelines further state that agencies, boards, commissions and tribunals, including the NEB, have a role to play in assisting the Crown in discharging, in whole or in part, the duty to consult.

On 27 April 2017, the AOO filed a letter with the Board. In their letter the AOO noted that:

“Algonquins have lived in present-day Ontario for thousands of years before the Europeans arrived. Today, the Algonquins of Ontario are comprised of ten Algonquin communities: the Algonquins of Pikwakanagan First Nation, Antoine, Kijicho Manito

Madaouskarini (Bancroft), Bonnechere, Greater Golden Lake, Mattawa/North Bay, Ottawa, Shabot Obaadjiwan (Sharbot Lake), Snimikobi (Ardoch) and Whitney and Area. Based on a Protocol signed in 2004, these communities are working together to provide a unified approach to reach a settlement of the Algonquin land claim. (...)

The Algonquins of Ontario land claim includes an area of 9 million acres within the watersheds of the Kichissippi (Ottawa River) and the Mattawa River in Ontario, unceded territory that covers most of eastern Ontario including our nation's capital and most of Algonquin Park. More than 1.2 million people live and work within the Settlement Area. There are 84 municipal jurisdictions fully and partially located within the Settlement Area, including 75 lower and single tier municipalities and 9 upper tier counties.

On October 18, 2016, the Algonquins of Ontario and the Governments of Ontario and Canada reached a major milestone in their journey toward reconciliation and renewed relationships with the signing of the (...) Agreement-in-Principle (AIP). The signing of the AIP is a key step toward a Final Agreement, and a modern-day Treaty, which will clarify the rights of all concerned and open up new economic development opportunities for the benefit of the Algonquins of Ontario and their neighbours in the Settlement Area in eastern Ontario.”

The AOO submitted that they had been notified of the above-noted Projects, but that appropriate consultation and accommodation had not taken place. The AOO requested an opportunity to meet with the Board to further detail their concerns and to discuss appropriate protocols for consultation and accommodation.

In a 20 June 2017 letter, the Board established an initial comment process for these Projects and encouraged the AOO to formulate and file its concerns with respect to them. In its letter, the Board also stated that it would consider the AOO’s preliminary submissions contained in the 27 April 2017 letter as part of its assessment of the Iroquois Project application. The Board invited AOO to file any additional submissions in regards to the Iroquois Project, and any submissions the AOO may have with respect to the Ottawa and Richmond Projects, by 30 June 2017, and allowed TransCanada to reply to those submissions no later than 5 July 2017.

On 30 June 2017, in its letter to the Board, the AOO stated that they had neither notice nor input into the process that led to the decision of the Board not to require a formal hearing under section 24 of the NEB Act, and noted that the Board’s procedural decision resulted in an inability on the part of the AOO to access the Board’s Participant Funding Program. The AOO submitted that the Board should exercise its discretion and ensure that they be given every reasonable opportunity to comment on the nature of the Iroquois Project and its impacts on their rights and interests which includes ensuring adequate funding for that purpose is provided. The AOO provided additional information on impacts of the Iroquois Project, without prejudice to their right to provide further comments, noting that their submission was made in light of the timeline imposed by the Board and the lack of participant funding available.

The AOO took the position that a Stage 1 archaeological assessment should be completed based on recent Ontario Ministry of Tourism, Culture and Sport (MTCS) guidance given to TransCanada for their existing natural gas (Iroquois) facilities. The AOO said that this assessment should be completed in consultation with the AOO in respect of the Iroquois Project and that a Stage 2 archaeological assessment would likely be necessary. The AOO further noted that there was no plan in place for managing cultural heritage resources that may be discovered during construction. Concerns were also noted in regards to the cumulative impacts of the Iroquois Project having not been adequately assessed. The AOO submitted that the Project will enable TransCanada to start importing gas, a change that will likely bring cumulative impacts upon their traditional rights and interests along with the real potential for increased greenhouse gas (GHG) emissions. The AOO also noted that it had not entered into an agreement with TransCanada for managing environmental and cultural heritage/archaeological impacts for ongoing “Integrity Digs” and submitted that the Iroquois Project, which will increase the volume of natural gas flow, will necessitate future integrity management work.

With respect to the Ottawa and Richmond Projects, the AOO said they would endeavour to provide comments as soon as it was able to.

