

# The Northern Gateway Pipeline: Seeking Consensus Is a Slippery Business

## Case

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**Online Pub Date:** April 04, 2019 | **Original Pub. Date:** 2019

**Subject:** Corporate Social Responsibility, Sustainability in Business, Sustainability Strategy

**Level:** Intermediate | **Type:** Indirect case | **Length:** 5518 words

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**Organization:** Enbridge | **Organization size:**

**Region:** [Northern America](#) | **State:**

**Industry:** Extraction of crude petroleum and natural gas| Mining and quarrying

**Originally Published in:**

**Publisher:** SAGE Publications: SAGE Business Cases Originals

**DOI:** <http://dx.doi.org/10.4135/9781526495099> | **Online ISBN:** 9781526495099

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<http://dx.doi.org/10.4135/9781526495099>

## Abstract

In December 2013, the Joint Review Panel (JRP) for the Northern Gateway Pipeline (NGP) was tasked with preparing a recommendation to the National Energy Board (NEB) on construction of one of Canada's most divisive pipeline projects. While considered critical to the economic growth of Canada's oil industry, the pipeline did not have universal support due to environmental, social, and economic risks associated with the project. This negotiation simulation requires students to adopt the position of regulatory, civilian, and industry representatives to identify considerations and achieve consensus on the construction of the pipeline. Undergraduate and graduate students alike will learn that competing perspectives and trade-offs occur in any decision involving a collective action problem, which can lead to agreements but also to failure.

## Case

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### Learning Outcomes

This multi-stakeholder negotiation simulation provides students with the opportunity to deal with the complexities of a publicly sensitive project that require negotiation and compromise to achieve regulatory approval. Students will learn to:

- assess the trade-offs that occur in any decision involving a collection action problem, which can lead to agreements but also failure;
- develop negotiation skills and techniques such as coalition building and distributive and integrated strategies; and
- experience the challenges involved in process management, such as communication between parties through working groups and steering committees.

### Introduction

In December 2013, the Joint Review Panel (JRP) for the Northern Gateway Pipeline (NGP) will prepare a recommendation to the National Energy Board (NEB) on whether to approve the construction of one of Canada's most divisive pipeline projects. The pipeline is to be constructed and operated by Enbridge Inc., a leading Canadian multinational energy infrastructure provider and project principle on the NGP. Mr. Al Monaco, president and chief executive officer of Enbridge, faces a predicament between ensuring the pipeline is constructed with minimal added cost and achieving approval by opposing stakeholders.

The pipeline is considered critical to the continued economic growth of Canada's oil industry as it connects sites of extraction in land-locked Alberta with tidewater access to Asian markets through British Columbia. The project is expected to accrue over CAD 28 billion in pre-tax earnings for the industry in the first decade. However, support for the pipeline is divided given a range of environmental, social, and economic risks associated with the project. Enbridge must work closely with stakeholders to mitigate their concerns, in particular by reducing environmental risk and encouraging local economic development. This negotiation will be critical in shaping Canada's energy and environmental future.

### Background

Canada is a globally recognized energy exporter with immense hydrocarbon reserves. To maintain its position as a global energy superpower, Canada must increase its pipeline capacity in line with the industry's increasing productive capacity. Enbridge Inc., a Canadian leader in energy infrastructure projects, has proposed the construction of a pipeline from Alberta's oil sands to the western coast of British Columbia. At the time of this case, there is no pipeline capable of transferring diluted bitumen to the western coast of Canada. To build the pipeline, Enbridge must first gain approval from the NEB, through a formal process of consultation.

## Enbridge Inc.

Enbridge currently operates over 28,000 kilometers of crude and liquid pipelines, transporting over 2.9 million barrels daily (28% of North American crude oil production). Enbridge is headquartered in Calgary, Alberta, and employs over 15,000 people in Canada and the United States. Enbridge consistently ranks as one of the world's most sustainable corporations given its social and environmental commitments. While Enbridge is the proponent of this pipeline development, the company also works closely with stakeholders to mitigate concerns through the adoption of conditions that reduce environmental risk and encourage local economic development.

