

Nature Canada
Speaking Notes for NEB Panel Session
August 8, 2016

Introductions

Good Morning Panel members and representatives of the Applicant. Thank you on behalf of Nature Canada for the opportunity to present to you today. My name is Lisa Mitchell; I am the staff lawyer with East Coast Environmental Law, a non-profit public interest law organization based in Halifax and we are acting as an authorized representative of Nature Canada. With me today, is Adam Bond, articling clerk with Nature Canada in Ottawa.

Nature Canada is Canada's oldest national nature conservation charity representing a network of over 45,000 members and supporters. There are nature organizations associated with Nature Canada in every province of Canada, including Nature NB who will be presenting later today.

Our focus this morning will be on identifying 7 main areas of concern that we expect to highlight throughout the NEB process and asking 3 key high-level questions of the Applicant.

Views on 2017 Hearing Process

Before we turn to concerns and questions we will begin with a comment on the future hearing process planned for 2017. We have reviewed the Hearing Order and the Applicants' Comments on 2017 Process and we have identified three areas for comment: the second stream review process, the technical conference and oral cross-examination. In the interest of time today we will submit comments on the second stream review process and the role of the technical conference in writing at a later date. Our focus this morning is on the role of cross-examination.

It is our opinion that oral cross-examination plays a critical role in the rigorous evaluation of all evidence. We were very relieved to see the Board include final oral argument and oral cross-examination in the Energy East hearing process. We note, however that the Hearing Order and the Applicants' Comments refer to 'limited' cross-examination (Hearing Order, p.21). Although the Board has not yet detailed these limits, suggestions made by the Applicant in their written Comments on the 2017 Process raise concerns.

The Applicants submit in their Comments that it would be "efficient and effective" to limit the Intervenor's cross-examination of the Applicant to the key issues of interest identified by the Board, (Comments, p.2) but in the interest of "procedural fairness" the Applicants cross-examination of the Intervenor should not be limited (Comments, p.3).

Nature Canada strongly opposes this suggestion by the Applicants. In our opinion such an inequitable distribution of procedural entitlements will place significant and unfair constraints on the ability of Intervenor to test the quality of the Applicants' evidence. We recognize that the Board is faced with legislated time limits, however the Board is clearly qualified to manage cross-examination in a reasonable way and manage the proceedings to ensure that the legislated time limits are respected.

The procedural integrity of the pipeline project review processes is crucial and the number of Intervenor is indicative of the public interest in these proceedings. If there are to be any limitations placed on cross-examination during the proceeding, the limitations must be equitable to all parties.

Main Areas of Concern

Moving now, to our 7 main areas of concern. Nature Canada takes no position in support of or against the Energy East pipeline project. Our goal throughout the National Energy Board process is to provide pertinent information to the Board and to ensure the Applicants' application and evidence is accurate and sufficient to minimize risks to wildlife and habitat.

Nature Canada will focus on issues specific to the Bay of Fundy. Based on our review of the Application to this point, we have identified seven main areas of concern. These areas of concern revolve around risks associated with increased tanker traffic, oil spills and cumulative effects in the Bay of Fundy.

The Bay of Fundy experiences the highest tides on the planet and it is subject to significant and unpredictable weather events, including dense fog. These factors will create a challenging environment when an accident or malfunction occurs and oil is released into the marine environment.

The Bay of Fundy is one of North America's 7 natural wonders, sharing this title with Niagara Falls, the Grand Canyon and the Everglades for example. The tides in the Bay of Fundy support a unique marine ecosystem bringing deep ocean water and rich nutrients into the Bay and creating ideal feeding conditions for marine mammals, fish and bird species. The Bay of Fundy serves as an invaluable birthing and nursery area for whales including the endangered North Atlantic Right Whale.

The Bay of Fundy is visited by a variety of migratory birds especially shorebirds who patrol the gigantic intertidal areas at low tide for the hugely abundant crustaceans and other food sources in the sediment.

