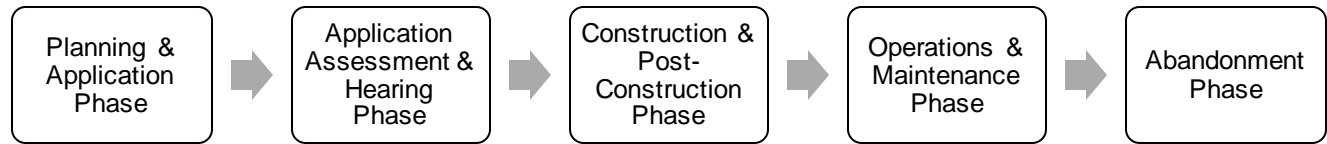


## Appendix C – Federally Regulated Pipelines

### Pipeline Approvals

Pipelines that cross provincial or international borders are federally regulated by the National Energy Board (NEB).<sup>14</sup> The NEB oversees the full life cycle of the pipelines it regulates.



With respect to regulating pipelines, the federal process differs from the provincial process because a certificate approval from the NEB is not required before commencing the land acquisition process with affected landowners.

The company's public consultation program will begin early in the planning phase of a proposed project. The NEB expects the company to demonstrate that an appropriate level of consultation was carried out. The level of consultation will depend on the scope of the project; for some projects, there may be extensive consultation, but for others it may be as simple as contacting a single landowner. It is important that landowners and other affected people or groups communicate their concerns to the company as early as possible. It is a good idea to use the public engagement opportunities (open houses, phone numbers, websites, etc.) that are provided by the company.

### Hearings

The NEB must hold a public hearing for any pipeline project that is more than 40 km in length. This is often referred to as a certificate hearing. For pipelines not exceeding 40 km in length, the NEB has discretion on whether or not to hold a public hearing. A hearing can be conducted solely in writing or through a combination of written and oral submissions. A hearing provides an opportunity for participants to express their points of view and ask questions about a proposed project. It also provides the NEB with the information it needs to make a recommendation or decision on whether or not a project should be allowed to proceed. Decisions are made by the NEB based on the public interest of all Canadians.

A person who wants to get involved in an NEB review may request to have their suggestions considered either as a Commenter or as an Intervenor.

- A *Commenter* submits their views in writing, describing how they are directly affected by the project. Commenters are not able to ask questions about other people's evidence or make final arguments.
- An *Intervenor* is directly involved in the hearing. They have an opportunity to present written evidence, cross-examine witnesses, and give final arguments. An Intervenor may also be questioned on the evidence they bring forward. The NEB administers a Participant Funding Program (PFP) that provides funding to help Intervenor with the costs of participating in a hearing. The PFP is not intended to cover all costs associated with participated in a hearing as an Intervenor.

### Determining the Detailed Route

The *National Energy Board Act* allows a pipeline company to enter lands to survey the proposed location of a pipeline or to conduct field studies, examinations and other work that is necessary

<sup>14</sup> There are rare exceptions to this, such as the Nova Gas Transmission Limited (NGTL) Alberta System .

to determine the location of a pipeline. The company is required to compensate the landowner for damages.

For projects that do not require a certificate (i.e., do not exceed 40 km in length), the Board most often permits the company to construct the project without further process. For projects that do require a certificate (i.e., exceed 40 km in length), the company cannot construct the project until it has applied for and received NEB approval of the detailed or exact route. The purpose of the detailed route hearing is to determine the best route, as well as the methods and timing of construction. It does not revisit the project approval or any other matters previously determined in the approval of a project.

In preparation for a detailed route hearing, notice of the proposed route will be provided to any person whose land is being crossed by the pipeline and will be published in the local paper. A landowner has 30 days after receiving notice to submit their concerns (known as a statement of opposition) about the exact route to the NEB. Others who believe they are directly affected by the detailed route will also have 30 days to respond. The NEB must conduct a detailed route hearing if legitimate concerns are raised within the 30 day period by a person whose lands are being crossed. The concerns must be specific to the detailed route, or timing and method of construction. The NEB can reject objections that deal with issues outside of its jurisdiction, such as compensation, or issues that are found to be frivolous or not made in good faith.

