

Memorandum of Understanding between Transport Canada and the National Energy Board for Pipelines and Power Lines Subject to the *National Energy Board Act* and the *Canada Oil and Gas Operations Act*

BETWEEN: Transport Canada (TC)

AND: National Energy Board (NEB)

WHEREAS, the National Energy Board is a quasi-judicial administrative tribunal that has regulatory responsibilities for inter-provincial and international natural gas, oil and commodity pipelines, international power lines and designated inter-provincial power lines pursuant to the *National Energy Board Act* (NEBA) and for Environmental Assessments (EA) pursuant to the NEBA and the *Canadian Environmental Assessment Act 2012* (CEAA 2012); and

WHEREAS, the Minister of Transport, Infrastructure and Communities has responsibilities, including the protection of navigation and the promotion of safe navigation under the *Navigable Waters Protection Act* (NWPA); which pursuant to amendments to the NWPA contained in the *Jobs and Growth Act, 2012*, will be renamed the *Navigation Protection Act* (NPA); and

WHEREAS, pursuant to the *Jobs, Growth and Long-term Prosperity Act*, the responsibilities for approving pipelines and power lines subject to the NEBA that pass in, on, over, under, through or across navigable waters was transferred to the NEB; and

WHEREAS, pursuant to the *Jobs, Growth and Long-term Prosperity Act*, the responsibilities for approving pipelines subject to the *Canada Oil and Gas Operations Act* (COGOA), that pass in, on, over, under, through or across navigable waters, which were previously approved under the NWPA, was transferred to the NEB; and

WHEREAS, pursuant to the CEAA 2012, the NEB is a Responsible Authority, and TC is a Federal Authority for a project, and an EA is required for designated projects listed in the *Regulations Designating Physical Activities*; and

WHEREAS, the Government of Canada is committed to undertaking a process of early, effective and meaningful consultation with Aboriginal groups concerning contemplated Crown conduct that may adversely affect potential or established Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*; and

WHEREAS, under Canada's Economic Action Plan, Responsible Resource Development involves the streamlining of reviews of major projects, continuous improvement in coordination and avoiding duplication to unleash Canada's resource potential; and

WHEREAS, the Parties are committed to protecting navigation and promoting safe navigation and will work to coordinate an effective and efficient transfer of responsibilities, for the approval of pipelines and power lines subject to the NEBA and pipelines subject to the COGOA that pass in, on, over, under, through or across navigable waters, from the Minister of Transport, Infrastructure and Communities to the NEB;

NOW THEREFORE, the Parties to this Memorandum of Understanding (MOU) agree to pursue effective and where appropriate, coordinated, discharge of responsibilities in respect of projects and to this end agree to the following provisions:

1. PURPOSE

The purpose of this MOU is to:

- Coordinate an effective and efficient transfer of responsibilities (Transitional Items);
- Outline roles and responsibilities between the two Parties (Roles and Responsibilities);
- Outline the manner in which information will be shared between the NEB and TC (Sharing of Information); and
- Outline the process for NEB to obtain TC's expertise.

2. INTERPRETATION

2.1. This MOU:

- is a public document that is to be read with and interpreted in a manner consistent with all applicable law;
- does not create any new legal powers or duties, nor alter in any way the jurisdiction, powers and duties of the Parties;
- applies only to pipelines and power lines subject to the NEBA; and
- applies only to pipelines subject to COGOA.

3. CONTEXT

3.1. As a result of changes to the NEBA, the Minister of Transport, Infrastructure and Communities will no longer have the responsibility to approve pipelines and power lines subject to the NEBA that pass in, on, over, under, through or across navigable waters; and, as result of changes to COGOA, the Minister of Transport, Infrastructure, and Communities will no longer have the responsibility to issue approvals under the NWPA for pipelines subject to COGOA that pass in, on, over, under, through or across navigable waters. The NEB's role relates to environmental protection and the safety,

security and economic efficiency of the pipelines and power lines it regulates. This includes balancing the need to construct pipelines and power lines that pass in, on, over, under, through or across navigable waters while ensuring the protection of navigation and promoting safe navigation. TC's role in this context is to support the NEB, through its public application review process or at the request of the NEB, by sharing expertise on complex scenarios regarding the placement, construction and marking of works in, on, over, under, through or across navigable waters.

3.2. The NEB's Filing Manual provides guidance to applicants as to the type of information the NEB's Board Members typically need to make decisions.

4. TRANSITIONAL ITEMS

4.1. Annex A defines the procedures and processes to be utilized over the course of the transition period to effect the transfer of responsibilities from the Minister of Transport, Infrastructure and Communities to the NEB for the administration of navigation matters under the NEBA and the COGOA.

5. SHARING OF INFORMATION

5.1. Annex B outlines the process for the exchange of information between the Parties related to navigational issues following the transfer of responsibilities.

6. ROLES AND RESPONSIBILITIES and SUPPORT ARRANGEMENT

6.1. Annex C outlines the specific roles and responsibilities related to various project scenarios.

7. COST RECOVERY AND SUPPORT ARRANGEMENT

7.1. Nothing in this MOU or any Annex is intended to impose any funding obligations on either of the Parties above and beyond the fulfillment of each organization's mandated responsibilities.

