

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

THE NATIONAL ENERGY BOARD

AND

THE NORTHERN PIPELINE AGENCY

**CONCERNING THE PROVISION OF TECHNICAL ADVICE WITH RESPECT
TO ENERGY MATTERS AND ADVICE TO THE COMMISSIONER**

PREAMBLE

WHEREAS the *National Energy Board Act*, R.S.C., 1985, c. N-7 (NEB Act), as amended from time to time, authorizes the National Energy Board (NEB) to regulate, administer, manage or otherwise deal with matters related to inter-provincial and international natural gas pipelines;

WHEREAS the *Northern Pipeline Act*, R.S.C., 1985, c. N-26 (NP Act), as amended from time to time, authorizes the Northern Pipeline Agency (NPA) to regulate, administer, manage or otherwise deal with matters related to the Alaska Highway Pipeline Project;

WHEREAS the NEB and the NPA have independent but related mandates in regard to the regulation of pipelines, and activities carried out under their respective mandates have the potential to affect the programs and responsibilities of the other;

WHEREAS subsection 26(4) of the NEB Act authorizes the NEB to provide advice to NPA with respect to energy matters;

WHEREAS the NPA wishes to obtain technical advice and advice to the Commissioner of the NPA through the NEB;

WHEREAS the NEB has the requisite expertise to provide technical advice to the NPA, either directly through its own employees or through third party contractors;

WHEREAS the NEB has the requisite expertise to provide advice to the Commissioner of the NPA, directly through its own employees;

NOW THEREFORE the Participants hereby establish principles and procedures in this Memorandum of Understanding (MOU) for the provision of technical advice and advice by the NEB to the NPA, and the recovery of the associated costs by the NEB from the NPA.

2.0 DEFINITIONS

2.1 In this MOU

“Administration Fee” is a mark up of 35% that is levied on top of rates of pay to cover costs of accommodation and employee benefits of federal employees.

“Alaska Highway Pipeline Project” is the pipeline for the transmission of natural gas from Alaska across Canada, as contemplated in the NP Act.

“Calgary Allowance” is an allowance paid to certain NEB employees, pursuant to the PIPSC-NEB Collective Agreement, the value of which is 4.95% of the employee’s annual salary.

“Market Allowance” is an allowance paid under the PIPSC-NEB Collective Agreement to certain employees in operational job families from NEB levels 08 to NEB level 12. Operational job families are: Economic & Financial Analysts, Environment, Market Analysts, Safety & Engineering, Socio-Economics and Lands, Supply Analysts, and Directors in operational positions.

“Disbursements” mean incidental expenses incurred by employees or contractors of the NEB in the course of providing services to the NPA to the extent that such expenses are payable to compensate employees or contractors according to the NEB’s rules respecting such payments.

“Information” means records (see “Records”), as well as any oral exchanges, directions, advice, or guidance.

“NEB Business Unit Vice-President” is a designated NEB Executive who performs a single window function in respect of NEB business pertaining to the Alaska Highway Pipeline Project.

“NPA Assistant Commissioner” is the designated NPA Executive who performs a single window function in respect of NPA business pertaining to the Alaska Highway Pipeline Project.

“Participant” means either the NPA or the NEB and their respective representatives, as the case may be, and “Participants” means both of them and their respective representatives.

“Records” mean any records and work product and includes books, documents, maps, drawings, photographs, letters, vouchers, notes, papers, correspondence,

memorandum, plan, diagram, pictorial or graphic work, film, microfilm, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof. This includes Records produced in the performance of duties under this MOU, as well as any historic records which may have arisen from other joint cooperation arrangements between the Participants.

“Services” means the services provided for in the attached Schedule ‘A’ to this MOU.

3.0 INTERPRETATION

No New Agency

- 3.1 Nothing in this MOU is to be construed as creating an agency, partnership or joint venture relationship between the NPA and the NEB or an employer/employee or master/servant relationship between the NPA and any NEB employees.

No Conflicting Interest

- 3.2 The NEB warrants that it has no conflict of interest in carrying out the Services contemplated under this MOU. Should such a conflict arise during the term of this MOU, the NEB shall disclose it immediately to the NPA and the Participants shall discuss such conflict with a view to achieving a mutually satisfactory arrangement.

4.0 SERVICES

Mechanisms

- 4.1. The NEB will provide Services to the NPA, upon request by NPA, subject to resource restraints, in accordance with this MOU using one of the following cost recovery mechanisms:
- 4.1.1 Fee for the Services of NEB Employees – Annual Rate
 - 4.1.2 Fee for the Services of NEB Employees – Hourly Rate
 - 4.1.3 Fees for Third Party (Contracted) Services
- 4.2 The NPA will pay the NEB based on the calculations in Section 5.0 - Payment.

