



File OF-Fac-Oil-T241-2009-01 01  
12 May 2009

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888 - 3<sup>rd</sup> Street S.W.  
Calgary, AB T2P 5C5  
Facsimile 403-266-9034

Dear Sir and Mesdames:

**Hearing Order OH-1-2009 regarding  
TransCanada Keystone Pipeline GP Ltd. (TransCanada)  
Keystone XL Pipeline Application of 27 February 2009**

The National Energy Board has decided to convene an oral public hearing, beginning **15 September 2009** at a location to be determined. The Hearing Order setting out the procedures to be followed in this hearing is attached.

The Board directs TransCanada, by **19 May 2009**, to serve a copy of this letter and the attached Hearing Order on the persons or agencies listed in Appendix VI of the Hearing Order in the official language of their choice.

TransCanada is also directed to serve a copy of the Notice of Public Hearing (Appendix III) on the parties on its distribution list with an interest in the proposed project, including landowners and individual contacts within the Aboriginal groups who are not specifically named in Appendix VI. In addition, the Board directs TransCanada to serve a copy of the Notice of Public Hearing (Appendix III) on the parties which TransCanada has identified as consulting with during the preparation of the Keystone XL Pipeline Application. TransCanada shall also publish the Notice of Public Hearing by noon (Calgary time) on **25 May 2009** in each of the publications listed in Appendix IV.

Yours truly,

Claudine Dutil-Berry  
Secretary of the Board

Attachments

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12 May 2009

## **Hearing Order OH-1-2009 for the TransCanada Keystone Pipeline GP Ltd. – Keystone XL Pipeline**

### **The Application**

1. On 27 February 2009, TransCanada Keystone Pipeline GP Ltd. (TransCanada) applied to the National Energy Board for authorization to construct and operate a 525 kilometre (km) oil pipeline from Hardisty, Alberta to Monchy, Saskatchewan.

TransCanada has applied for:

- (a) a Certificate of Public Convenience and Necessity under section 52 of the *National Energy Board Act* (Act) authorizing TransCanada to construct and operate the Keystone XL Pipeline;
- (b) an Order under Part IV of the Act for approval of the proposed toll methodology and tariffs; and
- (c) authority to carry out the Project pursuant to section 20 of the *Canadian Environmental Assessment Act* (CEA Act), including a finding that the construction and operation of the Pipeline will not or is not likely to cause adverse environmental effects.

The Project would involve the construction of approximately 525 km of new 914 mm outside diameter (NPS 36 inch) pipeline from Hardisty, Alberta to Monchy, Saskatchewan. Approximately 50 km of non-contiguous pipeline right of way would be required. The Project would have an initial capacity of approximately 111,300 m<sup>3</sup>/d (700,000 bbl/d) of commodity and is designed to be expandable to 143,100 m<sup>3</sup>/d (900,000 bbl/d). The Project would also include related physical works including: pump stations, tanks and other related works and activities.

The Board, as the lead Responsible Authority under the CEA Act, will complete an environmental screening report and will consider that report and any comments filed as required under the CEA Act.<sup>1</sup>

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<sup>1</sup> Information on the CEA Act may be obtained through the Canadian Environmental Assessment Agency: [www.ceaa-acee.gc.ca](http://www.ceaa-acee.gc.ca)

## Hearing

2. The Board will conduct a public hearing process that will include an oral hearing set to start **at 9:00 a.m., local time**, beginning **15 September 2009**, at a **location to be determined**. As always, the Board will make efforts to facilitate the participation of interested persons at the hearing, including through selection of the hearing location(s). The Board's proceeding will obtain the evidence and views of interested persons on the application.

To facilitate public participation and in the interests of fairness and efficiency, the Board has established the following procedures.

Please note that the procedures set out in this Hearing Order supplement the *National Energy Board Rules of Practice and Procedure, 1995*, (Rules) SOR/95-208, which are available at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) (click on "Acts and Regulations") or by calling the Board toll free at 1-800-899-1265.

## Public Viewing

3. The application is available for viewing on the Board's electronic document repository at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) (find "Regulatory Documents" on the right side of the page, and click on "view" then "Quick Links" and scroll down to the TransCanada Keystone XL Pipeline application). TransCanada will make available for public viewing, during normal business hours, a copy of its application and all related documents at the following locations:

TransCanada PipeLines Limited  
450 - 1<sup>st</sup> Street S.W.  
Calgary, AB T2P 5H1

### Alberta Libraries

Hardisty Public Library  
5027 - 50 Street  
Hardisty, AB T0B 1V0

Consort Municipal Library  
5215 - 49A Street  
Consort, AB T0C 1B0

Oyen Municipal Library  
105 - 3rd Avenue West  
Box 328  
Oyen, AB T0J 2J0

### Saskatchewan Libraries

Chinook Regional Library – Burstall Branch  
Corner of Martin Street and Hamilton Avenue  
Burstall, SK S0N 0H0

Chinook Regional Library  
Maple Creek Branch  
Maple Creek, SK S0N 1N0

Chinook Regional Library - Shaunavon Branch  
Grand Coteau Heritage & Cultural Centre  
440 Centre Street  
Shaunavon, SK S0N 2M0

Medicine Hat Public Library  
414 First Street SE  
Medicine Hat, AB T1A 0A8

Chinook Regional - Climax Library  
120 Main Street  
Climax, SK S0N 0N0

Swift Current Library  
411 Herbert Street East  
Swift Current, SK S9H 1M5

Copies of the application and all related documents are also available for viewing at the Board's library:

