Canada takes different approach for pipeline

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Most of TransCanada/ExxonMobil's proposed 1,717-mile natural gas pipeline from Alaska's North Slope would be built in Canada, where it faces government scrutiny remarkably similar to the oversight under way in the United States.

Canadian government agencies – federal, provincial and territorial – still must issue final approvals for the pipeline project.

They are empowered to ensure the pipeline is designed, constructed and operated safely.

They have a strong environmental voice over the project. This includes say-so on how the pipeline crosses streams, how land may be disturbed to trench and assemble the pipe, and what happens when the pipeline path penetrates acreage used by woodland caribou and other important wildlife.

But there's one significant difference between U.S. and Canadian oversight: The pipeline project sponsor already has in hand some important Canadian authorizations – including arguably the most important ones of all, federal certificates to build and operate the pipeline.

While the U.S. and Canadian governments both approved the gas pipeline project when it was initially proposed in the 1970s, project sponsors in the U.S. later gave up their rights.

However, that 1970s-era pipeline project, with its certificates in hand, continues to exist in Canada. And the **Alaska Pipeline Project** – a joint effort of TransCanada Corp. and ExxonMobil – has structured the Canadian portion of its multibillion-dollar pipeline proposal around the plan that first gelled when Jimmy Carter was U.S. president, "Laverne & Shirley" was the top-rated TV show and Alaskans were taking their first strides as newly christened oil tycoons.

Outpouring of diplomacy

The proposed North Slope gas pipeline conceived in the 1970s is physically almost identical to the one being pursued today, but different in a couple of important details.

The 1970s-era proposed pipeline system ran from Prudhoe Bay to southern Alberta, where it branched into various pipeline systems, including two segments feeding into the Lower 48 that needed to be built. The lower one-third of that system -- from Alberta into the U.S. West and

Midwest -- actually got built, with those pipelines starting service in the 1980s. The current concept covers much, but not all, of the 1970s proposal that wasn't constructed.

For the Alaska portion of the 1970s line, a consortium of nine companies formed to take on the project. That partnership dissolved years ago and none of the government authorizations it received are valid today. TransCanada and ExxonMobil are proposing to build the Alaska portion as a new project under 2004 federal legislation rather than the 1970s legislation.

It is different in Canada. There, TransCanada is working to complete its 1970s proposed pipeline. The project has the same purpose and will follow the same route. However, the project will rely on new technologies and engineering that have progressed in the past three decades.

The 1970s-era line was expected to flow a smaller volume of gas from Prudhoe Bay than the current project: 2.4 billion cubic feet a day then vs. the 4.5 bcf a day now. And the gas pressure inside the pipeline would be greater if today's project goes forward.

In Canada, construction from the Alaska border fell to two subsidiaries of Foothills Pipe Lines Ltd., one handling work in the **Yukon Territory** and the other in **British Columbia**. TransCanada now owns Foothills and controls the critical Canadian construction certificate each of those subsidiaries obtained, as well as certificates to extend the pipeline into Alberta if it chooses to do that.

The 1970s project sparked an outpouring of diplomacy between Canada and the United States specifically intended to push the pipeline forward.

This diplomacy resulted in three key documents that are active today in Canadian and U.S. consideration of the TransCanada/ExxonMobil pipeline proposal.

First is the Transit Pipeline Treaty, signed in January 1977. This treaty makes it easy for the United States to flow its natural gas via pipelines through Canada, and vice versa.

Second is the "**Agreement on Principles Applicable to a Northern Natural Gas Pipeline**," signed in September 1977. In this document, the U.S. and Canada agreed on:

- The pipeline route. (Several routes backed by different companies had been in competition. Under this agreement, the winner – the Foothills project – would follow the trans-Alaska oil pipeline route to Delta Junction then roughly parallel the Alaska Highway to Alberta.)
- Levels of property taxes along the route.
- Establishing ways to issue pipeline authorizations promptly.
- Ensuring that the pipeline tariff, or shipping fee, would be reasonable and nondiscriminatory.

- Conducting a joint technical study to evaluate pipeline diameter, pressure and other specifications.

The third document is the **Northern Pipeline Act** of 1978, which put into Canadian law the terms of the 1977 agreement as well as other aspects of Canada's approach to the pipeline project.

