National Energy Board | Office national de l'énergie

Reasons for Decision

Enbridge Pipelines (Westspur) Inc. Alida to Cromer Capacity Expansion (ACCE) Project

OH-2-2007

June 2007

Facilities

Canada

National Energy Board

Reasons for Decision

In the Matter of

Enbridge Pipelines (Westspur) Inc. Alida to Cromer Capacity Expansion (ACCE) Project

Section 52 Application dated 17 January 2007, for the Alida to Cromer Capacity Expansion Project

OH-2-2007

June 2007

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Glossary of Terms and Abbreviations

ACCE Project or the Project	Alida to Cromer Capacity Expansion Project
Act or NEB Act	*National Energy Board Act*
Annual Capacity	the average daily rate that the pipeline system is able to generate on an annual basis
Applicant	Enbridge Pipelines (Westspur) Inc.
Apportionment	the method of allocating the difference between the total shipper nominated volume on Enbridge Pipelines Inc.'s mainline and the available pipeline operating capacity, where the latter is smaller
b/d	barrels per day
Board or NEB	National Energy Board
CAPP	Canadian Association of Petroleum Producers
CEA Act or CEAA	*Canadian Environmental Assessment Act*
CSA	Canadian Standards Association
CSA Z662-03	CSA standard Z662-03, *Oil and Gas Pipeline Systems*
Dakota Nations of Manitoba (or DNM)	Sioux Valley Dakota Nation, Birdtail Sioux First Nation, Canupawakpa Dakota First Nation, Dakota Tipi First Nation and Dakota Plains First Nation
DESR or Draft ESR	*Draft Environmental Screening Report*
EA	engineering assessment
Enbridge Westspur	Enbridge Pipelines (Westspur) Inc.
EPP	Environmental Protection Plan
ESR	*Environmental Screening Report*
Forecast Restriction	A term used by Enbridge Westspur regarding the method used to restrict forecast volumes submitted by producing companies at the receipt points on to its system. These restrictions occur when there are capacity constraints on the Enbridge Westspur system, to dictate the volumes which may be transported upstream of the constraints.
HVP	high vapour pressure

ILI	in-line inspection
IMP	integrity management program
km	kilometre
kPag	kilopascals (gauge)
LVP	low vapour pressure
m	metre(s)
mm	millimetre(s)
m^3/d	cubic metres per day
MOP	maximum operating pressure
NGL	natural gas liquids
OD	outside diameter
OPR-99	*Onshore Pipeline Regulations, 1999*
PPBoR	plan, profile and book of reference
psig	pounds per square inch (gauge)
Reasons	Reasons for Decision
RoW	right-of-way
SBDFN	Standing Buffalo Dakota First Nation
shipper	the party that contracts or nominates with a pipeline for transportation service

Recital and Appearances

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

IN THE MATTER OF an application dated 17 January 2007 by Enbridge Pipelines (Westspur) Inc. for:

(a) a Certificate of Public Convenience and Necessity under section 52 of the NEB Act authorizing the construction and operation of the Alida to Cromer Capacity Expansion (ACCE) Project; and

(b) an exemption, pursuant to section 58 of the NEB Act, from provisions of subsections 31(c), 31(d) and section 33 requiring the filing of a Plan, Profile and Book of Reference; and

(c) a change of service and increase in maximum operating pressure of an existing pipeline under section 43 of the *Onshore Pipeline Regulations, 1999.*

IN THE MATTER OF National Energy Board Hearing Order OH-2-2007, dated 2 February 2007.

HEARD in Regina, Saskatchewan on 11, 12 and 13 April 2007.

BEFORE:

Mr. R.R. George	Presiding Member
Mr. S.J. Crowfoot	Member
Ms. S.A. Leggett	Member

Appearances	**Participants**	**Witnesses**
Mr. R. Neufeld Mr. A. Kerkovius	Enbridge Pipelines (Westspur) Inc.	Mr. H. Arcand Ms. F. Want Ms. S. Irwin Mr. K. Stelnicki Mr. D. Davidson Mr. K. Hatfield
Mr. J. Mohrbutter	Canadian Association of Petroleum Producers	
Mr. J.H. Smellie Mr. R.V. Rodier	EnCana Corporation	
Mr. M.C. Phillips	Standing Buffalo Dakota First Nation	Elder W. Goodwill Elder C. Tawiyala Elder D. Thorne Chief R. Redman

Mr. S. Rymes	Saskatchewan Industry and Resources
Mr. D. Saumure	National Energy Board

Chapter 1

Introduction

Enbridge Pipelines (Westspur) Inc. (Enbridge Westspur, or the Applicant) is indirectly a wholly-owned subsidiary of the Enbridge Income Fund, which is an affiliate of Enbridge Inc. Enbridge Westspur, acquired by Enbridge Inc. in 1995, was transferred to the Enbridge Income Fund in 2003. The Enbridge Westspur pipeline system, which was built in 1956, transports crude oil received from gathering systems and from truck terminals. The pipeline system also transports natural gas liquids (NGL) from a gas processing plant in Steelman, Saskatchewan to the Enbridge Pipelines Inc. terminal at Cromer, Manitoba, which interconnects to the Enbridge Pipelines Inc. mainline.

Figure 1-1 shows Enbridge Westspur's simplified ownership structure.

On 17 January 2007, Enbridge Westspur applied to the National Energy Board (the Board, or NEB) pursuant to section 52 of the *National Energy Board Act* (NEB Act), for a Certificate of Public Convenience and Necessity for the Alida to Cromer Capacity Expansion Project (ACCE Project, or the Project). The purpose of the Project is to increase the capacity of the Enbridge Westspur system to transport crude oil between Alida, Saskatchewan and Cromer, Manitoba from the existing annual capacity of 25,000 cubic metres per day (m^3/d) (157,300 barrels per day (b/d)) to 29,900 m^3/d (188,130 b/d). The Project would include the construction of a 60 kilometre (km) pipeline to transport NGL from Alida to Cromer and the subsequent conversion of the existing pipeline from Alida to Cromer from its current NGL service to the transmission of crude oil. For its entire route, the new 20 m wide right-of-way (RoW) for the 168.3 millimetre (mm) (6 inch) outside diameter (OD) pipeline would be contiguous to an existing 15 m wide RoW containing the 323.9 mm (12 inch) OD Enbridge Westspur NGL pipeline and a 406.4 mm (16 inch) OD line transporting crude oil.

In its 17 January 2007 application, Enbridge Westspur applied for:

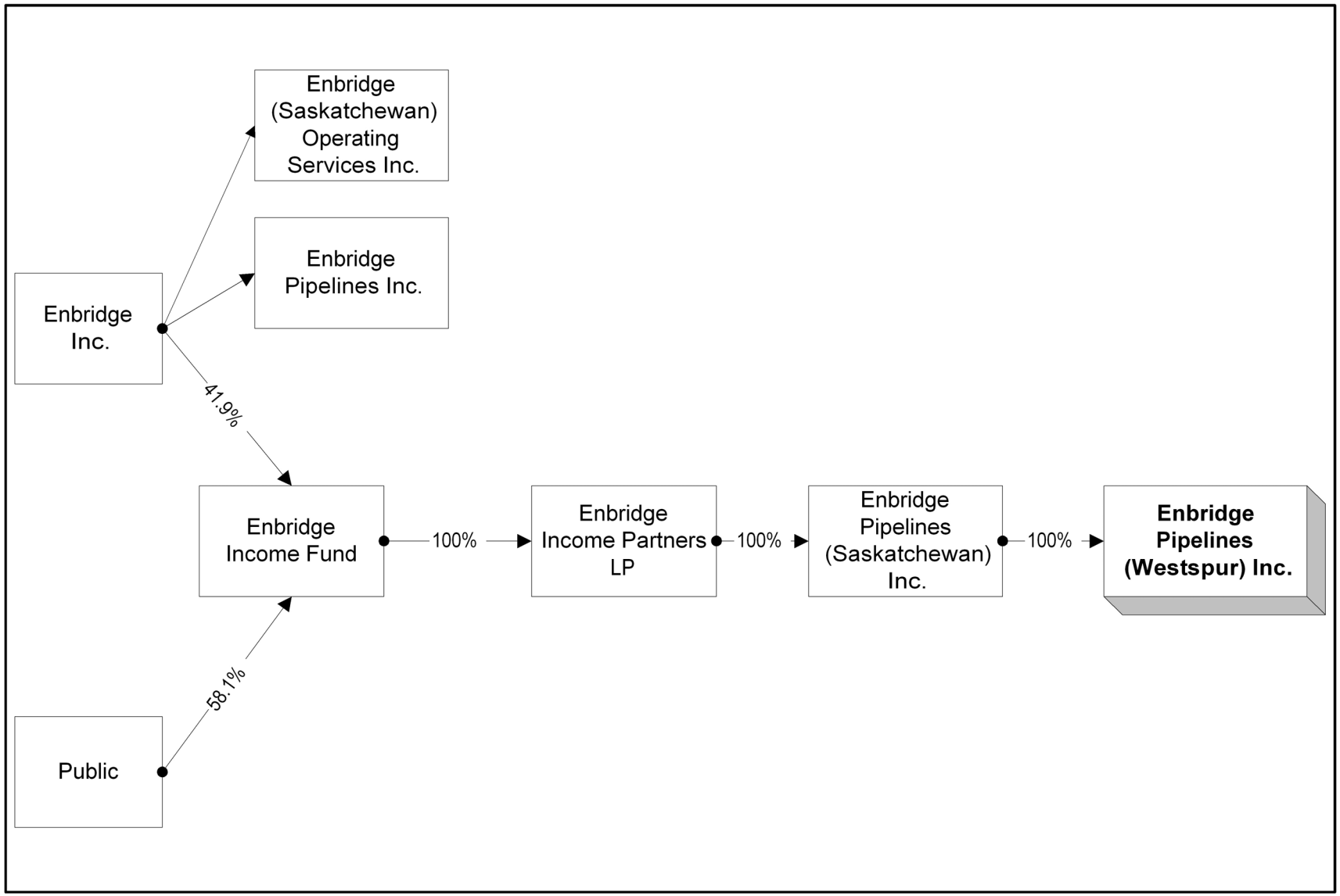
(a) a Certificate of Public Convenience and Necessity under section 52 of the NEB Act authorizing the construction and operation of the Alida to Cromer Capacity Expansion (ACCE) Project; and