National Energy Board  
First Floor, 444 – 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 0X8

### **Correspondence Related to this Hearing**

4. (1) Any person filing a document with the Board or serving a document on any person during this hearing must quote Hearing Order OH-1-2009 and File No. OF-Fac-Oil-T241-2009-01 01. With the exception of on-line forms, any document filed in this hearing must be signed by the person submitting it.
- (2) In this Hearing Order, reference to Service on TransCanada or on TransCanada's counsel means service on the following:

Mr. Ian Cameron Regulatory Project Manager TransCanada PipeLines Limited 450 - 1 <sup>st</sup> Street S.W. Calgary, AB T2P 5H1 Facsimile 403-920-2347 E-mail: ian_cameron@transcanada.com	Ms. Elizabeth Swanson Associate General Counsel TransCanada PipeLines Limited 450 - 1 <sup>st</sup> Street S.W. Calgary, AB T2P 5H1 Facsimile 403-920-2354 E-mail: elizabeth_swanson@transcanada.com
Ms. Wendy M. Moreland Stikeman Elliot LLP 888 – 3 <sup>rd</sup> Street S.W. Calgary, AB T2P 5C5 Facsimile 403-266-9034 E-mail: wmoreland@stikeman.com	

## Public Participation

5. Members of the public may participate in this hearing in one of three ways – by filing a letter of comment on the application, by providing an oral statement or by seeking Intervenor status. Government Authorities with an interest in the CEA Act environmental assessment may participate by filing a letter of comment, providing an oral statement, or by registering to become an Intervenor or a Government Participant.

Any person may monitor the record containing the application and most of the other filed documents on the Board's website: [www.neb-one.gc.ca](http://www.neb-one.gc.ca). Find “Regulatory Documents” on the right side of the page, and click on “view” then “Quick Links” and scroll down to the TransCanada Keystone XL Pipeline application. In addition, anyone may attend the oral portion of the hearing as an observer.

The letter of comment option is intended to allow interested persons who do not wish to appear at the hearing an opportunity to provide their views and opinions on the application.

The oral statement option is intended to allow interested persons who do not wish to intervene an opportunity to give their views to the Board. The Board will set aside a time for hearing oral statements, which will be made under oath or affirmation. The Board and TransCanada, and any other party with permission of the Board, will be allowed to ask questions of the person making the statement.

The Government Participant option is intended to allow Government Authorities the opportunity to participate without becoming Intervenors.

If you are providing technical or factual evidence, rather than views about the application, it may be more appropriate to participate as an Intervenor.

General information about how to participate in a National Energy Board hearing can be found at [www.neb-one.gc.ca](http://www.neb-one.gc.ca). Click on “Hearings and Information Sessions”, then click on “Participate in a Public Hearing”. The link includes an 11-minute video describing the role of the Board and how to participate in the public hearing process and a publication entitled “The Public Hearing Process – Your Guide to Understanding NEB Hearings”.

To request a copy of the publication by mail, please contact Sharon Wong at 403-299-3191, or call the NEB Toll-Free at 1-800-899-1265.

## Letters of Comment

6. Any interested person who does not wish to register as an Intervenor and become a party in the proceeding but who still wishes to comment on the application, may file a letter of comment. Letters of comment shall be filed with the Board and served on TransCanada and its counsel by **30 July 2009**. The Board will serve a copy on all parties.

A letter of comment should:

- (a) describe the nature of your interest in the application;
- (b) provide comments on the application; and
- (c) provide any relevant information that will explain or support your comments.

You may use a form on the Board's Internet site to file your letter of comment. Go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca) and under the "Regulatory Documents" heading, click "Submit documents electronically" – Then click "Letter of Comment".

*Note: If you choose to file a letter of comment, you are not considered an Intervenor. Therefore, you will not have the right to be served with a copy of the application, to file evidence, to ask questions in the hearing, to submit final argument, or to participate in any other way during the proceeding other than to provide comments on the environmental screening, or to simply observe the hearing. You will not be required to attend the hearing and will not be subject to questions on your comments. In determining the weight to be given to these comments, the Board may take into consideration the fact that they have not been made under oath or affirmation or tested by cross-examination.*

## Oral Statement

7. (1) If you wish to make an oral statement to the Board, you must file the following details with the Board and serve a copy on TransCanada and its counsel by **30 July 2009**:

- (a) the nature of your interest in the project;
- (b) that you wish to make an oral statement;
- (c) the official language in which you wish to make your oral statement; and
- (d) your name, mailing address, address for personal service (if this is different from your mailing address), e-mail address, telephone number and other telecommunications numbers.

The Board will establish a time for people to make their oral statements.

You may use a form on the Board's Internet site to file your request to make an oral statement. Go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca) and under the "Regulatory Documents" heading, click "Submit documents electronically" – Then click "Request to Make an Oral Statement".

*Note: If you choose to make an oral statement, you are not considered an Intervenor. Therefore, you will not have the right to be served with a copy of the application, to file evidence, to ask questions in the hearing, to submit final argument, or to participate in any other way during the proceeding other than to provide comments on the application and the environmental screening or to simply observe the hearing.*

(2) An oral statement made at the hearing should:

- (a) describe the nature of your interest in the application;
- (b) provide comments on the application; and
- (c) provide any relevant information that will explain or support your comments.

Time limits may be imposed on oral statements. As a guideline, an oral statement should normally take no longer than approximately ten minutes.

(3) Any person making an oral statement will be sworn or affirmed before the oral statement is given. TransCanada and the Board, and any other party with permission of the Board, may ask questions of the person making the oral statement.