On 5 July 2017, TransCanada submitted its reply. TransCanada stated that an Environmental and Socio-economic Assessment (ESA) had been undertaken, noting that while the NEB does not require ESAs to be filed with section 58 applications, the Summaries and Interactions Tables provided were based on the ESA TransCanada had conducted for the Projects. As to the potential effects resulting from the proposed modifications to the existing facilities, TransCanada submitted that its assessment demonstrates that there will be limited net effects to the environment from the proposed Projects. TransCanada anticipates only short-term transient increases in Criteria Air Contaminant (CAC) emissions and GHG emissions during construction due to use of heavy equipment and increased vehicle traffic. The ESAs determined that cumulative effects are not anticipated. TransCanada confirmed that all the required work for the Iroquois Project will be carried out on TransCanada fee simple property. The Ottawa Project is located entirely on TransCanada fee simple land within the City of Ottawa and approximately 0.10 ha of temporary workspace may be required during construction on a previously disturbed and graveled area owned by the National Capital Commission. The Richmond Project will similarly be located entirely on TransCanada fee simple land where existing facilities have been operating since the 1980’s. TransCanada submitted that third-party access is restricted at all three proposed Project sites.

On 5 July 2017, TransCanada also stated that, regarding potential cumulative effects on AOO interests, the ESAs completed for the proposed Projects did not identify interactions with traditional land and resource use. In addition, archaeological assessments were carried out in accordance with provincial standards, including a Stage 1 Archaeological Assessment for the Iroquois Project site and Stage 2 Archaeological Assessments for the Ottawa and Richmond Sales Meter Stations with a member of the AOO present for the duration of the field surveys and that the AOO monitor did not identify any concerns.

TransCanada further submitted that Ontario MTCS determined the assessment compliant with standards and guidelines and that no further archaeological assessment was required by MTCS. The assessments for the Projects determined residual environmental and socio-economic effects are predicted to be not significant and that cumulative effects are not anticipated. TransCanada reaffirmed that it remains committed to working with the AOO through initiatives such as community investment, education and training and contracting and employment opportunities, to identify long-term benefits.

On 18 July 2017, the AOO subsequently filed a letter with the Board further elaborating on its concerns with the Iroquois Project. The AOO noted that TransCanada did not conduct interviews with AOO land users in order to determine impacts on current traditional land use or on sites of cultural or spiritual interest to their people. The AOO submitted that given these interviews did not occur, the possibility of cultural heritage and/or land use impacts cannot be dismissed. The AOO also stated that the Stage 1 Archaeological Assessment was not included in the Iroquois application and requested that TransCanada provide a copy of the Stage 1 Archaeological Assessment. In the letter, the AOO expressed a desire for a coherent, comprehensive process for ongoing engagement with the Proponent and noted that a technical meeting was requested by them with TransCanada and remains pending. In its letter, the AOO did not identify specific concerns with respect to the Ottawa and Richmond Projects.

On 24 August 2017, the Board issued Hearing Order GHW-001-2017 establishing a hearing and setting out the remaining process steps for its review of the three Projects. These process steps were established after considering all submissions, and being mindful of the AOO's concerns with procedural fairness and capacity funding. The Board granted the AOO predetermined standing as an Intervenor in the hearing and did not require the AOO to complete an Application to Participate. The Board's Participant Funding Program announced a total funding envelope of \$80,000 to assist Intervenors participating in the hearing process. The Hearing Order set out 16 October 2017 as the deadline for the AOO to file its written submissions about the three Projects and set 23 October as the deadline for TransCanada to reply. These deadlines were later extended to 26 October 2017 and 31 October 2017 respectively as a result of an extension request from the AOO made on 12 October 2017.¹

On 31 August 2017, TransCanada served the NEB's Notice of Hearing GHW-001-2017 on the AOO, the Huron Wendat Nation, Mohawk Council of Akwesasne and Métis Nation of Ontario as directed by the Board.

On 22 September 2017, the Board placed the four 5 September 2017 letters sent by NRCan to the four potentially-impacted Aboriginal groups on the hearing record. In its 5 September 2017 letters, the Government of Canada strongly encouraged all Indigenous groups whose potential or

¹ [A87080](#) National Energy Board - Letter to Algonquins of Ontario - Ontario Meter Stations Projects - Ruling No. 2 Algonquins of Ontario request for an extension to file written submissions

established Aboriginal or treaty rights could be affected by the Projects to apply to participate in the Board's public hearing process.

