

National Energy
Board



Office national
de l'énergie

LETTER DECISION

File OF-Fac-Gas-T211-2015-05 01
4 August 2016

Ms. Trishna Wirk
Regulatory Project Manager
TransCanada PipeLines Limited
450 – 1st Street SW
Calgary, AB T2P 5H1
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Mr. Ryan V. Rodier
Senior Legal Counsel
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Mr. Sander Duncanson
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Dear Ms. Wirk, Mr. Rodier and Mr. Duncanson:

**Hearing Order GH-001-2016 regarding TransCanada PipeLines Limited
(TransCanada)
Application for the Vaughan Mainline Expansion Project (Project)
Decision and Order with Reasons to Follow**

On 10 November 2015, TransCanada applied to the National Energy Board (NEB or Board) for an order from the Board granting approval to construct and operate the Project pursuant to section 58 of the *National Energy Board Act* (NEB Act). In its application, TransCanada also requested exemptions from paragraph 30(1)(a) and section 31 of the NEB Act.

In a letter dated 11 January 2016, the Board confirmed that the application was complete and set the time limit for the Board to issue an order or dismiss the application. On 10 February 2016, the Board issued Hearing Order GH-001-2016 setting the application for a hearing with oral and written components. Seventeen intervenors and five commenters participated in the hearing.¹

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¹ Mr. Nick Pirruccio of Huntington Acres withdrew as an intervenor on 8 June 2016.

The Board considered TransCanada's application and submissions, as well as written submissions and oral statements by all participants on the record for the GH-001-2016 hearing. The Board has decided to release its decision with reasons to follow. It is the Board's view that there is a benefit to the hearing participants, the natural gas market and the public by having a timely decision. The Board's written reasons will be released on or before 9 September 2016 (Reasons for Decision).

The Board issues Order XG-T211-020-2016 (Order), and associated conditions pursuant to section 58 of the NEB Act, the effect of which is to approve the Project. A copy of the Order and its Schedule A, which together, outline the specifics of the Project as approved, is attached. The Board grants TransCanada's request for exemption from the provisions of paragraph 30(1)(a) and section 31 of the NEB Act.

The Board notes that TransCanada made numerous commitments relating to Project matters such as construction scheduling, land agreements and permits and authorizations. Adherence to and reporting on these commitments is set out in Conditions 2, 3 and 7 in the Order.

The Board considered the submissions from Giuseppe and Maria Sidoti that it included in the record in its letter of 19 July 2016 (filing [A78594](#)). The Board has approved the revised route as detailed in TransCanada's reply evidence of 8 June 2016 (filing [A77451](#)) and the Board's conditions detailed in the Order reflect this revised route. The revised route made changes to the proposed route detailed in the Application (filing [A73897](#)) in order to accommodate specific landowner concerns. The Board's reasons for accepting the revised route will be included in the Reasons for Decision.

Intervenors proposed a number of conditions during final argument, some of which related to changes to the proposed and revised route. The Board has not accepted these conditions. Intervenors also proposed a number of conditions relating to compensation, however, matters of compensation are not within the Board's authority to consider. Compensation claims for land use or for damage resulting from construction are handled by the federal Minister of Natural Resources. When a landowner and a pipeline company cannot agree on compensation for lands that the company has acquired or damaged, either party may apply to the Minister of Natural Resources to receive the services of a negotiator, or to have the dispute settled by arbitration.

The Board notes the concerns from the Conseil de la Nation huronne-wendat. The Board has decided to require TransCanada to file a plan describing participation by Aboriginal groups in monitoring activities during construction for archaeological resources. This requirement is set out in Condition 10. The Board notes TransCanada's commitments for training staff on heritage resources, archaeological potential and the Heritage Resources Contingency Discovery Plan. The Board expects that any Aboriginal monitors would also be offered an opportunity to receive this training. The Board expects a qualified archaeologist to participate in the development and delivery of this training. The Board has also decided to require TransCanada to provide an updated Heritage Resources Discovery Contingency Plan that reflects the commitments made during the hearing process and any additional commitments made during ongoing engagement with Aboriginal groups. This requirement is set out in Condition 6(e). The Board's reasons for these conditions will be included in the Reasons for Decision.

TransCanada is directed to notify intervenors to the GH-001-2016 proceeding when filings pursuant to Board Conditions 6, 7, 9, 10, 11, 15 are made. In addition, intervenors can request TransCanada to provide them notification of any other filing required by the Board under Order XG-T211-020-2016. The Board also reminds TransCanada that it must apply for Leave to Open pursuant to section 47 of the NEB Act, prior to the facilities being placed in operation.