(b) an exemption, pursuant to section 58 of the NEB Act, from provisions of subsections 31(c), 31(d) and section 33 requiring the filing of a Plan, Profile and Book of Reference; and

(c) a change of service and increase in maximum operating pressure of an existing pipeline under section 43 of the *Onshore Pipeline Regulations, 1999.*

The Board decided to consider the application in an oral public hearing and on 2 February 2007 issued Hearing Order OH-2-2007, which established the process for the Board's consideration of the Application.

Figure 1-1
Simplified Enbridge Westspur Ownership



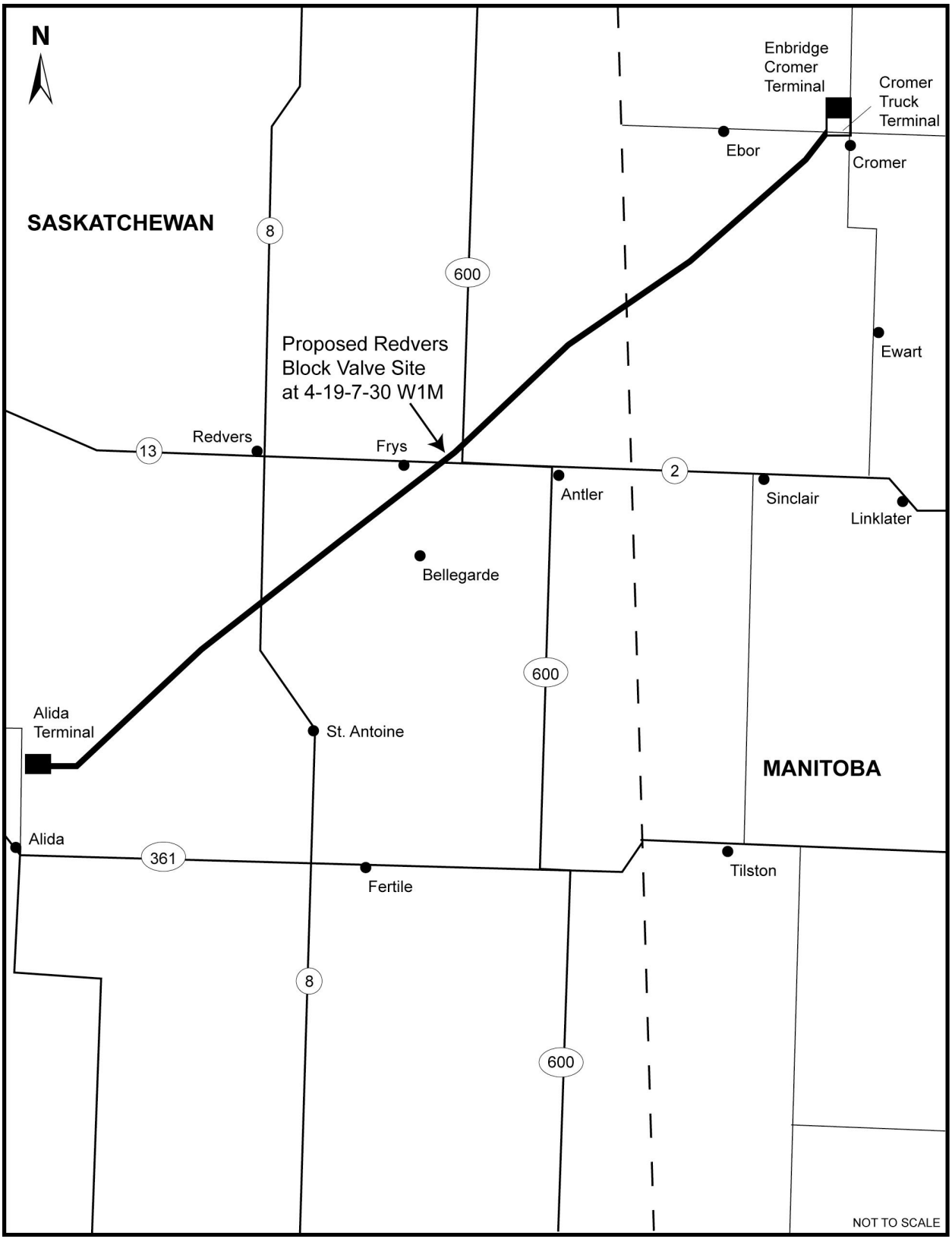
The Project requires a Certificate of Public Convenience and Necessity under s.52 of the NEB Act, and thus triggers the requirement for an environmental assessment under the *Canadian Environmental Assessment Act* (CEA Act or CEAA). Since the Project requires less than 75 km of new right-of-way, a screening level of environmental assessment under the CEA Act was required.

On 8 May 2007 the Board released for public comment a *Draft Environmental Screening Report* (DESR or Draft ESR).

The final Environmental Screening Report (ESR), which was issued with the Board's CEA Act determination on 24 May 2007, incorporates the comments received on the Draft ESR and provides the views of the Board and the Board's determination under the CEA Act.

Figure 1-2 provides an overview of the ACCE Project.

Figure 1-2
Overview of Project



Chapter 2

Facilities

2.1 Introduction

This chapter describes the Enbridge Westspur system, as well as the facilities that are applied for in this matter. It addresses pipeline design integrity and the safety aspects associated with the construction and operation of the Project.

2.2 Current and Proposed Facilities

Between the Alida and the Cromer terminals, the Enbridge Westspur mainline system consists of two operating pipelines sharing a 15 m wide and 60 km long RoW in place since 1956:

- a 406.4 mm (16 inch) crude oil pipeline; and
- a 323.9 mm (12 inch) pipeline currently transporting NGL.

2.2.1 Enbridge Westspur Mainline Modifications

Enbridge Westspur proposed to construct a new 168.3 mm (6 inch) NGL pipeline within a new 20 m wide RoW contiguous to the existing 15 m RoW from Alida to Cromer. Subsequently, the 323.9 mm (12 inch) pipeline would be converted from NGL service to crude oil service and its maximum operating pressure (MOP) would be increased.

2.2.2 Station Upgrades and Additions at Alida, Redvers and Cromer

In order to accommodate both new and converted facilities, Enbridge Westspur indicated that the following modifications are necessary at the existing pipeline terminals.

At Alida:

- the removal of a drag reducing agent (DRA) building;
- for the 168.3 mm pipeline, the addition of one new building containing an NGL booster pump unit and the incorporation of a flare system, an emergency shutdown valve and safety control systems to the NGL booster station; and
- for the 323.9 mm pipeline, the addition of two crude oil booster pumps and the replacement of two crude oil transfer pumps.

At Alida and Cromer:

- associated modifications to piping and pigging facilities.

Enbridge Westspur also proposed to construct an above-ground block valve station near Redvers, Saskatchewan on a site owned by Enbridge Westspur. The 168.3 mm pipeline would therefore

consist of two consecutive segments tying-in at the Redvers valve station, 29.2 km downstream of the Alida terminal.

The Applicant stated that construction of the Project was scheduled to commence in summer 2007, pending regulatory approvals. Enbridge Westspur anticipated that the new 168.3 mm NGL pipeline would then be commissioned in October 2007, prior to converting the existing 323.9 mm NGL pipeline to crude oil service by November 2007.