There is much that we do not know or understand about the Bay of Fundy ecosystem, but what we do know causes us to take a very considered and cautious approach to increasing the potential risk of oil releases into this environment. The Energy East project intends to increase storage of crude oil by 13.2 million barrels and increase large oil tanker traffic in the Bay of Fundy by approximately 281 vessels annually.

Given those increased risks to the health of the Bay of Fundy ecosystem we wish to share with you the following list of concerns:

1. The increased risk of oil spills from the Canaport Energy East marine terminal and VLCC, Aframax and Suezmax oil tankers.
2. The capacity of the Applicant to respond to and clean up oil spills when they occur.
3. The Applicant's knowledge of the behavior and fate of different oil types if spilt.
4. The impacts of an oil spill on Bay of Fundy wildlife and habitat.
5. The impact of increased tanker traffic on marine mammals and migratory birds, particularly species at risk.
6. The cumulative impact of oil spills and other anthropogenic stresses on Bay of Fundy ecosystems over the life of the project.
7. The effectiveness of adaptive management techniques used to respond to environmental changes.

High Level Questions

I will close with the 3 high-level questions, which we provided in writing in advance of the session today. Following consultation with one of our experts and to avoid repetition of questions from other Intervenor, we have made a slight modification to our first question.

1. The question focuses on oil spill response times. What steps has the Applicant taken to gather information on the oil spill response times at other facilities around the world, and does the Applicant have information to share on their own response times to marine oil spills from terminals or tankers?
2. The exceptionally challenging conditions in the Bay of Fundy will hinder oil spill response efforts. How do the Applicants intend to respond to a worst-case scenario tanker oil spill in adverse weather conditions?
3. What research have the Applicants conducted, commissioned, or relied on to develop oil spill response measures for different oil types in the Bay of Fundy?

We look forward to the Applicant's response to these questions.

By Lisa Mitchell, staff lawyer, ECELAW

Notes for Lisa

The Project:

The Applicant is Energy East Pipeline Limited (EEPL).

Energy East Pipeline is

- 4500 km from Alberta to New Brunswick
- Capacity to carry 1.1 million barrels of crude oil per day
- Will include new pipeline and retro of existing natural gas pipeline
- Initial shipments expected in 2021

Canaport Marine terminal will load crude oil onto oil tankers from the Saint John tank terminal.

The Canaport marine terminal will accommodate very large crude carriers (VLCC), Aframax and Suezmax oil tankers (see page 2-28 of application)

The project aims to replace the 550,000 to 600,000 barrels of offshore oil used daily by Eastern Canada's refiners with Western Canadian oil.

The NEB and EA Processes:

NEB Decisions to be made on the Energy East Project (Pipeline and Asset Transfer) and Eastern Mainline Project. The Eastern Mainline does not touch Bay of Fundy.

Total 21-month time limit for NEB process – report due on 16 March 2018.

Issues that the Board will consider is limited.

The NEB regulatory standard is the public interest – 'the greatest good for the greatest number'

CEAA process is triggered because there is more than 40 km of new pipeline.

Information from the Application:

There are already VLCC visiting marine terminals in the Bay of Fundy (Application p. 2-36).

The marine terminal has been designed to 'safely operate within the prevailing climatic and marine conditions experienced within the Bay of Fundy...' (Application page 2-28).

EE will implement a Tanker Acceptance Program for visiting tankers to meet industry standards for safety and environment. EE is not responsible for marine activities associated with vessel traffic. (Application p. 2-36).

EE voluntarily initiated the Technical Review Process of Marine Terminal Systems and Transshipment Sites (TERMPOL) review. Purpose is to identify oil handling marine terminals to identify risks of oil spills and implement design changes.

Energy East anticipates approximately 281 tankers each year at the Canaport Energy East marine terminal.

The Canaport EE marine terminal will have a dedicated emergency response capacity as an oil handling facility under the Canada Shipping Act. They will have a contract with Atlantic Environmental Response Team Inc (ALERT).

Oil spill prevention and mitigation measures for the Canaport Marine Terminal. There is not much detail here except to say that they will have spill booms, spill response vessel and deployment equipment in place (Application Volume 6, Section 6.3.1) .