

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

1.0 PREAMBLE

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

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

WHEREAS the Northern Gateway Pipelines Limited Partnership (the Proponent) is proposing to construct and operate pipelines and a marine terminal as further described in the Appendix to this Agreement;

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 NEB Act by or on behalf of Northern Gateway Pipelines Limited Partnership in respect of the Northern Gateway Pipeline Project (the project);

WHEREAS the Board, pursuant to the NEB Act, must hold a public hearing to consider the application for the project and conduct an environmental assessment of the project;

WHEREAS certain components of the project are within the jurisdiction of the Board and the Act 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 Act and the Canadian Transportation Agency, Environment Canada and Natural Resources Canada may be responsible authorities for the project under the Act;

WHEREAS the Board and the responsible authorities recommended that the Minister of the Environment refers the project to a review panel pursuant to section 25 of the Act;

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

WHEREAS the Board, the Agency, and the responsible authorities recognize that a TERMPOL 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 Act and the NEB Act;

AND WHEREAS the Government of Canada will rely upon the consultation effort of the proponent, and the Joint Review Panel process, to the extent possible, to assist in meeting the duty to consult;

NOW THEREFORE, in accordance with this Agreement and the Terms of Reference attached as an appendix to this Agreement, the Minister of the Environment and the Chair of the Board hereby establish a Joint Review Panel to conduct the environmental assessment of the project.

2.0 DEFINITIONS

In this Agreement:

“Aboriginal group” means a collectivity of Indian, Inuit or Métis people that holds or may hold Aboriginal or treaty rights under section 35 of the Constitution Act, 1982;

“Agency” means the Canadian Environmental Assessment Agency;

“Agreement” means this Agreement including the Appendix;

“Board” means the National Energy Board;

“Board rules” means the *National Energy Board Rules of Practice and Procedure, 1995*, as amended, and made pursuant to section 8 of the NEB Act;

“Board’s public hearing process” means the public hearings process followed by the Board under the NEB Act to assess a proposed project and the environmental effects of a project;

“The Act” means the *Canadian Environmental Assessment Act*;

“Environment” means, as set out in the Act, the components of the Earth, and includes

- a) land, water and air, including all layers of the atmosphere,
- b) all organic and inorganic matter and living organisms, and
- c) the interacting natural systems that include components referred to in paragraphs a) and b);

“Environmental assessment” includes, as set out in the Act in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance

with the Act and its regulations and an assessment of the environmental effects of the project for the purposes of the NEB Act and its regulations;

“Environmental effect” means, as set out in the Act in respect of a project,

- a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- b) any effect of any change referred to in paragraph a) on
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) the current use of lands and resources for traditional purposes by Aboriginal persons, or
 - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada;

“Federal authority” has the same meaning as set out in section 2 of the Act;

“Follow-up program” means, as set out in the Act, a program for

- a) verifying the accuracy of the environmental assessment of a project, and
- b) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project;

“Government participant” means a federal authority or provincial department that has an environmental assessment or regulatory responsibility and that files a declaration with the Joint Review Panel stating that it wishes to participate in the hearing as a government participant;

“Joint review” means the assessment of the environmental effects of the project to be conducted pursuant to the Act and the consideration of the application under the NEB Act;

“Panel” means the Joint Review Panel established pursuant to Section 3 of this Agreement;

“Parties” mean the signatories to this Agreement;

“Participant” means anyone who participates in the joint review process for the project through one of the means set out in Part IV of this Agreement;

“Pipeline” has the same meaning as set out in section 2 of the NEB Act;

“Project” means the project as described in the Terms of Reference found in the Appendix to this Agreement and titled “Part I - Scope of the Project”, and may also be referred to as the Northern Gateway Pipeline Project;

“Proponent” means Northern Gateway Pipelines Limited Partnership who proposes the project;

“Report” means the report set out in Section 9 of this Agreement;

“Responsible authority” has the same meaning as set out in section 2 of the Act; and

“TERMPOL review process” refers to the voluntary technical review process of Marine Terminal Systems and Transshipment Sites. The technical review process 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 ESTABLISHMENT OF THE PANEL

This Agreement:

- a) establishes an administrative framework within which the Parties can cooperatively exercise their respective powers and duties as established by the Act and the NEB Act;
- 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.

