

**First Nation and Métis Community Discussions – Meeting with Algonquins of Ontario – Pembroke, Ontario – January 22, 2015**

***Discussion Notes – Plenary Session***

**Part One Report**

- The Algonquins of Ontario undertook a detailed review of the *Summary Report Part One of the First Nation and Métis Community Discussions Re: TransCanada’s Proposed Energy East Pipeline*. The AOO submitted their written response to the Part One Report; this feedback will be incorporated into the Part Two Report.

***Discussion Notes***

**Areas of Potential Impact**

***1. Natural Gas Prices, Reliability and Access to Supply***

- No specific issues/concerns were raised during the discussion regarding the issue of natural gas prices, reliability and access to supply.

***2. Pipeline Safety and the Natural Environment***

- Given that the Federal Government’s/NEB’s major concerns relate to areas within their jurisdiction alone and largely exclude issues under provincial jurisdiction (i.e., forestry, groundwater and source water protection, endangered species, etc.), it was recommended that a provincial environmental assessment should be undertaken as an addition to the formal review process under way by the OEB.
- There were several issues raised about TCPL’s plans (as outlined in their application) with respect to monitoring and emergency response and management systems. Particular issues raised included the following:
  - The definition of what constitutes a “significant waterway crossing” requiring valve protection needs to be informed by someone other than the proponent. A group other than TCPL should be designated as being responsible for making an objective decision on this and other issues where there will inevitably be competing views. The AOO should have a role in that discussion.
  - The proposed monitoring programs need to be augmented/supplemented by a “highly intensive site-specific” monitoring system for sensitive locations. This should be a mandatory requirement for all major waterway systems.
  - The authority and discretion to shutdown the line based on the proposed “ten-minute rule” should not be left to a TCPL employee. Rather, a third party

organization should be vested with this responsibility and appropriate protocols put in place to support this process.

- It was noted that in the event of a leak, even if the shutdown procedures work exactly as planned the 10 minute decision making rule plus 12 minutes needed to actually close off the line could result in significant oil escape over 22 minutes.
- Processes and procedures related to onsite monitoring of tests and oversight of test results should not be left to TCPL employees. Provincial and/or Federal officer(s) should be identified and vested with the responsibility to be onsite when testing is conducted and to participate in the analysis and reporting of test results.
- The proposal by TCPL that it will demonstrate financial capability (\$1Billion) to respond to a pipeline failure and remedy the situation needs to be backed by 'hard dollars' in escrow or some similar arrangement, not just the financial capability of the firm.

*"This job cannot be left to a profit-driven organization. While this is recognized as a cost, it really should be a non-negotiable."*

*"Will Ontario be onsite monitoring the tests and overseeing the results of the tests?"*

- Participants are very concerned that the TCPL Application with respect to environmental considerations is incomplete. TCPL's Application is 'silent' in a number of important areas.
  - For example, issues pertaining to the North Bay shortcut (i.e., hydro connections, integrity digs, etc.). There is a perception that the TCPL views the North Bay shortcut as a maintenance-only issue. This is not the case.
  - The North Bay shortcut runs entirely through AOO traditional Territory, yet there is minimal information available to the group about work required or potential impacts. This is not acceptable.
- Participants raised specific questions about what they considered the incompleteness and deficiency of TCPL's Application, including:
  - Does the government of Ontario (OEB or Minister of Energy) have the authority to specify the key areas of deficiency and flag these to the NEB, to be addressed now, rather than later when the formal NEB review process is already underway based on this incomplete information? If so:
    - Would the OEB consider making a submission to the NEB in the next 30 days specifying the major areas of deficiency that need to be addressed?
    - Would the Minister of Energy consider sending a letter to the NEB and/or TCPL voicing their concerns (now!) about the serious gaps/shortcomings in the TCPL application?

*"Who can help us fill in some of the missing gaps and get us some clarity regarding location and placement of valves?"*

- Additional questions raised that require clarification:
  - Given that the main monitoring system will not detect small leaks that may not be caught by pipeline pressure alarms or aerial surveillance, what contingencies are in place to address this situation?
  - In a shutdown situation, how will a breach/failure in the pipeline impact on the natural gas line, and vice versa?
  - Are there locations where the oil and gas pipelines cross? Where are these located? What processes will be put in place to ‘manage’ these lines?
  - Where will the integrity digs take place? Will these digs include inspections of the inside and outside of the pipe?
  - Have criteria /protocols been developed for shutdown of the valves?
  - What are the real health consequences to residents who may be impacted by a spill?

The AOO is expecting information to address these questions and the distinction between oil pipeline versus gas line – and impacts of proximity to each. Although the pipelines will be separate systems, the AOO disputes the position that a failure in one will not impact the other.

### **3. Treaty and Aboriginal Rights**

- Free, prior and informed consent is key.
- The landscape has changed. There are important messages that need to be conveyed to the Minister(s) of the Crown:

*“We need to accept that there is a strong case to be made to protect our waters and find an economic solution that will include revenue sharing.... This is part of the big picture of consultations that is underway.... This message needs to be carried to the Ontario Government. Without this, we’re going to have a real battle.”*

*“We are going to have a line flow through our territory that was never approved. If there are going to be changes to this line in a major way there will need to be revenue sharing. In the midst of a treaty negotiation where title lands are being looked at.”*

*“The Algonquins have spent 250 year trying to resolve treaty rights, and petitioned the Crown 30 times over that period on specific issues. I can’t think of any other First Nation community across the country that tried to play the game and ended up feeling the pain and anguish of bad faith....”*

*“There is a dual responsibility of the Crowns {Ontario and Canada} to act as a fiduciary on our behalf.”*

*“More than 10% of the whole pipeline length in Ontario is on our traditional territory. No other First Nation is in a comparable situation. That must be taken into account.”*

#### 4. Economic Impacts

- This project offers very little economic benefit for anyone in Ontario, including First Nations peoples.

