

Appendix 1 Energy East – draft List of Issues

**Energy East Pipeline Ltd. (EEPL) and
TransCanada PipeLines Limited (TransCanada) [collectively, the Applicants]**

Application for the Energy East Project and Asset Transfer (Energy East or the Project)

Draft List of Issues

A. Description of the applied-for Project

Both EEPL and TransCanada made various requests in the Energy East application under the *National Energy Board Act* (NEB Act) and its regulations. The attachment to this draft List of Issues outlines the specific requests made, which can also be found in the [introductory document](#) of the Project application.

Energy East is a proposed, approximately 4,500-kilometre-long pipeline project that would carry 1.1 million barrels of crude oil per day from Alberta and Saskatchewan to Eastern Canada.

The Energy East application includes the following:

- EEPL's purchase of certain existing natural gas assets from TransCanada
- Conversion of approximately 3,000 kilometres of existing natural gas pipeline to allow it to transport crude oil
- Construction of approximately 1,500 kilometres of new crude oil pipeline in Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and New Brunswick to tie into the converted pipe described above
- Construction of required components along the pipeline, such as valves, pump stations, tank terminals, and other facilities and appurtenances, including onsite electricity infrastructure and generation sources
- Construction of a marine terminal in Saint John, New Brunswick to enable access to other markets by ship
- Operation of the above facilities and infrastructure in oil service
- Construction and use of permanent access roads for certain facilities
- Deactivation of certain existing pipeline segments
- Decommissioning (as considered necessary) of certain acquired natural gas assets that are not needed for oil service
- Construction and use of temporary infrastructure required for construction activities
- A proposed negotiated tolling methodology for oil transportation services.

More details on the various project components can be found in [Volume 1, Section 2](#) (Project Overview) of the Energy East application. In addition to the application itself, additional filings, including the Applicants' responses to past Board information requests, remain part of the hearing record, as per the Board's [Ruling No. 1.6](#). All of these filings, including the entire Project application, are accessible via the National Energy Board's (Board's) online [public registry](#).

In addition to making a public interest determination under the NEB Act, the Board will conduct an environmental assessment of the applied-for Project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). The draft Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012, about which the Board is also seeking comment, can be found as [Appendix 2](#) to the cover letter seeking comments.

B. Issues that the Board will consider in its review of Energy East

The Board will consider, but not limit itself to, the following issues in its review of the Energy East application. Please note that not all issues are applicable to each component of the Project.

1. PROJECT JUSTIFICATION, AND ECONOMIC AND COMMERCIAL CONSIDERATIONS

- The need for the Project, including:
 - The justification for the capacity of the pipeline, including:
 - The supply and type of oil available to the Project
 - The existing and potential markets (national and international) for the oil to be transported by the Project
 - Commercial support for the Project, including shippers' support and commitments
 - The alternative technically, economically, and environmentally feasible means of meeting the need for the Project
 - The impacts on, and of, other pipelines and modes of transporting liquid hydrocarbons
- The economic feasibility of the Project
- The economic and commercial impacts of the Project, including:
 - The economic benefits for the Applicants
 - The impact on shippers' netback prices
 - The adequacy of commercial third party notification, including shippers, commodity suppliers, end users, and other pipeline companies
 - The agreements made with commercial third parties

2. FINANCIAL CONSIDERATIONS

- The corporate structure for the Project, each entity's ownership, and the responsibilities with regard to financing, constructing, and operating the Project
- The Applicants' ability to finance the Project, including:
 - The financial risk to be borne by the Applicants
 - The method of financing the Project
 - The Applicants' access to sufficient, dedicated, and readily accessible financial resources to cover the risks and liabilities arising during project construction and operations, including a significant accident or malfunction
 - The adequacy of the Applicants' estimate of the financial resources required to cover the costs of potential releases, accidents, or malfunctions during project construction and operations
 - The financial contingency for abandonment and decommissioning

3. ASSET TRANSFER

- The assets to be transferred and any terms to be included
- EEPL's ability to finance the purchase of assets
- The method of financing the purchase of assets
- EEPL's financial risk associated with the intended method of financing the purchase of assets
- The commercial, economic, supply and market impacts of the transfer of assets
- The tests to be used to assess the sale and purchase of the assets
- The value that should be assigned to the assets for the purpose of:
 - Their removal from the rate base of TransCanada's natural gas Mainline
 - Their inclusion in EEPL's toll calculation
- The impact of the proposed sale of assets on TransCanada's abandonment cost estimate
- The toll impact of the proposed sale of assets on Mainline shippers, including the extent of any cross-subsidization
- The appropriateness of the requested exemptions from the *Gas Pipeline Uniform Accounting Regulations* and the *Oil Pipeline Uniform Accounting Regulations* regarding the agreed transfer price of the assets
- The accounting treatment under the *Gas Pipeline Uniform Accounting Regulations* for the sale and purchase of assets
- The appropriateness of the requested approval of the three adjustment accounts and the methodology for the proposed future treatment of certain costs as detailed in the Local Distribution Companies' Energy East Agreement

