



File OF-Fac-Gas-T211-2015-05-01
16 May 2016

To: All Participants to Hearing Order GH-001-2016

Hearing Order GH-001-2016
TransCanada PipeLines Limited (TransCanada)
Application for the Vaughan Mainline Expansion Project (Project)
Procedural Update No. 3

On 10 February 2016, the National Energy Board (NEB or Board) issued Hearing Order GH-001-2016, setting out the procedures that will be followed for the assessment of the Project. Paragraph 3.13 of the Hearing Order indicated that the Board scheduled an oral hearing with details to follow. This Procedural Update provides information on the oral hearing and seeks information (in Appendix 2, Parts A and B) from Intervenor and TransCanada regarding their participation.

The Board would also like to communicate the date for TransCanada to file Reply Evidence. It is **8 June 2016**.

Oral Hearing

The oral hearing will be held at **Element Hotel in Vaughan Ontario starting on 14 June 2016 at 10 a.m.** The Board will announce a preliminary schedule, including the order of the Witness Panels, by 6 June 2016. The Board will conclude the hearing by 17 June 2016. The Board intends to sit until 5 pm each day, with a break from 12 to 1 p.m.¹

Parties who have expressed an intention to actively participate in the GH-001-2016 hearing (either by sitting a Witness Panel or by cross-examining another party) are to register their appearance in the hearing room on the first day. Space may be limited, especially on the first day. Therefore, parties may phone in to register their appearance (contact the Regulatory Officer for phone information), have another counsel register their appearance, or submit a letter to the Board to register their appearance in writing (either by e-file or through the Participation Portal) by 4:00 p.m. (Eastern Time) on Monday 13 June 2016.

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¹ However, the Board expects there to be some flexibility in this schedule. There will also be an extended break between the end of oral cross-examination and the start of oral final argument to allow for the submission of written final argument. The timing for the start of final argument is not known at this time.

One purpose of the hearing is to allow for cross-examination of parties' witnesses on their filed written evidence. Following the completion of oral cross-examination, the Board will begin oral final argument. There will be a short delay before the start of oral final argument to allow for any party wishing to submit written argument instead or oral argument to do so.

There are additional procedural questions discussed in Appendix 1 to this letter.

Oral Cross-examination of Witness Panels

As explained in the Hearing Order, parties may ask questions about the evidence of parties adverse in interest to them through oral cross-examination. Those who have submitted written evidence must make a witness, or a number of witnesses sitting together (witness panel) to respond to questions on that evidence. Parties may have different witnesses to address different subject areas. The following Parties have submitted written evidence:

- TransCanada
- 1595758 Ontario Limited
- Conseil de la Nation huronne-wendat
- Enbridge Gas Distribution Inc.
- Her Majesty the Queen in right of Ontario
- Huntington Acres Limited (Mr. Nick Pirruccio)
- Société en commandite Gaz Métro
- St. Lawrence Gas Company Inc.
- The Corporation of the City of Vaughan
- Union Gas Limited
- Ussia Family

Witness Panels (Appendix 2, Part A)

All parties listed above are required to complete, file with the Board and serve on all other parties, **no later than 24 May 2016**, the Witness Panel Form attached as Appendix 2 Part A, or provide equivalent information in a letter.

The people selected as witnesses should be those in the best position to answer questions about the written evidence. If the written evidence is grouped into more than one subject area, a party may wish to have witnesses for each subject area.

The Board reminds parties to serve this information on all other participants. If you do not use the participation portal to file your information, you must notify other Intervenors and TransCanada by email (or hard copy if requested) when your document has been filed.

Note that while all parties who submitted written evidence must make witnesses available for cross-examination, there may not be any questions for their witnesses. The Board will inform those parties for whom there are no questions at the time when the schedule of cross-examination is released by 6 June 2016. A party is not required to sit witnesses if no other party intends to ask them questions. They can adopt their evidence under oath in the hearing or do so by

affidavit filed on the record. Instructions on how to do this will be provided by the Board by 6 June 2016.

Furthermore, all Witness Panels are permitted to make an opening statement summarizing the party's position on the Project. Unless leave of the Board is granted, any opening statement that a witness intends to make must be filed with the Board by the party on behalf of its witness and served on all other parties at least one clear business day before the attendance of the witness ([NEB Rules of Practice and Procedure s. 39](#)). The opening statement cannot introduce new evidence. Appendix 1 discusses where to find additional hearing process information.

Oral Hearing Participation (Appendix 2, Part B)

All parties should review the information filed in Part A in order to complete, file with the Board, and serve on all other parties by **31 May 2016**, the Oral Hearing form attached as Appendix 2.

This form asks all parties to indicate which witnesses or witness panels they intend to question and the expected duration of each cross-examination. You must monitor the filings received under Part A to complete your response in Part B.

