



National Energy
Board

Office national
de l'énergie

Reasons for Decision

Trans-Northern Pipelines Inc.

OHW-1-2003

November 2003

Facilities

National Energy Board

Reasons for Decision

In the Matter of

Trans-Northern Pipelines Inc.

Section 58 Application dated 26 June 2003

OHW-1-2003

November 2003

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Abbreviations

Act	<i>National Energy Board Act</i>
Applicant	Trans-Northern Pipelines Inc.
Board	National Energy Board
CEA Act	<i>Canadian Environmental Assessment Act</i>
City	City of Hamilton
CSA	Canadian Standards Association
ESR	Environmental Screening Report
Expressway	The City of Hamilton's Red Hill Creek Expressway
intervenor	parties to the OHW-1-2003 proceeding that are not the Applicant, not including Responsible Authorities or those who filed letters of comment
m	metre(s)
mm	millimetre(s)
OPR-99	<i>Onshore Pipeline Regulations, 1999</i>
parties	Applicant and intervenors
TNPI or Trans-Northern	Trans-Northern Pipelines Inc.

Recital and Appearances

IN THE MATTER OF *the National Energy Board Act* and the regulations made thereunder;
and

IN THE MATTER OF an application dated 26 June 2003 by Trans-Northern Pipelines Inc.,
pursuant to section 58 of the Act, to relocate and lower sections of its pipeline in Hamilton,
Ontario; and

IN THE MATTER OF National Energy Board Hearing Order OHW-1-2003.

EXAMINED by way of written submissions.

BEFORE:

D.W. Emes	Presiding Member
R.J. Harrison	Member
J.S. Bulger	Member

PARTIES:

J.F. Lang	Trans-Northern Pipelines Inc.
-----------	-------------------------------

E.R. Wade	The City of Hamilton
D. Estrin	
J. Mesquita	

D. McLean	Friends of the Red Hill Valley
P. Muldoon	
T.A. McClenaghan	

J. Dolbec	Hamilton Chamber of Commerce
A. Jackson	

A. McKinnon	The Red Hill Neighborhood Association
-------------	---------------------------------------

M.D. Lumley

P. Ormond

Introduction

1.1 Application

On 26 June 2003, Trans-Northern Pipelines Inc. (TNPI, Trans-Northern or the Applicant) applied to the National Energy Board for an order pursuant to sections 58 and 74 of the *National Energy Board Act* (the Act), for authorization to relocate and lower sections of its pipeline in Hamilton, Ontario (the Project). (See Figure 1-1.) Specifically, TNPI applied to:

- relocate approximately 525 m of its 406.4 mm (16 inch) diameter pipeline by grouting and abandoning in place approximately 250 m of its existing 16 inch diameter pipe, removing approximately 147 m of its existing 16 inch pipe, and constructing approximately 525 m of new 16 inch pipeline;
- lower a 70 m long segment of the same pipeline across the proposed Red Hill Creek Expressway by approximately 4 m, by installing a new section of pipe about 1 m south of the existing pipeline; and
- lower a 50 m long segment of the same pipeline across the future channel of Red Hill Creek by approximately 3 m, by installing a new section about 1 m south of the existing pipeline.

The City of Hamilton has requested that TNPI relocate and lower its pipeline in order to accommodate construction of the City's Red Hill Creek Expressway (Expressway). The Expressway was designed to link Highway 403 in south-west Hamilton to the Queen Elizabeth Way. The City began planning for the Expressway in the 1950s; land acquisition commenced in the 1970s; and initial construction began in 1990. The City is now planning to construct the remaining eight kilometres of the Expressway.

Those portions of TNPI's pipeline that are the subject of this application are located on land owned by the City and are subject to a licence agreement between TNPI and the City. The licence agreement requires that, at the City's request, Trans-Northern relocate its pipeline to other lands owned by the City. In order to accommodate Expressway construction, the City has instructed TNPI to relocate one segment and lower two segments of its pipeline. Upon receipt of the notice from the City, TNPI filed the application which is the subject of this hearing.