4. TOLLING MATTERS

- The appropriateness of the negotiated tolling methodology
- The appropriateness and fairness of the negotiated tolling settlement process
- The method of toll and tariff regulation, including whether EEPL should be regulated as a Group 1 or Group 2 company
- The appropriateness of the requested exemptions from the filing requirements related to Financial Surveillance Reports and depreciation rates

5. TECHNICAL, SAFETY, AND SECURITY CONSIDERATIONS

- The suitability of the proposed design, construction methods, operation, and maintenance of the Project
- The Applicants' ability to appropriately build, operate, and maintain the Project
- The risks of potential project-related releases, including:
 - The likelihood of failures, accidents, and malfunctions
 - The potential release volumes
 - The consequences of any release, including geographical extent
- The appropriateness of the proposed risk assessment, mitigation, and prevention measures and programs for the design, construction, and operation of the Project
- The safety and security associated with project construction and operations, including third-party damage prevention
- The proposed programs, plans, and measures for emergency preparedness and response
- The adequacy of liaison activities with potentially affected first responders
- Contingency planning for releases, accidents, or malfunctions during project construction and operations

6. ABORIGINAL CONSIDERATIONS

- The adequacy of the Applicants' engagement with Aboriginal peoples
- The potential benefits of project construction and operations for Aboriginal peoples, including employment, contracting, procurement, training, and direct economic participation in the Project
- The integration of local and traditional knowledge, where appropriate, into the design of the Project
- With respect to Aboriginal peoples, the effects occurring in Canada of any change that may be caused to the environment on any the following:
 - Health and socio-economic conditions
 - Physical and cultural heritage
 - The current use of lands and resources for traditional purposes
 - Any structure, site, or thing that is of historical, archeological, paleontological, or architectural significance
- The role of Aboriginal peoples in monitoring during project construction and operations

- The potential effects on Aboriginal culture and institutions
- The potential effects on asserted and established Treaty and Aboriginal rights
- The adequacy of the Applicants' proposed programs and commitments, if applicable, for engaging with Aboriginal peoples during project construction and operations

7. LANDOWNER AND LAND USE CONSIDERATIONS

- The potential impacts of the Project on landowners and land users, and their use of the land
- The appropriateness of the land rights and the land acquisition process for the Project
- The adequacy of the Applicants' engagement with landowners, local residents, and land and waterway users
- The adequacy of the Applicants' proposed programs and commitments, if applicable, for engaging with landowners, local residents, and land and waterway users during project construction and operations

8. ROUTING CONSIDERATIONS

- The appropriateness of the general route and land requirements for the Project
- The Applicants' proposed process and criteria for route selection
- The appropriateness of the Applicants' proposed re-alignments to existing portions of pipeline

9. MUNICIPAL AND LOCAL COMMUNITY CONSIDERATIONS

- The potential impacts of the Project on municipalities and local communities
- The adequacy of the Applicants' engagement with municipalities, local communities, and other government authorities
- The adequacy of the Applicants' proposed programs and commitments, if applicable, for engaging with municipalities, local communities, and other government authorities during project construction and operations

10. ENVIRONMENTAL AND SOCIO-ECONOMIC CONSIDERATIONS

- The adequacy of the Applicants' Environmental and Socio-Economic Assessment
- The potential effects of the Project on the environment, including:
 - Soils, terrain, and geology
 - Vegetation
 - Water, hydrology, and wetlands
 - Wildlife and wildlife habitat
 - Fish and fish habitat
 - Species at risk
 - The atmosphere, including greenhouse gas emissions
 - Protected areas

- The marine environment
- The potential effects of the Project on socio-economic elements, including:
 - Human occupancy and resource use
 - Heritage resources
 - Traditional land and resource use
 - Social and cultural wellbeing
 - Human health
 - Navigation and navigation safety
 - Infrastructure and services
 - Employment and economy, including:
 - The extent to which Canadians will have an opportunity to participate in the financing, engineering, and construction of the Project at the national, provincial, and local levels
 - The fiscal and taxation impacts at the national, provincial, and municipal levels
- The factors (such as cumulative effects and potential effects of accidents and malfunctions) described in the draft Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012 (see [Appendix 2](#) to the cover letter seeking comments)