On 26 October 2017, the AOO submitted comments on all three Projects and proposed conditions of approval for the Board's consideration with respect to the three Projects. The AOO confirmed their three primary issues of concerns were Cultural Heritage Impacts, Environmental Impacts to Current Uses of Traditional Land and Waters, and Cumulative Impact Assessment.

The AOO submits that cultural heritage resources continue to be at risk during TransCanada's integrity management work that involves soil disturbance. The AOO is of the view that TransCanada is not required to follow archaeological standards and guidelines established by the Ontario MTCS. The AOO submitted that there is no agreement or protocol in place for TransCanada to conduct and provide archaeological assessments to the AOO for new projects or for integrity management project involving soil disturbance. AOO further submitted that, accordingly, the AOO must continue to monitor TransCanada's applications before the Board, including monitoring and observing TransCanada's activities across the AOO Settlement Area.

The AOO stated that they were not consulted in the preparation of the archaeological report for the Iroquois Project and that no primary historical documents were used in the section on Indigenous land use history and there is no Algonquin oral history. The AOO noted that Glacial Lake Iroquois, the Champlain Sea and relic shorelines are not discussed in terms of traditional land use; further they noted that the caveats at the end of the archaeological report do not refer to notification of the AOO in case of accidental archaeological discovery. The AOO argue that deeply buried remains may be present at the sites of proposed pipeline infrastructure. The AOO submitted that TransCanada's failure to notify them of the Iroquois Project illustrates the challenges they face with respect to impacts on cultural heritage resources. The AOO noted that they did not receive a copy of the Archaeological assessment from TransCanada until 31 August 2017.

The AOO also submitted that they have no agreement or protocol in place to have input into TransCanada's Environmental Monitoring or Environmental Protection Plans (EPP). Further, that AOO have not been offered any meaningful role in the development of site-specific environmental impact mitigation in relation to operations and maintenance and integrity programs. The AOO submitted a list of characteristic associated with operation and maintenance activities, along with the impact that those activities may result in to argue how these activities can impact ongoing traditional land and water uses. The AOO submit that these integrity management activities similarly apply to the construction activities for the Projects that are the subject of this hearing.

The AOO stated that TransCanada has not provided a comprehensive description of the collective of three Projects and neither TransCanada nor the Board have consulted directly with AOO on these cumulative impacts; nor have either provided the AOO with a comprehensive map of TransCanada facilities within the AOO territory to assist in understanding cumulative impacts.

In this same 26 October 2017 letter, the AOO proposed eight conditions of approval for the three Projects for the Board's consideration to address their concerns. These are briefly outlined as follows:

1. That TransCanada enter into a lifecycle agreement with AOO for ongoing monitoring and engagement in reviewing operation and maintenance for all of TransCanada's natural gas infrastructure associated with the Projects.
2. That TransCanada meet annually with AOO to provide them with a confidential summary of known and reasonably foreseeable projects connected to, or benefitting from TransCanada natural gas facilities that may impact AOO rights, interests and territory.
3. That TransCanada provide the AOO with reasonable time and funding for staff and technical expert review of the EPPs for each of the three Projects.
4. That TransCanada collaborate with AOO to develop and produce a Cumulative Impact Assessment for the Projects and file this assessment with the Board no more than 120 days after commencement of construction activities.
5. That TransCanada provide the AOO with all related permit applications for the Projects and with all additional reports (including the information about additional species-specific surveys in the spring 2017 conducted to determine species presence and habitat use for the Richmond Project) and to provide the AOO with reasonable time and funding for staff and technical expert review of those permit applications and adequate time to engage with relevant Crown or municipal agencies as may be necessary.
6. That TransCanada enable AOO liaisons and on an on-site AOO environmental technical expert for a minimum of three construction days at each Project site to observe and report to the AOO on any environmental matters, cultural heritage matters or traditional land use matters, including assessment of possible cultural heritage remains at depth with respect to pipeline construction for the Projects.
7. That TransCanada file with the Board at least seven days prior to construction of each of the Projects a description of how TransCanada has incorporated additional mitigation measures as applicable into its EPP for each Project as a result of recommendations from the AOO, and
8. That TransCanada file with the Board no more than 120 days after commencement of construction activities a report summarizing TransCanada's consultation activities with the AOO and the Board.