4.0 GENERAL

4.1 Purpose – The primary purpose of this Agreement is to coordinate the environmental assessment required under the Act and the NEB Act by providing for a review of the Environmental Effects likely to result from the project and the appropriate mitigation measures as part of the Board’s public hearing process for the project. Nothing in this Agreement should be construed as limiting the ability of the Panel to have regard to all considerations that appear to it to be relevant pursuant to section 52 of the NEB Act.

4.2 Public Registry

- 4.2.1 A public registry will be maintained during the course of the review in a manner that provides for convenient public access. The registry will meet the purposes of compliance with sections 55, 55.1 and 55.4 of the Act and the Board's requirement to maintain a record of the Board's public hearing process for the project.
- 4.2.2 The public registry will include hearing transcripts and all submissions, correspondence, exhibits and other information received by the Panel, as well as all public information produced by the Panel relating to the review of the project.
- 4.2.3 All information produced or received by the Panel will be made available to the public and to Aboriginal peoples, unless specific procedural rulings or legislative provisions prevent the disclosure of the information.

4.3 Participant Funding Program – The Agency will administer a participant funding program that includes an Aboriginal funding envelope and a regular funding envelope. The Aboriginal Funding Envelope contributes limited funding specifically to Aboriginal groups to participate in and be consulted throughout the joint review process. The Regular Funding Envelope contributes limited funding to members of the public, not-for-profit organizations and Aboriginal people to participate in the joint review process.

5.0 CONSTITUTION OF THE PANEL

- 5.1 The Panel will consist of three members and be composed of no less than two permanent members of the Board.
- 5.2 Two members of the Panel, including the Panel Chair, will be appointed by the Board. The Minister of the Environment will approve the appointment of the Panel Chair and select the third panel member who will satisfy the eligibility requirements for a temporary member of the Board.
- 5.3 The Chair of the Board will make a request to the Minister of Natural Resources to recommend to the Governor in Council the appointment of the third panel member as a temporary member of the Board.
- 5.4 The members of the 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.

6.0 CONDUCT OF THE ENVIRONMENTAL ASSESSMENT BY THE PANEL

- 6.1 The Panel will meet the requirements of the Act and the NEB Act in the joint review of the project.

- 6.2 The Panel will conduct its review in accordance with the Board Rules and in accordance with Part IV of the Terms of Reference attached as an appendix to this Agreement. The Panel will have the powers set out in the NEB Act and section 35 of the Act.
- 6.3 The Panel will review the project in a careful and precautionary manner.
- 6.4 The Panel will conduct its review in a manner which will facilitate the participation of the public and Aboriginal peoples, and enable them to convey their views on the project to the Panel by various means, such as oral statements, letters of comment or participation as intervenors as outlined in Part IV of this Agreement.
- 6.5 In order that the Panel may be fully informed about the potential impacts of the project on Aboriginal rights and interests, the Panel will require the proponent to provide evidence regarding the concerns of Aboriginal groups, and will also carefully consider all evidence provided in this regard by Aboriginal peoples, other participants, federal authorities and provincial departments.

7.0 SECRETARIAT TO THE PANEL

- 7.1 Administrative, technical and procedural support required by the Panel shall be provided by a secretariat, which shall be the joint responsibility of the Board and the Agency.
- 7.2 The Secretariat will report to the Panel and will be structured so as to allow the Panel to conduct its review in an efficient and cost-effective manner.
- 7.3 The Agency will ensure that all other activities performed by 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.

8.0 ABORIGINAL CONSULTATION

- 8.1 In addition to Subsection 6.5, the Panel will receive information from Aboriginal peoples related to the nature and scope of potential or established Aboriginal and treaty rights that may be affected by the project and the impacts or infringements that the project may have on potential or established Aboriginal and treaty rights. The Panel may include in its report recommendations for appropriate measures to avoid or mitigate potential adverse impacts or infringements on Aboriginal and treaty rights and interests.

- 8.2 The Panel shall reference in its report:
- a) the information provided by Aboriginal peoples regarding the manner in which the Project may affect potential or established Aboriginal and treaty rights; and
 - b) in the case of potential Aboriginal rights, the information provided by the Aboriginal groups regarding the Aboriginal groups' strength of claim respecting Aboriginal rights.