The Board recognizes that hearings often raise matters that affect people, the environment, commercial interests and municipal and other government authorities. The Board acknowledges and expresses its appreciation for the participation of parties during the oral portions of the hearing and the quality of the submissions that were made by the Parties. The Board considered all statements and submissions by Parties when making its decisions.

The Board directs TransCanada to serve a copy of this letter, the attached Order and its Schedule A on all interested parties.

The foregoing constitutes our Decision in respect of the Project heard by the Board in the GH-001-2016 proceeding.



L. Mercier
Presiding Member



S. Parrish
Member



J. Gauthier
Member

Calgary, Alberta
August 2016

Attachments

c.c. All parties to GH-001-2016



ORDER XG-T211-020-2016

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the regulations made thereunder; and

IN THE MATTER OF an application made by TransCanada PipeLines Limited (TransCanada), pursuant to section 58 of the NEB Act, dated 10 November 2015, filed with the National Energy Board (Board) under File OF-Fac-Gas-T211-2015-05 01.

BEFORE the Board on 18 July 2016.

WHEREAS the Board received an application from TransCanada, pursuant to section 58 of the NEB Act, dated 10 November 2015, to construct and operate the Vaughan Mainline Expansion Project (Project) between TransCanada's approved 914.4 mm (NPS 36) King's North Connection (KNC) project (Board Order XG-T211-027-2015) and the existing TransCanada Line 200-2, 914.4 mm (NPS 36) pipeline, and the existing TransCanada Line 200-3, 1067 mm (NPS 42) pipeline near the existing mainline valve (MLV) 201A crossover valve site at in the Greater Toronto area of southern Ontario at an estimated cost of \$221 million;

AND WHEREAS TransCanada filed additional evidence on 14 March 2016, responses to information requests on 8 April 2016, 24 May 2016, 2 June 2016, submitted reply evidence on 8 June 2016 and made commitments in these filings;

AND WHEREAS TransCanada requested exemption from the provisions of paragraph 30(1)(a) and 31 of the NEB Act;

AND WHEREAS the Board held a public hearing, including written evidence, information requests, a community meeting to provide oral statements from participants to the Board, letters of comment, oral cross examination and oral and written argument in respect of the Project pursuant to Hearing Order GH-001-2016;

AND WHEREAS information about the Project is set out in Schedule A, attached to and forming part of this Order;

AND WHEREAS the Board has had regard to all considerations that are directly related to the Project and relevant, including environmental matters, pursuant to Part III of the NEB Act;

AND WHEREAS the Board has examined the application and related submissions and considers it to be in the public interest to grant the following relief;

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IT IS ORDERED that, pursuant to section 58 of the NEB Act, the applied-for Project, as specified in Schedule A, is exempt from the provisions of paragraph 30(1)(a), and section 31 of the NEB Act. The effect of this exemption order is to approve the Project subject to the following conditions:

General

1. Condition Compliance

TransCanada must comply with all of the conditions contained in this Order, unless the Board otherwise directs.

2. Project Design, Location, Construction, and Operation

TransCanada must cause the Project to be designed, located, constructed, installed, and operated in accordance with the specifications, standards and other information referred to in its application or as otherwise agreed to during the hearing or in its related submissions.

3. Implementation of Environmental Protection

TransCanada must implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations and procedures for the protection of the environment included in or referred to in its application or as otherwise agreed to during the hearing or in its related submissions.

Prior to Construction (Including Clearing or Ground-breaking Activities)

4. Finalized Watercourse Crossing Inventory

TransCanada must file with the Board, **at least 60 days prior to commencing any watercourse crossing construction activities**, the following:

- a) an updated inventory of all watercourses to be crossed, including, for each crossing:
 - i) the name of the watercourse being crossed and an identifier for the crossing;
 - ii) the location of the crossing;
 - iii) the primary and contingency crossing methods;
 - iv) planned construction timing;
 - v) information on the presence of fish and fish habitat;
 - vi) the restricted activity period;
 - vii) an indication of whether any of Fisheries and Oceans Canada's applicable "Measures to Avoid Causing Harm to Fish and Fish Habitat" cannot be implemented;
- b) detailed generic design drawings of trenchless, dry open-cut, frozen open-cut, and isolation crossings of various watercourse types;