Some participants asked who the stakeholders are that are seeking revenue sharing [Métis? Other stakeholders? Municipalities? Special interest groups (Ducks Unlimited, etc.)]

*“Who are the other groups/stakeholders asking specifically for revenue sharing? How are these discussions being negotiated/managed? Apart from the unions wanting jobs and the municipalities wanting revenue, who are the other groups and stakeholder asking for revenue sharing.”*

- One participant raised concerns about the risks inherent in accepting any revenue sharing.

*“Accepting the idea of revenue sharing must be carefully weighed against the potential for spills and disasters. I’m not sure we should even be having this discussion. How will we ever explain this to future generations?”*

#### Input based on Presentation and Other Materials

- One participant asked why the Federal and Provincial Governments are even entertaining discussions about this project given the significant drop in the price of oil.

#### Key Takeaways

1. The current proposal by TCPL presents a unique but very challenging project that presents both potential opportunities and risks for the Algonquins of Ontario. Participants emphasized the uniqueness of their position given the current nation-to-nation Treaty negotiation under way with the Federal Government. These negotiations have been 250+ years in the making. Eighty plus municipalities (including Ottawa), cottage associations, industry, and multiple other stakeholders are involved in these discussions focused on achieving ‘reconciliation.’ However, while other stakeholders all have interests in these lands, they are not involved in the sense of being parties to the current negotiations between the Algonquins of Ontario and the Crown.
2. TCPL should not be left with the sole discretion/responsibility for carrying out monitoring and emergency management protocols. Third party oversight is necessary and should be considered a “non-negotiable” in clarifying the processes that will address safety concerns.

3. Participants highlighted the importance of the Province of Ontario supporting them in making the case on issues where they have real expertise (For example, in ministries like Environment and Natural Resources).
4. They further requested that the Minister of Energy write to the NEB to outline the serious problems and shortcomings associated with various aspects of the TransCanada application.

**ADDITIONAL COMMENTS FROM THE ALGONQUINS OF ONTARIO:**

The AOO were asked to review the draft version of these notes to ensure they accurately reflected the discussion that took place. AOO elaborated on several themes and raised important questions which go beyond or probe further on the points raised in the discussions. These are noted separately below:

- The AOO are very concerned about the possible adverse impacts of the pipeline conversion on water crossings. The AOO are particularly concerned that the documentation submitted by TransCanada to the NEB in October 2014 references only the Madawaska and Rideau Rivers, and fails to acknowledge a number of major watercourses and associated tributaries within the Algonquin Traditional Territory, including, but not limited to the following:

- |                            |                                    |   |                           |
|----------------------------|------------------------------------|---|---------------------------|
| 1. Ottawa River            | 7. Bissett Creek                   | 13. Bonnechere River                        | 20. South Nation          |
| 2. Mattawa River           | 8. Chalk River                     | 14. Madawaska River                         | River – South             |
| 3. Amable du Fond<br>River | 9. Petawawa River/<br>Barron River | 15. Mississippi                             | Branch                    |
| 4. Durand Creek            | 10. Indian River                   | 16. Jock River                              | 21. Rigaud River          |
| 5. Bastien Creek           | 11. Muskrat River                  | 17. Rideau River                            | 22. Delisle River         |
| 6. Grant’s Creek           | 12. Snake River                    | 18. Cataraqui River                         | 23. Beaudette River       |
|                            |                                    | 19. South Nation<br>River – North<br>Branch | 24. St. Lawrence<br>River |

- Based on the proposed protocol by TransCanada should a leak occur it will take up to 22 minutes to shut down. This includes the proposed 10 minutes to allow for detection and a further 12 minutes to shut down. OEB advised that 17,000 barrels can leak in 22 minutes if full-bore rupture – pushes oil at 1.1 million barrels of oil a day – equals 2.5million litres.
- The TCPL contingency fund for clean up must be verified firstly to ensure that it exists and secondly to ensure that it is accessible to agencies involved in clean up.
- The AOO have advised TransCanada by letter of February 15, 2015 that the works associated with any mainline block valve installations, modifications or replacements, integrity digs and other excavations, temporary and permanent road access, hydro connections, etc. along the North Bay Short-Cut will have significant impact on Algonquin interests and as such must be the subject of the upcoming proceedings before the NEB including, in particular, any environmental assessment

of these projects. The AOO is requesting confirmation in writing from TransCanada that potential retrofit works on the North Bay Short-Cut have been or will be included as part of the Proposed Undertaking in the Environmental Assessment and are also included in the Project Description for the EEPP document submitted to the NEB.

- Ontario will be requested to act "as a fiduciary" on, and assist in, making the argument on behalf of the Algonquins regarding AOO issues of concern, and matters related to reconciliation, compensation and revenue sharing. To clarify the proposed Energy East Pipeline Proposal involves the proposed conversion of the existing natural gas pipeline to the transmission of oil products. This pipeline (which is also known as the North Bay Short-Cut) crosses approximately 400 km of Algonquin Traditional Territory extending from North Bay to just north of Iroquois, Ontario. This represents approximately 20% of the Energy East project route through Ontario and includes a crossing of the two project routes in the area north of Iroquois, Ontario. The Proposal also includes the construction of approximately 35 km of new pipeline at the eastern limit of Algonquin Territory extending northward to cross the Ottawa River immediately downstream of Voyageur Provincial Park.
- The AOO expects that the EEPP will include the requirement for revenue sharing and compensation for the use of the Algonquin Traditional Territory