(4) If you wish to make an oral statement and also file a letter of comment or other documentation, you must file the written information by **30 July 2009**. Written filings will not normally be accepted at the time of the oral statement. If you choose to file written information and make an oral statement, you will be asked to adopt the written filing at the time you are sworn to give your oral statement and the filing will be considered sworn evidence. When making an oral statement, you will not be allowed to read your letter of comment as filed with the Board, but you may present further elaboration on your comments at that time.

### **Application for Intervention**

8. (1) Any person wanting to become an Intervenor in the hearing shall file a written request to intervene with the Board and serve a copy on TransCanada and its counsel by **9 June 2009**.

An application to intervene must:

- (a) set out your name, mailing address, address for personal or courier service (if this is different from your mailing address), e-mail address, telephone number and other telecommunications numbers;
- (b) set out the name, mailing address, address for personal or courier service (if this is different from the mailing address), e-mail address, telephone number and other telecommunications numbers for your authorized representative if you have one;
- (c) describe the nature of your interest in the project;
- (d) state clearly the issues that you intend to address at the public hearing;
- (e) include a statement on whether you or your authorized representative intends to appear at the hearing and if you do not expect to attend the oral hearing, state clearly the reasons why your interest in the proceeding requires an intervention;

- (f) indicate the official language you wish to use in correspondence with the Board and at the oral hearing;
- (g) indicate whether you have the capability to access documents through the Board's electronic document repository on the Board's Internet site; and
- (h) if you are not able to use the Board's electronic document repository, indicate why not.

*Note: If a party can access the electronic document repository on the Board's Internet site, it must accept notification that an e-filed document is available in the repository rather than requiring a hard copy of the document be served (see paragraph 14).*

You may use a form on the Board's Internet site to file your application to intervene. Go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca) and under the "Regulatory Documents" heading, click "Submit documents electronically" – Then click "Application for Intervenor Status".

### **Late Interventions**

- (2) If you are unable to state the information to be addressed at the hearing (see 8(1)(d) above) you must:
  - (a) include with your application to intervene a statement explaining why you are unable at this time to describe the issues that you intend to address; and
  - (b) 15 days after the date of filing of the written intervention or 15 days after receiving a copy of the application, whichever is later, file the information required by 8(1)(d) with the Board and serve it on TransCanada and its counsel.

### **Becoming an Intervenor**

- (3) Persons and agencies listed in Appendix VI or otherwise served with a copy of the application or this Hearing Order are not automatically considered Intervenor. An application must be filed to become an Intervenor.

### **Declaration by Government Participant**

- 9. (1) Any government department or agency wanting to be a Government Participant must file a declaration with the Board and serve a copy on TransCanada and its counsel by **9 June 2009**.

A declaration of participation as a Government Participant must contain the same information that is required in an application to intervene. (See previous section).

You may use a form on the Board's Internet site to file your declaration. Go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca) and under the "Regulatory Documents" heading, click "Submit documents electronically" – Then click "Declaration of Government Participant Status".

## Becoming a Government Participant

- (2) Departments and agencies listed in Appendix VI or otherwise served with a copy of the application or this Hearing Order are not automatically considered Government Participants. A declaration must be filed to become a Government Participant.

*Note: The features of the Government Participant role are set out in a document “The NEB has a New Government Participant Role” which can be found on the Board’s Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca).*

## List of Issues and Draft Scope of the Environmental Assessment

10. (1) The Board intends to examine the issues contained in the List of Issues, attached as Appendix I. Any party who wishes to suggest an amendment or addition to this List of Issues must file their suggestion with the Board and serve a copy on TransCanada and its counsel by **9 June 2009**. You must include a clear explanation of the relevance of the suggestion to the hearing.
- (2) The Board will consider any comments received and shortly after the deadline for comments on the List of Issues the Board will release a final List of Issues.
- (3) The draft scope for the Board’s environmental assessment is attached to this Hearing Order as Appendix V. Any party who wishes to suggest an amendment or addition to the scope must file their suggestion with the Board and serve a copy on TransCanada and its counsel by **9 June 2009**. You must include a clear explanation of the relevance of the suggestion to the hearing.

## List of Parties

11. Shortly after **9 June 2009**, the Board will issue a List of Parties (which consists of TransCanada, Intervenor and Government Participants).

Immediately after receiving the List of Parties, Intervenor must serve a copy of their intervention on all other Intervenor, and Government Participants must serve a copy of their declaration on all other parties.

If there are parties who cannot access documents through the Board’s electronic document repository, and therefore cannot be served by being notified that the document has been e-filed, the Board will indicate on the List of Parties the manner of service for those parties.

Parties must file an update with the Board if there are any changes in their contact information.

*Note: Government Participants will be considered parties to the hearing and will be*

*included on the List of Parties.*

### **Service of Documents - General**

12. Anyone required to serve a document on a party may serve a notification that the document is on the Board's electronic document repository instead of serving a hard copy of the document. The party being served will be responsible for retrieving the document from the electronic document repository. Parties identified as being unable to access electronic documents will need to be served a hard copy of any filed documents.

Where the Hearing Order indicates that documents must be served on other parties, one copy must be served on TransCanada, its counsel and each person on the List of Parties, including the Government Participants.

### **Service of Documents – Government Participants**

13. TransCanada and Intervenors need not serve any documents on Government Participants except for those documents specified in this Hearing Order.

Parties are only required to serve Government Participants with information requests and requests to cross-examine a Government Participant.

