

Appendix 3 List of Issues for Energy East

Energy East Pipeline Ltd. (EEPL) and TransCanada PipeLines Limited (TransCanada) [collectively, the Applicants]

Application for the Energy East Project and Asset Transfer (Energy East or the Project)

List of Issues

The National Energy Board (Board) will consider the following issues in its review of the Energy East application. Under each main issue, the Board elaborates upon the types of topics it will consider in developing its recommendations and decisions regarding the Project. This list is not exhaustive and does not preclude discussion of other relevant topics. If other issues or topics arise during the hearing, the Board will consider their relevance and decide whether and how it will consider them.

In line with the Government of Canada's January 2016 interim principles for reviewing major natural resource projects, all decisions and recommendations with respect to the Project will be based on science, traditional knowledge of Indigenous peoples,¹ and other relevant evidence. The Board will consider these types of information for the listed issues, where applicable and available.

Where they are relevant and appropriate, the listed issues apply to both the pipeline sections to be converted and the new pipeline sections to be built as part of the Project.

In addition to making a public interest determination under the NEB Act, the Board will conduct an environmental assessment of the applied-for Project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). See the Board's [Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012](#) for more information.

As part of its coordinated hearing, the Board is conducting a project-specific review of TransCanada's Eastern Mainline Project (Eastern Mainline). As the Board noted in [Ruling No. 2](#), Energy East and Eastern Mainline are closely interrelated and, in some aspects, integral to each other. Although included within the [List of Issues](#) for Eastern Mainline, the project justification and economic and commercial considerations related to that project will also be a consideration in the Board's review of Energy East (specifically with respect to its asset transfer component).

¹ Indigenous peoples include the Indian, Inuit, and Métis peoples of Canada, as defined in section 35 of the *Constitution Act, 1982*.

1 PROJECT JUSTIFICATION, AND ECONOMIC AND COMMERCIAL CONSIDERATIONS

- 1.1. The need for the Project, including:
 - 1.1.1. The justification for the capacity of the pipeline, including:
 - 1.1.1.1. The existing and potential supply and type of oil available to the Project
 - 1.1.1.2. The existing and potential markets (national and international) for the oil to be transported by the Project
 - 1.1.1.3. Supply and demand scenarios incorporating, for example, potential oil prices, levels of economic growth, and greenhouse gas abatement laws and policies
 - 1.1.2. Commercial support for the Project, including shippers' support and commitments
 - 1.1.3. Other technically, economically, and environmentally feasible means of meeting the need for the Project
 - 1.1.4. The impacts on, and of, other pipelines and modes of transporting crude oil, oils used as diluent, and other liquid hydrocarbons
- 1.2. The economic feasibility of the Project
- 1.3. The economic and commercial impacts of the Project, including:
 - 1.3.1. The economic and commercial benefits for Canada, provinces, and local communities, including the impacts on tax revenues at the national, provincial, and municipal levels
 - 1.3.2. The extent to which Canadians will have an opportunity to participate in the financing, engineering, construction, operation, and maintenance of the Project at the national, provincial, and local levels, including employment and other opportunities
 - 1.3.3. The economic and commercial benefits for the Applicants
 - 1.3.4. The notification of potentially impacted commercial third parties, including shippers, commodity suppliers, end users, and other pipeline companies
 - 1.3.5. The agreements made with commercial third parties

2 FINANCIAL CONSIDERATIONS

- 2.1. The corporate structure for the Project, each entity's ownership, and the responsibilities with regard to financing, constructing, and operating the Project
- 2.2. The financial and performance risk to be borne by the Applicants with respect to project construction, operations, maintenance, and abandonment/decommissioning
- 2.3. The financing plan or method to finance and generate sufficient cash-flow to support the Project, including:

- 2.3.1. The construction, operation, and maintenance of the Project, including to ensure the Project's integrity, safety, and security
- 2.3.2. To cover the costs and liabilities arising from a significant release, accident, or malfunction
- 2.3.3. The funding required to meet the Applicants' obligations with respect to abandonment/decommissioning

3 ASSET TRANSFER

- 3.1. The assets to be transferred and any terms and conditions included in the transfer agreement
- 3.2. The economic, financial, commercial, supply, markets, and toll considerations arising from the asset transfer, including those related to TransCanada's existing natural gas Mainline, and the impacts of any cross-subsidization
- 3.3. The impacts of the asset transfer on TransCanada's existing natural gas Mainline, including on its capacity
- 3.4. EEPL's ability to finance the purchase of assets
- 3.5. The method of financing the purchase of assets
- 3.6. EEPL's financial risk associated with the intended method of financing the purchase of assets
- 3.7. The value that should be assigned to the assets for the purpose of:
 - 3.7.1. Their removal from the rate base of TransCanada's existing natural gas Mainline
 - 3.7.2. Their inclusion in EEPL's toll calculations
- 3.8. The requested exemptions from the *Gas Pipeline Uniform Accounting Regulations* and the *Oil Pipeline Uniform Accounting Regulations* regarding the agreed transfer price of the assets
- 3.9. The accounting treatment under the *Gas Pipeline Uniform Accounting Regulations* for the sale and purchase of assets
- 3.10. The impacts of the proposed sale of assets on TransCanada's abandonment cost estimate
- 3.11. The three adjustment accounts² and the methodology for the proposed future treatment of certain costs as detailed in the 30 October 2015 LDC Energy East Agreement between TransCanada, Gaz Métro Limited Partnership, Enbridge Gas Distribution Inc., and Union Gas Limited
- 3.12. The \$200 million rate base transfer from the Eastern Triangle to the Western Mainline

² See Appendix 2 of the Board's cover letter to this document for more information.

