

MEMORANDUM

Amendment to the Agreement concerning the joint review of the Northern Gateway Pipeline Project

Between

The Minister of the Environment, Canada

- and -

The National Energy Board

WHEREAS each of the Parties signed the Agreement Concerning the Joint Review of the Northern Gateway Pipeline Project (hereinafter referred to as the Agreement); and

WHEREAS section 11.1 of the Agreement provides that amendments may be made upon written notice by a Party to the other Party and upon mutual consent of the Chair of the National Energy Board and the Minister of the Environment; and

WHEREAS section 126(1) of the *Canadian Environmental Assessment Act, 2012* provides that the environmental assessment of the Project is continued under the process established under that Act and the Agreement is considered to have been entered into by the Federal Minister of the Environment under section 40 of that Act; and

WHEREAS the Parties wish to amend the Agreement to reflect the provisions of *Canadian Environmental Assessment Act, 2012*, the *National Energy Board Act*, as amended, and the *Jobs, Growth and Long-Term Prosperity Act*.

Now therefore, the Parties hereby amend the Agreement as follows:

1. The Preamble is amended replacing the first, seventh, eighth, and ninth paragraphs with the following:

WHEREAS the National Energy Board (the Board) has regulatory responsibilities for interprovincial and international natural gas, oil and commodity pipelines pursuant to the *National Energy Board Act, as amended* (the NEB Act) and for environmental assessment pursuant to the NEB Act and the *Canadian Environmental Assessment Act, 2012* (the Act);

WHEREAS the Board, Fisheries and Oceans Canada, Transport Canada, Aboriginal Affairs and Northern Development Canada, the Canadian Transportation Agency, Environment Canada and Natural Resources Canada are or may be federal authorities for the project under the Act;

WHEREAS the Board and the responsible authorities recommended that the Minister of the Environment refers the project to a review panel pursuant to section 25 of the *Canadian Environmental Assessment Act*;

WHEREAS the Minister of the Environment had determined that a Joint Review Panel (the Panel) should be established pursuant to paragraph 40(2)(a) of the *Canadian Environmental Assessment Act* to consider the project;

2. The Preamble is amended by adding the following paragraphs after the twelfth paragraph:

WHEREAS the *Canadian Environmental Assessment Act* has been repealed and the *Canadian Environmental Assessment Act, 2012* has come into force;

AND WHEREAS pursuant to section 126 of the *Canadian Environmental Assessment Act, 2012*, the assessment by the joint review panel is continued under the process established under the *Canadian Environmental Assessment Act, 2012* as if it had been referred to a review panel under section 38 of the *Canadian Environmental Assessment Act, 2012* and the Agreement is considered to have been entered into by the Federal Minister of the Environment and the Board under section 40 of that Act;

AND WHEREAS pursuant to section 104 of the *Jobs, Growth and Long-term Prosperity Act*, the time limit established for the submission of the environmental assessment is also the time limit specified by the Chairperson of the National Energy Board under subsection 52(4) of the NEB Act, for the submission of the report under section 52 of the NEB Act.

3. Article 2.0 of the Agreement "DEFINITIONS" is amended by updating references to the *Canadian Environmental Assessment Act, 2012*:

"**The Act**" means the *Canadian Environmental Assessment Act, 2012*;

"**Environmental effect**" means,

- a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- b) any effect of any change referred to in paragraph a) on
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) the current use of lands and resources for traditional purposes by Aboriginal persons, or

- (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada;

4. Article 4.2.1 is amended as follows:

A public registry will be maintained during the course of the review in a manner that provides for convenient public access. The registry will meet the purposes of compliance with sections 79 to 81 of the Act and the Board's requirement to maintain a record of the Board's public hearing process for the project.

5. Article 6.2 is amended as follows:

The Panel will conduct its review in accordance with the Board Rules and in accordance with Part IV of the Terms of Reference attached as an appendix to this Agreement. The Panel will have the powers set out in the NEB Act and section 45 of the Act.

6. Sections 9.1, 9.2 and 9.3 under "REPORTING AND DECISION MAKING" are amended as follows:

9.1 The Panel will prepare a report under section 52 of the NEB Act setting out its recommendation on whether a certificate of public convenience and necessity should be issued taking into account whether the project is and will be required by the present and future public convenience and necessity, the reasons for the recommendations, as well as the terms and conditions that the Panel considers necessary or desirable in the public interest to which the certificate will be subject if the Governor in Council were to direct the Board to issue the certificate. The report will also set out the Panel's rationale, conclusions and recommendations relating to the environmental assessment of the project, including any mitigation measures and follow-up programs and a summary of any comments received from the public and Aboriginal peoples, as well as information referred to in Section 8. The report will also identify

- those conclusions that relate to the environmental effects to be taken into account under section 5 of the *Canadian Environmental Assessment Act, 2012*; and
- recommended mitigation measures that relate to the environmental effects to be taken into account under section 5 of the *Canadian Environmental Assessment Act, 2012*.

9.2 Once completed, the report will be submitted to the Minister of Natural Resources who will make it available to the public and Aboriginal peoples.

9.3 The Governor in Council will make the decision on the environmental assessment (whether the project is likely to cause significant adverse environmental effects and if so, whether such effects are justified in the circumstances). The Governor in Council will also decide, by order, whether the Board should issue a certificate and will give reasons for the order.

7. Article 11.4 is amended as follows:

11.4 Subject to section 62 of the Act, a Party's eligibility to withdraw from or terminate this Agreement will end at the commencement of the oral hearings.

8. The Appendix, Part II - Factors to be Considered During the Joint Review, is amended as follows:

The joint review will include a consideration of the following factors:

- The environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- The significance of the effects referred to above;
- Comments from the public and Aboriginal peoples that are received during the review;
- Measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project;
- The purpose of the project;
- Alternative means of carrying out the project, that are technically and economically feasible and the environmental effects of any such alternative means;
- The need for, and the requirements of, any follow-up program in respect of the project; and
- The capacity of renewable resources that is likely to be significantly affected by the project to meet the needs of the present and those of the future;
- Need for the project;
- Alternatives to the project;
- Community knowledge and Aboriginal traditional knowledge received during the review;
- Measures to enhance any beneficial environmental effects; and

- Environmental protection, environmental monitoring, and contingency and emergency response plans.

9. The Appendix, Part IV – Review Process, is amended as follows:

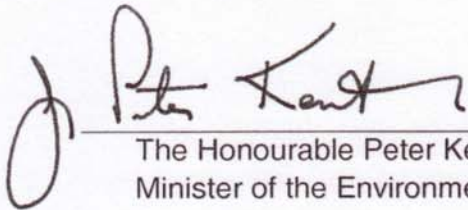
The final paragraph in Part IV is amended as follows:

- The Panel will deliver its report to the Minister of Natural Resources following the close of the oral hearings. The report will take into account and reflect the views of all Panel members.
10. The Agreement is amended by adding the following articles to the Appendix under a new heading entitled "PART V – TIME LIMITS" as follows:


PART V – TIME LIMITS

- The Panel shall complete its mandate and submit its final report to the Minister of Natural Resources within 543 days from the coming into force of the Act.
- Pursuant to subsection 52(5) of the NEB Act, with the approval of the Chairperson of the National Energy Board, the time period between the issuance by the Panel of any request for information from the proponent and the submission of the requested information by the proponent is not included in the time limit referred to in the above paragraph.

The Agreement, as hereby amended in accordance with the terms thereof, remains in full force and effect.



The Honourable Peter Kent
Minister of the Environment



Gaétan Caron
Chair, National Energy Board