Government Participants must serve any documents they file with the Board on all parties, that is, TransCanada, Intervenors and other Government Participants.

It is the responsibility of the Government Participant to check the Board's electronic document repository and the Canadian Environmental Assessment Agency public registry to ensure that it receives all pertinent information. The Board will make reasonable efforts to serve the Government Participants with documents relating to environmental and procedural matters.

### **Electronic Filing and the Electronic Document Repository**

14. Parties who have the ability to file documents electronically are expected to file documents through the Board's electronic document repository at [www.neb-one.gc.ca](http://www.neb-one.gc.ca). Click on "Submit a Document" to file a document. Any party who has the ability to access documents through the electronic document repository must accept service of a notification that the document is in the repository rather than requiring a hard copy of the document be served. Click on "Regulatory Documents" then "Quick Links" and scroll down to the application to view and print a document.
15. During the oral hearing, the Board will view exhibits electronically. For ease of reference, documents filed in this proceeding should be numbered beginning with the title page as page 1 and numbered consecutively to the end of the document (including blank pages). This way, the page numbers on paper copies will correspond to those in electronic pdf documents.

For more information about filing electronically, please refer to the “Filers Guide to Electronic Submission” available on the Board’s Internet site at [www.neb-one.gc.ca/efile/guide\\_e.pdf](http://www.neb-one.gc.ca/efile/guide_e.pdf).

**Please note that e-mails are not considered electronic filing and will not be accepted in this hearing.**

The Board’s electronic document repository will contain the full text of those documents filed electronically (following the procedures mentioned above). When documents are filed by hard copy or facsimile, the Board will attempt to scan them into the electronic document repository but may, in some instances, create an electronic placeholder. This placeholder indicates that a document has been filed in hard copy. It will not be possible to view or search these documents on the electronic document repository, but they are available in the Board’s library and locations for public viewing set out in paragraph 3.

### **Filing Documents with the Board**

16. All documents and correspondence being filed with the Board should be addressed to the Secretary of the Board, Claudine Dutil-Berry. The Board accepts documents and correspondence by hand delivery, mail or courier at the following address:

Claudine Dutil-Berry  
Secretary of the Board  
National Energy Board  
444 - 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 0X8

Documents and correspondence may also be submitted by facsimile at 403-292-5503.

### **Number of Copies and Delivery of Documents**

17. Parties filing documents electronically only need to file one hard copy and the electronic filing receipt with the Board. The filing receipt is generated by the electronic document repository when a document is electronically filed.

Parties filing hard copies of documents with the Board prior to or after the oral hearing are required to provide 25 copies. For any party that have difficulties in meeting this requirement, please contact Sharon Wong, Regulatory Officer, at 403-299-3191 in Calgary or by calling the Board toll-free at 1 800 899 1265 and specifying the Keystone XL Pipeline. The exception is a Letter of Comment, or request to make an oral statement, for which only one copy is required for each of the Board, TransCanada and its counsel. The Board will serve a copy of each letter of comment and request to make an oral statement on each Intervenor.

Any party filing a document during the oral hearing must give six copies to the

Regulatory Officer, and 10 copies to Board counsel. The party must also provide enough copies for use by the other parties at the oral hearing. There will be a designated location in the hearing room to place documents. In addition to providing copies in the hearing room, parties who have the ability to file documents electronically are also expected to file the document through the Board's electronic document repository.

Parties filing documents fewer than five days before the oral hearing begins must serve the document as otherwise set out in the Hearing Order and bring to the oral hearing enough copies for use by the Board and other parties.

When this Hearing Order requires the filing or service of documents by certain deadlines, the documents are only considered to meet the deadline when the intended person receives them. The intended recipient must receive the documents by noon, Calgary time.

### **References to Websites**

18. Any person making a reference to information on a website must ensure that:
  - (a) the reference is sufficiently precise to allow any person accessing the site to know the exact information which is being referenced;
  - (b) the website does not require a password or subscription in order to access the information; and
  - (c) a hard copy of all of the information being referenced on the website is filed with the Board.

### **TransCanada to Serve Application**

19. TransCanada must serve a copy of its application and all related documents on each Intervenor who has not yet received a copy immediately after receiving the List of Parties.

### **Additional Written Evidence from TransCanada**

20. TransCanada must file any additional evidence with the Board and serve a copy on all Intervenors by **18 June 2009**.

### **Information Requests to TransCanada**

21. If Intervenors or Government Participants have any information requests for TransCanada, they must serve them on TransCanada and its counsel, file a copy with the Board and serve a copy on all Intervenors by **2 July 2009**.
22. TransCanada must file its responses to Intervenor information requests received by the deadline with the Board and serve a copy on all Intervenors by **16 July 2009**.

TransCanada must file its responses to Government Participant information requests received by the deadline with the Board and serve a copy on all parties by **16 July 2009**.

### **Written Evidence of Intervenors and Government Participants**

23. Intervenors wishing to give evidence must file their written evidence with the Board and serve a copy on TransCanada and all Intervenors by **30 July 2009**. Government Participants wishing to give evidence must file their written evidence with the Board and serve a copy on all parties by **30 July 2009**.

### **Information Requests to Intervenors and Government Participants**

24. If TransCanada or any Intervenor has any information requests about the evidence of Intervenors or Government Participants, they must serve them on the Intervenor or Government Participant, file a copy with the Board and serve a copy on TransCanada and all Intervenors by **13 August 2009**.
25. Intervenors must file a copy of all responses to the information requests received by the deadline with the Board and serve a copy on TransCanada and all Intervenors by **27 August 2009**. Government Participants must file a copy of all responses to the information requests received by the deadline with the Board and serve a copy on all parties by **27 August 2009**.