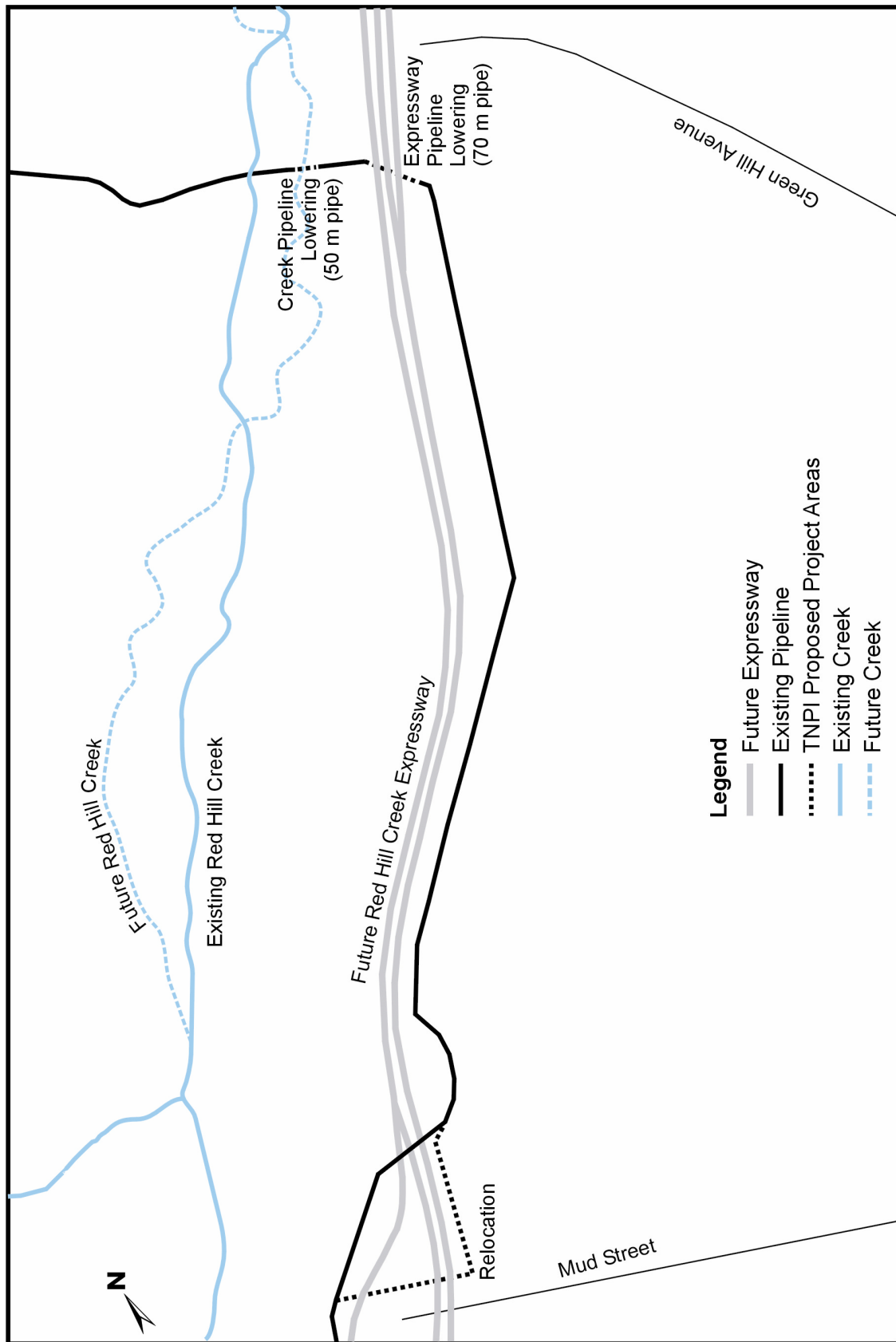
1.2 Environmental Assessment

Trans-Northern submitted that the pipeline relocation and lowerings should not be subjected to the *Canadian Environmental Assessment Act* (CEA Act). It based this argument on the Federal Court decision in *Hamilton-Wentworth (Regional Municipality) v. Canada (Minister of the Environment)*.¹ In that decision, the Court held that the Expressway project was exempted from the CEA Act. The Board was not persuaded by TNPI's argument and therefore conducted an environmental screening in respect of the construction, operation, decommissioning and

1 F.C.T.D. [2001] F.C.J. No. 627, appeal denied F.C.A. [2001] F.C.J. No. 1700.

abandonment of TNPI's proposed Project in compliance with the CEA Act. The Board ensured that there was no duplication in requirements under the CEA Act and the Board's own regulatory process.