9.0 REPORTING AND DECISION MAKING

- 9.1 The 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 and Aboriginal peoples, as well as information referred to in Section 8.
- 9.2 Once completed, the report will be submitted to the Minister of the Environment who will make it available to the public and Aboriginal peoples.
- 9.3 Following the Governor in Council approval of the government response to the report, the Panel will issue its Reasons for Decision pursuant to the NEB Act.

10.0 SPECIALIST ADVISORS TO THE PANEL

- 10.1 The Panel may request federal authorities and provincial departments having specialist information or knowledge with respect to the project to make this information or knowledge available.
- 10.2 The Panel may retain the services of independent non-government experts to provide evidence on certain subjects within the Panel's Terms of Reference.
- 10.3 The names of the experts retained pursuant to Subsection 10.2 and any documents obtained or prepared by such experts and that are submitted to the Panel will be placed on the public registry. For greater certainty, this shall exclude any information subject to solicitor-client privilege where the expert is a lawyer.
- 10.4 Any federal authorities or provincial departments from which specialist or expert information or knowledge has been requested, and any independent non-government experts retained pursuant to Subsection 10.2 may be required to appear at the oral hearing and testify in regard to the documents they have submitted to the Panel.
- 10.5 Nothing in this Agreement will restrict the participation by way of submission to the Panel by other federal or provincial departments or bodies.

11.0 AMENDMENTS, INTERPRETATION AND TERMINATION

- 11.1 Amendments to this Agreement may be made upon written notice by a Party to the other Party and upon the mutual consent of the Chair of the Board and the Minister of the Environment.
- 11.2 To the extent practicable, the Parties will seek to resolve differences of opinion in the interpretation and application of this Agreement at a working level, through good faith reasonable efforts.
- 11.3 Any Party may terminate this Agreement upon one month's written notice to the other Party.
- 11.4 Subject to section 27 of the Act, a Party's eligibility to withdraw from or terminate this Agreement will end at the commencement of the oral hearings.
- 11.5 The attached Appendix forms an integral part of this Agreement.

WHEREAS the Parties hereto have put their signatures this _____ day of _____ 2009.

Original Signed by:

The Honourable Jim Prentice
Minister of the Environment

Gaétan Caron
Chair, 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 Northern Gateway Pipeline Project will apply to this Appendix.

The 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 NEB Act.

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

Part I – Scope of the Project

The project includes the construction, operation, decommissioning and abandonment of the following components:

- 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;
- The right-of-way for the two pipelines as well as any temporary workspace required for the construction;
- Associated pump stations, a pressure letdown station (oil) and a pressure initiation station (condensate);
- Tunnels through North Hope Peak and Mount Nimbus to facilitate crossing of the Coast Mountains by the pipelines;
- A tank terminal, including hydrocarbon tanks, pump facilities and other land facilities, adjacent to the marine terminal;
- All-weather road access and electrical power requirements for the pump stations, the tank terminal and the new marine terminal in Kitimat, British Columbia;
- Block valves located at pump stations, selected watercourse crossings and other locations along the route;
- Pigging facilities at either end of the pipeline system and in selected intermediate locations;
- Cathodic protection system for the 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) including:
 - 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.
- Marine transportation of oil and condensate within:
 - the Confined Channel Assessment Area, as defined by the proponent, which includes the marine and shoreline area of Kitimat Arm, Douglas Channel to Camano Sound, and Principe Channel to Browning Entrance;
 - Hecate Strait; and
 - the proposed shipping routes to be used for the project that are within the 12 nautical mile limit of the Territorial Sea of Canada.
- All related works and activities including:
 - all temporary electrical power supply lines, such as those supplying energy for camps and worksites;
 - temporary work camps;
 - temporary access roads;
 - bridges and watercourse crossings (new or modified);
 - management and treatment of wastewaters and waste management;
 - water withdrawals;
 - borrow pits and quarries;
 - management of excavation material, including stockpiles (e.g. overburden);
 - log handling and storage facilities
 - construction worksites, storage areas and staging areas;
 - handling and storage of petroleum products and hazardous materials;
 - handling, storage and use of explosives; and
- Any other components described by the proponent in its Preliminary Information Package, filed with the National Energy Board on November 1, 2005

Any additional modifications or decommissioning and abandonment activities would be subject to future examination under the NEB Act and consequently, under the Act, as appropriate. Therefore, at this time, the Proponent will be required to examine these activities in a broad context only.