Valid construction certificates

Canada's Northern Pipeline Act is at the heart of why the Canadian and U.S. governments are approaching the gas pipeline project differently.

The act declared that the certificates of public convenience and necessity shall be issued for the Canadian portion of the pipeline. This is the Canadian authorization that TransCanada would use today to build and operate its proposed pipeline. The 1978 certificates remain valid. However, the Canadian certificates were heavily conditioned. Regulators still must sign off on the final pipeline design and location within the easement, and numerous federal and provincial permits will be needed before construction can begin.

In the United States, by contrast, the TransCanada/ExxonMobil partnership is several years away from obtaining a similar certificate for its Alaska construction. The partnership is preparing to apply in October 2012 to the Federal Energy Regulatory Commission for that certificate. In the meantime, the partnership is refining the pipeline design and route as well as amassing a mountain of environmental data needed to complete its application next year. If all goes smoothly, FERC could issue the certificate in mid-2014.

The Canadian pipeline act also created a new office – the **Northern Pipeline Agency** – that quarterbacks oversight of the project, known there as the Alaska Highway Pipeline Project.

This agency is a one-stop permitting and regulatory office for construction. Most federal applications related to the gas line will get filed with the NPA.

The agency works with other Canadian federal regulators to expedite decisions and coordinates interaction among governments – U.S. and Canadian federal, provincial and territorial. In that way, the Canadian agency is similar to the Office of the Federal Coordinator, which assists with U.S. federal permitting for the project. Congress created the Federal Coordinator's Office in the Alaska Natural Gas Pipeline Act of 2004, an update of the Alaska Natural Gas Transportation Act of 1976, the U.S. law that pertained to the 1970s-era pipeline project.

Another important role: The Northern Pipeline Agency will monitor and inspect the construction work (the Office of the Federal Coordinator will have that responsibility for Alaska construction).

The Northern Pipeline Act lays out the agency's goals:

- Facilitate efficient and expeditious planning and construction of the pipeline, taking into account local and regional interests, the interests of residents, particularly Native people.
- Consult and coordinate with provincial, Yukon Territory and Northwest Territories governments.
- Maximize the social and economic benefits while minimizing social and environmental harm.
- Ensure the highest possible Canadian participation in all aspects of planning and building the pipeline.

When the 1970s-era pipeline project went dormant during the 1980s, the Northern Pipeline Agency did, too. It exists today with a small staff as TransCanada/ExxonMobil pursue environmental and other field work in Canada connected to today's pipeline project. The agency has expanded and plans to continue to do so as the project develops. By law, the agency will go away one year after the pipeline starts up, just like the U.S. Office of the Federal Coordinator.

