



National Energy
Board

Office national
de l'énergie

The National Energy Board and The TransCanada Alberta System

Questions and Answers

www.neb-one.gc.ca



Canada

Message from the Chair of the National Energy Board



Dear Landowner:

As Chair of the National Energy Board (NEB), I wish to personally inform you about a recent decision issued on 26 February 2009 involving an application filed by TransCanada PipeLines Limited (TransCanada) regarding its Alberta pipeline system, which is owned by NOVA Gas Transmission Ltd. (Nova), a subsidiary of TransCanada.

The NEB has decided that this pipeline system, known as the TransCanada Alberta System, is properly under federal jurisdiction and has decided to issue, subject to Governor in Council approval, a certificate for its operation under the National Energy Board Act. The decision was made on the basis that the Alberta System is part of an extensive pipeline system already under federal jurisdiction.

Previously, the Alberta System was provincially regulated by the Alberta Utilities Commission in conjunction with the Energy Resources Conservation Board.

We are aware that some of the federal regulations and processes differ from the ones to which you were accustomed prior to this change. In order to help you understand the differences, we have prepared this Questions and Answers document that we encourage you to read carefully. This information will be most relevant to those of you who in the past only had to deal with provincial pipeline regulations.

On our Web site at www.neb-one.gc.ca, we have also created a webpage specifically designed to provide information on topics that you may find useful as a landowner. The webpage is entitled "TransCanada Alberta System".

Your questions about our regulations and processes are always welcome. Please feel free to contact Darcie Harding, Right-of-Way and Lands Specialist, who will ensure that your comments or concerns are forwarded to the appropriate staff for follow-up. If requested, printed copies of NEB documents found on our Web site can also be mailed to you.

You can contact Ms. Harding by email at darcie.harding@neb-one.gc.ca or by phone at 403-299-3318 (toll free 1-800-899-1265).

Yours sincerely,

A handwritten signature in black ink, which appears to read "Gaétan Caron". The signature is fluid and cursive.

GAÉTAN CARON
Chair and CEO

Question and Answers – TransCanada Alberta System

The following *Questions and Answers* have been prepared for the benefit of landowners who have questions about the impact of the Board's decision.

QUESTION 1

I have a TransCanada pipeline crossing my land. Within the federal government, who will actually regulate the pipeline system?

- The NEB has decided that this pipeline system, known as the TransCanada Alberta System, is properly under federal jurisdiction.
- In accordance with its decision, the NEB has issued, subject to Governor in Council approval, a certificate for the operation of the TransCanada Alberta System under the *National Energy Board Act*.
- The decision was made on the basis that the TransCanada Alberta System is part of an extensive pipeline system already under federal jurisdiction.

QUESTION 2

Does the change of jurisdiction to the NEB mean that I will be required to comply with a different set of crossing regulations?

- Yes, in some instances, there are differences between federal and provincial crossing regulations.
- However, it is possible that some landowners may be accustomed to the federal regulations because their lands may already be crossed by another NEB regulated pipeline such as the Alliance or Cochin systems.

QUESTION 3

As a landowner, I'd like to get more information about the NEB's processes and regulations. Where and how can I find it?

- In an effort to be accessible and transparent, the NEB makes its documentation available on the Web site at www.neb-one.gc.ca. Select "Involving the Public", and scroll down to "Landowners". Copies of the documents can also be requested from our Library Service by calling 403-299-3561 (toll free 1-800-899-1265) or by email at library@neb-one.gc.ca.

Available publications include:

- Pipeline Regulation in Canada: A Guide for Landowners and the Public - June 2003
- Living and Working Near Pipelines: Pamphlet
- Living and Working Near Pipelines: Landowner Guide 2005
- Excavation and Construction Near Pipelines





QUESTION 4

More specifically, where and how can I get more information about the NEB Crossing Regulations?

- The Crossing Regulations are posted on the NEB Web site at www.neb-one.gc.ca. In the left margin, select “Acts and Regulations” and scroll down to “Rules, Regulations, Guidelines, Guidance Notes and Memoranda of Guidance pursuant to the *National Energy Board Act*” and click on *National Energy Board Pipeline Crossing Regulations, Part I and Part II*.
- To request a copy of the document, please contact our Library Service by phone at 403-299-3561 (toll free 1-800-899-1265) or by email at library@neb-one.gc.ca.

QUESTION 5

Is it true that I will be required to get permission every time I need to cross a section of the TransCanada Alberta System that is on my land?