- c) site-specific information for each watercourse crossing where any of Fisheries and Oceans Canada's applicable "Measures to Avoid Causing Harm to Fish and Fish Habitat" cannot be implemented for the primary watercourse construction method:
 - i) detailed crossing-specific engineered design drawings;
 - ii) photographs up-stream, down-stream, and at the crossing location;
 - iii) a description of the fish species and habitat that is present at the crossing location, and if fish spawning is likely to occur within the immediate area;
 - iv) a description of the composition of the riparian habitat at the crossing location and an indication if the riparian habitat has a limiting effect on the productive capacity of the watercourse, and if its removal or disturbance represents a potential influence on fish communities;
 - v) the site-specific mitigation and habitat enhancement measures to be used to minimize impacts;
 - vi) any potential residual effects;
 - vii) proposed reclamation measures; and,
 - viii) a discussion of the potential impacts to local fisheries resources within the immediate area as a result of the crossing's construction.

5. Western Chorus Frog Mitigation and Habitat Restoration Plan

Where critical habitat for Western Chorus Frog may be affected by the Project, TransCanada must file with the NEB for approval, **at least 30 days prior to commencing construction**, a Western Chorus Frog Mitigation and Habitat Restoration Plan. The plan must include:

- a) for each type of critical habitat: its location, total spatial area, and a description of the biophysical attributes with potential to be directly or indirectly affected by Project activities;
- b) a detailed description of alternative activities and/or measures that will be used to avoid critical habitat, or to reduce the amount of critical habitat encountered by the Project, and a quantification of the spatial area of critical habitat that cannot be avoided;
- c) where critical habitat cannot be avoided, identification and review of alternative mitigation and habitat restoration measures to reduce direct and indirect Project effects on critical habitat, and the rationale for the selected measure(s);
- d) a detailed description of mitigation and habitat restoration measures to be implemented, as identified in c), to reduce direct and indirect Project effects on critical habitat, including:
 - i) all relevant measures committed to throughout the GH-001-2016 proceeding;
 - ii) any new mitigation measures;
 - iii) detailed criteria using clear and unambiguous language that describes the circumstances under which each measure will be applied; and

- iv) measurable goals for evaluating mitigation effectiveness and critical habitat restoration success.
- e) details on post-construction monitoring of the effectiveness of mitigation measures and critical habitat restoration measures, including survey methods, corrective measures, detailed criteria using clear and unambiguous language that describes the circumstances under which each corrective measure will be applied, and a proposed reporting schedule;
- f) a commitment to include the results of the monitoring in the post-construction monitoring reports filed under Condition No. 17;
- g) an update on all consultation undertaken with Environment and Climate Change Canada (ECCC) with respect to Western Chorus Frog. In its update, TransCanada must describe how it has incorporated the results of its consultation with ECCC, including any recommendations from ECCC, into the plan. TransCanada must provide an explanation why it cannot implement any specific recommendations from ECCC.
- h) confirmation that TransCanada has updated, or will update, its Environmental Protection Plan for the Project to include any relevant measures from the Western Chorus Frog Mitigation and Habitat Restoration Plan.

Where there is no critical habitat for Western Chorus Frog that is potentially affected by the Project, TransCanada must notify the Board to this effect, and provide evidence supporting this conclusion.

6. Environmental Protection Plan (EPP)

TransCanada must file with the Board for approval, **at least 30 days prior to commencing construction**, a final and updated Project-specific EPP, including Environmental Alignment Sheets. The EPP must describe all environmental protection procedures, and mitigation and monitoring commitments, as set out in TransCanada's application, subsequent filings, evidence collected during the hearing process, or as otherwise agreed to during the hearing and in its related submissions. The EPP must include:

- a) any environmental mitigation or monitoring committed to under conditions of permits issued by or agreements made with the Ontario Ministry of Natural Resources and Forestry, the Toronto and Region Conservation Authority, and the City of Vaughan;
- b) site-specific mitigation for provincially and federally listed species at risk including but not limited to: Western Chorus Frog, Little Brown Myotis, Monarch, Bobolink, Eastern Meadowlark and Redside Dace;
- c) updated Environmental Alignment Sheets;
- d) current drawings of construction practices; and,
- e) an updated Heritage Resources Discovery Contingency Plan that reflects all archaeology related commitments made during the hearing process and any additional commitments made during ongoing engagement with Aboriginal groups.

7. Commitments Tracking Table

TransCanada must file with the Board, **at least 30 days prior to commencing construction**, a Commitments Tracking Table listing all commitments made by TransCanada in its application or in its related submissions, or during the GH-001-2016 proceeding in relation to the Project, including reference to:

- a) The documentation in which reference to the commitment is made (for example: the application and subsequent filings; response to information requests; the transcript reference; any permit, authorization or approval requirements; condition filings);
- b) The accountability for implementing each commitment; and
- c) The timelines associated with the fulfillment of each commitment.