Figure 1-1
TNPI Red Hill Creek Project



Chapter 2

Pipeline Design and Safety

2.1 Appropriateness of the Design

The proposed Project consists of relocating one section and lowering two sections of the pipeline. The relocation consists of installing approximately 525 m of new pipe with an outside diameter of 406.4 mm. This section of pipeline would be installed at a depth of 1.2 m under the future Expressway. Associated with the relocation, approximately 250 m of the existing pipeline would be filled with grout and abandoned in place, while approximately 147 m of the existing pipeline would be removed and disposed of at a licensed scrap facility.

The two sections of pipeline to be lowered are 70 m and 50 m in length. At both these lowerings, the existing pipe would be removed and new pipe installed at a greater depth. The removed pipe would be disposed of at a licensed scrap facility.

The specifications of the new pipe are:

- Grade 359;
- Wall thickness of 7.14 mm;
- Yellow Jacket pipe coating; and
- Polyguard 600 primer and Kema Series 60 Tape joint coating.

During the construction phase, all field joints would be radiographically examined for 100% of the circumference and the new pipe sections would be hydrostatically tested for eight hours as set out in TNPI's Hydrostatic Testing Procedures and as required by the current Canadian Standards Association (CSA) Z662, *Oil and Gas Pipeline Systems*.

The cathodic protection would be maintained on the pipeline.

Views of the Board

TNPI indicated that the proposed Project would be designed, constructed and operated in accordance with the *Onshore Pipeline Regulations, 1999* (OPR-99). The OPR-99 specifies that the design, installation, testing and operation of the pipeline must be in accordance with the applicable provisions of CSA standard Z662, and all applicable standards, specifications and codes incorporated by reference in that standard.

The Board is satisfied that TNPI's proposed design is appropriate and would meet widely accepted standards, as well as the Board's OPR-99, for design, construction, testing and operation.

2.2 Public Safety

Through the OPR-99, the Board requires companies to develop and implement a safety program that would anticipate, prevent, manage and mitigate potentially dangerous conditions and exposure to those conditions during all construction, operation and emergency activities. The goals are to ensure that:

- pipelines are constructed in a safe and environmentally responsible manner and that detailed safety procedures are developed and available; and
- the public and the environment are protected during construction and maintenance activities and that specific safety procedures are in place and are made available to all applicable personnel.

Furthermore, companies are required to implement an emergency response program, the goals of which are to ensure that:

- applicable emergency procedures are developed and kept current;
- all applicable agencies are aware of the contents of the emergency procedures manual; and
- all applicable persons are prepared to respond to emergency situations.

Views of the Board

TNPI's Operation and Maintenance Program, Emergency and Preparedness Program, and Safety Program were audited by the Board in 2002. The Board found these programs to be satisfactory.

The Board examined TNPI's *Construction Safety Manual* to ensure that specific safety measures would be in place to protect the public during construction of the Project.

The Board is of the view that the safety measures to be implemented by TNPI during the construction and operation of the pipeline are appropriate.

Chapter 3

Financial Matters

TNPI stated that the costs of the relocation and the lowering to accommodate the Expressway have been estimated to be \$1,200,000 and will be borne by TNPI. The cost of the lowering to accommodate the future creek channel has been estimated to be \$175,000 and will be borne by the City of Hamilton.

No intervenors or interested persons expressed concern with respect to the cost of the Project.

Views of the Board

The Board is satisfied that TNPI has the ability to finance the Project.

Chapter 4

Consultation

4.1 Public Consultation and Early Public Notification

TNPI's pipeline is, and its proposed Project would be, located on property owned by the City of Hamilton.

The City stated that it had developed a Community Relations Plan and conducted public consultation for the Expressway project. The City's public documents included TNPI's proposed pipeline relocation, lowerings, and abandonment and the related construction schedule for those activities. Public meetings with people from adjacent neighbourhoods, aboriginal people, and local, provincial and federal government agencies were conducted by the City as part of its public consultation. The City noted that it took the comments received into consideration and made design changes to the Expressway to reduce the impact on neighbourhoods.

TNPI stated that it has not consulted with the public directly regarding its Project. It argued that its Project is small in nature and is an essential component of activities that would be carried out if the Expressway is constructed. Trans-Northern was of the opinion that extensive public notification was conducted and would continue within the context of the work being performed by the City. In the Applicant's view, this notification had provided interested persons with the opportunity to raise issues or concerns with TNPI or the Board.