4 TOLLING MATTERS

- 4.1. The negotiated tolling methodology, including the fairness of the negotiated tolling settlement process
- 4.2. The method of toll and tariff regulation, including whether EEPL should be regulated as a Group 1 or Group 2 company
- 4.3. The requested exemptions from the filing requirements related to financial surveillance reports and depreciation rates

5 TECHNICAL, SAFETY, AND SECURITY CONSIDERATIONS

- 5.1. The proposed design, construction methods, operation, and maintenance of the Project, including watercourse crossings
- 5.2. The Applicants' ability to build, operate, and maintain the Project
- 5.3. The Applicants' proposed integrity management plan, including pipeline inspection methods
- 5.4. The proposed risk assessment, mitigation, and prevention measures and programs for the design, construction, and operation of the Project
- 5.5. The proposed safety and security programs, plans, and measures associated with project construction and operations, including third-party damage prevention

6 ACCIDENTS AND MALFUNCTIONS CONSIDERATIONS

- 6.1. The risks of potential releases, including:
 - 6.1.1. The hazard assessment for the Project
 - 6.1.2. The methods, scenarios, and simulations used to assess the risks of releases
 - 6.1.3. The probability of failures, accidents, and malfunctions causing a release
 - 6.1.4. Potential release volumes, and the geographical area that could be impacted
 - 6.1.5. The potential environmental and socio-economic effects of releases, including on drinking water
 - 6.1.6. The risks associated with locating an oil pipeline in the vicinity of a gas pipeline
- 6.2. The proposed programs, plans, and measures for emergency preparedness and response, including consideration of:
 - 6.2.1. Proposed methods for identifying release sources
 - 6.2.2. Proposed methods for monitoring releases
 - 6.2.3. Release containment
 - 6.2.4. Technical and human resources
 - 6.2.5. Response times

- 6.2.6. Geographical remoteness of portions of the Project
- 6.2.7. Extreme weather conditions
- 6.2.8. Liaison activities with potentially affected agencies that may be involved in an emergency response, including municipalities and Indigenous peoples, notably to ensure an integrated response
- 6.3. The Applicants' estimate of the financial resources required to cover the costs of potential releases, accidents, or malfunctions during project construction and operations
- 6.4. The liability and compensation regime that would apply in the case of a release, accident, or malfunction

7 INDIGENOUS CONSIDERATIONS

- 7.1. The Applicants' consultation and cooperation efforts with Indigenous peoples
- 7.2. The Applicants' involvement of Indigenous peoples and their consideration of Indigenous knowledge and effects on Indigenous rights and interests³ in the design of the Project and in the preparation of its Environmental and Socio-economic Assessment, including at the following stages:
 - 7.2.1. When gathering baseline information
 - 7.2.2. When analysing potential routes
 - 7.2.3. When assessing potential effects
 - 7.2.4. When assessing mitigation measures
- 7.3. The potential effects of the Project on Indigenous peoples, including effects on:
 - 7.3.1. Asserted and established Indigenous rights and interests
 - 7.3.2. Health and socio-economic conditions
 - 7.3.3. Physical and cultural heritage
 - 7.3.4. The current use of lands and resources for traditional purposes
 - 7.3.5. Human occupancy and resource use
 - 7.3.6. Any structure, site, or thing that is of historical, archeological, paleontological, or architectural significance
 - 7.3.7. Indigenous culture and institutions
 - 7.3.8. Social and cultural well-being
 - 7.3.9. Navigation and navigation safety
 - 7.3.10. Infrastructure and services
- 7.4. The Applicants' proposed mitigation and accommodation measures
- 7.5. The cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out

³ To be more specific, this includes any Aboriginal and Treaty rights protected under section 35 of the *Constitution Act, 1982*

- 7.6. The potential benefits of the Project at the design, construction, and operations stages for Indigenous peoples, including employment, contracting, procurement, training, and direct economic participation in the Project
- 7.7. The role of Indigenous peoples in the design of monitoring programs and procedures, and in actual monitoring during project construction and operations, including at areas of cultural significance, areas related to traditional land and resource use, and heritage resources
- 7.8. The Applicants' proposed programs and commitments for engaging with Indigenous peoples during project design, construction, and operations, including with respect to dispute avoidance and resolution