### **Reply Evidence of Applicant**

26. TransCanada may file any reply evidence with the Board and serve a copy on all Intervenors by **3 September 2009**.

### **Cross-examination of Government Participants**

27. If TransCanada or any Intervenor wishes to cross-examine a Government Participant it must request permission of the Board. The request must indicate the nature of the questions, the relevance to the proceeding, and why fairness requires cross-examination and must be filed with the Board and a copy served on all parties by **3 September 2009**.
28. If the Government Participant has any comments on the request to be cross-examined, it shall file a reply with the Board and serve a copy on all parties by **8 September 2009**.
29. The party requesting the right to cross-examine the Government Participant shall file its reply, if any, with the Board and serve a copy on all parties by **11 September 2009**.

The Board will then consider the request to cross examine and communicate its decision, including any restrictions, to the requesting party and Government Participant.

*Note: Government Participants must also receive leave of the Board to cross-examine any other party.*

## Environmental Assessment Process

30. The Application is for a Certificate under section 52 of the Act which also triggers the CEA Act. As such, the Board will conduct an environmental assessment. As part of this environmental assessment, the Board will:
- (a) apply the CEA Act, ensuring that there is no duplication of requirements under the CEA Act and the Board's own regulatory process; and
  - (b) release an Environmental Screening Report for comment shortly after the oral portion of the public hearing concludes.

Any person who wants to receive a copy of this report should contact Sharon Wong, Regulatory Officer, at 403-299-3191 in Calgary or by calling the Board toll-free at 1-800 899-1265 and specifying the Keystone XL Pipeline before the end of the oral hearing.

Comments on the report must be filed with the Board and served on TransCanada and its counsel no later than 14 days from the release date of the Environmental Screening Report. TransCanada may then file comments with the Board and serve a copy on those persons who have filed comments no later than 21 days from the release date of the Environmental Screening Report.

## Public Information Session

31. Where there is sufficient interest demonstrated by interested persons, the Board holds a public information session designed to provide information on the Board's role and hearing process. A public information session would be held prior to the hearing, at a location that would accommodate the majority of the interested persons. Any member of the public would be welcome to attend. These sessions are not a forum for discussing the merits or substance of the application, but are intended to assist people to better understand and participate in the Board's hearing process. Interested persons should file a letter to advise the Board of their interest in the Board holding a public information session, no later than **29 May 2009**.

## TransCanada's Public Notification Duties

32. TransCanada is responsible for:
- (a) serving a copy of this Hearing Order and Appendices on all persons or agencies listed in Appendix VI in the official language of their choice by **19 May 2009**;
  - (b) publishing the Notice of Public Hearing (Appendix III) in each of the publications listed in Appendix IV by **25 May 2009**;
  - (c) ensuring the published Notice of Public Hearing meets the requirements of the Government of Canada's Federal Identity Program (for assistance please contact FIP@neb-one.gc.ca);

(d) including a map with the notices in paragraph (b) for the following newspapers:

- *The Globe and Mail*;
- *Sedgewick Community Press*;
- *Consort Enterprise*;
- *Oyen Echo*;
- *Medicine Hat News*;
- *Maple Creek News*;
- *Shaunavon Standard*;
- *Southwest Booster*;
- *Calgary Herald*;
- *Le Franco*; and
- *L'eau Vive*.

The scale of the map must be big enough to indicate with reasonable accuracy the location of the proposed facilities. The map must show prominent topographical features or landmarks such as rivers, population centers, highways, and utilities; and

(e) filing with the Board a complete list of publication dates of the Notice of Public Hearing immediately after all notices have been published.

### **Timetable of Events**

33. Appendix II lists the deadlines for filing and serving documents and the party responsible.

### **Motions**

34. Any party wishing to raise a question of procedure or substance that requires a Board decision before the oral hearing starts must file a document titled "Notice of Motion" separate from other correspondence. Section 35 of the Rules must be followed. The motion must set out a statement of the facts, the grounds for the request, the decision requested and the evidence supporting the request. If case law is being relied on, a case book must be filed and the specific passages of the cases being relied on must be highlighted or side barred.

The party raising a motion must file a copy with the Board and serve a copy on all parties.

### **Simultaneous Interpretation**

35. Parties must indicate the official language they wish to use at the oral hearing. If both official languages will be used at the hearing, the Board will provide simultaneous interpretation.

## Transcripts

36. The oral hearing will be recorded and transcribed daily. Transcripts will be available through the Board's Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca).

One hard copy of the daily transcript will be provided at no cost, except for the cost of delivery, to any party to the hearing who requests one. All costs of any subsequent copies are the responsibility of the requesting party. You can also order transcripts directly from International Reporting Inc., either at the hearing, by e-mailing [bprouse@irri.net](mailto:bprouse@irri.net) or by calling 613-748-6043.

## Live Broadcasts

37. The hearing will be broadcast live over the Board's Internet site. Parties who wish to access the audio feed should log on to the Board's Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) and follow the links starting under "Hearings and Information Sessions" in the left column.

## Fairness and Efficiency

38. The Board encourages fairness and efficiency in all of its proceedings and therefore asks that all parties and persons observe the deadlines set out in this Hearing Order. The Board encourages the use of electronic filing and facsimile or courier to ensure that documents are received on time.

The Board will not allow an exception to a deadline unless, in the Board's view, it can be reasonably justified.