2.3 Pipeline Design and Integrity

Enbridge Westspur submitted that the design and construction of the Project would comply with the OPR-99 and the *Canadian Standards Association* Z662-03, *Oil and Gas Pipeline Systems* (CSA Z662-03). Additionally, the Applicant committed to following the Engineering Standards, the Operations and Maintenance Manuals, as well as the Integrity Management Program (IMP) of Enbridge Pipelines Inc.

Enbridge Westspur stated that the new 168.3 mm pipeline and the existing 323.9 mm pipeline would initially be tested with water at pressures above 125% MOP. Successful hydrotests would therefore ensure pipe integrity and a minimum safety margin of 1.25 between test pressures and maximum operating pressures, before placing both lines in service.

2.3.1 New 168.3 mm (6 inch) NGL Line

Enbridge Westspur proposed the construction of a new 168.3 mm pipeline to accommodate future NGL throughputs from Alida to Cromer, for which the existing 323.9 mm line was deemed oversized. The new 168.3 mm pipeline would be placed in NGL service at a MOP of 9,928 kilopascals gauge (kPag) (1,440 pounds per square inch gauge (psig)), following a hydrostatic pressure test.

2.3.2 Change in Service and MOP Increase of the 323.9 mm (12 inch) Line

Enbridge Westspur stated that the 323.9 mm pipe had been subjected to a test pressure of 11,566 kPag (1,677 psig) at the mill. Following construction in 1956, the Applicant's files contain no records to confirm whether a subsequent hydrotest was undertaken before opening the pipeline for crude oil service at an MOP of 7,378 kPag (1,070 psig). In 1982, the Board approved the conversion of this pipeline to NGL service, at a MOP of 4,000 kPag (580 psig). The current Project would return the pipeline to its original crude oil service and MOP of 7,378 kPag, following a hydrostatic pressure test.

Enbridge Westspur addressed the integrity of the 323.9 mm pipeline and the viability of proposed modifications in a preliminary engineering assessment (EA). The preliminary EA noted that the pipeline has operated without recorded in-service leaks or failures.

Enbridge Westspur indicated that the operating pressures and pressure cycling experienced during crude oil service were unclear, but that the growth of a pre-existing crack defect would have been unlikely during the subsequent NGL service. In order to mitigate the potential risk of failure due to cracking, the Applicant proposed to complete a hydrostatic pressure test to

establish new maximum operating pressures and determine survivable crack flaw sizes. Following the hydrotest, Enbridge Westspur would monitor pressure cycling and complete a refined fatigue analysis. Should the results indicate susceptibility to crack growth, Enbridge Westspur committed to scheduling crack in-line inspections (ILI).

With regard to corrosion, Enbridge Westspur confirmed that a high resolution metal loss ILI was completed in November 2006. However, the inspection data on 6.5 km of the 60 km Alida-to-Cromer pipeline was not collected, due to a tool malfunction. The Applicant therefore referred to results available from the previous corrosion ILI in 1996, when nine minor corrosion features had been located in these 6.5 km of pipe. Enbridge Westspur estimated that by 2007 these features should not have grown sufficiently to cause a failure at the planned hydrotest pressures. To validate this initial analysis for the 6.5 km, as well as results obtained through the metal loss ILI in 2006, the Applicant would conduct investigative excavations along the pipeline prior to pressure testing.

Enbridge Westspur specified that data gathered by ILI in 2006, associated excavations and the planned hydrotest would be included in the IMP. A detailed viability assessment of the proposed MOP increase and change in service would then be completed.

Views of the Board

The Board notes that the proposed facilities will follow the requirements of OPR-99 and CSA Z662-03 and will comply with national regulations, codes, standards and proven practices of the pipeline industry. The Board also notes the absence of leaks or ruptures in the 323.9 mm (12 inch) line, as well as the intention to maintain normal operating pressures within the MOP in effect prior to 1982. Nevertheless, Enbridge Westspur did experience problems with its recent corrosion inspection and has not provided in-line crack inspection results or pressure data from construction. Therefore the Board views the planned hydrotest as an important means of validating Enbridge Westspur's preliminary integrity assessment of the pipeline.

To ensure that field results also corroborate this initial analysis prior to pressure testing, the Board conditions Enbridge Westspur to file a comparison of the predicted defects through ILI analysis with findings through investigative excavations [condition 8]. Further, should any hydrotest failure occur on the 323.9 mm pipeline, Enbridge Westspur will be required to notify the Board and reassess the pipeline's fitness for the proposed service [conditions 9 and 10].

2.4 Safety of Construction and Operation

In the preliminary EA for the existing 323.9 mm pipeline, Enbridge Westspur noted that NGL typically has a high vapour pressure (HVP) while crude oil has a low vapour pressure (LVP). In the event of a pipeline failure, crude oil service is generally considered a lower risk than NGL service.

Relative to the new 168.3 mm NGL pipeline, Enbridge Westspur provided design and construction specifications which include, but are not limited to, pump data sheets, pipe and coating specifications, piping and instrumentation diagrams, as well as pipeline alignment sheets. Since the detailed engineering phase had begun in December 2006 and was not expected to end until June 2007, Enbridge Westspur indicated that the Project's engineering specifications were preliminary and subject to final design.

The applied-for facilities would be integrated into Enbridge Westspur's existing supervisory control and data acquisition (SCADA) system, which is remotely operated from Estevan, Saskatchewan. The risk of leaks and overpressure is mitigated through continuous monitoring of line flow rates and pressures, the use of safety shutdown switches and pump pressure control valves.

In accordance with OPR-99 and Enbridge Pipelines Inc.'s Operations and Maintenance Manuals, Enbridge Westspur had also developed an Emergency Procedures Manual for its existing pipeline system.

Views of the Board

The Board is of the view that final design and construction specifications, as well as operation practices must address safety considerations. The Board also reaffirms the importance of the hydrostatic pressure test as a safety validation prior to the operation of both the new and the converted pipelines.

In that regard, and to facilitate potential Board inspections, Enbridge Westspur is conditioned to file updated construction specifications [condition 4a], along with a detailed schedule listing major field activities [condition 3].

In accordance with OPR-99, the Board has included conditions requiring Enbridge Westspur to submit the Construction Safety Manual [condition 4b], the Pressure Testing Program [condition 7] and the revised Emergency Procedures Manual to reflect the change in service and installation of new facilities [condition 11].

The Board reminds Enbridge Westspur that an application pursuant to section 47 of the Act for leave to open will be required prior to the commencement of service.

Chapter 3

Public Consultation

3.1 Introduction

The Board expects companies to design a public consultation program that is appropriate for the scale and setting of their projects.

This chapter addresses Enbridge Westspur's public consultation program. Enbridge Westspur also consulted with the shippers on its line. This aspect of consultation is discussed in chapter 7. The company's consultation with Aboriginal Peoples is discussed in chapter 4.

3.2 Enbridge Westspur's Public Consultation Program

In its application, Enbridge Westspur stated that it based the design and implementation of the ACCE Project public consultation program on Enbridge Inc.'s Corporate Social Responsibility Policy**,** which recognizes the value and importance of public consultation and stakeholder engagement as a key component of business practice.

Enbridge Westspur identified landowners and occupants within 1.5 km of the RoW, local government bodies and other government authorities as having an interest in the Project.

Starting in July 2006, various methods were used to provide project information to those identified as having an interest, including personal meetings, mail out packages and public notice advertisements in local newspapers.

Enbridge Westspur submitted that these stakeholders had no outstanding concerns about the ACCE Project. It also indicated that it would continue its ACCE Project consultation and stakeholder engagement activities throughout the project lifecycle.

Views of the Board

The Board expects its regulated companies to develop consultation programs that are appropriate for the nature of their particular projects. In this case, the Board notes that the Project includes 60 km of new pipeline, the entire length of which is immediately adjacent to an existing RoW and most of which is on privately owned agricultural land.

The Board is of the view that Enbridge Westspur's public consultation program was adequate given the scale and setting of the Project. The company identified potentially affected landowners and other stakeholders and used appropriate methods to disseminate project information and engage in consultation. The Board notes that Enbridge Westspur has committed to continuing its consultation activities and expects Enbridge Westspur to do so throughout the lifecycle of the pipeline and facilities.

Chapter 4

Aboriginal Issues

4.1 Introduction

This chapter describes Aboriginal engagement undertaken by Enbridge Westspur and Aboriginal participation in the Board's regulatory process with regard to the ACCE Project.

Figure 4-1 shows the location of First Nations intervenors in relation to the ACCE Project.

4.2 Aboriginal Engagement by Enbridge Westspur

Starting in August 2006, Enbridge Westspur began its initial round of Aboriginal consultation on the ACCE Project. In determining the extent of its consultation program, the Applicant took into consideration the nature of the Project (60 km of new pipeline adjacent to an existing RoW) and the specific location of the Proposed Project (94% of the proposed easement is freehold). Enbridge Westspur also took into consideration the fact that, during the fifty years of operation of the pipeline over the existing RoW, it has never been made aware of any Aboriginal claim, interest or uses on and along the said RoW.