Some land easements in hand

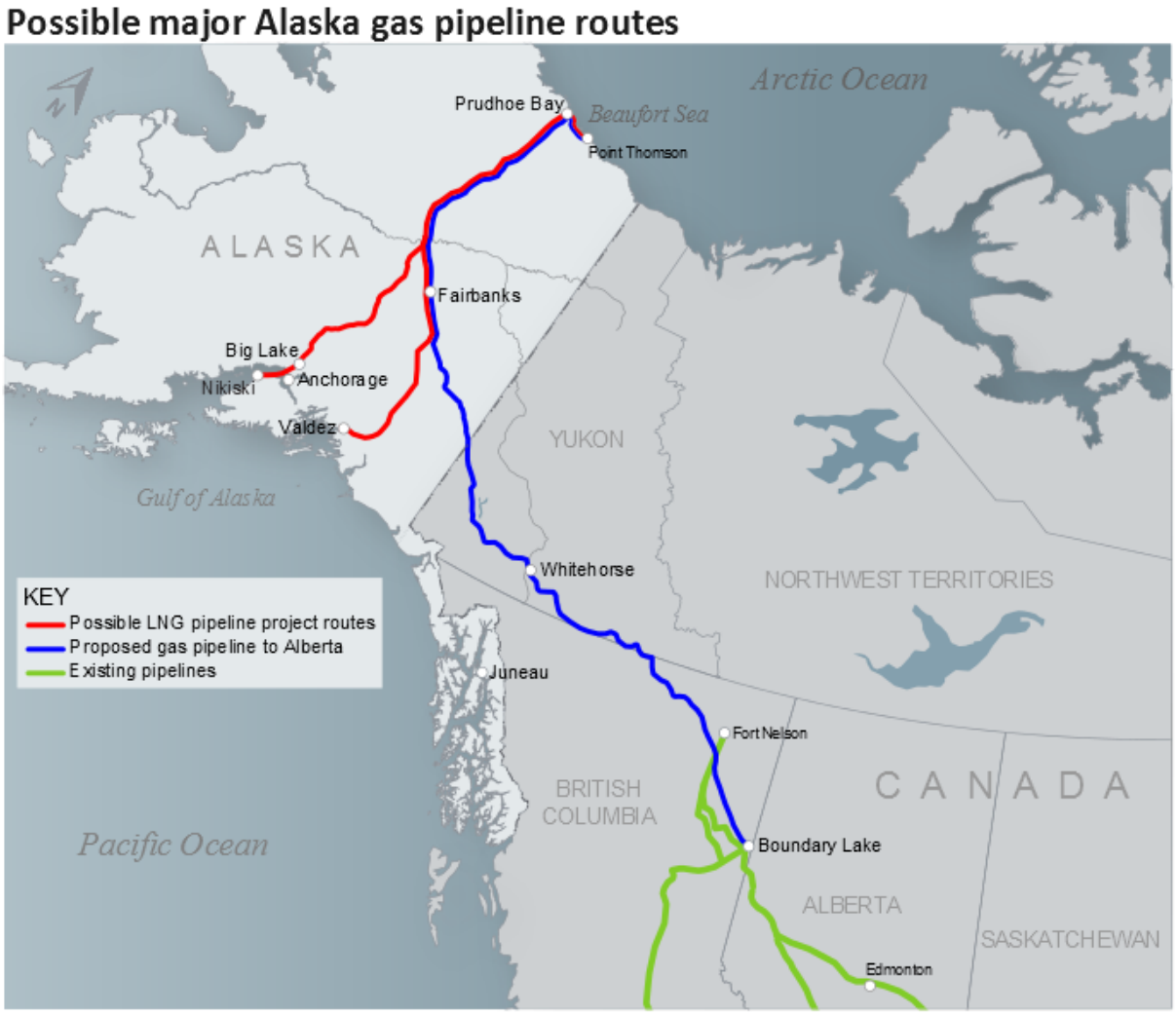
Another vital authorization that TransCanada already holds is an easement, or right of way, for the pipeline through the Yukon Territory. In Alaska, TransCanada/ExxonMobil have no rights of way yet.

Foothills applied for the **Yukon land easement** in 1976. In 1983, Canada granted it to Foothills. The easement lets TransCanada/ExxonMobil do field work on the land and allows the partnership to build eventually, but the easement requires approval of the minister responsible for the Northern Pipeline Agency before actual construction can start.

The Yukon easement allows construction within a 787-feet-wide corridor (240 meters). That gives TransCanada leeway within the right of way on exactly where to bury the 48-inch pipe and locate compressor stations. Once the pipeline is built, the easement boundaries will narrow.

The Foothills project underwent **environmental and socio-economic reviews** in the late 1970s and early 1980s as part of applying for this easement and obtaining certificates of public convenience and necessity.

To update that work from 30 years ago, TransCanada/ExxonMobil is compiling the earlier work and adding information collected since. The partnership then will note the gaps and consult with NPA, Yukon Territory and First Nations to ensure it has identified the information still needed.



Although TransCanada holds the Yukon easement covering about half the pipeline in Canada, it has no pipeline right of way in British Columbia for the other half of its Canada route. The British Columbia government has established a map reserve corridor that's nearly a mile wide (1,500 meters) to help protect the proposed route from uses that would conflict with a pipeline. The partnership will need authorizations for work camps, mining gravel for construction and the pipeline right of way itself. The provincial government issues these authorizations in British Columbia.

Other approvals

Besides the rights of way, TransCanada/Exxon Mobil will need stream-crossing approvals.

And depending on how the project has changed since the 1970s, approvals for compressor stations or other features might be required.