The Board issued a News Release, sent letters to those persons who expressed an interest in the application, and released a Hearing Order informing the public that the Board would hold a public hearing, by way of written submissions, on the application of TNPI. As required by the Board, Trans-Northern published the notice of the public hearing in newspapers of local distribution.

Views of the Board

On 17 July 2003, the Board considered TNPI's application, public interest in the Expressway, the consultation conducted by the City with respect to the Expressway and the use of land governed by a licence agreement with the City. The Board granted the Applicant exemption from the requirements of the Board's *Guidelines for Filing Requirements* relating to Early Public Notification.

Given the nature of Trans-Northern's proposed Project and the public process conducted by the City, the Board is satisfied that there has been sufficient public consultation.

4.2 Aboriginal Peoples

Trans-Northern stated that informal discussions have taken place with Mr. David Heatley, Director of Haudenosaunee Environmental Delegation and Repatriation of Burials Association and Mr. Norm Jacobs, Keeper of the Faith (Six Nations Reserve and Mohawk Confederacy) about pipeline maintenance work in the Red Hill Valley, as well as the pipeline relocation and two sections to be lowered. TNPI further stated that, although these groups have expressed interest in TNPI's activities, they do not oppose Trans-Northern's Project.

TNPI also noted that the City of Hamilton has been in consultation with the Haudenosaunee (Six Nations Confederacy) as to the extent of all the work associated with the Expressway project, including the pipeline.

Views of the Board

The Board notes that the Haudenosaunee (Six Nations Confederacy) did not raise concerns about the Project during the Hearing. The Board also notes that Trans-Northern has established a Heritage Resource Contingency Plan in the event that any heritage resources are located during construction. Additionally, TNPI will retain the services of a qualified archaeologist during the start-up of the construction activities. The Board is of the view that Trans-Northern has taken appropriate steps to identify concerns that Aboriginal peoples may have regarding the proposed Project.

Chapter 5

Land Matters

On 28 October 1977, the City of Hamilton and TNPI entered into a licence agreement,² which conditionally allowed Trans-Northern to construct and operate a pipeline on City-owned property in the Red Hill Valley. The City regards the relocation of the pipeline as essential to the construction of the Expressway and the licence agreement was drafted with a view to managing this relocation process.

The licence agreement conditions state that the City may require TNPI either to remove its pipeline from City property or to relocate its pipeline to an alternate location. Where the City requires TNPI to relocate its pipeline, the City would be required to provide Trans-Northern with alternate lands for the relocation.

In April 2003, the City issued a request for Trans-Northern to relocate its pipeline. TNPI's proposed Project would occur entirely within the City's Expressway disturbed work area and would be undertaken to accommodate construction of that Expressway. TNPI stated that, although the City has given notice that the pipeline must be moved, the commencement of TNPI's construction activity is subject to the City obtaining all necessary approvals and permits required for TNPI to commence its Project.

TNPI proposes to relocate approximately 525 m of its pipeline to a new location in the vicinity of the Mud Street and Mount Albion Road intersection (Lots 33 and 34, Concession 6). The lowering of two other existing pipeline sections located in King's Forest Park (Lot 33, Concession 5) would be undertaken on existing right of way. The relocated and lowered segments would be situated within a 3.048 m wide right of way.

Trans-Northern also requires a 10 m wide temporary workspace adjacent to the right of way to accommodate construction activities associated with the pipeline relocation and two lowerings. The City has agreed to provide TNPI with alternate City lands and has consented to the Applicant's use of the temporary workspace.

The Applicant included a request for an order pursuant to section 74 of the Act for the abandonment of the portions of the pipeline that would be replaced by the relocated or lowered pipe. TNPI stated that approximately 250 m of existing pipeline would be abandoned in place and approximately 147 m of the existing pipeline would be removed to accommodate the City's Expressway. The City has not raised any concerns and has given its consent for sections of the pipeline to be removed or abandoned in place. Under the licence, TNPI's land rights regarding the removed and abandoned sections will be relinquished following acquisition of an easement for the relocated pipeline.

2 Permission making it lawful for the licensee (in this case, TNPI) to enter onto the licensor's (in this case, the City) land for a specific purpose.