On 31 October 2017, TransCanada reiterated that the Projects were submitted under section 58 of the NEB Act and to accord with all requirements that prescribe the content of the applications. TransCanada stated that these Projects are not part of one significant undertaking to change the flow of gas across the Eastern Ontario triangle of the TransCanada mainline. TransCanada submitted that these Projects are needed to make technical modifications to TransCanada's

existing Mainline system to accommodate customer demands. TransCanada further stated that should it propose any new projects that potentially affect the AOO, the AOO will be provided the appropriate opportunity to participate and make submissions in the relevant project review and assessment process as prescribed by the NEB.

With respect to its integrity management program, TransCanada argued that any issues associated with the complaint process resulting from the Letter of Complaint filed by the AOO, in relation to TransCanada's operation and maintenance procedures, which the AOO referred to in its 26 October 2017 submissions, are separate from the section 58 application process for these three Projects. TransCanada further noted that the Letter of Complaint does not concern specific safety, environmental or engagement issues relating to the Projects.

With respect to heritage matters, TransCanada confirmed that as part of its ongoing construction and operation policies, it maintains detailed plans and procedures to mitigate for any potential impacts that may occur as a result of any of its projects. TransCanada reiterated that the facilities affected by the Projects are all located on private, previously disturbed lands and that there is no third party access to those lands. TransCanada also noted that it disagrees with the AOO's statement that TransCanada is not required to follow archaeological standards and guidelines established by Ontario's MTCS, and that TransCanada's ESA has been prepared to not only meet NEB requirements but all ESA work has been completed in accordance with applicable provincial and municipal laws, including archaeological assessments under the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists. The MTCS has reviewed and entered into registry Stage 1-2 archaeological assessments for each Project. No further archaeological assessments have been recommended by the MCTS.

TransCanada stated it had no comments on the potential Board conditions of approval proposed by the Board in its GHW-001-2017 Hearing Order issued on 24 August 2017. TransCanada submitted that any conditions proposed by the AOO that would establish direct control for the AOO over TransCanada activities are not appropriate and would be inconsistent with the legal and regulatory framework for the oversight of energy infrastructure in Canada.

Views of the Board

The Board has considered all of the relevant information before it, including TransCanada's activities to engage Aboriginal groups, and the letters filed by the AOO on 27 April 2017, 30 June 2017, 18 July 2017, 12 October 2017, 18 October 2017 and 26 October 2017 respectively, along with TransCanada's reply letters dated 5 July 2017, 17 October 2017 and 31 October 2017.

The Board notes the AOO's concerns about the potential effects to their current uses of traditional land and waters. Given that the Projects will take place almost exclusively on company-owned lands without third-party access, the Board is of the view that the potential adverse effects of the Projects on the current use of lands and resources for traditional purposes by Aboriginal persons are not likely to be significant.

The Board further notes the only additional land that will be used for the Ottawa Project is 0.10 ha of temporary workspace that is located on a previously disturbed and graveled area owned by the National Capital Commission.

The Board notes the AOO's concerns about the potential effects to their cultural and heritage resources. The Board further notes that archaeological assessments were carried out in accordance with provincial standards, including a Stage 1 Archaeological Assessment for the Iroquois Project site and Stage 2 Archaeological Assessments for the Ottawa and Richmond Sales Meter Stations with a member of the AOO present for the duration of the field surveys, and that Ontario MTCS determined that no further archaeological assessment was required. The Board also notes TransCanada's commitment to develop and implement a Project-specific EPP and has imposed a condition for TransCanada to file its EPP for each of the three Projects, which must include any conditions, comments or recommendations contained in the archaeological and heritage resource clearances and authorizations from the Ontario MTCS. The condition also requires that the EPP include a comprehensive Heritage Resource Discovery Contingency Plan (HRDCP) and Traditional Land Use Discovery Contingency Plan (TLUDCP). The Board expects that the HRDCP and TLUDCP for all three Projects to include notification to potentially affected Aboriginal groups. As a result, the Board is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.

The Board notes AOO's concerns with respect to cumulative effects, the need for the projects and GHGs. The Board is satisfied with TransCanada's responses to these concerns. The Board acknowledges the concerns raised by the AOO in regards to TransCanada's Operations and Maintenance program on existing facilities and notes that a separate NEB dispute resolution process has been established to address these concerns.