11. MANAGEMENT SYSTEM CONSIDERATIONS

- The plans or programs that the Applicants will apply during project construction and operations to ensure their compliance with commitments made, Board-imposed conditions, and applicable laws and regulations

12. RECOMMENDATIONS, TERMS, AND CONDITIONS

- The recommendations to be included in the Board's report to the Minister
- The terms and conditions to be included in any orders and certificate of public convenience and necessity that the Board may issue for the Project following the Governor in Council's decision

C. Additional issues that the Board is considering including in its review of Energy East

The Board is also considering including in its review of the application Items 1) to 4) below.

- 1) The potential impacts of the Project on Canada's greenhouse gas (GHG) emissions.
- 2) The potential environmental and socio-economic effects of the construction and operation of power lines required for the Project.
- 3) The potential environmental and socio-economic effects of changes to marine shipping resulting from the Project.

- 4) The potential impacts that government GHG strategies, policies, laws, and regulations (including ceilings and pricing) may have on the availability of oil supply and markets underpinning the need for the Project and its economic and financial considerations.¹

With regard to Item 1) – in addition to the direct GHG emissions from project construction and operations (which are included in Issue 10 under Part B of this draft List of Issues) – consideration might include GHG emissions from other project-related sources, such as those associated with the following:

- a) Any changes to the amount of oil production resulting from project operations (upstream emissions).
- b) Any changes to the amount of oil consumption resulting from project operations (downstream emissions).
- c) Third-party electricity generation required to power the proposed pump stations and other project components.
- d) Any corresponding reduction in GHG emissions that may result from the Project.

With regard to Item 2), consideration might include the following:

- a) The general route of such power lines, acknowledging some uncertainty given that they will be developed and operated by third parties.
- b) Estimated forest clearing, and potential effects on species at risk, migratory birds, heritage resources, and GHG emissions.
- c) The Applicants' ability to affect the location and need for such power lines.

With regard to Item 3), consideration might include the following:

- a) Details on the marine shipping activities likely to result from the Project, out to the 12 nautical-mile territorial sea limit.
- b) The potential effects of those marine shipping activities on the marine and coastal environment in Canada
- c) The potential socio-economic effects of those marine shipping activities.
- d) The potential effects of accidents and malfunctions, including credible worst-case spill scenarios.

Sub-items a) to d) of Item 1, as well as Items 2 and 3, involve considerations and matters that may be outside the scope of the applied-for designated project and beyond the Board's ability to regulate. Nevertheless, the Board considers it to be within its authority to review these considerations and matters as part of its assessment of the application, given its discretion to have regard to "any public interest that in the Board's opinion may be affected by the issuance of the certificate or dismissal of the application," as set out in paragraph 52(2)(e) of the NEB Act,

¹ The Board notes that oil supply and markets are included in Issue 1 in Part B of this draft List of Issues. Those wishing to comment on the possible consideration of the potential consequences that government GHG strategies, policies, laws, and regulations (including ceilings and pricing) may have on the availability of oil supply and markets may wish to incorporate those comments with any submissions they may have on Issue 1.

as well as to consider “any other matter relevant to the environmental assessment,” as set out in paragraph 19(1)(j) of the CEAA 2012.

With regard to Items 1 to 3 above, the Board is particularly interested in submissions discussing how these matters are relevant to the Board’s public interest determination under the NEB Act and/or to its CEAA 2012 environmental assessment of the Project. Submissions discussing if and why the Board should consider each of these matters, and the extent to which they should be considered, are also solicited. The Board encourages those commenting on these topics to review and consider any appropriate references on the hearing record when drafting their comments.²

² Regarding a) – see, for example, [Application Volume 20, Section 6 – Greenhouse Gases](#) (PDF page 12 of 30).

Regarding b) – see, for example, [Application Volume 20, Section 2.5.3.4 – Power Lines](#) (PDF pages 9 to 11 of 14), and the Applicants’ [response](#) to Board Information Request No. 2.2.

Regarding c) – see, for example, [Application Volume 17, Part B – Marine Shipping](#), and [Application Volume 24, Ecological and Human Health Risk Assessment](#).