## Further Information

39. For information on this hearing, or the procedures governing the hearing, please contact Sharon Wong, Regulatory Officer, at 403-299-3191 in Calgary or by calling the Board toll-free at 1-800-899-1265 and specifying the Keystone XL Pipeline. The Hearing Order may also be accessed through the Board's Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) (click on "Hearings").

NATIONAL ENERGY BOARD



Claudine Dutil-Berry  
Secretary of the Board

**List of Issues**

The Board has identified but does not limit itself to the following issues for discussion in the proceeding:

1. The need for the proposed facilities.
2. The economic feasibility of the proposed facilities.
3. The potential commercial impacts of the proposed project.
4. The potential environmental and socio-economic effects of the proposed facilities, including those to be considered under *the Canadian Environmental Assessment Act* (the Scope of which is set out in Appendix V).
5. The appropriateness of the general route of the pipeline.
6. The method of toll and tariff regulation.
7. The suitability of the design of the proposed facilities.
8. The terms and conditions to be included in any approval the Board may issue.

**Timetable of Events**

<b>Events</b>	<b>Reference</b>	<b>Person Responsible</b>	<b>Deadline (noon, Calgary time)</b>
Hearing Order issued	paragraph 2	Board	12 May 2009
Serve Hearing Order on the persons listed in Appendix VI	paragraph 32(a)	Applicant	19 May 2009
Publish Notice of Public Hearing	paragraph 32(b), (c) and (d)	Applicant	25 May 2009
Request for Public Information Sessions	paragraph 31	Interested Persons	29 May 2009
Application to intervene	paragraph 8(1)	Intervenors	9 June 2009
Declaration by Government Participant	paragraph 9(1)	Government Participant	9 June 2009
Comments on List of Issues	paragraph 10(1)	All Parties	9 June 2009
Comments on Draft Environmental Scope	paragraph 10(3)	All Parties	9 June 2009
Final List of Issues released	paragraph 10(2)	Board	shortly after 9 June 2009
List of Parties issued	paragraph 11	Board	shortly after 9 June 2009
Application served on all Intervenors	paragraph 19	Applicant	immediately after receiving the List of Parties
Interventions served	paragraph 11	Intervenors	immediately after receiving the List of Parties
Government Participant Declaration served	paragraph 8	Government Participant	immediately after receiving the List of Parties

<b>Events</b>	<b>Reference</b>	<b>Person Responsible</b>	<b>Deadline (noon, Calgary time)</b>
Additional Written Evidence	paragraph 20	Applicant	18 June 2009
Information Requests to TransCanada	paragraph 21	Board, Intervenor and Government Participants	2 July 2009
Responses to Information Requests	paragraph 22	Applicant	16 July 2009
Letters of Comment	paragraph 6	Commenters	30 July 2009
Register for Oral Statement	paragraph 7(1)	Commenters	30 July 2009
Written Evidence	paragraph 23	Intervenor and Government Participants	30 July 2009
Information Requests to the Intervenor and Government Participants	paragraph 24	Board, Applicant and Intervenor	13 August 2009
Responses to Information Requests	paragraph 25	Intervenor and Government Participants	27 August 2009
Reply Evidence	paragraph 26	Applicant	3 September 2009
Request to cross-examine Government Participants	paragraph 27	Applicant or Intervenor	3 September 2009
Comments on request to be cross-examined	paragraph 28	Government Participants	8 September 2009
Reply to comments	paragraph 29	Party requesting right to cross-examine	11 September 2009
Begin the Oral Hearing	paragraph 2	Board and all parties	beginning 15 September 2009

<b>Events</b>	<b>Reference</b>	<b>Person Responsible</b>	<b>Deadline (noon, Calgary time)</b>
Request a CEA Act Screening Report	paragraph 30	Interested persons	Before the end of oral portion of Hearing
File and serve comments on the CEA Act Screening Report	paragraph 30	Interested persons	14 days from release of CEA Act Screening Report
File and serve comments on CEA Act Screening Report	paragraph 30	Applicant	21 days from release of CEA Act Screening Report

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## Appendix III

**National Energy Board  
Notice of Public Hearing  
on the  
TransCanada Keystone Pipeline GP Ltd. (TransCanada)  
Keystone XL Pipeline**

The National Energy Board has scheduled an oral public hearing on an application from TransCanada under the *National Energy Board Act* to construct and operate the proposed Keystone XL Pipeline and for orders related to toll and tariff matters. The proceeding will also consider matters required by the *Canadian Environmental Assessment Act*. Copies of the application are available for viewing on the Board's Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) (click on "Regulatory Documents" then "Quick Links" and scroll down to the application), at TransCanada's office 450 - 1st Street S.W., the Board's library (1<sup>st</sup> floor, 444 Seventh Ave. S.W., Calgary) and the Hardisty Public Library (5027-50 Street, Hardisty, AB), Consort Municipal Library (5215 49A Street, Consort, AB), Oyen Municipal Library (105 3<sup>rd</sup> Avenue West Oyen, AB), Medicine Hat Public Library (414 First Street SE Medicine Hat, AB), Chinook Regional Library – Burstall Branch (Corner of Martin Street and Hamilton Avenue, Burstall, SK), Chinook Regional Library – Maple Creek Branch (Maple Creek, SK), Chinook Regional Library – Shaunavon Branch (440 Centre Street, Shaunavon, SK), Chinook Regional – Climax Library (120 Main Street, Climax, SK), and the Swift Current Library (411 Herbert Street East, Swift Current, SK).