From the AOO's 30 June 2017 letter, it appears that the AOO's understanding of section 58 of the NEB Act is that this section grants the Board the power to exempt a project from an environmental assessment. The Board wishes to clarify that it is responsible for assessing the environmental and socio-economic effects of energy projects within its jurisdiction. While the Projects are not designated projects under the *Canadian Environmental Assessment Act, 2012*, the Board assures the AOO that an environmental assessment of the Projects was carried out and appropriate conditions of approval are being imposed as demonstrated in the attached Orders. Given the small scope of the Projects and their limited interaction with environmental components, given TransCanada's commitments to mitigation measures, and given the Board's additional conditions, the Board is of the view that the overall environmental effects of the Projects are not likely to be significant.

Although there are possible cumulative effects for Criteria Air Contaminant emissions and GHG emissions during construction due to use of heavy equipment and increased

vehicle traffic, the Board is of the view that these cumulative interactions and effects are limited in spatial extent, short-term during construction, reversible and minor in nature, and would be mitigated by TransCanada's environmental protection and mitigation measures. There may also be potential cumulative effects to wildlife and wildlife habitat on the Richmond Project as a small amount of clearing is required. However, the Board is of the view that these cumulative interactions and effects are limited in spatial extent, short- to medium-term, reversible and minor in nature, and would be mitigated by TransCanada's environmental protection and mitigation measures. Therefore, the Board concludes that these elements of the Project would not likely result in significant adverse cumulative effects. For more information on the Board's approach to environmental assessment, the AOO may refer to the Board's [Filing Manual](#) in Chapter 4 – Physical Projects, Guide A – Facilities Applications (NEB Act s.52 and s.58), A.2 Environment and Socio-Economic Assessment.

The Board has considered the conditions submitted by the AOO and is of the view they have been adequately addressed by the combination of mitigation measures committed to by TransCanada, and the conditions imposed by the Board. Specifically, the Board notes that:

- Regarding AOO's Proposed Conditions 1 and 2, the Board expects that TransCanada's consultation to be responsive to the needs, input and concerns of potentially affected Indigenous Peoples. The Board is purposefully not prescriptive in this area. However, the Board encourages companies and Indigenous Peoples to find solutions that work for them.
- Regarding AOO's Proposed Conditions 3 and 7, the Board notes **Order Condition 5**. The Board is of the view that standard, Project-specific EPPs are appropriate for the three Projects given the size and scope of the Projects. The Board notes that the EPP must include a comprehensive Heritage Resource Discovery Contingency Plan (HRDCP) and Traditional Land Use Discovery Contingency Plan (TLUDCP). The Board expects that the HRDCP and TLUDCP for all three Projects to include notification of potentially affected Aboriginal groups.
- Regarding AOO's Proposed Condition 4, the Board considers the environmental and socio-economic assessments provided for the three Projects to be appropriate given the size and scope of the Projects. The Board has determined that it had sufficient information from TransCanada to be able to come to a conclusion on the cumulative impacts of the Projects and does not require further assessment on this matter.
- Regarding AOO's Proposed Condition 5, proposing that TransCanada provide the AOO with all related permit applications for the Projects and all additional reports (including the information about additional species-specific surveys in the spring 2017 conducted to determine species presence and habitat use for the Richmond Project), since any municipal or provincial permits for the Projects are not regulated by the Board, the Board does not typically rely on the timing and outcomes of those permitting processes in its conditions. Any input the AOO has on those processes should be provided to the relevant agencies.

As for the AOO asking that TransCanada provide them with the results of the 2017 spring surveys for the Richmond Project, the Board directs TCPL to provide a copy of its spring 2017 species-specific surveys to AOO. The Board further notes that TransCanada has already committed to update its EPP to include any mitigation measures that have arisen from surveys conducted and that the Board has made this a condition of approval, as further detailed in **Richmond Order Condition 5**.