The NEB can approve segments of the pipeline route where no statements of opposition have been filed. This allows the company to begin construction at those locations. The company cannot begin construction where statements of opposition have been filed until the NEB approves that section of the route and the company has acquired all of the necessary land rights and all other applicable conditions of approval have been satisfied.

The company and the landowner are encouraged to reach a solution even if the NEB has set a date for a detailed route hearing. The NEB encourages parties to consider accessing the NEB's Alternative Dispute Resolution (ADR) services. If a resolution is made between the company and the landowner through ADR or other negotiations, the landowner may withdraw their statement of opposition, and a detailed route hearing will not take place for that segment of the pipeline.

Reimbursement of reasonable costs incurred in the detailed route process is available by submitting expenses directly to the company. The NEB is only involved should parties be unable to reach agreement on costs incurred.

At the detailed route hearing, the NEB may: accept the company's proposed route, without or without conditions, or reject all or part of the company's proposed detailed route.

Following approval of a detailed route, a company works to ensure that all land acquisition agreements (also referred to as easement agreements) are in place, giving a pipeline company the right to use the land to construct, operate, and maintain the pipeline. The finalized easement agreement lasts indefinitely and will be registered on the landowner's Certificate of Title. Future landowners will be bound by the original agreement. Since these are potentially very long-term agreements, it can be valuable to obtain legal advice prior to signing.

A landowner can negotiate conditions into the right-of-way agreement to meet their needs. The NEB does not enforce private agreements; this would be done through the provincial court in the province where the lands are located. The FAO recommends that landowners affected by a

federally regulated pipeline review the NEB's *Landowners' Guide to Land Agreements and Landowner Guide*.<sup>15</sup>

If a landowner does not agree with the decision, they can request that the NEB review the decision or they can apply to the Federal Court of Appeal for permission to appeal the decision on a question of law or jurisdiction.

### Compensation

The *National Energy Board Act* stipulates several subject areas that must be reflected in a company's agreement with the landowner, including:

- compensation for all damages suffered as a result of the operations of the company;
- review of compensation every 5 years or annual or periodic payments;
- landowner protection from all liabilities or claims caused by the company's operations (does not cover damages or claims resulting from the gross negligence or willful misconduct of a landowner); and
- restricting the company's land use to a particular area (unless otherwise agreed upon).

Compensation for a federally-regulated pipeline is negotiated between the landowner and the company. Most companies will retain qualified appraisers to determine the market value of the land to provide a basis for compensation. When negotiating with the company on compensation matters, landowners can provide their own supporting information such as appraisals, receipts, studies, or reports. Please note that the FAO does not provide advice on compensation amounts.

The landowner may also be compensated for:

- the use of any Temporary Work Spaces;
- inconvenience and nuisance caused the construction of the pipeline;
- loss of use of the land; and
- damages resulting from the company's use of the land.

Companies may take different approaches to paying compensation. They may choose to offer annual or periodic payments of equal or different amounts over a period of time. Alternatively, they may offer one lump sum payment. According to the *National Energy Board Act*, the decision rests with the landowner to select which method of compensation they would prefer.

The NEB does not have the authority to determine compensation. Disputes concerning compensation on federally regulated pipelines are forwarded by the NEB to the Minister of Natural Resources Canada to be settled using the services of a negotiator or arbitrator. Arbitration produces a binding decision for the parties.

If a company is unable to come to an agreement with the landowner for access to lands required for an approved project, the company may request that the NEB issue a Right of Entry Order, which grants the company an immediate right to enter the lands to which the order applies. The company must provide the landowner with at least 30 days' notice of its intent to apply for a Right of Entry Order. If a landowner opposes the Right of Entry application, they have 10 days to file a written response articulating why, or what conditions they would like to see on the Right of Entry Order. If the NEB grants the Right of Entry Order, the landowner is entitled to receive an advance on the compensation payable.

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<sup>15</sup> National Energy Board, Landowner Guide <https://www.neb-one.gc.ca/prtcptn/Indwnrgd/index-eng.html>  
National Energy Board, Landowners' Guide to Land Agreements <https://www.neb-one.gc.ca/prtcptn/Indwnrgd/Indgrmnt/index-eng.html>

### Prescribed Area & Ground Disturbances

Pipeline right-of-ways can vary in size, but typically they are somewhere from 12-30m in width. Legislation stipulates that there is a 30 metre “prescribed area” (or safety zone) on each side of the pipeline for safety reasons. Anyone wishing to conduct any ground disturbance within the prescribed area must obtain permission from the company first. For federally-regulated pipelines, a ground disturbance is any activity deeper than 30 centimetres and cultivation over 45 centimetres below the surface.