8. Contingency Watercourse Crossings

- a) For any watercourse crossing where TransCanada will employ a contingency crossing method instead of its proposed primary method, and where any of Fisheries and Oceans Canada's applicable "Measures to Avoid Causing Harm to Fish and Fish Habitat" cannot be implemented, TransCanada must file with the Board **at least 30 days prior to commencing construction of the contingency watercourse crossing**:
 - i) confirmation of the contingency watercourse crossing method that will be employed, the rationale for employing that method, and a summary of the differences between the primary and contingency watercourse crossing methods; and
 - ii) the following site-specific information:
 - i. detailed crossing-specific engineered design drawings;
 - ii. photographs upstream, downstream, and at the crossing location;
 - iii. a description of the fish species and habitat that is present at the crossing location, and if fish spawning is likely to occur within the immediate area;
 - iv. a description the composition of the riparian habitat at the crossing location and an indication if the riparian habitat has a limiting effect on the productive capacity of the watercourse, and if its removal or disturbance represents a potential influence on fish communities;
 - v. the site-specific mitigation and habitat enhancement measures to be used to minimize impacts;
 - vi. any potential residual effects;
 - vii. proposed reclamation measures; and
 - viii. a discussion of the potential impacts to local fisheries resources within the immediate area as a result of the crossing's construction.
- b) For all other instances where a contingency crossing method will be employed and all of Fisheries and Oceans Canada's applicable "Measures to Avoid Causing Harm to Fish and Fish Habitat" will be implemented, TransCanada must file with the Board a notification, **at least 15 days prior to commencing the contingency crossing**, that the contingency

method will be employed. With this notification, TransCanada must explain why the contingency method is being employed and provide a summary of the differences between the primary and contingency watercourse crossing methods.

TransCanada must confirm, **within 30 days after commencing operations**, that any contingency watercourse crossing(s) identified to the Board pursuant to a) and b) were the only contingency watercourse crossing(s) implemented for the construction of the pipeline.

9. Heritage and Archaeological Resources Condition

TransCanada must file with the Board, **at least 30 days prior to the commencement of construction on any particular parcel of land**:

- a) confirmation, signed by an officer of the company, that TransCanada has obtained a compliance letter from the Ontario Ministry of Tourism, Culture and Sport confirming that all applicable provincial requirements have been met for that parcel of land; and
- b) a statement on how TransCanada intends to implement any comments or recommendations contained in the compliance letter referred to in a) above.

10. Aboriginal Monitor(s) during Construction Activities

TransCanada must file with the Board, **at least 30 days prior to the commencement of construction activities**, a plan describing participation by Aboriginal groups in monitoring activities during construction for the archaeological resources. The plan must include:

- a) a summary of engagement activities undertaken with Aboriginal groups to determine opportunities for their participation in monitoring activities;
- b) a list of potentially affected Aboriginal groups, if any, that have reached agreement with TransCanada to participate in monitoring activities;
- c) the scope, methodology, and justification for monitoring activities to be undertaken by TransCanada and each participating Aboriginal group identified in b), including those elements of construction and geographic locations that will involve Aboriginal Monitor(s);
- d) a description of how TransCanada will use the information gathered through the participation of Aboriginal Monitor(s); and
- e) a description of how TransCanada will provide the information gathered through the participation of Aboriginal Monitor(s) to the participating Aboriginal group.
TransCanada must provide a copy of the report to each potentially affected group identified in b) above at the same time that it is filed with the Board.

11. Construction Schedule

TransCanada must file with the Board, **at least 14 days prior to commencing construction**, a detailed construction schedule(s) identifying major construction activities. TransCanada must notify the Board of any modifications to the schedule(s) as modifications occur.

12. Manuals and Programs

TransCanada must file with the Board, within the time specified for each manual, plan and program, the following:

- a) Construction Safety Manual – **14 days prior to commencing construction;**
- b) Field Emergency Preparedness and Response Plan – **14 days prior to commencing construction;** and,
- c) Confirmation that a Security Management Plan for the construction of the Section 58 Facilities, pursuant to the National Energy Board Onshore Pipeline Regulations and CSA Z246.1 has been developed – **14 days prior to commencing construction.**

13. Authorizations Under Paragraph 35(2)(b) of the Fisheries Act

For any watercourse crossings that will require Authorization under paragraph 35(2)(b) of the *Fisheries Act*, TransCanada must file with the Board, **at least 10 days prior to commencing the respective instream activities**, a copy of the Authorization under paragraph 35(2)(b) of the *Fisheries Act*.