The other main Canadian federal regulator for the Alaska gas pipeline is the National Energy Board. Canada law set up an integrated NEB-NPA regulatory regime specifically for this project. An NEB member is appointed to the Northern Pipeline Agency and is called the designated officer.

The NEB is Canada's counterpart to FERC. It regulates pipelines, among other duties.

The NEB was leading government oversight of the 1970s-era pipeline project until the Northern Pipeline Agency started up. For example, the NEB held extensive public hearings on the Foothills' application. Foothills applied for the Yukon land easement in 1976, and the federal government granted it in 1983 following an environmental assessment.

Beyond this, the **NEB licenses** gas imports and exports, and will approve the pipeline's tariffs.

Further, to receive the NEB's go-ahead, TransCanada/ExxonMobil must show that natural gas shippers are committed to use the pipeline. Unlike in the U.S., Canada does not mandate that the pipeline sponsor hold an open season to solicit shippers. But most pipeline sponsors hold them anyway. To support its bid for NEB approval, TransCanada/ExxonMobil held a Canadian open season in 2010 concurrent with its open season for the Alaska section of pipe. The partnership said it is negotiating with potential shippers.

Ultimately, after the Northern Pipeline Agency goes away, the NEB will take over responsibility for regulation of safety, integrity, environment and socio-economic matters, as well as tolls and tariffs.

Ongoing oversight

Although TransCanada holds the important certificates and the Yukon easement, these authorizations are heavily conditioned, as was mentioned. The Northern Pipeline Agency can amend them or impose new terms and conditions.

Also under these documents, the partnership must get its final construction plans approved before breaking ground. Among other features, these plans will detail how the partners will protect the environment as construction clears vegetation, removes soil and disrupts migratory birds or other wildlife. The plans will cover waste disposal at work camps and hiring of locals.

The NPA could impose new conditions on any of these subjects, or others. It ordered hundreds of conditions when it signed off on the parts of the 1970s-era pipeline project that got built.

First nation issues

Land claims and other First Nations issues also are at play in Canada.

First Nations is the Canadian term for its Indian people.

One goal of the Northern Pipeline Act is to ensure the project provides the maximum benefits possible to First Nations and others. The Northern Pipeline Agency will consult with First Nations on many prospective authorizations and activities.

The Canadian federal government has been working with hundreds of First Nations for decades to resolve their land claims and issues related to treaty rights.

About half of the 972-mile Canadian portion of the pipeline would lie in the Yukon. The Foothills easement there is recognized as valid in certain First Nation Settlement Lands. Many of the First Nations there have formed the **Alaska Highway Aboriginal Pipeline Coalition** to facilitate interaction with TransCanada/ExxonMobil, and the Canadian and Yukon governments. A few First Nations groups from the Yukon told the Northern Pipeline Agency this fall that they will oppose the Alaska pipeline unless they get **certain social and economic benefits**.

Most of the other half of the Canadian pipeline route lies in British Columbia. As in parts of the Yukon, some First Nations in British Columbia have unresolved land claims or treaty issues. Although B.C. has a map reserve pipeline corridor for the pipeline, consultations with affected First Nations will be required before the final pipeline right of way is set.

TransCanada has been working with First Nations in the Yukon and British Columbia.

"At the moment, First Nations issues are not a roadblock for our project in Canada," Tony Palmer, TransCanada vice president for major project development and Alaska Pipeline Project management committee chair, told the Alaska Senate Resources Committee in August 2011.

"We've executed participation agreements with several of them (First Nations), and we continue to negotiate with others," he said.

"We have legal rights through the Yukon that no other party does," he said. The Northern Pipeline Act gives First Nations certain benefits, he added. "We're negotiating to give them more."

As for northern British Columbia, Palmer called it "traditional pipelining country." Oil and gas development has occurred there for 60 to 70 years, unlike in the Yukon where pipelines are rare, he said.

"We continue to have negotiations with First Nations both in the Yukon and North B.C.," he said. "We've made good progress with First Nations. Still miles to go."

To learn more about First Nations of Canada, visit **Aboriginal Affairs and Northern Development Canada**, the Canadian agency that is similar to the U.S. Bureau of Indian Affairs.