Under the *National Energy Board Act*, crossing a pipeline (which includes the right of way) is prohibited unless authorized through the the NEB’s regulations or a Board order. The regulations require that anyone wanting to cross the pipeline with a vehicle or mobile equipment must have pipeline company consent unless the vehicle or mobile equipment is operated within the travelled portion of a highway or public road.

If one is operating a vehicle or mobile equipment for agricultural purposes, the regulations provide that you may cross the pipeline if:

- the loaded axle weight and tire pressures of the vehicle or mobile equipment are within the manufacturer’s approved limits and operating guidelines; and
- the point of crossing has not been identified by the pipeline company as an area where crossings could impact the safety of the pipeline.

While crossing a pipeline with a vehicle that is used to perform an agricultural activity is authorized if it meets these requirements, if it is causing a ground disturbance, that activity must also be authorized as outlined in the NEB’s regulations.

It is recommended that anyone planning to conduct activities on or near a pipeline first make a contact Alberta One Call at 1-800-242-3447 or <http://albertaonecall.com/>

### Abandonment

The abandonment phase of the pipeline life cycle begins when the company decides that it wants to permanently cease using the pipeline. Abandoned pipelines may be removed from the ground or cleaned, treated, and left in the ground. There may be sections of the pipeline that are removed and other sections that remain in place. The company has no obligation to remove a pipeline unless such provisions are outlined in the original land acquisition agreement.

In the context of this publication, landowners should note an important difference in the language between federally and provincially regulated pipelines in Alberta. For federal processes, the abandonment process encompasses reclamation; once the NEB is satisfied that all commitments have been met, and the risks to public safety and the environment are eliminated or reduced to an acceptable level, the NEB’s abandonment order takes effect and the pipeline is considered to be abandoned. Provincially, abandonment and reclamation are separate processes.

The NEB is required to hold a public hearing for every pipeline that is going to be abandoned. The company will need to submit an abandonment plan that describes the planned handling of key safety and environmental issues. The information collected during the hearing process, as well as the established abandonment requirements, are used to inform the conditions the NEB will impose on the abandonment. The company must provide evidence that those affected by the abandonment were provided with sufficient notice.

The company remains responsible for any issues with an abandoned pipeline after the reclamation is complete. Even when a pipeline is abandoned, landowners should work with care in the area and contact Alberta One Call <http://albertaonecall.com/> or 1-800-242-3447 before conducting ground disturbance in the area.

#### Compliance and Landowner Complaints

Landowners are welcome to contact the NEB with any questions or concerns about a pipeline on their property at any stage in the life cycle of a project. A formal complaint from a landowner must be received by the NEB in writing and the company will be contacted for follow-up. Complaints are generally dealt with by the NEB on a case-by-case basis. The NEB can facilitate a discussion between the landowner and the company on possible ways to resolve an issue. The NEB's ADR program offers a confidential and cost-effective process for resolving disputes.

The company is accountable to the NEB for its entire life cycle. A landowner may submit safety or operational concerns to the NEB for inspection. The NEB can order an inspection if the issue is related to compliance with a condition of their approval. Non-compliance with the land agreement would need to be addressed to the courts.

For a pipeline emergency, the concern should be directed to the Transportation Safety Board's 24-Hour Hotline at 1-819-997-7887. All other emergencies related to an NEB regulated company's operations, facilities or activities should be brought to the NEB toll free at 1-800-899-1265

#### Contact

National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, Alberta T2R 0A8  
[www.neb-one.gc.ca](http://www.neb-one.gc.ca)  
Telephone: 403-292-4800  
Toll Free: 1-800-899-1265

Alternative Dispute Resolution Coordinator: [ADR-MRD@neb-one.gc.ca](mailto:ADR-MRD@neb-one.gc.ca)  
Complaint Resolution Specialist: [landsinfo@neb-one.gc.ca](mailto:landsinfo@neb-one.gc.ca)  
Compensation Disputes: [PAS-SAP@NRCan-RNCan.gc.ca](mailto:PAS-SAP@NRCan-RNCan.gc.ca) or 343-292-6216