During Construction

14. Complaint Tracking

From commencement of construction to five years following the commencement of operations, TransCanada must, for audit purposes, create and maintain records that chronologically track complaints by landowners, including municipal and regional governments, relating to the Project. The complaint tracking records must include:

- a) The date the complaint was received;
- b) The form in which the complaint was received (for example, telephone, mail, email, or other communication methods that may evolve over time);
- c) The date and summary of all subsequent telephone calls, visits, correspondence, site monitoring/inspections, follow-up reports and other related documentation;
- d) Updated contact information for all persons involved in the complaint;
- e) A detailed description of the complaint; and
- f) Any further actions to be taken or an explanation why no further action is required.

15. Construction Progress Report

TransCanada must file with the Board, **at the middle and end of each month**, construction progress reports for the Project. The reports must include the following: information on the activities carried out during the reporting period; any environmental, safety and security issues and issues of non-compliance; and the measures undertaken for the resolution of each issue and non-compliance.

Post-Construction and Operations

16. Conditions Compliance by a Company Officer

Within 30 days after the date that the Project is placed in service, TransCanada must file with the Board a confirmation, by an officer of the company, that the Project was completed and constructed in compliance with all applicable conditions of this Order.

If compliance with any of the applicable conditions cannot be confirmed, the officer of the company must file with the Board details as to why compliance cannot be confirmed. Any filing required by this condition must include a statement confirming that the signatory to the filing is an officer of the company.

17. Post-construction monitoring reports

On or before 31 January after each of the first, third and fifth complete growing seasons following completion of final cleanup of the Project, TransCanada must file with the Board, a post-construction environmental monitoring report that:

- a) Describes the methodology used for monitoring, the criteria established for evaluating success and the results found;
- b) Identifies the issues to be monitored, including but not limited to unexpected issues that arose during construction, and their locations (for example, on a map or diagram, or in a table);
- c) Describes the current status of the issues (resolved or unresolved), any deviations from plans and corrective actions undertaken;
- d) Assesses the effectiveness of the mitigation (planned and corrective) measures applied against the criteria for success;
- e) Provides proposed measures and the schedule that TransCanada would implement to address ongoing issues or concerns.

The report must address, but not be limited to, the issues pertaining to soils, weeds, watercourse crossings, wetlands, and species at risk.

18. Pipeline Geographic Information System (GIS) Data

TransCanada must provide the Board, **within one year of the date TransCanada files with the Board the confirmation letter required pursuant to Condition 16**, as-built GIS data in the form of an Esri® shape file that contains all pipeline segment centre lines. The datum must be North American Datum of 1983 (NAD83) and projection must be geographic (latitudes and longitudes). Each segment must have a pipeline name, outside diameter, wall thickness, maximum operating pressure, pipe material, pipe material standard, pipe grade, external coating, primary product, pipeline joint type, and operating stress level. If the above values of the pipeline change at any point along the length of the pipeline, the pipeline must be segmented at that point. TransCanada must also provide GIS locations and names of all meter stations, compressor stations and block valves, as applicable.

19. Sunset Clause

Unless the Board otherwise directs prior to 18 July 2018, this Order must expire on 18 July 2018, unless construction in respect of the Project has commenced by that date.

NATIONAL ENERGY BOARD

Original signed by

Sheri Young
Secretary of the Board

SCHEDULE A
National Energy Board Order XG-T211-020-2016

TransCanada PipeLines Limited
Application pursuant to section 58 of
the *National Energy Board Act*

Vaughan Mainline Expansion Project
File OF-Fac-Gas-T211-2015-05 01

Pipeline Specifications – Vaughan Mainline Expansion Project

Project Type	New construction
Location	Within Vaughan, ON Connecting KNC Project and Line 200-2 near northwest of the intersection of Major MacKenzie Drive and Huntington Road, to MLV 201A near Kirby Road and Kipling Avenue.
Approximate Length	12 km
Outside Diameter	1067 mm (NPS 42)
Minimum Wall Thickness	12.7 mm or greater
Pipe Material	Carbon steel
Pipe Material Standard	CSA Z245.1
Pipe Grade	Grade 483, X70
External Coating Type	Fusion-bond epoxy
Maximum Operating Pressure	6 450 kPa
Product	Non-Sour Natural Gas