**Project Details**

The Keystone XL pipeline is a proposed expansion of the Keystone oil pipeline system currently under construction. The Canadian portion of the Keystone XL Pipeline Project (the Project), would extend from Hardisty, Alberta (AB) to the international border between Canada and U.S. near Monchy, Saskatchewan (SK). The Project would involve the construction of approximately 525 km of new 914 mm outside diameter (NPS 36 inch) pipeline from Hardisty, AB to Monchy, SK. The Project would have an initial capacity of approximately 111,300 m<sup>3</sup>/d (700,000 bbl/d) of commodity and is designed to be expandable to 143,100 m<sup>3</sup>/d (900,000 bbl/d). The Project would also include related physical works including: pump stations; tanks and other related works and activities. The Project would cross the AB-SK boundary near McNeill, AB with about 266 km of the pipeline in AB and 259 km in SK. Approximately 475 km of the proposed pipeline is projected to be contiguous with existing pipeline rights-of-way (RoW) and approximately 50 km would require new non-contiguous RoW.

Some temporary infrastructure would be required for construction and some new access roads would be needed for pipeline operations. The Project would require several watercourse crossings, the most prominent of which are the crossings of the Red Deer and South Saskatchewan rivers in AB and the Frenchman river in SK. Construction is proposed to begin in mid-2010 and be completed in 2012.

### **Oral Public Hearing**

The oral hearing will start at 9:00 a.m., local time, beginning **15 September 2009** at a location to be determined. The hearing will obtain the evidence and views of interested persons on the application. Any person interested in participating in the oral hearing should consult the Board's Hearing Order OH-1-2009 for further background and instructions. The deadline for filing applications to intervene is **9 June 2009** and for providing comments on the application is **30 July 2009**. Federal or provincial government authorities may participate by filing a letter of comment, providing an oral statement, seeking Intervenor status or by filing a declaration that they will be a Government Participant by **9 June 2009**. Further details can be found in the Hearing Order.

### **Information for Intervenors**

Any person wishing to intervene in the hearing must file an application to intervene by noon, Calgary time, **9 June 2009** with the Secretary of the Board and serve a copy on TransCanada and its counsel at the following addresses:

Mr. Ian Cameron  
Regulatory Project Manager  
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Ms. Elizabeth Swanson  
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Ms. Wendy M. Moreland  
Stikeman Elliot LLP  
888 – 3<sup>rd</sup> Street S.W.  
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You may use a form on the Board's Internet site to file an application to intervene. Go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca) and under the "Regulatory Documents" heading, click "Submit documents electronically" – then click "Application for Intervenor Status". TransCanada will serve a copy of the application and related documentation on each Intervenor.

## Letters of Comment and Oral Statements

Any person wishing only to comment on the application should file a letter of comment to the Secretary of the Board and send a copy to TransCanada and its counsel by noon, Calgary time **30 July 2009**. The Board will also establish a time for people to make their oral statements on the application. Anyone wishing to make an oral statement must file a letter with the Board requesting the opportunity to make an oral statement and send a copy to TransCanada and its counsel by noon, Calgary time, **30 July 2009**. You may use forms on the Board's Internet site to file your letter of comment or request to make an oral statement. Go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca). Under the "Regulatory Documents" heading, click "Submit documents electronically" – then click "Letter of comment" or "Request to Make an Oral Statement".

## Information on Hearing Procedures

General information about how to participate in a National Energy Board hearing can be found at [www.neb-one.gc.ca](http://www.neb-one.gc.ca). Click on "Hearings and Information Sessions", then click on "Participate in a Public Hearing". The link includes an 11-minute video describing the role of the Board and how to participate in the public hearing process and a publication entitled "The Public Hearing Process – Your Guide to Understanding NEB Hearings".

You may access the Hearing Order through the Board's Internet site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) (click on "Regulatory Documents" then "Quick Links", scroll down to the TransCanada application, then click on "Hearing Order" at the top of the screen). You may obtain information on the procedures for this hearing or on the *National Energy Board Rules of Practice and Procedure, 1995*, as amended, (Rules of Practice and Procedure) governing all hearings (available in English and French) by writing to the Secretary of the Board, or by contacting Sharon Wong, Regulatory Officer at 403-299-3191 or at 1-800-899-1265. You may also go to the Board's Internet site and click on "Acts and Regulations" to access the Board's Rules of Practice and Procedure and other legislation.

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National Energy Board  
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**List of Publications****Publication****Location***Sedgewick Community Press*

Sedgewick, AB

*Consort Enterprise*

Consort, AB

*Oyen Echo*

Oyen, AB

*Medicine Hat News*

Medicine Hat, AB

*Maple Creek News*

Maple Creek, SK

*Shaunavon Standard*

Shaunavon, SK

*Southwest Booster*

Swift Current, SK

*Calgary Herald*

Calgary, AB

*Globe and Mail*

Toronto, ON

**Notice to be published in French***Le Franco*

Edmonton, AB

*L'eau Vive*

Regina, SK

## **Draft Scope of Environmental Assessment**

### **TransCanada Keystone Pipeline GP Ltd. Proposed Keystone XL Pipeline Draft Scope of the Environmental Assessment Pursuant to the *Canadian Environmental Assessment Act***

#### **1.0 INTRODUCTION**

TransCanada Keystone Pipeline GP Ltd. (TransCanada) is proposing to construct and operate the Keystone XL Pipeline Project (the Project). This would require a Certificate of Public Convenience and Necessity pursuant to the section 52 of the *National Energy Board Act* (NEB Act). The Project would also be subject to an environmental screening under the *Canadian Environmental Assessment Act* (CEA Act).