The Board would like to remind all parties that they may only cross-examine parties who are adverse in interest. Cross-examining witnesses who are not adverse in interest to you is known as "sweetheart cross" and is not allowed.

Board counsel and the Board Panel may ask questions of any witnesses without prior notification.

Finally, the Part B form asks parties to indicate whether they intend to present oral argument (or file written argument).

You can choose to present oral or written final argument, but not both. The Board advises that parties intending to file written argument must monitor the proceeding (for example, through the NEB's webcast) in order to be aware of the deadline for written argument. The deadline for written argument will occur between the conclusion of oral cross-examination and the start of oral argument and parties will not receive significant advanced notice of this deadline.

Final argument is an opportunity for TransCanada and Intervenorors to present their views and opinions after all evidence has been submitted. This is an opportunity to:

- a) summarize points of view;
- b) make their case about the relevance and weight of any evidence that is before the Board;
- c) comment on terms and conditions that should or should not be attached to any approval the Board may issue; and
- d) persuade the Board on the decisions that it may make regarding the Project.

New evidence cannot be introduced in final argument. Final argument must be based on evidence that is already on the record before the Board (i.e., filed written evidence, responses to information requests, letters of comment, and witnesses' answers during cross-examination). Final argument need not repeat evidence that is on the record or arguments that have been made by others.

The Board will first call upon TransCanada to present its final argument, followed by each Intervenor in alphabetical order as shown in the List of Parties. Then, the Board will begin at the bottom of the list and go back up to the top to allow parties only to address matters in final arguments raised by parties who followed them down the list that they have not already addressed. This is also known as a "top down, bottom up" final argument. Lastly, TransCanada will be provided the opportunity for a final reply argument.

If you do not intend to cross-examine any party, you must still complete Part B to indicate to the Board how you intend to participate in final argument. The Board notes that all parties reserve their right to participate in oral cross-examination and the Board recognizes that the information to be supplied in Part B may change as the hearing unfolds.

You do not require a lawyer to engage in oral cross-examination or oral final argument. The Board's [Hearing Process Handbook](#) describes how to participate in an oral hearing. Further information is found in Appendix 1 and from the Board's Process Advisor, whose contact information appears below.

If an intervenor would like to cross-examine another party's witness(es) but cannot attend in person, please notify the Process Advisor. The Board will, to the best of its ability and the extent reasonable, accommodate remote participation. Details regarding potential remote participation will be provided in advance of the oral portion of the hearing to those who request it.

Participants and members of the public who are unable to attend in person will be able to follow the live broadcast of the hearings' oral portions through the Board's website in either official language.

For questions or help regarding the hearing process and how to effectively participate in it, please contact Monica Rodriguez-Galvez or Karine Johnson, the Board's Process Advisors for this Project at VMEProcessHelp@neb-one.gc.ca or toll-free 1-800-899-1265. If you intend to participate by telephone in any part of the oral hearing, please contact the Regulatory Officer, Danielle Comte, at Danielle.comte@neb-one.gc.ca or toll-free 1-800-899-1265 before 4:00 p.m. Eastern Time on 13 June 2016.

Yours truly,

Original signed by L. George for

Sheri Young
Secretary of the Board

Attachments

Appendix 1

Hearing Hours

The hearing will start on **Tuesday, 14 June 2014 at 10:00 a.m. and will adjourn at 5:00 pm** (local time) in the Oak Room of the Element Hotel in Vaughan, Ontario. After that the Board intends to sit from 9:00 a.m. until 5:00 p.m. with lunch breaks for approximately one hour and additional short breaks as required. The Board will advise if there are any changes to this schedule.

While the Board will try to keep to these sitting hours, it may have to sit longer. If so, the Board will inform participants as soon as possible. The Presiding Member will confirm the sitting hours during the course of the hearing.

Attire

There are no specific dress requirements. Board staff will be dressed in business casual attire.

Registration

Parties who intend to participate in the oral portion of the GH-001-2016 hearing in Vaughan, Ontario are to appear to register their appearance at **10:00 a.m. on Tuesday, 14 June 2016**.

Remote Participation

The Board will, to the best of its ability and the extent reasonable, accommodate remote participation. Details regarding potential remote participation will be provided in advance of the hearing to those who request it.

Opening Statements

In accordance with the Board's usual practice, participants in the hearing may file a written opening statement. An opening statement is intended to present a brief summary of a participant's position in respect of the evidence and/or issues before the Board. Pursuant to the Board's [Rules of Practice and Procedure](#), any opening statements shall be filed with the Board and served on all other parties **at least one clear business day before the attendance of the participant's witnesses**. As they will be pre-filed and adopted along with witness evidence, it will not be necessary to read opening statements onto the hearing record.