The Applicant contacted First Nations and Métis Groups within a 160 km corridor centred on the existing RoW. The consultation process included mailing project information and formal meetings in the Aboriginal communities to discuss the Project and answer questions. In its application, Enbridge Westspur stated that it contacted the Assembly of Manitoba Chiefs, the Manitoba Métis Federation, the Federation of Saskatchewan Indian Nations, the Métis Nation – Eastern Region, Zone III, the Canupawakpa Dakota First Nation, the Sioux Valley Dakota Nation, the Birdtail Sioux First Nation and the White Bear First Nation.

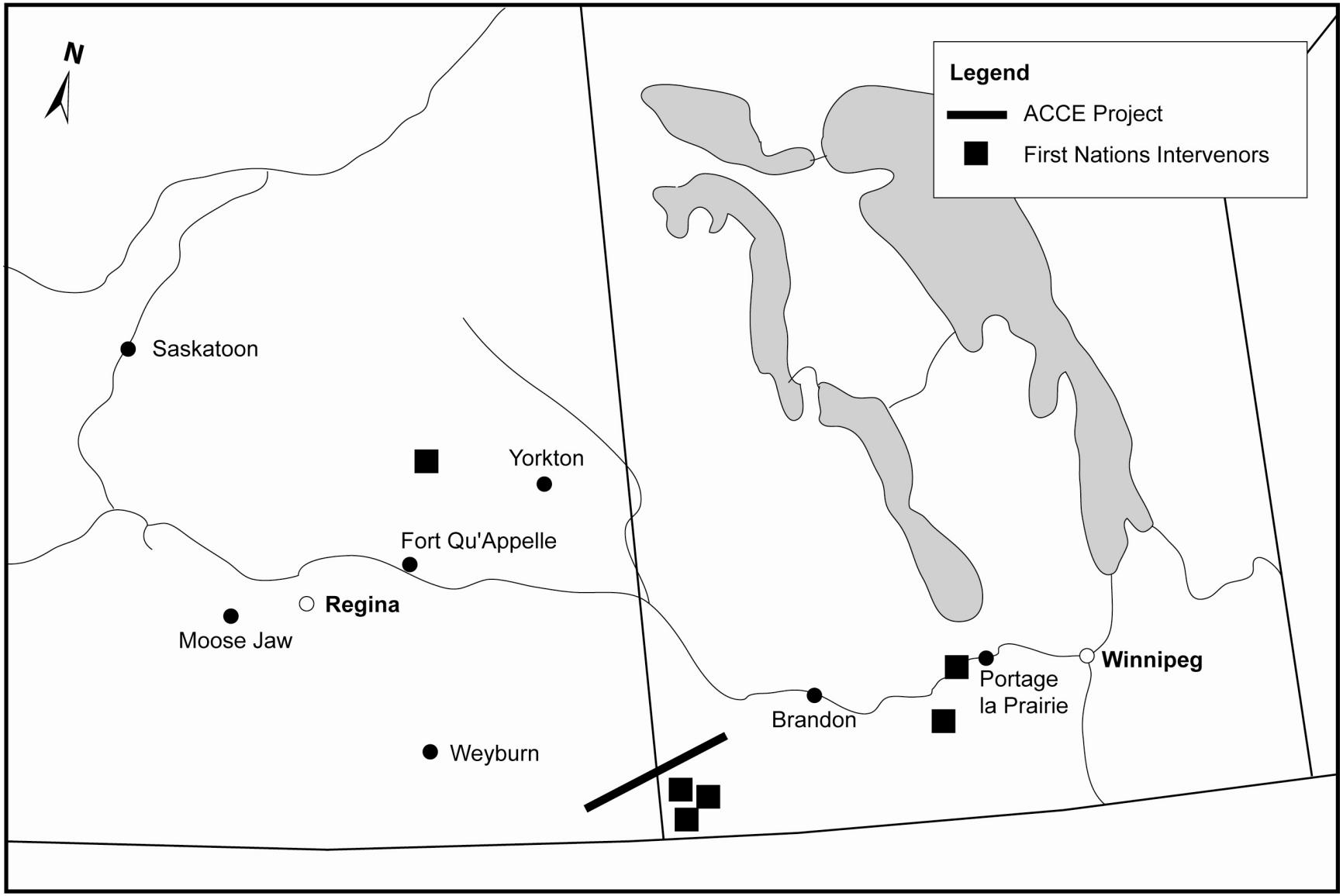
Furthermore, the Applicant contacted various government agencies, including the Manitoba and Saskatchewan Regional Offices of Indian and Northern Affairs Canada, and was informed that there were no current land claims negotiations going on in the ACCE Project area.

4.3 Aboriginal Participation in the Hearing Process

On 17 January 2007, Enbridge Westspur filed its application for the ACCE Project with the NEB. In its application and subsequent filings Enbridge Westspur provided a summary of the consultation it carried out with Aboriginal Peoples.

The NEB issued a Hearing Order on 2 February 2007.

Figure 4-1
First Nations and the ACCE Project



On 22 February 2007, the Standing Buffalo Dakota First Nation (SBDFN) filed an Application for Intervenor Status for the ACCE Project Hearing. In its application, the SBDFN indicated its interest in the matter as including "unextinguished Aboriginal title, self-governance rights and historic allyship status." The SBDFN's reserve is located approximately 200 kilometres from the project area, near Fort Qu'Appelle in the Province of Saskatchewan.

On the same day, the Sioux Valley Dakota Nation, Birdtail Sioux First Nation, Canupawakpa Dakota First Nation, Dakota Tipi First Nation and Dakota Plains First Nation, whose reserves are in the Province of Manitoba (collectively referred to herein as the Dakota Nations of Manitoba or DNM), filed Applications for Intervenor Status in the ACCE Project. On 23 March 2007, the DNM gave notice to the NEB of their decision to suspend their involvement in the ACCE Project proceedings, but did file final argument.

It was only after the filing of the Application for Intervenor Status that Enbridge Westspur became aware that the Standing Buffalo Dakota First Nation, the Dakota Plains First Nation and the Dakota Tipi First Nation had an interest in the Project.

Enbridge Westspur submitted that, when it was made aware of the interest of these First Nations, it sent out the ACCE application materials binder with an offer to come and further explain the project to the leadership of the communities.

In the case of SBDFN, Enbridge Westspur submitted that a member of its staff made telephone calls to the First Nation and on 7 March 2007 met with the Band Manager, Betty Goodfeather for about half an hour to introduce the company and try to arrange an audience with the Chief and Council. A meeting with the Chief and Council could not be arranged before the Hearing.

On 14 March 2007, noting that SBDFN had not yet filed its evidence (the deadline for filing intervenor evidence was 2 March 2007) the Board sent a letter reminding SBDFN that the hearing was set to begin on 11 April 2007 and that the deadline for filing evidence had passed. The Board directed SBDFN to file its evidence, on or before 19 March 2007. In its letter, the Board also reminded SBDFN that it is not within the Board's mandate to make determinations on matters such as the ones identified in its Application for Intervenor Status; more particularly, unextinguished Aboriginal title, self-governance rights and historic allyship status. The letter further specified that when reviewing an application, the Board considers the potential impacts of a project on Aboriginal Peoples.

On 26 March 2007, SBDFN filed its evidence. In its filing, SBDFN indicated that Elders would appear at the Hearing to provide oral traditional evidence. The Board accepted the late filing and agreed to the request that Elders be allowed to provide oral evidence in their own language. The Board decided to hold the Hearing in Regina, which was the nearest centre to SBDFN. The hearing commenced 11 April 2007.

On 12 April 2007, the NEB proceedings started with a pipe ceremony led by Elders of SBDFN. Then Elders provided oral evidence relating to the Dakota worldview, their connection to the land and the Creator, the Seven Council Fires, their governance system, the traditional hunting and the nomadic lifestyle associated with following the buffalo. They also provided evidence regarding the historical relationship and alliance with France, England and Canada. The Elders

mentioned that the First Nation has a claim on the Crown land through which part of the ACCE project runs which, in their view, imposes a duty on the Crown to consult with the SBDFN: such consultation has not taken place.

4.4 Impact of the ACCE Project on First Nations

Views of the parties

Standing Buffalo Dakota First Nation

It is SBDFN's position that the Crown has a duty to consult with the Dakota Nation before a Certificate of Public Convenience and Necessity can be issued and to this date, the Crown has not consulted and denies the duty to do so.