Part II -Factors to be Considered During the Joint Review

The joint review will include a consideration of the following factors listed in paragraphs 16(1) (a) to (d) and subsection 16(2) of the Act:

- 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 and Aboriginal peoples 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 paragraph 16(1)(e) of the Act, the assessment by the Panel will also include a consideration of the following additional matters:

- Need for the project;
- Alternatives to the project;
- Community knowledge and Aboriginal traditional knowledge received during the review;
- Measures to enhance any beneficial environmental effects; and
- Environmental protection, environmental monitoring, and contingency and emergency response plans.

Part III - Scope of Factors

The Panel in conducting its consideration of the factors outlined in Part II will have regard to the following:

- The National Energy Board's Filing Manual dated 2004 as amended from time to time; and
- The document issued by the Canadian Environmental Assessment Agency, in response to comments received on the draft Joint Review Panel Agreement, entitled "Scope of the Factors - Northern Gateway Pipeline Project, August, 2009".

Part IV – Review Process

The main steps of the joint review process will be as follows:

- After the application has been filed with the Board by the Proponent, the Panel will review it to determine if there is sufficient information in the application to initiate the joint review process. If it is determined by the Panel that there is sufficient information, it will proceed to issue a Hearing Order. If there is not sufficient information, the proponent will be notified and the process will not proceed until the required information has been filed with the Panel.
- The Panel will issue a Hearing Order which sets out the procedures that will be followed for the joint review of the project including:
 - a description of the methods by which the public and Aboriginal peoples can participate in the review of the project;
 - the draft list of issues (i.e. the project-related issues) that will be considered in the joint review;
 - how and when intervenors can issue information requests to the Proponent or other parties in order to clarify evidence or obtain further information regarding the project;
 - the distribution of and access to all evidence, correspondence and other documents which will be used in the joint review and which will form the public registry;
 - the timetable of events for the joint review, including the deadlines for filing evidence and information requests as well as the date when the oral hearings will commence; and
 - how motions or questions of procedure or substance can be raised with the Panel.
- The Secretariat to the Panel will conduct information sessions with the public and Aboriginal peoples to assist them in understanding the joint review process and

the ways in which they can participate. The location and timing of the sessions will be determined by the Panel.

- The Panel will conduct sessions with the public and Aboriginal groups for the purpose of seeking comments on:
 - the draft list of issues (included in the Hearing Order);
 - whether the proponent ought to be required to file any additional information which was not included in its application in view of the proposed changes to the list of issues, the NEB Filing Manual and the Agency's document entitled "Scope of the Factors - Northern Gateway Pipeline Project, August 2009"; and
 - the location of the oral hearings.
- The public and Aboriginal peoples may choose the manner in which they wish to participate in the review of the project. These options include:
 - **filing a letter of comment:** This is a written statement of the writer's views on the project and any relevant information that will explain or support their comments;
 - **providing an oral statement:** This is similar to a letter of comment except that the statement is delivered orally at a prescribed time during the oral hearings. A party wishing to provide an oral statement must advise the Panel of their intention to do so in advance; and
 - **intervention:** Intervenors may choose the extent to which they wish to participate in the hearing, but have the ability to do the following: file written evidence, ask questions regarding the evidence of others, be questioned on their evidence, participate in cross-examination and make a final argument at the oral hearings. There will be a minimum of 90 days between the deadline for requesting intervenor status and the commencement of the oral hearings.
- Government participant status will be afforded to federal authorities and provincial departments with an environmental assessment or regulatory responsibility and who file a declaration to this effect. The requirements of a government participant will be outlined in the Hearing Order.
- Prior to the scheduled start of the oral hearings as set out in the Hearing Order, the Panel will announce the location and timing of the oral hearing. When determining the location and timing of the oral hearings, the Panel will take into consideration the location of those most impacted by the Project and any special needs of participants.
- The public and Aboriginal peoples will have a minimum of 90 days prior to the commencement of the oral hearings to review the proponent's application.

- The oral hearings will be accessible via the Internet so the public and Aboriginal peoples not attending the oral hearing can listen to the proceedings. Transcripts of the oral hearings will be prepared and be available through the public registry.
- The Panel will deliver its report to the Minister of the Environment following the close of the oral hearings. The report will take into account and reflect the views of all Panel members.