

**Memorandum of Understanding between
Environment and Climate Change Canada and the National Energy Board
for the Establishment of a Public Engagement Process for the Assessment of
Upstream Greenhouse Gas Emissions related to the Energy East Project
(MOU)**

1. Context:

An application for the Energy East Project (Project) was filed with the National Energy Board (NEB or Board) on 30 October 2014 and amended on 17 December 2015. The application was made pursuant to the *National Energy Board Act* (NEB Act) and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

The Project is an approximate 4,500 km pipeline intended to transport crude oil from Alberta and Saskatchewan to delivery points in Québec and New Brunswick, as well as to a marine terminal in New Brunswick. The Project is comprised of both new pipeline and pipeline-related facilities and existing pipeline facilities that will be transferred from TransCanada PipeLines Limited to Energy East Pipeline Ltd. and converted from natural gas service to oil service.

On 27 January 2016, the Government of Canada introduced five interim principles that will guide its decision-making on major natural resource projects. One of those principles is that direct and upstream greenhouse gas emissions linked to projects under review will be assessed by the Government of Canada and this information will be made public.

The NEB will conduct a public hearing to review and assess the Project. The outcome of this public hearing will be a recommendation report to be submitted to the Governor-in-Council (GIC), where authority to approve or deny the application resides.

- The List of Issues the NEB will consider in its public hearing will include greenhouse gas (GHG) emissions directly related to construction and operation of the Project.
- The NEB will not consider upstream or downstream GHGs in its review of the Project or in the final recommendation report.

Based on the interim principles, Environment and Climate Change Canada (ECCC) will assess the upstream GHG emissions associated with the Project, and will produce a report with the results of its assessment.

The NEB and ECCC (herein referred to as Participants, or individually as Participant) will establish an engagement process where interested persons can share their views on ECCC's technical assessment of upstream GHG emissions associated with the Project (the Engagement Process). The Engagement Process is separate and independent from the public hearing the NEB will conduct to review and assess the Project.

2. Purpose and objective:

The purpose of this MOU is for the NEB and ECCC to jointly establish the deliverables, timelines, roles and responsibilities, and procedural details of the Engagement Process.

The Engagement Process will be established to seek public comments on ECCC's technical assessment of upstream GHG emissions associated with the Project in a flexible, transparent and meaningful manner.

The outcome of the Engagement Process will be the creation of a final two-part joint report that includes ECCC's technical assessment of upstream GHG emissions associated with the Project, and the NEB's summary of public comments obtained through the Engagement Process.

3. Guiding principles:

The Participants agree on the following guiding principles for the Engagement Process:

- The Engagement Process will be established to seek public comments on ECCC's draft technical assessment of upstream GHG emissions associated with the Project.
- The Engagement Process will be open, flexible and participatory. As a result, it is expected that the scope of public comments will be broader than upstream GHG emissions. While the Participants will not proactively seek comments on these subjects, such input may form part of the NEB's summary of public comments.
- ECCC has full control and decision-making authority over its technical assessment of upstream GHG emissions associated with the Project, including data acquisition and analysis, authorship, presentation, editing, inclusion or rejection of public comments, and approval. The NEB may undertake communications activities about ECCC's technical assessment of upstream GHG emissions associated with the Project, with the agreement of ECCC.
- The NEB has full control and decision-making authority over the Engagement Process, but will actively consult with ECCC on its design and implementation.
- The Engagement Process will not include a review or assessment of the Project, nor will it lead to a decision or recommendation on the Project, as such matters will be considered during the NEB public hearing on the Project.
- The Engagement Process will not be a formal quasi-judicial hearing. The *National Energy Board Rules of Practice and Procedure, 1995*, and the standing tests described in the Board's Participation Guidance will not apply. The Engagement Process will not include typical features of NEB hearings (e.g. cross-examination, filing of evidence).

4. Process phases and key deliverables:

Phase 1: Develop and initiate a plan for the Engagement Process

- The Chair of the NEB will assign a Member (or a panel) to carry out the Engagement Process and to summarise public comments provided during the Engagement Process.¹
- The NEB will develop, in consultation with ECCC, a plan for the Engagement Process. While it is recognized that the scope of public comments may be broader than ECCC's technical assessment of upstream GHG emissions associated with the Project, the Engagement Process will not include issues that are within the scope of the NEB public hearing on the Project.
- Any comments received that fall outside the scope of ECCC's technical assessment of upstream GHGs associated with the Project (but still outside the scope of the NEB public hearing) will be treated differently by the NEB Member or Panel than comments that do fall within the scope of ECCC's upstream GHG assessment.
- As part of the Engagement Process, the NEB will establish an online forum where interested persons will be able to submit comments before ECCC completes its draft technical assessment of upstream GHG emissions associated with the Project.
- The NEB, in consultation with ECCC, will issue a notice announcing that the Engagement Process is being launched to gather public comments on the draft technical assessment of upstream GHG emissions associated with the Project, and how interested persons can participate.
- *Key deliverables: Plan for the Engagement Process and setting-up online forum*

Phase 2: Draft upstream GHG Report

- ECCC will undertake a technical assessment of upstream GHG emissions associated with the Project, resulting in a report (Upstream GHG Report) that will be used for public engagement purposes.
- *Key deliverables: Draft Upstream GHG Report*

Phase 3: Prepare for and carry out engagement activities on draft Upstream GHG Report

- The NEB will prepare materials for and organise the logistics of the engagement activities and will consult with ECCC on the number, timing and duration of these activities.
- The NEB Member or Panel will, with NEB staff support, undertake engagement activities to gather public comments on the draft Upstream GHG Report and, if raised, on other topics of interest to Canadians. Specific activities will be described in the plan for the Engagement Process but could include meetings with key stakeholders, open house forums, WebEx sessions, and online posting of information and collection of comments.