- Not necessarily, however crossing with vehicles or mobile equipment other than on a highway or public road should be discussed with the pipeline company that is primarily responsible for keeping the pipeline safe for everyone.
- Pipeline companies may contact landowners to discuss the types of equipment that could be used when crossing their right-of-way.
- Before making a decision, the company may assess the level of risk involved in crossing the right-of-way. The risk level will determine whether a landowner needs to call the company prior to each crossing or whether a long term arrangement is sufficient.

- The NEB suggests that landowners familiarize themselves with their individual easement agreements with the pipeline company. The NEB mandate does not include the negotiation or the management of easement agreements.
- A landowner with concerns about pipeline crossing issues should first discuss them with the company. In the event of a disagreement that cannot be resolved, the parties can apply to the Board under the *National Energy Board Act*, for assistance through the NEB Landowner Complaint Program or NEB Appropriate Dispute Resolution Program.

QUESTION 6

What happens if I can't reach a mutually suitable arrangement with the pipeline company?

- If both parties fail to come to an agreement, the NEB can be asked to intervene by way of a letter detailing the nature of the problem. The Board can provide assistance through its Landowner Complaint Program or its Appropriate Dispute Resolution Program. Please refer to the NEB Contact Information published at the end of this document.

QUESTION 7

With the change of jurisdiction, will I still be able to cultivate the section of land that is crossed by the pipeline?

- Yes, farming activities are allowed to continue along all NEB regulated pipelines across Canada providing landowners and pipeline companies agree on specific restrictions. The purpose of these restrictions is to prevent the risk of causing damage to the pipeline.
- Landowners need to contact the pipeline company directly to discuss and come to an agreement based on the type of equipment that they plan to use when crossing the pipeline.
- Movement of vehicles and mobile equipment over a pipeline may cause damage to a pipe. Pipeline companies are responsible for determining stress loads that will ensure the continued safety for their own pipes and

specify which vehicles and types of mobile equipment are either exempt or less likely to cause damage. Pipeline companies need to be aware of what is taking place near their pipeline to ensure the safety of all persons living and working near the pipeline.

- Assessment of pipeline stress levels requires a comprehensive knowledge of ground conditions, design factors and operating characteristics. For these reasons, pipeline companies are in the best position to make these assessments.
- Under section 112(2) of the *National Energy Board Act*, permission must be obtained from the company when the activities require the movement of vehicles and mobile equipment across its pipelines. Permission is not required if the vehicles and mobile equipment are operated within the travelled portion of a highway or public road.

QUESTION 8

Could the violation of an NEB Crossing Regulation constitute an offence which may carry fines of up to \$1,000,000 and imprisonment of up to five years?

- There is no penalty prescribed for contravening the crossing provisions of the *National Energy Board Act* or the Crossing Regulations.
- There is a penalty prescribed for failing to comply with an order of an NEB Inspections Officer. Those who continue to contravene NEB crossing provisions after being specifically ordered to stop would face the penalties set out in the *National Energy Board Act*.
- Although penalties could include fines amounting up to \$1,000,000 and imprisonment for up to five years, the penalty in any particular case is determined by the Court based on the seriousness of the offence.
- In the case of someone violating NEB crossing provisions, the NEB would start by dealing with this person through its engagement and educational programs.

- Where violations could be a hazard to safety, or a detriment to property or the environment, an NEB Inspection Officer has the authority to order the offender to stop the activity in question. In the event the offender does not comply with an order, they could be charged and dealt with through the courts.
- Historically, this level of escalation has never occurred with NEB regulated pipelines. Experience has shown that NEB programs and procedures in place have been sufficient to manage the regulation of pipelines.

QUESTION 9

What about landowner liability for possible damage to an operating pipeline?

- The *National Energy Board Act* does not address liability nor does it authorize the NEB to make findings on liability, which is a matter for the courts under the general law.
- A change of jurisdiction will not affect existing easement agreements between landowners and the company. These agreements will continue to apply, including provisions on landowner liability.

QUESTION 10

Does the NEB provide for participant funding in its processes? Under what circumstances could funding be available?

- A. The concept of participatory funding can be defined as providing money up front to allow persons or groups to participate in a regulatory proceeding.
 - The *National Energy Board Act* does not authorize the NEB to provide participant funding for general NEB hearings.
- B. The Board may order a company to reimburse a person or group who made representations at either a detailed route, or a diversion and relocation proceeding.

Parties in either one of those proceedings have to participate at their own expense and can, after the fact, submit their costs for a potential reimbursement, either full or partial.

People or groups involved in this type of proceeding are not assured of funding until after they have completed their participation.

- C. The *Canadian Environmental Assessment Act* provides for participant funding for comprehensive studies and for review panel processes, which may apply to NEB-regulated projects.
- D. Prior to, and throughout its Land Matters Consultation Initiative, the NEB has been aware of landowners' concerns about a lack of participant funding in the *National Energy Board Act*.