Rental Vehicles

- 4.3 The Participants agree that in the performance of Services, NEB employees or contractors will not use their own personal vehicles but will only use rental vehicles and will obtain full insurance coverage.

Applicable Laws

- 4.4 This MOU is to be read with and interpreted in a manner consistent with the NEB Act and the NP Act, and any other law of general application and the rules of

natural justice. This MOU does not create any new legal powers or duties, or fetter in any way, the jurisdiction, powers and duties of the Participants.

5.0 COST RECOVERY

5.1 The NPA will pay the NEB for the Services according to the following calculations:

Fee for Services Provided by NEB Employees – Annual Rate

5.1.1 The annual salary for a NEB employee providing Service(s), determined in accordance with attached Schedule ‘B’ to this MOU.

Fee for Services of NEB Employees – Hourly Rate

5.1.2 The hourly rate for a NEB employee providing Service(s), determined in accordance with attached Schedule ‘C’ to this MOU.

Fees for Third Party (Contracted) Services

5.1.3 Actual costs of contracted services performed by NEB contractors.

5.1.4 NPA will reimburse the NEB for payment of penalties if third party service contracts are unspent or cancelled at the request of NPA.

Travel, Hospitality, Equipment and Incidentals

5.1.5 The NEB will bill the NPA quarterly for Disbursements paid or payable to NEB employees and contractors.

Invoices

5.2 The NEB will invoice NPA on a quarterly basis or at other times mutually agreed to by the NEB and NPA. In any event, the NEB will invoice the NPA for costs related to all Services performed or contracted for in a fiscal year by March 31 of that fiscal year and provide NPA with such invoice within 30 days thereafter.

5.3 The NPA will make full payment to the NEB within 30 days of receiving the invoice.

5.4 Notwithstanding 5.3, all invoices will be paid by the end of each fiscal year.

Invoice Information

5.5 Where Services are performed by NEB, invoices provided by the NEB will indicate, or be accompanied by documentation sufficient to indicate:

5.5.1 the level of each NEB employee providing the Services billed for;

5.5.2 the hourly or annual rate applicable to the employee;

5.5.3 if the hourly rate is used, the number of hours of Services provided by the employee in the billing period and the month in which the services were performed; and

5.5.4 the nature of the Services provided by NEB.

- 5.6 Where Services are performed by contracted third parties, the invoice will indicate, or be accompanied by documentation sufficient to indicate:
- 5.6.1 the company and contractor name(s);
 - 5.6.2 the nature of the Services provided; and
 - 5.6.3 the cost of Services performed, including a breakdown of the hours spent and the hourly rates, if applicable.

Spending Limits

- 5.7 This MOU is subject to the provisions of the *Financial Administration Act*, R.S.C., 1985, c. F-11, as amended from time to time. In particular, any payment under this MOU is subject to an appropriation of money for that purpose by Parliament.
- 5.8 The aggregate amount for which the NPA may be invoiced for under this MOU in respect of any fiscal year will not exceed the amount included in the NPA's budget for that fiscal year for the purpose of paying amounts invoiced to the NPA by the NEB under this MOU.

6.0 LEGAL LIABILITY

- 6.1 This MOU indicates the intentions of the participants but does not create a contractual obligation between them.
- 6.2 Nothing in this MOU or any schedule is intended to create any right or benefit, substantive or procedural, enforceable at law by any person or organization against either participants, its agencies or officers, agencies or officers carrying out programs authorized under federal or provincial law, or any other person.

7.0 INFORMATION MANAGEMENT AND DOCUMENT CONTROL

Security Clearance

- 7.1 The NPA and the NEB will each ensure that their staff and/or contractors obtain the security clearance required for viewing and/or working with documents and other sources of Information, written and oral.

Records

- 7.2 All Records created by employees or contractors of the NEB in the course of providing Services under this MOU will remain in the custody of the NPA.
- 7.3 If Records have joint value, a copy will be provided to NEB and may be retained by the NEB for its own records purposes.
- 7.4 The Records referred to in 7.2 and 7.3 will not be disclosed by the NEB without the written consent of the NPA.

- 7.5 At reasonable times and on reasonable notice, the NEB and the NPA will provide each other with access to the Records described in 7.2 and 7.3, as well as to any historic documents that are of joint value.

Continuing Obligation

- 7.6 The obligations of the NEB and the NPA under 7.2 – 7.5 survive the expiration or termination of this MOU.