Attachment to the draft List of Issues – Applicants’ requested relief in the Energy East application

EEPL’s requested relief in the Energy East application

- 1) Under the NEB Act:
 - a) Leave under paragraph 74(1)(b) to purchase natural gas assets from TransCanada.
 - b) A certificate under section 52 of the NEB Act authorizing:
 - i) construction and operation of the new oil pipeline and related facilities; and
 - ii) operation of the converted oil pipeline and pipeline-related facilities.
 - c) Orders under the following provisions:
 - i) Section 58, granting relief from the provisions of paragraphs 31(c) and 31(d), and section 33 for:
 - transferred natural gas assets and associated activities required to convert those assets to oil service;
 - tank terminals and related facilities at Hardisty, Alberta and Saint John, New Brunswick;
 - pump stations and related facilities along the conversion segments; and
 - temporary infrastructure for construction.
 - ii) Subsection 45(1), approving changes to the approved plans, profiles, and books of reference for those portions of the transferred and converted TransCanada assets requiring a route re-alignment.
 - iii) Subsections 48(2.1) and 48(2.2), exempting certain ancillary piping systems from section 17 of the *National Energy Board Onshore Pipeline Regulations* (OPR).
 - iv) Section 59 of Part IV, approving the negotiated tolling methodology for oil transportation services described in the application.
 - v) Subsection 129(1.1), exempting EEPL from subsection 15(4) of the *Oil Pipeline Uniform Accounting Regulations* (OPUAR), the effect of which would authorize the purchase, at the agreed price, of the TransCanada Mainline gas assets.
 - vi) Section 59, approving the inclusion of the amount of the transfer price of the Conversion Facilities in the Energy East Oil Plant Under Construction at the date of transfer and, subsequently, in the Energy East rate base (Oil Plant in Service) at the start of operation of the Energy East pipeline for crude oil transmission.
 - vii) Subsection 129(1.1), exempting EEPL from filing requirements related to Financial Surveillance Reports and OPUAR requirements to file depreciation rates, in recognition of the negotiated nature of the Energy East tolls.
- 2) Orders under the following provisions of the OPR:
 - a) Section 43, approving the change of service from gas to oil.
 - b) Section 44, for the deactivation of an existing 914 mm nominal pipe size (NPS 36) crossing of the Assiniboine River.

- c) Section 45.1, as may be necessary, for the decommissioning of transferred TransCanada gas assets that will not be required for oil service after conversion.
- 3) Such further and other relief as EEPL may request or the Board may consider appropriate.

TransCanada's requested relief in the Energy East application

- 1) Under the NEB Act:
 - a) Leave under paragraph 74(1)(a) to sell certain TransCanada Mainline natural gas assets to EEPL.
 - b) Orders under the following provisions:
 - i) Subsection 129(1.1), exempting TransCanada from subsection 15(4) of the *Gas Pipeline Uniform Accounting Regulations* (GPUAR), the effect of which would be to authorize the sale, at the agreed price, of the Trans Canada Mainline gas assets.
 - ii) Section 59, approving:
 - a reduction to the Mainline rate base by the amount of the agreed transfer price;
 - the three adjustment accounts set out in Section 4.4 of the LDC Energy East Agreement; and
 - the methodology for proposed future treatment of certain costs as illustrated in Appendix A – Financial Impact Base Case to the LDC Energy East Agreement.
 - iii) Section 21, varying existing TransCanada certificates and orders to remove the Conversion Facilities.
- 2) An order under section 40 of the GPUARs, approving the proposed accounting treatment for the sale of the TransCanada Mainline gas assets.
- 3) Such further and other relief as TransCanada may request or the Board may consider appropriate.

Appendix 2 Energy East – draft Environmental Assessment Factors Document

**Energy East Pipeline Ltd. and
TransCanada PipeLines Limited (collectively, the Applicants)**

Application for the Energy East Project and Asset Transfer (Energy East)

**Draft Factors and Scope of the Factors for the Environmental Assessment pursuant to the
*Canadian Environmental Assessment Act, 2012 (CEAA 2012)***

1. Introduction

The National Energy Board (Board) is reviewing the Energy East application in a coordinated public hearing that will also consider TransCanada PipeLines Limited’s Eastern Mainline Project application. Through this review, the Board will determine whether, in its view, Energy East is in the public interest. In coming to this determination, the Board will consider, among other things, environmental matters related to the project.