- Regarding AOO's Proposed Condition 6, proposing that TransCanada enable AOO liaisons and on an on-site AOO environmental technical expert at each Project site to observe and report to the AOO on any environmental matters, cultural heritage matters or traditional land use matters, the Board notes **Order Conditions 5, 6 and 7**, which address the concerns related to environmental, cultural heritage and or traditional land use matters. In particular, the EPP must include a comprehensive Heritage Resource Discovery Contingency Plan (HRDCP) and Traditional Land Use Discovery Contingency Plan (TLUDCP). The Board also expects that the HRDCP and TLUDCP for all three Projects include notification to potentially affected Aboriginal groups. Accordingly, the Board is of the view that on-site observation by an AOO expert is not required. Therefore, the Board does not support the AOO's proposed condition 6.
- Regarding AOO's Proposed Condition 8, the Board is of the view that **Order Condition 7** achieves this outcome and has modified the time frame to no more than 120 days after commencement of construction.

The Board notes the AOO's concerns regarding the lack of consultation and accommodation. The Board notes the 5 September 2017 letters sent by NRCan, where the Government of Canada has strongly encouraged all Indigenous groups whose potential or established Aboriginal or treaty rights could be affected by the Projects to apply to participate in the Board's public hearing process. The Board notes that two recent Supreme Court of Canada decisions, *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, have acknowledged the Crown's ability to rely on the Board's regulatory assessment process to fulfill its duty to consult when the Board is the final decision-maker. The Board is the decision-maker in relation to section 58 of the Act.

Administrative tribunals play an essential role in the execution of the federal or provincial constitutional powers. Through their legislative mandates, they are charged with performing duties and exercising the powers that fall within the executive branch of government. Administrative tribunals such as the Board must perform those duties and exercise those powers, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982* and other applicable laws.

The NEB Act provides the Board with broad powers and expansive remedial authority to deal with the impacts of federally-regulated pipeline projects. The Board is the federal statutory body that has the most direct involvement in the assessment of applications to construct and operate interprovincial and international pipelines. The Board also has the technical expertise and the regulatory experience to understand a project, the likelihood of effects and the measures that can be implemented to minimize effects. In addition, the Board has the authority to elicit commitments from the proponent, impose conditions on an approval and ensure ongoing regulatory oversight of a project and a proponent's compliance. The Board also has been given the statutory ability and mandate to impose and enforce mitigation measures to reduce negative project effects and hold a proponent to the commitments made in the Board's project assessment process.

The Board has considered the information submitted regarding the nature of the AOO's asserted interests, including information on constitutionally protected Aboriginal and treaty rights, in the Project area. The Board has also considered the anticipated effects of the Projects on those interests and the concerns expressed by AOO, as noted above. In light of the nature of the interests and the anticipated effects of the Projects, the Board has evaluated the consultation undertaken with respect to these Projects, including the mandated consultation performed by TransCanada and the consultation undertaken through the Board's project assessment and hearing process. The Board has also considered the accommodation and mitigation measures proposed to address the various concerns and potential effects which TransCanada has either committed to or which the Board has imposed through conditions of approval.

As noted above, the Projects involve work to modify existing facilities and all work will be carried out on TransCanada fee simple property (with the exception of 0.10 ha of temporary workspace that may be required for the Ottawa Project and which is located on a previously disturbed and graveled area owned by the National Capital Commission). In this context, the effects of the Projects on AOO's interests are anticipated to be minimal. The Board is satisfied with TransCanada's consultation to date given the limited size and scope of these Projects, as well as the nature of the lands involved.

In these Applications, while much of the early consultation was performed by TransCanada, the Board hearing process acted as a necessary and important check on that consultation and gave Aboriginal groups an additional avenue to explain their concerns about the Projects and have those concerns considered by the Board. The Board is also of the view that the Board hearing process was appropriate in these circumstances.

Given TransCanada's commitment to continued engagement with Aboriginal groups, TransCanada's proposed mitigation measures, and with the conditions imposed by the Board on Heritage Resource Clearances, filing the Environmental Protection Plan (including HRDCP and TLUDCP), and Aboriginal Consultation Reporting, the Board is of the view that any potential adverse Projects impacts on the interests, including rights,

of affected Aboriginal Peoples are likely to be minimal and have been appropriately addressed.

In light of the foregoing, the Board is of the view that there has been adequate consultation and accommodation for the purposes of the Board's decision on these Projects. The requirements of section 35 of the *Constitution Act*, 1982 have been met, such that an approval of these Projects is in keeping with the honour of the Crown.

The Board directs TransCanada to serve a copy of this letter and the attached Orders on all interested parties.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Attachments