Views of the Board

The Board notes that the licence agreement requires the City to provide alternative City-owned lands for the relocated pipeline. The Board is satisfied that, prior to the commencement of construction, Trans-Northern would have acquired all the necessary lands required, including temporary workspace, for the proposed Project from the City.

The Board is of the view that the site selection and land requirements for the construction and operation of the proposed Project are appropriate.

The commencement of TNPI's construction activities is subject to the City obtaining the necessary approvals and permits for TNPI to do work on City land. Should the Project be approved, the Board will include a condition to reflect this requirement.

Although Trans-Northern applied for an abandonment order pursuant to section 74 of the Act, the Board is of the view that such an order is not required. Removing portions of a pipeline is a necessary component of replacing, relocating and often, lowering a pipeline. As the Board has stated previously, abandonment with regard to section 74 means the permanent cessation of the operation of a pipeline which results in the discontinuance of service. The Board notes that there will be no discontinuance of service.

The Board notes that the City has not raised concerns regarding the removal and decommissioning in place of the existing pipeline. The Board is of the view that the proposed treatment of the existing pipeline is reasonable in this case.

Chapter 6

Environmental and Socio-Economic Matters

6.1 Environmental Matters

The Board, as a Responsible Authority under section 5 of the CEA Act for the proposed Project, examined TNPI's application and prepared an Environmental Screening Report (ESR) pursuant to the CEA Act. As well, under its own mandate, the Board considered environmental issues related to the Project, and Board concerns are addressed in the ESR. The Board issued the ESR, with proposed conditions, for comment by parties and interested persons. Following consideration of the comments, which are included in an addendum to the ESR, the Board made a determination that the Project was not likely to result in significant adverse environmental effects pursuant to paragraph 20(1)(a) of the CEA Act. A copy of the ESR can be obtained by contacting the Secretary of the National Energy Board.

Views of the Board

The Board is of the opinion that, subject to implementation of TNPI's proposed mitigative measures and compliance with the Board's regulatory requirements and the conditions set out in the Order found in Appendix II of these Reasons for Decision, the proposed Project is not likely to cause significant adverse environmental effects.

6.2 Socio-Economic Matters

As part of its application, TNPI submitted that no significant adverse socio-economic impacts would be expected and no change to the existing land uses at the work areas would result from this Project as the proposed works would occur within an active construction zone.

Views of the Board

The Board examined socio-economic issues related to the proposed Project and discussed these issues in the ESR. The Board identified in the ESR a need for a condition that TNPI shall file with the Board evidence that the City of Hamilton has obtained all approvals necessary to permit the City's preparatory work for TNPI's pipeline lowerings and relocation. One of the aforementioned approvals would be clearance from the Ministry of Culture under the *Ontario Heritage Act*.

The Board is of the view that, taking into account the implementation of TNPI's proposed mitigative measures and compliance with the Board's regulatory requirements and the conditions attached to the ESR, the proposed Project will have a negligible socio-economic impact.

Chapter 7

Other Matters

A number of parties and interested persons submitted evidence and comments on matters that were outside the scope of this proceeding. The Expressway was not part of the application before the Board. Evidence and comments that are not related to the relocation and the lowerings of the pipeline or could not be shown in argument to relate to the application were not considered by the Board and, as such, are not addressed in these Reasons for Decision.

The Board made a decision on the applicability of the CEA Act before issuing the Hearing Order; therefore, the applicability of the CEA Act is not an issue in this proceeding and is not addressed in these Reasons for Decision.

Chapter 8

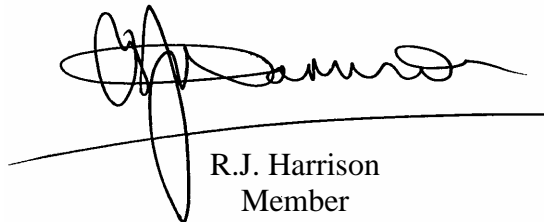
Disposition

The foregoing constitutes our Reasons for Decision in respect of the application heard by the Board in the OHW-1-2003 proceeding.

The Board is satisfied from the evidence that granting TNPI's application would be in the public interest and therefore has approved the application and has issued the attached Order, the effect of which is to authorize TransNorthern to relocate one segment of approximately 525 metres and to lower two segments of approximately 50 metres and 70 metres of its pipeline in Hamilton, Ontario, as set out in its 26 June 2003 application and evidence.