¹ The Minister of Natural Resources intends to recommend the appointment of additional temporary members to the National Energy Board to help facilitate expanded public input into the National Energy Board review process, including public and community engagement activities. Once appointed to the NEB by the Governor-in-Council, one or more of these new Members may be assigned to this Engagement Process, at the discretion of the Chair of the NEB. The NEB will consult with ECCC before this assignment occurs.

- ECCC will participate in in-person sessions (e.g. meetings, open house forums). This participation will include a presentation of the draft Upstream GHG Report and answering questions related to upstream GHGs.
- The NEB will gather public comments made during in-person sessions.
- *Key deliverables: Collect and document public comments on the draft Upstream GHG Report*

Phase 4: Review public comments and create final joint report

- The Participants will review public comments received during the Engagement Process.
- ECCC will revise its draft Upstream GHG Report, taking into consideration public comments as appropriate.
- The NEB will develop a summary of public comments.
- The Participants will work together to develop a final joint report that includes the final Upstream GHG Report (Part A) and a summary of public comments (Part B) (Final Joint Report).
- Upon completion, the Final Joint Report will be made public.
- The Participants may issue joint or separate notices announcing completion of the Final Joint Report.
- *Key deliverables: Final Joint Report*

5. Proposed timeline:*

July – October 2016	Planning of Engagement Process
December 2016	Issue notice announcing launch of Engagement Process
July 2016 - March 2017	Preparation of draft Upstream GHG Report
January - March 2017	Preparation of materials and organisation of logistics for in-person sessions
April 2017	ECCC releases draft Upstream GHG Report
April - September 2017	Engagement activities on draft Upstream GHG Report
October 2017 - January 2018	Review of public comments Revision of draft Upstream GHG Report as required Drafting of summary of public comments
February 2018	Endorsement of Final Joint Report by respective organizations
March 2018	Final Joint Report to be made public Announce completion of Final Joint Report

*Timelines subject to change depending on availability of Project documentation, resource constraints, operational requirements, external circumstances, or any other relevant factor.

6. Roles and responsibilities:

ECCC will:

- Conduct technical assessment of upstream GHG emissions associated with the Project.
- Issue draft Upstream GHG Report for public review and comment.
- Attend in-person sessions as appropriate, present the draft Upstream GHG Report and answer questions about the draft Upstream GHG Report. Attendance will be in-person to the extent possible, but may be via videoconference or teleconference if necessary.
- Revise Upstream GHG Report as necessary and produce final Upstream GHG Report for inclusion in Final Joint Report.

The NEB will:

- Issue notices announcing the launch of the Engagement Process, details of engagement activities, and completion of the Final Joint Report. The NEB will consult with ECCC on all notices prior to issuance.
- Lead the Engagement Process under the remit of a Board Member or Panel that will be assigned by the Chair of the NEB.
- Draft a plan for the Engagement Process in consultation with ECCC.
- Establish an online forum for public comments.
- Plan, coordinate and chair public engagement activities.
- Provide staff support, written and electronic materials, and simultaneous interpretation at engagement activities.
- Make records of attendees at engagement activities, and comments expressed at engagement activities and in writing.
- Draft a summary of public comments on the Upstream GHG Report for inclusion in the Final Joint Report.

7. Resources:

The NEB will provide the following resources:

- Board Member or Members to direct and make decisions regarding the Engagement Process.
- One Project Manager (PM) that will have overall accountability for the Engagement Process.
- A project working group constituted of staff with appropriate skills and experience to assist the PM with planning and implementation of the Engagement Process.

ECCC will provide the following resources:

- A project working group to conduct the technical assessment of upstream GHG emissions associated with the Project.
- One staff person to liaise with the NEB regarding the planning of the Engagement Process,
- A technical expert to attend in-person sessions as required.

All salary, employer-paid benefits, overtime, accommodation and travel costs associated with NEB and ECCC staff working on this project will be paid by their respective employer. Board Members will be paid according to the terms of their appointments. This MOU makes no provisions for transfer, interchange, loan or cost-sharing of FTEs between the Participants.

8. Budget:

The NEB agrees to cover the following costs:

- All costs associated with holding public engagement activities including, but not limited to, production of materials for engagement activities, provision of A/V equipment, venue bookings, facilitators, translation/interpretation, web site and transcription.
- Travel costs for NEB staff and Board Members to attend any engagement activities outside the Calgary area.

ECCC agrees to cover the following costs:

- Travel costs for ECCC staff to attend any engagement activities outside the National Capital Region.
- Costs associated with conducting and finalising the technical assessment, including written translation of the final assessment.

The Participants agree to share the following costs on a 50/50 basis:

- Production costs of the Final Joint Report.

9. MOU non-binding:

This MOU is not legally binding and does not impose, nor is it intended to impose, any legal commitments on, or give rise to any legal rights not otherwise held by the Participants.

10. Termination:

Unless otherwise agreed to by the Participants, this MOU will terminate when the Final Joint Report is submitted to the GIC.

11. Amendment:

The Participants may jointly modify this MOU at any time with the written approval of the Participants. Any amendment to the MOU becomes effective upon the date of the last Participants' signature, unless otherwise indicated.

12. Effective date:

This MOU will commence and take effect upon the date of the last Participants' signature.

13. Administrative representatives:

The administrative representatives named below are responsible for the overall management and implementation of this MOU.

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14. Signatories:


FOR THE NEB



**C Peter Watson, P. Eng. FCAE
Chair and CEO**

Date: July 7, 2016

FOR ECCC



**Michael Martin
Deputy Minister**

Date: August 8, 2016