Energy East is a “designated project”¹ under the CEAA 2012’s *Regulations Designating Physical Activities* (Regulations) and is subject to an environmental assessment (EA) under that Act, which the Board will undertake as the responsible authority. As described in subsection 4(2) of the CEAA 2012, the Board must exercise its powers under that Act in a manner that protects the environment and human health and applies the precautionary principle.

The Board’s public hearing will gather and test evidence and hear argument to satisfy the requirements of both the CEAA 2012 (with respect to the Board’s EA under that Act) and the *National Energy Board Act* (NEB Act) (with respect to the Board’s overall public interest determination).

One of the purposes of the CEAA 2012 is to protect the components of the environment that are within the legislative authority of Parliament from significant adverse environmental effects caused by a designated project. Another purpose is to ensure that designated projects are considered in a careful and precautionary manner to avoid such effects.

In the CEAA 2012, “environment” means:

“the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and

¹ “Designated project” is defined in subsection 2(1) of the CEAA 2012.

- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).”

Another important purpose of the CEAA 2012 is to offer opportunities for meaningful public participation during federal EAs.

2. Scope of the designated project

For the purposes of the Board’s CEAA 2012 EA, the designated project comprises the various physical activities described by the Applicants in the Energy East application and subsequent filings with the Board. It includes any physical activities that are incidental to those designated physical activities set out in the Regulations.

Details on the various components that comprise Energy East, as applied for, can be found in [Volume 1, Section 2](#) (Project Overview) of the Energy East application. The entire project application, as filed, is accessible via the Board’s online [public registry](#). The Board provides a high-level overview of the project in its draft List of Issues, which is found as [Appendix 1](#) to the cover letter seeking comments.

3. Factors to be considered in the EA

The Board’s CEAA 2012 EA for Energy East will take into account the following factors described in paragraphs 19(1)(a) through (i) of that Act:

- a) the environmental effects² of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;
- b) the significance of the effects referred to in paragraph a);
- c) comments from any interested party that are received in accordance with the CEAA 2012;
- d) mitigation measures³ that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the designated project;
- e) the requirements of the follow-up program in respect of the designated project;
- f) the purpose of the designated project;
- g) alternative means of carrying out the designated project that are technically and economically feasible and the environmental effects of any such alternative means;
- h) any change to the designated project that may be caused by the environment; and
- i) the results of any relevant regional study conducted by a committee established under section 73 or 74 of the CEAA 2012.

Paragraph 19(1)(j) of the CEAA 2012 allows the Board to consider any other matter relevant to the EA that the Board requires to be taken into account. This could include the consideration of

² The environmental effects to be taken into account are outlined in section 5 of the CEAA 2012.

³ “Mitigation measures” are defined in subsection 2(1) of the CEAA 2012.

potential effects of project-related activities that are not themselves part of the applied-for designated project.

As noted in the [draft List of Issues](#) for Energy East, the Board is seeking comments on whether to consider certain other matters in its review, including comments regarding the statutory authority under which those matters should be considered. See the [draft List of Issues](#) for more information.

4. Scope of the factors to be considered in the EA

Pursuant to subsection 19(2) of the CEAA 2012, the Board, as the responsible authority, determines the scope of the factors to be taken into account in the EA.

The Board's CEAA 2012 EA will consider the potential effects of the designated project within spatial and temporal boundaries within 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, and maintenance; foreseeable changes; and site reclamation; as well as any other undertakings proposed by the Applicants or that are likely to be carried out in relation to the physical works proposed by the Applicants, including mitigation and habitat replacement measures;
- seasonal or other natural variations of a population or ecological component;
- any sensitive life cycle phases of species (e.g., wildlife, vegetation) in relation to the timing of project activities;
- the time required for an effect to become evident;
- the area within which a population or ecological component functions; and
- the area affected by the project.

Any works and activities associated with additional modifications or associated with the decommissioning or abandonment phase of the designated project would be subject to a future application under the NEB Act and assessed in detail at that time. Therefore, in the Board's current review, such works and activities will be examined in a broad context only.

5. Community knowledge and Aboriginal traditional knowledge

Subsection 19(3) of the CEAA 2012 indicates that the EA of a designated project may take into account community knowledge and Aboriginal traditional knowledge. Aboriginal peoples include Indian, Inuit, and Métis peoples of Canada.

In its CEAA 2012 EA of the designated project, the Board will consider all relevant community knowledge and Aboriginal traditional knowledge put before it during the public hearing, as well as information received on the record with respect to consultation and engagement activities with Aboriginal peoples regarding the project. This may include community knowledge and

Aboriginal traditional knowledge filed by the information holders themselves, or by the Applicants.