Exhibits and Aids to Cross-Examination

Participants should provide sufficient notice to other participants and the Board's Regulatory Officer of any intention to introduce an aid to cross-examination, or enter a new exhibit, and provide six copies to the Regulatory Officer and six copies to Board Counsel. In addition, participants should leave enough copies on the table at the back of the hearing room for all other interested parties; however, if the document is unduly lengthy (e.g., greater than ten pages) participants should make extra copies of those documents available upon request. When filing hard copies during the hearing, participants must also file the document through the Board's electronic document repository.

Undertakings

On a table at the back of the hearing room, there will be a document entitled “List of Undertakings”. When a witness gives an undertaking, the Regulatory Officer will provide it with a “U” (undertaking) number, and update the List of Undertakings. When filing a response to an undertaking, please refer to the applicable undertaking number.

In addition, the court reporters will list undertakings at the front of each day’s hearing transcript. Accordingly, when any counsel asks for and obtains an undertaking from a witness, they are reminded to request a “U” (undertaking) number from the Regulatory Officer and to clarify on the record exactly what the undertaking is and the timing by which it is expected to be provided. The Board asks that participants check the List of Undertakings regularly and advise Board Counsel of any required changes to it.

Electronic Exhibits

During this proceeding, the Board will be viewing the exhibits electronically on a screen in the hearing room. For efficiency, the Board requests that those speaking on the record identify each reference document by its exhibit number.

In advance of cross-examination, participants need to provide the Regulatory Officer with a list of exhibit numbers to which they intend to refer, to allow the Officer to retrieve the documents quickly. The information provided should include the exhibit number, including a sub-letter if that is included on the exhibit list (e.g., C8-4b, where more than one electronic document was submitted with a particular filing), the Adobe page number, and a paragraph or line reference, if available. A form that may be used to provide this information to the Regulatory Officer is attached as Appendix 3.

Please provide this information a day in advance of cross-examination in order to allow the exhibit to be projected on the screen. Completed forms may be hand-delivered to Danielle Comte, Regulatory Officer, or emailed to: Danielle.comte@neb-one.gc.ca. When additional exhibits are filed during the hearing, electronic versions should be provided to the Regulatory Officer, where possible, for projection in the hearing room.

An Exhibit List will be provided before the start of the hearing and will be updated as new exhibits are entered.

Transcripts

Transcripts of the proceeding will be available electronically on the Board’s Internet site at www.neb-one.gc.ca. Transcripts will be placed in the TransCanada Vaughan Mainline Expansion folder. A folder entitled “Hearing Transcripts” will be located at the top of this page. There may be a delay in the transcript appearing in the folder. It may be found in the “Inbox” folder.

A paper copy of the transcripts may be ordered for a fee directly from International Reporting Inc. either at the hearing, by e-mailing bprouse@irri.net or by calling 613-748-6043.

On-Line Broadcasting

The hearing will be broadcast live in English and French over the internet at www.neb-one.gc.ca. On the NEB's home page, click on "View Upcoming Hearings and Information Sessions." Follow the instructions under "Hearings and Information Sessions". A link will be included for the hearing under the "Broadcast" column of the Upcoming Hearings table.

Additional Information

The Board encourages all parties to review the [Board's Rules of Practice and Procedure](#)², in particular sections:

- 35 - Notice of Motion
- 36 - Evidence at an Oral Hearing
- 38 - Communication with Witnesses
- 39 - Opening Statements
- 42 - Argument

The Board's Process Advisor can also answer any process related questions.

² <http://laws-lois.justice.gc.ca/eng/regulations/SOR-95-208/FullText.html>

Appendix 2

Part A

Witness Panels and Responsibilities

Submit by 24 May 2016

Name of Party:

Name of Panel or single witness:	
Witnesses' names and titles	
Subject Area(s)/Evidence that will be addressed by the witness panel	

Name of Panel or single witness:	
Witnesses' names and titles	
Subject Area(s)/Evidence that will be addressed by the witness panel	

Please add additional sheets if necessary.

Appendix 2

Part B

Intention for Oral Cross-Examination and Final Argument

Submit by 31 May 2016

Name of Party:

Intention for Oral Cross-examination	Party and Witness Panel (if applicable) <i>Indicate whether you intend to ask questions of TransCanada and/or other intervenors and which witnesses or witness panels you intend to question</i>	Time Duration <i>Provide an estimate of the expected duration of your cross-examination for each witness or witness panel.</i>

Intention for Final Argument		
	No final argument	
	Oral	
	Written <i>The Board advises that parties intending to file written argument must monitor the proceeding (for example, through the NEB's webcast) in order to be aware of the deadline for written argument.</i>	

Please add additional sheets if necessary

Appendix 3

Exhibits to be Referred to at the Oral Hearing

Hearing Order GH-001-2016

Party Name: _____

Exhibit Number	Brief Description	Adobe Page Number	Paper Page Number	Line or paragraph reference