QUESTION 11

In terms of emergency response, how do the provincial guidelines differ from NEB regulations?

- The provincial and federal regulations both require companies to have emergency response measures in place to ensure the safety of the people living and working in proximity to a pipeline, and the protection of surrounding properties and the environment.
- TransCanada operates the NOVA pipeline in Alberta and also operates interprovincial pipelines across Canada under NEB regulation. TransCanada's emergency response manual is the same for both the provincially and federally regulated pipelines. Therefore, emergency response will not be different following the change in jurisdiction.
- Landowners should continue to feel safe, no matter which level of government regulates the pipeline system.

QUESTION 12

With the transfer of jurisdiction in place, will that cancel my easement/statutory right-of-way agreement? What happens to my payments?

- Easement/right-of-way agreements are private contracts between a landowner and a company. A change of jurisdiction will not impact existing agreements.
- A landowner or a company can request to renegotiate an agreement with the other party.

The NEB may provide assistance through its Appropriate Dispute Resolution Program (ADR) to resolve issues, but cannot decide on a monetary amount to be paid.

- With respect to matters of compensation, on request from a landowner or a pipeline company, this may be done through an arbitration committee appointed by the Minister of Natural Resources Canada. In order to appoint an arbitration committee, the Minister must be satisfied that the damages caused by the pipeline company are directly related to the acquisition of lands for the pipeline; construction of the pipeline; or, inspection, maintenance or repair of the pipeline.
- For further information on negotiation or arbitration services provided by the Minister of Natural Resources Canada, visit their Web site at www.nrcan.gc.ca or contact their office at 613-992-9612.

QUESTION 13

How does the NEB deal with landowner concerns about energy related land matters?

- The NEB already has a process in place to receive landowner complaints. Formal complaints are handled by the NEB on a case-by-case basis.
- Depending on the nature of the complaint, Land Specialists or Inspectors may visit the lands in question to gain a better understanding of the problem.
- If the matter cannot be resolved quickly, then the NEB may offer the services of an appropriate dispute resolution expert.
- Landowners can contact the NEB using telephone, email, fax, or mail (see NEB Contact Information listed at the end of this document). A formal request must be made in writing and the company will be contacted for follow-up.
- Landowners are invited to contact the NEB to voice their concerns or simply to request information.

- In October 2007, the National Energy Board decided to establish a process open to all stakeholders as part of its review of some key issues related to land matters.
- The goal of the Land Matters Consultation Initiative (LMCI) is to provide a forum for all interested parties and the Board to engage in dialogue and generate options to support the long-term responsible development of the energy sector, while respecting the rights of those affected.
- As stated in the LMCI Draft Final Report released in December 2008, the Board has a mandate to make decisions that balance the interests of all Canadians. It is the Board's view that the roadmap for change developed through the LMCI will bring about concrete improvements which will achieve an appropriate balance among landowners, project proponents and others impacted by infrastructure development. The Board looks forward to continuing the constructive and collaborative approaches that have been established through the LMCI so that there can be continual improvement in the Board's regulatory approaches to land matters for the benefit of Canadians.

QUESTION 14

How does the NEB deal with pipeline abandonment matters?

- Before a company can abandon the operation of its pipeline, it must first obtain permission from the NEB. At that time, the NEB will review the proposed abandonment, taking into account the concerns of landowners and other affected parties, and will determine the conditions that the company will have to meet in order to abandon the pipeline. Although the NEB will not decide on liability, it will be able to address, through conditions, the issues that may give rise to liability.
- The NEB is in the last stages of a hearing process, held in Calgary, to consider the financial aspects of pipeline abandonment. The NEB is also addressing physical issues related to pipeline abandonment by way of its Land Matters Consultation Initiative (LMCI). Information about the LMCI is available on the Web site at www.neb-one.gc.ca. In the right margin, select "TransCanada Alberta System", scroll down and click on "Land Matters Consultation Initiative".



NEB Contact Information:

Darcie Harding

Right-of-Way and Lands Specialist

Phone: 403-299-3318 (toll free 1-800-899-1265)

Email: darcie.harding@neb-one.gc.ca

Lorna Patterson

Engagement and Conflict Management Specialist

Phone: 403-221-3010 (toll free 1-800-899-1265)

Email: lorna.patterson@neb-one.gc.ca

In the weeks to come, the NEB will be holding Information Sessions in various locations. Please check your local newspaper to find out when and where these Sessions will be held. We look forward to meeting with you, and to hearing your views and concerns.