8.0 DISPUTE RESOLUTION

- 8.1 Step 1: Any dispute relating to this MOU and the Services performed or to be performed will be referred to the NEB Business Unit Vice-President and the NPA Assistant Commissioner for joint consideration and resolution. Step 2: If resolution is not possible following Step 1, the dispute will be brought to the NEB Deputy Head and the NPA Commissioner.
- 8.2 The provision of services as contemplated under this MOU will continue during the implementation of the dispute resolution process under this section.

9.0 ENTRY INTO FORCE, TERM, REVIEW, AMENDMENTS AND TERMINATION

Entry into Force

- 9.1 This MOU shall enter into force by signature of the Participants.

Term

- 9.2 This MOU will terminate in 10 years unless terminated early for cause or unless Participants agree, in writing, to renew the MOU.

Interim Review and Reporting

- 9.3 The NPA and the NEB will jointly undertake an annual review of services and provide a report on the effectiveness of the MOU, including any recommendations, to the NEB Business Unit Vice-President and the NPA Assistant Commissioner, within 60 days of the yearly anniversary of this MOU coming into force.

Amendments

- 9.4 This MOU may be amended at any time by the written consent of the Participants as executed by their duly authorized representatives.

Termination

- 9.5 This MOU may be terminated by either Participant on its giving at least three months notice in writing to the other Participant.

10.0 NOTICES

10.1 Any notice or communication required to be given under this MOU will be made in writing and will be delivered personally, sent by fax, electronic communication or by first class prepaid mail to the addresses listed below.

If to the NEB:

Vice President, Field Operations or
Vice President, Energy Adjudication
National Energy Board
517 Tenth Avenue SW
Calgary, AB T2R 0A8
Tel: (403) 292-4800
Fax: (403) 292-5503

If to the NPA:

Assistant Commissioner
Northern Pipeline Agency
588 Booth Street, room 470
Ottawa, ON K1A 0Y7
Tel: (613) 995- 1150

Receipt of Notice

- 10.2 The date of receipt of any notice shall be deemed to be:
 - 10.2.1 if personally delivered or sent by courier, the date of delivery;
 - 10.2.2 if sent by certified or ordinary mail, 7 business days after mailing;
and
 - 10.2.3 if sent by electronic communications or fax, 24 hours after the time of transmission, excluding from the calculation, weekends and public holidays.

Peter Watson
Chief Executive Officer
National Energy Board

Christyne Tremblay
Commissioner
Northern Pipeline Agency

Date

Date

SCHEDULE “A” - SERVICES

Services falling in any of the categories identified below may be requested by the NPA either orally or in writing. When they are requested orally, the request will be followed up by the NEB in writing.

Category #1 - Technical Advice

NPA may request the NEB to provide technical advice on energy matters pertaining to the following areas, on a priority basis and, in such a case, the NEB will use its best efforts to accommodate the request.

- Environment
- Socio-economics
- Public consultation
- Aboriginal
- Lands
- Engineering

Category #2 - Other Services including Advice to the Commissioner of the NPA

The NEB may perform or contract for other services not described in Category 1, as required from time to time by NPA, but are mutually agreeable by the Participants.

The terms and conditions of such services will be the same as for Category 1, unless other unique terms and conditions are negotiated by NPA and the NEB.

SCHEDULE “B” – Calculation of the Annual Rate

The “Annual Rate” is calculated on the basis of the current:

1. Annual salary of the NEB employee, plus:
 - 4.95% Calgary Allowance
 - The total maximum payout under all other allowances (e.g., Market Allowance) and Performance Pay.
2. The Administration fee.

NOTE: The annual salary and allowances/performance pay will be amended from time to time to reflect salary increases and other changes in effect at the NEB, such as those that may result from collective bargaining or classification renewal.

NPA agrees to pay the amounts, as amended, upon receipt of notification from the NEB.

SCHEDULE “C” – Calculation of the Hourly Rate

NEB LEVEL	HOURLY RATE
16	\$171.48
15	148.70
14	134.06
13	116.47
12	113.02
11	99.63
10	87.89
09	75.52
08	63.87
07	53.96
06	47.82
05	42.40
04	37.64
03	33.39
02	29.61
01	26.28

The “Hourly Rate” is calculated on the basis of:

1. The Annual Rate (Schedule “B”), based on the average salary per NEB-level and including maximum payouts for current NEB allowances and performance pay, divided by:
220 working days; and
7.5 hours per day.

The Schedule will be amended by the NEB from time to time to reflect salary increases and other changes in effect at the NEB, such as those that may result from collective bargaining or classification renewal.

NPA agrees to pay the amounts set out in amended Schedules upon receipt of notification of the amendment.