8 LANDOWNER, LAND USE, AND WATERWAY USE CONSIDERATIONS

- 8.1. The Applicants' consultation and cooperation efforts with landowners, local residents, and land and waterway users
- 8.2. The potential effects of the Project on landowners, local residents, and land and waterway users, including effects on:
 - 8.2.1. Human occupancy, including rural and urban residential areas, industrial and commercial areas, recreation and park areas, and property values
 - 8.2.2. Resource use, including agriculture, farming, ranching, forestry, health and productivity of livestock, hunting, fishing, trapping, guiding, and water supply sources
 - 8.2.3. Human health
 - 8.2.4. Heritage resources, including cultural, historical, archaeological, and paleontological resources
 - 8.2.5. Navigation and navigation safety
 - 8.2.6. Infrastructure and services
- 8.3. The Applicants' proposed mitigation measures
- 8.4. The cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out
- 8.5. The types of land rights proposed to be acquired for the Project, and the land acquisition process
- 8.6. The Applicants' proposed programs and commitments for engaging with landowners, local residents, and land and waterway users during project design, construction, and operations, including with respect to dispute avoidance and resolution
- 8.7. The role of landowners in monitoring during project construction and operations

9 ROUTING CONSIDERATIONS

- 9.1. The Applicants' process and criteria for selecting the route
- 9.2. The route and land requirements for the new pipeline sections and related facilities
- 9.3. The route and land requirements for the converted pipeline sections and related facilities
- 9.4. The Applicants' proposed re-alignments to existing sections of pipeline, and related land requirements

10 MUNICIPAL AND LOCAL COMMUNITY CONSIDERATIONS

- 10.1. The Applicants' consultation and cooperation efforts with municipalities and local communities
- 10.2. The potential effects of the Project on municipalities and local communities, including effects on:
 - 10.2.1. Infrastructure, including railways, roads, navigable waterways, pipelines, power lines, and water and sewer utilities
 - 10.2.2. Services, including accommodation, recreation, waste disposal, essential and emergency services, and health care services
- 10.3. The Applicants' proposed mitigation measures
- 10.4. The cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out
- 10.5. The Applicants' proposed programs and commitments for engaging with municipalities and local communities during project design, construction, and operations, including with respect to dispute avoidance and resolution
- 10.6. The role of municipalities and local communities in monitoring during project construction and operations

11 ENVIRONMENTAL AND SOCIO-ECONOMIC CONSIDERATIONS

- 11.1. The adequacy of the Applicants' Environmental and Socio-economic Assessment, including of:
 - 11.1.1. The alternative means considered
 - 11.1.2. The geographical scope
 - 11.1.3. The temporal scope
 - 11.1.4. The characterization of baseline conditions
 - 11.1.5. The assessment of the potential effects
 - 11.1.6. The proposed mitigation measures

- 11.1.7. The analysis of the cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out
- 11.2. The potential effects of the Project on the environment, including:
 - 11.2.1. Soils, terrain, and geology
 - 11.2.2. Vegetation
 - 11.2.3. Surface water, groundwater, and wetlands
 - 11.2.4. Wildlife and wildlife habitat
 - 11.2.5. Fish and fish habitat
 - 11.2.6. Species at risk
 - 11.2.7. Invasive species
 - 11.2.8. The atmosphere, including air quality and greenhouse gas emissions
 - 11.2.9. Protected areas
 - 11.2.10. The marine environment
 - 11.2.11. Ecosystem interactions
- 11.3. The potential effects of the Project on social and economic elements, including:
 - 11.3.1. Human occupancy and resource use
 - 11.3.2. Visual aesthetics
 - 11.3.3. Heritage resources, including cultural, historical, archaeological, and paleontological resources
 - 11.3.4. Traditional land and resource use
 - 11.3.5. Social and cultural wellbeing
 - 11.3.6. Human health
 - 11.3.7. Navigation and navigation safety
 - 11.3.8. Infrastructure and services
 - 11.3.9. Employment and economy, including procurement, contracting, and training opportunities
- 11.4. The factors described in the Board's [Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEEA 2012](#)
- 11.5. The cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out. This includes the construction and operation of power lines required for the Project and consideration of potential mitigation under the Applicants' control with respect to those power lines, such as:
 - 11.5.1. The location of Project facilities, including pump stations, for which power lines are required
 - 11.5.2. The alternative means, such as onsite electricity generation, that could affect the need for power lines

12 INDIRECT GREENHOUSE GAS EMISSIONS

- 12.1. Quantification of incremental indirect greenhouse gas emissions that could result if the Project is constructed, including from incremental upstream oil production and upgrading, incremental downstream refining and end-use, and incremental third-party electricity generation

13 PROJECT-RELATED MARINE SHIPPING

- 13.1. The potential environmental and socio-economic effects of changes to marine shipping resulting from the Project within Canada's territorial sea

14 MANAGEMENT SYSTEM CONSIDERATIONS

- 14.1 The plans, programs, and procedures, including with respect to monitoring and mitigation, that the Applicants will apply during project design, construction, and operations to ensure their compliance with commitments made, Board-imposed conditions, and applicable laws and regulations

15 RECOMMENDATIONS, TERMS, AND CONDITIONS

- 15.1 The recommendations to be included in the Board's report to the Minister
- 15.2 The terms and conditions to be included in any orders and certificate of public convenience and necessity that the Board may issue for the Project following the Governor in Council's decision