According to SBDFN, the ACCE Project would be within Dakota traditional territory and would traverse five quarters of Crown land upon which the SBDFN has a claim. It is located on land that is part of a vast traditional territory the Dakota historically used to hold ceremonies, hunt and travel. Canada has never entered into a treaty agreement with the Dakota and despite more than 70 meetings over the past seven years with the Saskatchewan Office of the Treaty Commissioner, the parties have not been able to resolve the issues and negotiations have been suspended without reaching a resolution. The Dakota Nation has retained jurisdiction over its traditional territory and therefore, the SBDFN submit, Canada has a duty to consult with the Dakota before it permits action that will affect lands that are subject to a claim.

The SBDFN also expressed a specific concern, namely the potential of archaeological finds or disturbances as the proposed project is located within its traditional territory and earlier finds of burial sites, pottery, pipes and other objects found in the general geographic area of the project had been identified as Dakota.

Dakota Nations of Manitoba

In its final argument, the DNM echoed the position put forward by SBDFN, mainly that the lands upon which the existing and the proposed pipelines are located are encumbered by un-extinguished Aboriginal title. As such, the primary obligation to consult and accommodate rests with the Government of Canada. Despite the fact that the Applicant has not met its consultation obligations, the DNM indicated that they are prepared at this point in time to explore further discussions with the Government of Canada and Enbridge Westspur.

Enbridge Westspur

The Applicant argued that its consultation program was sufficient considering the nature and location of the project. In developing its Aboriginal consultation program, the company took into consideration the fifty year operating history during which there was no mention of any Aboriginal interest. Furthermore, its consultations with Aboriginal People within a 160 km corridor did not disclose any impact of the pipeline project on any Aboriginal interest. Finally, despite SBDFN's participation in the NEB Hearing, Enbridge Westspur has not heard that any Aboriginal rights or interests of the SBDFN would be impacted by the ACCE Project.

With regard to the Crown's duty to consult, Enbridge Westspur stated that it is not sufficient to simply assert a claim that Aboriginal rights will be infringed by a project in order to trigger a requirement for Crown consultation. The duty arises where the Crown contemplates conduct that might adversely affect such rights or title. Absent credible evidence of a potential infringement, it is difficult to determine how a constitutional duty to consult could arise.

According to Enbridge Westspur, the issues raised by the SBDFN and the DNM are more an attempt to force the Government of Canada to accept their claim of Aboriginal rights and title than any concerns or potential infringement the ACCE Project could have on the First Nations.

Views of the Board

In keeping with the Board's requirement for applicants to initiate early discussions with Aboriginal groups potentially affected by a proposed project, Enbridge Westspur identified a 160 km wide corridor and consulted with Aboriginal groups and First Nations within the corridor including the Assembly of Manitoba Chiefs, the Manitoba Métis Federation, the Federation of Saskatchewan Indian Nations and the Métis Nation – Eastern Region, Zone III. In addition, Enbridge Westspur contacted Federal and Provincial governmental Departments and Agencies, including INAC's Regional Offices, which confirmed that there are no current, ongoing land claims discussions over the proposed Project area. Once the Applicant became aware of the concerns raised by SBDFN, the Dakota Plains First Nations and the Dakota Tipi First Nation, which had not been consulted originally, it provided them with a copy of the application and made attempts to meet with those communities even though they are located outside of the company's 160 km consultation corridor.

Once an application is filed with the Board, all interested parties, including Aboriginal Peoples, have the opportunity to participate in the Board's process to make their views known so they can be factored into the decision-making process.

In this particular instance, the Board notes that to accommodate and facilitate SBDFN's participation in the process, it allowed the filing of late evidence, agreed to let the Elders provide oral testimony in their own language at the hearing (contrary to the standard practice of requiring that the evidence be filed ahead of time), and decided to hold the Hearing in Regina.

The Board is of the view that those Aboriginal groups with an interest in the proposed Project were provided with the details of the project and were given the opportunity to make their views known to the Board so that they could be factored into the decision-making process.

The steps the Board has taken have provided SBDFN and the DNM an opportunity to participate fully in its process and to bring to the Board's attention all their concerns. The Hearing Process provided all parties with a forum in which they could receive further information, were able to question and challenge the evidence put forward by the parties and present their own views and concerns with regard to the ACCE Project. The SBDFN and the Dakota Nations of Manitoba had the opportunity to present evidence, including any evidence of potential infringement the Project could have on their rights and interests. To the extent that the SBDFN and the Dakota Nations of Manitoba have chosen to provide their views to the Board, those views were fully taken into consideration in the decision making process.

The Board carefully considered the evidence provided by the SBDFN but has determined that it is of limited relevance to the issues before it. The SBDFN's evidence related primarily to unextinguished Aboriginal title, self-governance rights and historic allyship status. Parties acknowledged that none of these issues are within the mandate of the Board to determine and conceded that they were not asking the Board to adjudicate on these issues.

In this particular instance, the proposed Project will be located on a RoW adjacent to an existing RoW that has been in place for fifty years. During all those years of operation, the company has stated that it has never heard of any claims from First Nations over any portion of the RoW and the First Nations have provided no evidence of any current traditional use over any portion of the RoW. This is not surprising given that most of the RoW is on privately owned agricultural land (94% of the land is freehold, 4% is Crown Land and 2% is Public Land).

The SBDFN has no legally proven rights in the area and their claim is not recognized by the Government of Canada. Even if the Board were to accept the proposition that they have rights in the Project area, aside from the possible archaeological discoveries on the RoW, the SBDFN has provided no evidence regarding specific impacts the Project could have on its interests.

The Board recognizes the importance of the issue of archaeological finds for the Aboriginal Peoples. Therefore, should the Certificate be issued, to ensure the protection and proper handling of any archaeological findings, the Board will include a condition that directs Enbridge Westspur to immediately cease all work in the area of any archaeological find and contact the responsible provincial authorities. Only when approval is granted by the responsible authority would the Applicant be able to resume work. [condition 6]

Chapter 5

Routing and Land Matters

5.1 Introduction

This chapter addresses matters of route selection, land requirements and land acquisition. The issue of the exemption from filing of plan, profile and book of reference is addressed in Chapter 8.

5.2 Route Selection

Enbridge Westspur stated that the routing criteria for the Project were to:

- follow the existing RoW to the extent feasible;
- take advantage of previously established control points, such as drainage crossings;
- avoid previously undisturbed environmentally sensitive habitat;
- minimize the number of new wetlands crossed;
- minimize the crossing of tree habitat;
- minimize the amount of sensitive terrain crossed;
- minimize disturbance to habitats of listed flora and fauna;
- select a route that was feasible to reclaim; and
- avoid known heritage resource sites.

Enbridge Westspur noted that during evaluation of routing options and subsequent field investigations, it was evident that routing for the original pipeline constructed in 1956 considered wetland avoidance and appropriate creek crossing locations. Consequently, Enbridge Westspur focused its route evaluation on the existing pipeline RoW, considering an option that parallels it and other options that deviate from it, rather than evaluating entirely new routes. Enbridge Westspur submitted that deviations were considered only where there could be potential to reduce environmental and social impacts or to address technical and safety issues. A north and a south deviation were considered in addition to paralleling the original route. Both deviations diverge up to approximately one km from the original corridor while still converging at the same end points as the routing option that parallels the existing RoW.

Enbridge Westspur stated that the evaluated deviations resulted in conflicts with as many or more wetlands of equal or greater sensitivity or presented pipeline engineering constraints such as bending. For instance, the north deviation required approximately 0.8 km of new RoW length, crossed 51 new wetlands, and crossed Graham and Jackson Creeks at new locations, while the south deviation required approximately 1.2 km of new RoW length, crossed 48 new wetlands, and crossed Graham and Jackson Creeks at new locations.

As a result of these evaluations, and considering the success of reclamation efforts on the existing RoW based on 2006 field assessment, Enbridge Westspur stated that deviating from the original RoW route was not considered to be advantageous. Therefore, Enbridge Westspur determined that aligning the new RoW alongside and contiguous to the existing RoW for its entire length best addressed the routing criteria. Enbridge Westspur noted the following features of its applied-for routing of the new RoW alongside and contiguous to the existing RoW:

- no environmental, heritage, socio-economic, or engineering constraints are encountered along the existing corridor that cannot be effectively mitigated or compensated;
- there have been no environmental issues related to the reclamation and operation of the existing RoW;
- effects associated with a widening of an existing pipeline RoW would be incremental, while a new route would affect additional lands and wetlands;
- the existing RoW has been in place for more than 50 years and is well known to all interested parties;
- adequate workspace and access are available along the route; and
- pipeline surveillance and maintenance activities can be conducted more efficiently for pipelines located within a common RoW, compared to two RoWs that are geographically separated.

Enbridge Westspur also submitted that, by placing the proposed new RoW parallel to and contiguous with the existing RoW, incremental environmental and land disturbances are reduced, and cost-effective design, operations, and maintenance are facilitated.