On 18 July 2008, TransCanada filed a Project Description with the NEB regarding the proposed Project. The intent of the Project Description was to initiate the environmental assessment process (EA) pursuant to the CEA Act.

On 31 July 2008 the Board sent out a Federal Coordination Notification letter pursuant to section 5 of the CEA Act *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements* (Federal Coordination Regulations). In response, the following departments identified themselves either as a Responsible Authority (RA) likely to require an EA under the CEA Act or as a Federal Authority (FA) in possession of specialist or expert information or knowledge in respect of the proposed project EA:

- National Energy Board – RA
- Agriculture and Agri-Food Canada (AAFC) – RA
- Canadian Transportation Agency (CTA) – RA
- Transport Canada (TC) – RA
- Department of Fisheries and Oceans – FA
- Environment Canada – FA
- Natural Resources Canada – FA
- Health Canada – FA

AAFC, the CTA and TC's responsibilities will be defined relative to their particular triggers under the CEA Act.

The Provinces of Alberta and Saskatchewan also expressed an interest in monitoring and participating in the EA although Provincial EA legislation is not triggered.

This draft Scope of the EA was established by the RAs, after consulting with the FAs, in accordance with the CEA Act and the Federal Coordination Regulations.

On 27 February 2009, TransCanada filed an application with the NEB. The information contained within the application remains materially the same as that described in the Project Description.

## **2.0 SCOPE OF THE ASSESSMENT**

### **2.1 Scope of the Project**

The scope of the Project for the NEB as determined for the purposes of the EA includes the various components of the Project described by TransCanada in its 27 February 2009 Project Application submitted to the NEB. The physical activities include construction, operation, maintenance and foreseeable changes and, where relevant, the abandonment, decommissioning and site rehabilitation relating to the entire Project, including the following physical works described in greater detail in TransCanada's Project Description:

#### Pipeline

Approximately 525 km of new 914 mm outside diameter oil pipeline, extending from Hardisty, Alberta (AB) to the international border between Canada and U.S. near Monchy, Saskatchewan (SK), plus additional related facilities (see below). The pipeline would cross the AB-SK boundary near McNeill, AB, with about 266 km in AB and 259 km in SK. Approximately 475 km of the pipeline would be contiguous with existing pipeline right-of-way (RoW) and approximately 50 km would require new non-contiguous RoW.

Construction is proposed to begin in mid-2010 and be completed in 2012.

#### Hardisty Terminal

Three operational storage tanks would be constructed at the pipeline terminal in Hardisty and would include the following ancillary facilities: an initiating pump station; metering facilities; control systems; and pipeline interconnections.

#### Pump stations

Seven additional intermediate pump stations consisting of three to five 5,200 kW (7,000 hp) electric-driven pump units, piping, control systems and related facilities would be required along the proposed pipeline, four in Alberta and three in Saskatchewan.

#### Other Facilities:

- Mainline valves
- Cathodic protection system
- In-line inspection facilities

- Permanent access roads for pump stations and valve sites
- Temporary infrastructure such as construction access roads, pipe storage sites, contractor yards and construction camps

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

AAFC, the CTA and TC have determined, based on their respective triggers under the CEA Act, that their scopes of project for the purposes of the EA will be:

- For AAFC, based on section 5(1)(c) of the CEA Act, any pipeline crossings of Prairie Farm Rehabilitation lands for which Keystone requires AAFC licenses;
- For the CTA, based on section 101(3) of the *Canada Transportation Act*, any pipeline crossings of federally regulated railway lines;
- For TC, based on section 108 of the NEB Act and section 5(1) of the *Navigable Waters Protection Act*, any watercourse crossings (pipeline crossings and bridges) of navigable waterways.

These include all construction, operation, maintenance, modification, and decommissioning (including closure and reclamation) activities related to those project components.

## 2.2 Factors to be Considered

The EA will include a consideration of the following factors listed in paragraphs 16(1) (a) to (d) of the CEA act:

- (a) 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;
- (b) the significance of the effects referred to in paragraph (a);
- (c) comments from the public that are received in accordance with the CEA Act and regulations; and
- (d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project.

For further clarity, subsection 2(1) of the CEA act defines 'environmental effect' as:

- (a) any change that the project may cause in the environment, including any change that the project may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species as defined in 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,

- 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.

### **2.3 Scope of Factors to be Considered**

The EA will consider the potential effects of the proposed Project within spatial and temporal boundaries which the Project may potentially interact with, and have an effect on components of the environment. These boundaries will vary with the issues and factors considered, and will include but not be limited to:

- construction, operation, decommissioning, site rehabilitation and abandonment or other undertakings that are proposed by the Proponent or that are likely to be carried out in relation to the physical works proposed by the Proponent, including mitigation and habitat replacement measures;
- seasonal or other natural variations of a population or ecological component;
- any sensitive life cycle phases of wildlife species in relation to project scheduling;
- the time required for an effect to become evident;
- the time required for a population or ecological component to recover from an effect and return to a pre-effect condition, including the estimated degree of recovery;
- the area within which a population or ecological component functions; and
- the area affected by the Project.

For the purpose of the assessment of the cumulative environmental effects, the consideration of other projects or activities that have been or will be carried out will include those for which formal plans or applications have been made.

**List of Interested Persons to be Served with Hearing Order OH-1-2009**  
**Liste des parties intéressées à qui l'ordonnance d'audience OH-1-2009**  
**doit être signifiée**

*(Attorneys General - Canada / Procureurs généraux)*

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