7.2. Subject to sub-sections 7.3 and 7.4, each Party will be responsible for their respective costs incurred related to the implementation of the MOU.

7.3. Subject to resource availability, TC will provide assistance to the NEB for the purposes of training or other navigation associated needs. The NEB agrees to pay TC the costs for TC employees to travel for these purposes.

7.4. Where technical advice or support from TC is required by the NEB on an extended basis, the Parties may enter into an interchange agreement or other cost recovered assignment. Interchanges and assignments will be of a mutually agreed to duration and may continue for brief or extended periods.

8. DESIGNATED REPRESENTATIVE

8.1. For administrative purposes, the designated representatives of each Party are listed below.

National Energy Board

Jamie Kereliuk
Business Leader, Applications
444 Seventh Avenue, SW
Calgary, Alberta
T2P 0X8

Transport Canada

Catherine Higgins
Director General, Stewardship and Sustainable Transportation Programs
Transport Canada
330 Sparks Street
Ottawa, Ontario
K1A 0N5

Donald Roussel
Director General, Marine Safety and Security
Transport Canada
330 Sparks Street
Ottawa, Ontario
K1A 0N5

9. EFFECTIVE DATE, AMENDMENT AND TERMINATION

9.1. This MOU will be effective as of the date of final signature by both of the Parties and will remain in effect until terminated by either Party. Either Party may terminate this MOU upon 60 days written notice to the other Party.

9.2. This MOU may be amended or modified at any time by mutual written agreement between the designated representatives.

9.3. Any annex to this MOU may be added, amended or modified at any time by mutual written agreement between the designated representatives.

9.4. The Parties will review this MOU following the first year of its application and at least once every three years thereafter, or more often as required or if there are amendments to relevant applicable law.

Approved By:



Sandy Lapointe
Strategic Leader, Regulatory
National Energy Board

10 July 2013

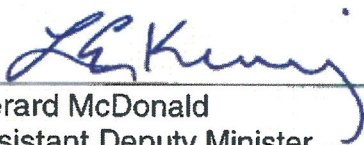
Date



Helena Borges
Assistant Deputy Minister
Programs Group
Transport Canada

July 2, 2013

Date



Gerard McDonald
Assistant Deputy Minister
Safety and Security Group
Transport Canada

July 2/13.

Date

ANNEX A

TRANSITIONAL ITEMS

The purpose of Annex A is to coordinate the effective and efficient transfer of responsibilities from the Minister of Transport, Infrastructure and Communities to the NEB.

1. TC and the NEB agree to:
 - 1.1. Continue to fulfill their respective mandates and to effectively communicate throughout the transition of responsibilities; and
 - 1.2. Examine and pursue areas or opportunities where training and technical cooperation and collaboration would be beneficial.

ANNEX B

SHARING OF INFORMATION

The purpose of Annex B is to facilitate the ongoing sharing of information between the NEB and TC following the transfer of responsibilities from the Minister of Transport, Infrastructure and Communities to the NEB.

1. To the extent it is permitted by law, including the *Access to Information Act* and the *Privacy Act*:

1.1 TC agrees to retain and, on an as requested basis, provide the NEB with copies of records related to watercourse crossings by NEB regulated facilities, including past decisions issued by TC under sections 58.29 and 108 of the NEBA, as well as past decisions issued by TC under the NWPA for pipelines subject to the COGOA.

1.2 TC and the NEB agree to consult the other Party prior to any change in established policies, and procedures as they relate to pipelines and power lines that pass in, on, over, under, through or across navigable waters, as applicable.

ANNEX C
**ROLES AND RESPONSIBILITIES and SUPPORT ARRANGEMENT FOR PIPELINES
AND POWER LINES SUBJECT TO THE NEBA**

The purpose of Annex C is to outline the roles and responsibilities for NEB and TC in various project scenarios for pipelines and power lines subject to the NEBA following the transfer of responsibilities from the Minister of Transport, Infrastructure and Communities to the NEB.

1. TC and the NEB agree to:

- 1.1. Work collaboratively to resolve questions concerning potential regulatory overlap.
- 1.2. Refer stakeholders and Aboriginal groups to convey Project-related concerns to the NEB.
- 1.3. The NEB's role and responsibilities are outlined generally in the following scenarios:

Construction of a temporary or permanent work (i.e. bridge, or water intake structure) associated with, but not necessarily physically connected to, the construction of a pipeline or power line; or

Construction of a temporary or permanent work (i.e. bridge, or support structure) connected to a pipeline or power line that is under the responsibility of the NEB.

If a work is proposed by the pipeline or power line proponent and is physically or operationally connected to the pipeline or power line, it is under the responsibility of the NEB.

Works at a Marine Terminal

If a work at a Marine Terminal is proposed by the pipeline proponent and is physically or operationally connected to the pipeline it is under the responsibility of the NEB.

2. The NEB agrees to:
 - 2.1 Notify TC of projects received by NEB that involve the following issues:
 - Non Horizontal Directional Drilling (HDD) crossings on waterbodies with known commercial traffic; and
 - Other maritime matters under the responsibility of TC.