Enbridge Westspur stated that the proposed pipeline route would, for the vast majority of its length, traverse privately-owned lands used primarily for cultivation farming. Enbridge Westspur noted that it contacted and engaged with an estimated 110 landowners and tenants situated within a 1.5 km radius of the proposed pipeline route. Enbridge Westspur indicated that no specific concerns or objections to the proposed routing of the new pipeline were raised by these landowners or tenants during these consultations. Enbridge Westspur submitted that it has obtained from these landowners all of the RoW agreements and crossing agreements required to construct and operate the proposed pipeline.

Views of the Board

The Board finds that the RoW route put forward for the 60 km of proposed new pipeline for the ACCE Project is appropriate. The Board considers the route selection process applied by Enbridge Westspur, including the use of a set of environmental, socio-economic, and engineering criteria in evaluating three routing alternatives, to be reasonable given the nature and setting of the Project. By selecting a new pipeline RoW route that is parallel to and contiguous with its existing RoW, the Board is satisfied that Enbridge Westspur has chosen a route that minimizes adverse impacts to the land, landowners, and nearby residents while providing efficiencies

and synergies for construction and operation of adjacent compatible facilities and overlapping footprints.

The Board notes that Enbridge Westspur undertook to identify and consult with all landowners and tenants who may be directly affected by the proposed pipeline RoW. Considering that no objections or concerns were raised by these landowners and tenants regarding the proposed route, and the fact that all land acquisition agreements have since been obtained for the proposed RoW, the Board is given further reason to conclude that the proposed pipeline RoW route is suitable for this Project.

5.3 Land Requirements

Enbridge Westspur stated that the Project would include development of a new 20 m-wide RoW for the 60 km of new pipeline to be constructed, adjacent to the existing 15 m-wide RoW. Enbridge Westspur noted that a temporary 7 m-wide workspace would be required in certain locations along the proposed route to provide a travel lane on the north side of and adjacent to the new and existing RoWs during construction, but only where the existing 15 m-wide RoW would not be sufficient. Enbridge Westspur indicated that no additional land rights would be required for the proposed new booster station and surface valve site, as they would be located on lands it already owns. Enbridge Westspur further noted that access to the Project would be via existing public roads, and therefore no new lands would be required for access purposes.

Enbridge Westspur submitted design requirements and site-specific factors to demonstrate its need for a 20 m-wide permanent RoW for the new pipeline. These requirements and factors pertain to the physical size of the pipe, constraints imposed by nearby existing facilities, safety and environmental considerations, ground and soil characteristics, and the space required for machinery and related construction and maintenance activities. No concerns were raised by landowners or tenants regarding the size and location of the lands required for the ACCE Project.

Views of the Board

In considering the potential impacts of the Project on landowners and tenants, the Board finds that Enbridge Westspur's anticipated permanent and temporary land requirements are reasonable and justified. The Board is of the view that Enbridge Westspur has adequately demonstrated the need for a 20 m-wide RoW and that the additional lands are required for temporary uses in order to construct and operate the proposed new pipeline in a safe and efficient manner. The Board finds that Enbridge Westspur's proposed siting of its new RoW parallel to and contiguous with its existing 15 m-wide RoW allows for maximum use of an existing pipeline RoW footprint for construction and operation purposes rather than creating a new footprint. Considering the rationale and justification provided for the lands required, combined with the route selection approach taken, the Board finds that the lands required for the ACCE Project are appropriate.

5.4 Land Acquisition

Enbridge Westspur confirmed that all land rights for the Project would be acquired in compliance with the provisions and regulations of the NEB Act and, in particular, s. 87(1) of the NEB Act. Enbridge Westspur indicated that along the proposed RoW, approximately 94% of the land is privately owned, while the remainder is either Crown land or public conservation lands. Enbridge Westspur stated that for privately-owned lands and public conservation lands, the land rights for the new RoW would be acquired through easement agreements or statutory RoW agreements. Submitted sample copies of landowner notices and land acquisition agreements indicate that Enbridge Westspur has complied with NEB Act requirements.

Enbridge Westspur noted that land agents acting on its behalf were making personal contact with landowners and tenants along the proposed RoW in order to negotiate voluntary easement or working rights agreements in compliance with the NEB Act. Some site-specific lands concerns and questions pertaining to the ACCE Project were raised early on during Enbridge Westspur's consultation activities. However, Enbridge Westspur indicated that these questions and concerns have since been addressed or were no longer outstanding. More recently, Enbridge Westspur submitted that it has consulted further with landowners and has obtained all of the RoW and crossing agreements required to construct and operate the proposed new pipeline.

Enbridge Westspur stated that it has prepared a "registered owner/land location list" for its proposed new pipeline RoW, and that its post-construction monitoring and maintenance program would include contacting landowners every two to three years to discuss potential issues, and that it would log all complaints received during construction and operation activities as well as the actions taken in response to these complaints.

Views of the Board

The Board has considered Enbridge Westspur's land acquisition approach for the ACCE Project and finds it to be appropriate. The Board finds Enbridge Westspur's commitments to comply with the land acquisition requirements of the NEB Act, to consult with and track the issues raised by those who own or reside on lands required for the Project both prior to land acquisition and following pipeline construction, and to negotiate agreements with all landowners to be suitable for the Project.

Chapter 6

Environment and Socio-Economic Matters

6.1 Introduction

This chapter provides a brief description of the environmental assessment process used by the NEB for the ACCE Project. It also addresses the socio-economic issues of employment, economy, infrastructure and services.

6.2 Environmental Screening Process

As mentioned in Chapter 1 of these Reasons, the Project would require a Certificate of Public Convenience and Necessity under section 52 of the NEB Act, and thus triggers the requirement for an environmental assessment under the CEA Act. Since the Project does not require more than 75 km of new RoW, the Project required a screening level of environmental assessment under the CEA Act.

The ESR describes the proposed Project, the setting for the Project, the methodology for the assessment, the potential environmental and socio-economic effects and the mitigation measures proposed by Enbridge Westspur, and contains an evaluation of the likely significance of any adverse environmental and socio-economic effects.

All known environmental and socio-economic effects covered by the CEA Act are assessed in the ESR.

> ***Views of the Board***
>
> The Board determined in the ESR that, with the implementation of Enbridge Westspur's environmental protection procedures and mitigation measures and the Board's recommendations [condition 2 and 5], the proposed Project is not likely to cause significant adverse environmental effects.
>
> Copies of the ESR are available in the National Energy Board library or on-line at the Board's electronic document repository at www.neb-one.gc.ca (click on "Regulatory Documents", then enter "450715" in the **Search Regulatory Documents for** box, click on "Go", choose the folder named "2007-01-17 Application for the Alida to Cromer Capacity expansion (ACCE) Project (OH-2-2007)", click on the Reasons for Decision and scroll down to the Environmental Screening Report).

6.3 Socio-Economics

Potential socio-economic effects covered by the CEA Act are included in the ESR. Potential socio-economic effects covered by the NEB Act are found below in sections 6.3.1 and 6.3.2.

Enbridge Westspur submitted that the Project would have an overall modest positive socio-economic effect in the Project area.

6.3.1 Employment and Economy

Enbridge Westspur submitted that if all construction workers were to come from outside of the area, then up to $800,000 could be realised in direct economic benefits as well as indirect economic benefits resulting from spending on such things as temporary accommodation and meals.

However, the applicant anticipates that most of the workers will come from within the Project area. The workers with the requisite skill level are expected to come from Estevan, Redvers and Virden. In that case, Enbridge Westspur estimates the benefits to the local economy through wages and salaries would be approximately $1.5 million.

6.3.2 Infrastructure and Services

Enbridge Westspur submitted that accommodation for the project construction workers can be supplied by local hotels, motels and campgrounds. The Applicant submitted that, given the short duration of the construction period, any stress on these services would not be significant, and there would be tangible positive economic benefits.

With respect to traffic, construction vehicles would be passing through the area from 6:00 a.m. to 7:00 p.m. Enbridge Westspur submitted that it would work with local authorities to ensure that effects on local traffic are minimized. In its Environmental Protection Plan, Enbridge Westspur provides mitigative measures to address traffic, dust from traffic and highway and road crossings.

Views of the Board

The Board accepts the evidence of Enbridge Westspur and is of the view that the Project will have a positive impact on employment and economy in the Project area and that it will not cause any significant adverse effects on local infrastructure and services.

Chapter 7

Economics, Finance, Supply and Markets

7.1 Introduction

This chapter addresses tolls, financial matters, supply, markets, and Enbridge Westspur's consultation with shippers considered in the determination of the likelihood that the applied-for facilities will be used and useful over their economic life.

7.2 Tolls and Financial Matters

Enbridge Westspur is financially regulated on a complaint basis as a Group 2 company. Under this method of regulation, and pursuant to paragraph 60(1)(a) of the NEB Act, Enbridge Westspur is responsible for providing shippers and other interested parties with sufficient information to enable them to ascertain whether the tolls are reasonable. In the absence of a complaint, the Board may presume that the filed tolls are just and reasonable.