D.W. Emes
Presiding Member



R.J. Harrison
Member



J.S. Bulger
Member

Calgary, Alberta
November 2003

Appendix I

List of Issues

The Board, in Hearing Order OHW-1-2003, identified but did not limit itself to the following issues for consideration in the written hearing:

1. The potential environmental and socio-economic effects of the proposed relocation and lowering of the pipeline (Project), including those factors outlined in subsection 16(1) of the *Canadian Environmental Assessment Act*.
2. The suitability of the design of the proposed Project.
3. The terms and conditions to be included in any approval the Board may issue.

Appendix II

Order XO-T002-19-2003

IN THE MATTER OF the *National Energy Board Act* (the Act) and the regulations made thereunder; and

IN THE MATTER OF an application, pursuant to section 58 of the Act, by Trans-Northern Pipelines Inc. (TNPI), filed with the National Energy Board under File 3400-T002-57.

BEFORE the Board on 20 November 2003.

WHEREAS the Board has received an application made pursuant to section 58 of the Act by TNPI dated 26 June 2003 for authorization to:

- relocate approximately 525 m of its 406.4 mm (16 inch) diameter pipeline by grouting and abandoning in place approximately 250 m of its existing 16 inch diameter pipe, removing approximately 147 m of its existing 16 inch pipe, and constructing approximately 525 m of new 16 inch pipeline;
- lower a 70 m long segment of the same pipeline across the proposed Red Hill Creek Expressway by approximately 4 m, by installing a new section of pipe about 1 m south of the existing pipeline; and
- lower a 50 m long segment of the same pipeline across the future channel of Red Hill Creek by approximately 3 m, by installing a new section about 1 m south of the existing pipeline

in Hamilton, Ontario (the Project);

AND WHEREAS the Board conducted a public written hearing pursuant to Hearing Order OHW-1-2003 during which it considered evidence and argument presented by TNPI and parties and letters of comment from interested persons;

AND WHEREAS pursuant to the *Canadian Environmental Assessment Act* (CEA Act), the Board has considered the information submitted by TNPI and has performed an environmental screening of the Project;

AND WHEREAS the Board has determined, pursuant to paragraph 20(1)(a) of the CEA Act that, taking into account the implementation of TNPI's proposed mitigative measures and those set out in the attached conditions, the Project is not likely to cause significant adverse environmental effects;

AND WHEREAS the Board's decisions on TNPI's application are set out in its OHW-1-2003 Reasons for Decision dated November 2003 and in this Order;

IT IS ORDERED that the Project described above is exempt from the provisions of sections 30, 31 and 47 of the Act, subject to the following conditions:

1. Unless the Board otherwise directs, TNPI shall cause the approved facilities to be designed, manufactured, located, constructed and installed in accordance with those specifications, drawings and other information or data set forth in its application or as otherwise included in evidence as part of the OHW-1-2003 proceeding.
2. Unless the Board otherwise directs, TNPI shall implement or cause to be implemented all of the policies, practices, mitigative measures, recommendations and procedures for the protection of the environment included and referred to in its application or as otherwise included in evidence as part of the OHW-1-2003 proceeding.
3. Unless the Board otherwise directs, TNPI shall file with the Board, at least fourteen (14) days prior to the commencement of construction, evidence that the City of Hamilton has obtained all approvals necessary to permit the City's preparatory work for TNPI's pipeline lowerings and relocation (including blasting, topsoil stripping, and clearing of vegetation).
4. Unless the Board otherwise directs, TNPI shall file with the Board at least three (3) days prior to commencement of the lowering of the section of mainline pipeline on Lot 33, Concession 5 to accommodate the Red Hill Creek channel realignment, evidence that the City of Hamilton has cleared the site of vegetation and stripped the topsoil.
5. Within 30 days of the date that the approved facilities are placed in service, TNPI shall file with the Board a confirmation, by an officer of the company, that the approved facilities were completed and constructed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, the officer of the company shall file with the Board details as to why compliance cannot be confirmed.
6. Unless the Board otherwise directs prior to 31 December 2004, this Order shall expire on 31 December 2004, unless work on the Project has commenced by that date.

NATIONAL ENERGY BOARD

Michel L. Mantha
Secretary