Enbridge Westspur tolls are based on a cost of service methodology in accordance with shipping agreements with certain crude oil shippers signed in 1985, but expired in 1995.

The Applicant submitted that the $14 million Project will be financed through a combination of internally generated funds and a drawdown of existing credit facilities. Enbridge Westspur submitted that the expected costs of the facilities would be recovered through revenue collected on incremental volumes transported and through an increase in each of the Enbridge Westspur crude oil tolls destined for Cromer based on forecast levels of throughput. The crude oil toll impact is expected to range from a Base Case increase of $\$0.19/m^3$ ($0.03/barrel) to a Worst Case increase of $\$0.42/m^3$ ($0.07/barrel). However, because Enbridge Westspur is financially regulated on a complaint basis the Applicant has not applied for the resultant toll increase.

On 28 March 2006, in anticipation of forecast restrictions, Enbridge Westspur sent a letter to all shippers and producers outlining its analysis of production expectations and presenting two options and the associated costs and toll impact to alleviate capacity constraints between Alida and Cromer. The letter solicited a response from shippers and producers to determine which option they preferred. Option A consisted of adding a new booster station and was favoured by 17 percent of the responding shippers (by volume), while Option B, the ACCE Project, was favoured by 75 percent of these shippers (by volume).

Enbridge Westspur sent a letter to all shippers and producers dated 20 June 2006 communicating that the majority of the respondents supported Option B, and indicating it would proceed with that option.

7.3 Supply and Markets

Enbridge Westspur submitted that the economic feasibility of the ACCE Project is demonstrated by its forecast of increased production and a Saskatchewan Industry and Resource provincial crude oil forecast. Moreover, the Applicant submitted that anticipated capacity constraints have occurred, and argued that the production forecast that motivated the Project may prove to be conservative as the anticipated bottlenecks have appeared on the system earlier than predicted. Increased crude oil production in southeast Saskatchewan has resulted in forecast restrictions on the Alida-Cromer segment since December 2006, increasing in the first quarter of 2007.

In response to current crude oil capacity constraints, the Applicant submitted that it has undertaken to increase the capacity of the Enbridge Westspur system from the existing annual capacity of 25,000 m^3/d (157,300 b/d) to 29,900 m^3/d (188,130 b/d) to transport crude oil, while preserving the ability of the system to transport NGL. The ACCE Project is part of a series of projects designed to alleviate capacity constraints or bottlenecks from Weyburn, Saskatchewan to Cromer.

NGL

The 323.9 mm (12 inch) line commenced service in 1956 as a medium oil pipeline and was converted to an NGL line in 1981/1982. The NGL line is currently oversized, and liquids production is not expected to increase. In its application, Enbridge Westspur submitted that currently about 500 m^3/d (3,140 b/d) of NGL are being transported in the 323.9 mm (12 inch) line between Alida to Cromer. Enbridge Westspur further submitted that the proposed new 168.3 mm (6 inch) line has been sized to accommodate historical throughput of NGL.

Since forecast NGL supply is proprietary to the sole NGL Shipper, BP Canada Energy Company, an NGL supply forecast to 2020 estimating the volumes of liquids available to the proposed new pipeline was provided to the Board on a confidential basis.

Oil

In support of its application, Enbridge Westspur stated that, in 2005, it undertook a shipper survey to assess the outlook for available supply to the Westspur system. The results of the survey indicated a significant increase in light and medium crude oil production over the next few years. As well, it concluded that this would result in bottlenecks on the system in early 2007. Increased production has already occurred and has resulted in bottlenecks on the system earlier than previously forecast.

Enbridge Westspur stated that the majority of the shippers on its system supported the capacity expansion.

In terms of markets, Enbridge Westspur stated that all volumes transported on the Westspur system would be delivered to the Cromer terminal facility of Enbridge Pipelines Inc. to be transported to downstream markets, mainly in the U.S.

Views of the Parties

Canadian Association of Petroleum Producers (CAPP)

CAPP submitted that it supports the increase in pipeline capacity.

EnCana

EnCana submitted that, as a shipper of approximately 20 percent of the crude oil on the Enbridge Westspur system, it has a material interest in any proposal to address the inability of shippers to deliver their crude to market. EnCana raised the following issues:

1) oil loss allowance;

2) the toll charges that are to be administered; and

3) capacity constraints on the Westspur system and upstream of Alida.

Oil loss allowances on the Westspur system are collected at a rate of one half of one percent of all volumes shipped. These volumes have been collected since 1985 and are higher than the amount collected on the Enbridge Pipelines Inc. mainline. Although there was no specific reason provided by Enbridge Westspur as to why oil loss allowances are collected, it mentioned that *"This charge was in existence when the pipeline was purchased from Dome Petroleum in 1985"* and is *"a real and direct cost to the shipper"*.

Under the ACCE Project, the toll from Alida to Cromer would increase by between $0.19 m^3 on a Base Case scenario to $0.42 m^3 for the Worst Case scenario. EnCana ships from Weyburn, a point upstream of Alida, and the impact of the toll increase would be a total of $1.55 m^3 to $1.95 m^3 including a $0.06 m^3 surcharge to transport oil from Weyburn to Cromer. EnCana accepts the increase in tolls to have its crude oil production enter the Enbridge Pipelines Inc. mainline.

Capacity constraints on the Enbridge Westspur system have not only plagued the segment from Alida to Cromer but have also impacted pipelines upstream of Alida. It has been difficult for EnCana's crude oil production to be delivered to market on the Enbridge Pipelines Inc. mainline system due to bottlenecks from Weyburn to Midale, Midale to Steelman, and Alida to Cromer. Since February 2006, forecast restrictions from Weyburn ranged from just above six percent to as high as 34 percent in January 2007.

EnCana submitted that in the face of capacity constraints on the Enbridge Westspur system, producers and shippers must shut in their crude volumes, truck them to a terminal on the Enbridge Westspur system downstream of the bottleneck to where there is capacity, or deliver such volumes to market via a competing pipeline. In southeast Saskatchewan there is currently no competitive pipeline alternative, leaving the costs attendant on the other options to differ only in their severity.

EnCana recognized that the ACCE Project is part of a series of expansions within Saskatchewan to increase pipeline capacity to the Enbridge Pipelines Inc. mainline. EnCana submitted that the ACCE Project would confer a couple of material benefits. It would appear that EnCana's current

production would no longer be partially shut in or have to be trucked. In addition, the potential exists for EnCana to capture some portion of the additional capacity added by the ACCE Project.

Given the increasing forecast restrictions, EnCana's final concern is that future production increases may exceed the capacity increase engendered by the ACCE Project.

Views of the Board

In arriving at its decisions, the Board is governed by the requirements of the NEB Act which, under section 52, lists economic feasibility as one the factors that the Board may consider.

The Board has traditionally determined the economic feasibility of pipeline facilities by considering evidence on all relevant factors which impact the likelihood that the applied-for facilities will be used at a reasonable level over their economic life and that the associated tolls will be paid.

The Board notes that no Intervenor opposed the ACCE Project on the grounds of supply, markets and finance and that the majority of the shippers on the Westspur system support the pipeline expansion and that CAPP and EnCana have endorsed the project.

The ACCE expansion is underpinned by the Applicant's forecast of increased crude oil production in the area, a supply outlook prepared by Saskatchewan Industry and Resources and the ability of the market to absorb increased volumes.

The Enbridge Westspur pipeline connects with Enbridge Pipelines Inc.'s mainline at Cromer, Manitoba which has access to refineries in Eastern Canada and the United States. The Enbridge Westspur pipeline has been operating under forecast restrictions since December 2006. As the Western Canadian Sedimentary Basin continues to increase production, the Enbridge Pipelines Inc. mainline, along with other major pipelines transporting crude oil to the United States, have been faced with apportionment issues. CAPP recognizes that there will be pipeline constraints and bottleneck issues until incremental mainline capacity is added.

The Board considers the oil supply forecasts submitted by Enbridge to be reasonable. As well, the Board notes that the Enbridge Westspur system has already experienced forecast restrictions as a result of the growing supply of crude oil in southeast Saskatchewan.

With respect to NGL production and required transportation service, the Board is of the view that, in light of the NGL production forecast provided

to the Board, NGL service requirement is expected to continue at a reasonable level through to at least 2020.

With respect to financial matters, the Board finds that Enbridge Westspur has the ability to finance the Project. Furthermore, having regard to the evidence, the Board is of the view that the facilities are likely to be economically feasible.

The Board finds that additional pipeline capacity is needed to transport the growing quantities of crude oil being supplied to the Enbridge Westspur system.

Chapter 8

Request for Exemption from Filing of a Plan, Profile and Book of Reference

8.1 Introduction

This chapter addresses Enbridge Westspur's request for exemption from filing a PPBoR.

8.2 Exemption Request

In its 17 January 2007 application for the ACCE Project, Enbridge Westspur included an application pursuant to section 58 of the NEB Act for relief from the obligation under paragraphs 31(c) and 31(d) and section 33 of the NEB Act which require the production and filing of a PPBoR.

Section 58 of the NEB Act states that

> **58** (1) The Board may make orders exempting
>
> (a) pipelines or branches of or extensions to pipelines, not exceeding in any case **forty kilometres** in length …
>
> from any or all of the provisions of sections 29 to 33 and 47.

The purpose of a PPBoR is to accurately describe the land areas proposed to be acquired for the detailed route of the proposed pipeline, including a description of the land parcels traversed and the names of the owners and occupiers of these parcels. For all applications subject to sections 31 and 33 of the Act, a PPBoR must be approved by the Board before the company can construct its pipeline. Although a PPBoR is filed with the Board for its review and approval, it is more importantly intended to provide interested landowners, occupants, and the public with the opportunity to understand more specifically the effects that the proposed detailed route may have over lands in which they may have an interest. The filing of the PPBoR also raises the opportunity to be heard by the Board if those with an interest raise valid objections regarding the proposed detailed route of the pipeline or its construction methods or timing.

Exemption from sections 31 and 33 of the NEB Act would also lead to exemption from sections 34 to 40. Section 34 requires the company to notify all directly affected landowners and the general public of the proposed PPBoR and of the procedures for how an individual may file with the Board a written statement of opposition regarding detailed route location or construction methods or timing. Section 35 directs the Board to hold a public detailed route hearing with respect to any written statement of opposition as deemed appropriate, and section 36 requires the Board to take any detailed route hearing matters into account before approving the PPBoR.

The application filed by Enbridge Westspur included samples of information provided to landowners regarding detailed route approval. This information specifically described the detailed route approval procedure, including the opportunities available to landowners to oppose the route and be heard by the Board. Enbridge Westspur confirmed that it had also provided these landowners with copies of the Board publication entitled *Pipeline Regulation in Canada: A Guide for Landowners and the Public*, which also lays out the detailed route approval procedure required for Certificate applications such as the ACCE Project.

The Applicant applied for the construction of a 60 km pipeline to transport NGL from Alida to Cromer. Enbridge Westspur has indicated that it intends to construct the pipeline in two segments. In final argument, the Applicant has requested that the Board consider the fact that each of the construction segments constitutes a separate pipeline under section 58 of the NEB Act.

Views of the Board

It is clear from the evidence provided that Enbridge Westspur has communicated to the landowners and the public in the Project area that there will be PPBoR published and that publication will trigger a period of time for impacted parties to express opposition to the Board.

The Board finds that regardless of how the NGL line is constructed it still constitutes one pipeline. The two segments would be owned and operated by one company and would be continuous and separated only by a valve. The individual segments in which it may be constructed have no characteristics that distinguish one segment from another. Furthermore, there has been no evidence presented as to why the Board should consider two continuous parts of a pipeline separate and apart from the 60 km pipeline as submitted in the original application of 17 January 2007.

Section 58 of the NEB Act states that an exemption may only be granted in relation to pipelines not exceeding 40 km in length. Given that the ACCE Project involves a pipeline that is 60 km in length the Board denies Enbridge Westspur's request. Further, the Board notes that the distributed information referred to the detailed route hearing process and it would not be in the public interest to grant such an exemption.

Chapter 9

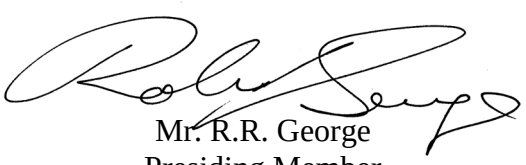
Disposition

The foregoing constitutes our Reasons for Decision in respect of the application considered by the Board in the OH-2-2007 proceedings. The Board is satisfied from the evidence that the ACCE Project facilities are, and will be, required by the present and future public convenience and necessity.

Having made its determination under the CEA Act, the Board approves Enbridge Westspur's application pursuant to section 52 of the Act and will recommend to the Governor in Council that a certificate be issued, subject to the certificate conditions set out in Appendix II.

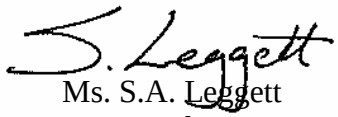
The Board denies Enbridge Westspur's request, pursuant to s.58 of the NEB Act, for exemption from the provisions of subsections 31(c), 31(d) and section 33.

The Board approves a change of service and increase in maximum operating pressure of an existing pipeline under section 43 of the OPR-99.



Mr. R.R. George
Presiding Member

Mr. S.J. Crowfoot
Member



Ms. S.A. Leggett
Member

Calgary, Alberta
June 2007

Appendix I

List of Issues

1. The need for the proposed facilities.

2. The economic feasibility of the proposed facilities.

3. The potential commercial impacts of the proposed project.

4. The potential environmental and socio-economic effects of the proposed facilities, including those factors outlined in subsection 16(1) of the *Canadian Environmental Assessment Act*.

5. The appropriateness of the general route and general land requirements of the pipeline.

6. The suitability of the design, construction and operation of the proposed facilities, including but not limited to safety and integrity.

7. The terms and conditions to be included in any approval the Board may issue.

Appendix II

Certificate Conditions

General

1. Unless the Board otherwise directs, Enbridge Westspur shall cause the approved Project to be designed, located, constructed, installed, and operated in accordance with the specifications, standards and other information referred to in its application or as otherwise agreed to during the OH-2-2007 Proceedings.

2. Enbridge Westspur shall implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations and procedures for the protection of the environment included in or referred to in its application or as otherwise agreed to during questioning or in its related submissions.

Prior to and during construction:

3. To facilitate Board inspections, Enbridge Westspur shall file with the Board at least 30 days prior to the commencement of construction, a detailed schedule regarding field activities, which identifies major construction activities as well as hydrostatic tests. Enbridge Westspur shall notify the Board of any modifications to the schedule as they occur.

4. For the new 168.3 mm (6 inch) pipeline, Enbridge Westspur shall file with the Board at least 30 days prior to construction:

    a) the latest construction specifications, including updates made to alignment sheets; and

    b) the Construction Safety Manual.

5. Enbridge Westspur shall file with the Board for approval, at least 30 days prior to construction, an updated project specific Environmental Protection Plan (EPP), which Enbridge Westspur shall implement. The EPP shall describe all environmental protection procedures, and mitigation and monitoring commitments, as set out in Enbridge Westspur's application or as otherwise agreed to during questioning, in its related submissions or through consultation with other government agencies. Construction shall not commence until Enbridge Westspur has received approval of its EPP from the Board.

6. Enbridge Westspur shall, in the event that previously unidentified archaeological or heritage resources are discovered:

    (a) immediately cease work at the location of the discovery and notify responsible provincial authorities; and

    (b) resume work only after approval is granted by the responsible provincial authorities.

Prior to pressure testing:

7. For the new 168.3 mm (6 inch) pipeline as well as for the existing 323.9 mm (12 inch) pipeline, Enbridge Westspur shall file with the Board its Pressure Testing Program at least two weeks prior to the commencement of pressure testing activities.

8. Enbridge Westspur shall file with the Board at least two weeks prior to the pressure testing of the 323.9 mm (12 inch) pipeline:

    a) the number and location of all investigative excavations conducted along the pipeline, or proposed to be conducted prior to the hydrostatic test; and

    b) to validate the company's initial analysis, the comparison of Enbridge Westspur's predicted defects with those excavated in the field, per location, type and size.

Prior to leave to open:

9. Should any hydrostatic test failure occur on the 323.9 mm (12 inch) pipeline, Enbridge Westspur is directed to immediately notify the Board by calling the NEB On-Call Responder at the incident cell phone 403-807-9473.

10. Should any hydrostatic test failure occur on the 323.9 mm (12 inch) pipeline, Enbridge Westspur shall submit to the Board, along with its application for leave to open:

    a) a report indicating the failure pressure, details as to the cause and reasons why the defect was not detected and repaired prior to the pressure test; and

    b) an updated analysis on the pipeline's fitness for the intended service, which accounts for the hydrostatic test failure(s).

11. To reflect as required, the change of service and the addition of new facilities, Enbridge Westspur shall submit to the Board three copies of its updated Emergency Procedures Manual, two weeks prior to applying for leave to open.

After leave to open:

12. Enbridge Westspur shall file with the Board, within 30 days following issuance of the Order for leave to open, a confirmation by an officer of the company, that the approved Project was completed and constructed in compliance with all applicable conditions in this Certificate. 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. The filing required by this condition shall include a statement confirming that the signatory to the filing is an officer of the company.

Expiration of Certificate

13. Unless the Board otherwise directs prior to 31 December 2008, this Certificate shall expire on 31 December 2008 unless construction in respect of the applied-for facilities has commenced by that date.