## The Canadian Oil Sands

Canada is home to the third largest hydrocarbon reserve on the planet.<sup>1</sup> The province of Alberta is estimated to hold over 166 billion barrels of oil reserves (Government of Alberta, 2017), the bulk of which are a viscous mixture of sand, water, and bitumen commonly known as tar sands or oil sands. The steep rise in oil prices since 2007 has made capital-intensive bitumen extraction and export lucrative and spurred an exponential rise in oil sands investment and production. While most oil sands deposits are owned by a handful of large Canadian companies (including Athabasca Oil Corp., Canadian Natural Resources, Cenovus, Suncor, Syncrude), Canadian bitumen is primarily exported to the United States. Canada is a globally recognized energy exporter; however, in recent years, transport capacity has outpaced increasing productive capacity. New infrastructure development will be imperative to maintain the growth and profitability of the oil sands.

## Canadian Pipelines

Pipelines that deliver bitumen to export markets are predominantly directed southward toward the United States, which imports 71% of Canada's total crude production (National Energy Board, 2013a). However, U.S. demand for Canadian oil is declining as the country pursues energy independence (Hoberg, 2013). Thanks to the rise of shale oil production, the United States is transforming into a major exporter of oil. The increase in U.S. production motivates oil sands producers to pursue tidewater routes, primarily to Asian markets where demand is booming, as an option to exporting to the United States (National Energy Board, 2016).

## The Northern Gateway Pipeline

The NGP was first proposed by Enbridge Inc. in 2004 to export Canadian bitumen from the landlocked province of Alberta to the western coast of British Columbia for export. In its current state, the project involves two pipelines spanning approximately 1,170 kilometers from Bruderheim, Alberta, to Kitimat, British Columbia (National Energy Board, 2013b): one 36 inch pipeline will export approximately 525,000 barrels per day (bpd) of bitumen from Alberta west to the coast of British Columbia; a second 20-inch pipeline will carry 193,000 bpd of natural gas condensate (used to thin bitumen for pipeline transport) east.

Enbridge initially proposed the NGP to transport 400,000 bpd from inland Alberta to the coast of British Columbia with a cost estimated at CAD 4 billion. In 2005, Enbridge signed a pact with PetroChina to import half of the 400,000 bpd capacity (National Energy Board, 2013c). The project was then enlarged to include two tanker berths, three condensate storage tanks, and 16 oil storage tanks at the port of Kitimat, British Columbia. The final estimated cost for the project is CAD 7.9 billion (National Energy Board, 2013c) with the pipeline projected to increase the Canadian gross domestic product (GDP) by CAD 9.2 billion annually (Eglington, Mansell, Ruitenbeek, & Schlenker, 2012).

## The Joint Review Panel

Decisions on inter-provincial pipelines fall under the jurisdiction of the NEB, which is responsible for determining whether such projects align with the country's national interest (Bankes, 2012). The NEB often appoints JRPs to consult with interested stakeholders through formal hearings and written submissions. The independent and bipartisan tribunal is responsible for examining projects that are subject to a high degree of public concern (National Energy Board, 2013c). To inform its position, the JRP conducts hearings where interested stakeholders can make oral presentations or submit written arguments. Six stakeholders represent a range of interests in the case negotiation: Enbridge is the project principal; Natural Resources Canada (NRCAN) is a federal ministry responsible for regulation; the Province of British Columbia (BC) is where most of the pipeline will be laid; Forest Ethics is an environmental NGO; Unifor is a labor association; and the Yinka Dene First Nations Alliance represents an Indigenous coalition.

Ultimately, the success of the NGP relies on Enbridge receiving a "social license to operate" by persuading opposing stakeholders that they would benefit if the pipeline was built. Thus, the mediation process must address stakeholder opposition associated with the potential environmental, economic, and social consequences. Each stakeholder will have an opportunity to negotiate with others and vote for conditions that align with their interests.

## Critical Project Benefits

### Economic Activity

The Canadian economy is closely tied to the oil and gas sector. Canada is the fifth largest oil producer and the fourth largest oil exporter in the world (Natural Resources Canada, 2014). Oil and gas products account for 20% of Canada's net exports, almost 25% of private sector investments, and 20% of capitalization on the Toronto Stock Exchange (Pineault & Hussey, 2017; Simpson, 2013). Record-breaking oil prices from 2011 to 2014 bolstered private investments and increased oil sands production capacity. In 2012, the oil and gas sector invested roughly CAD 55 billion in new capital projects across Canada (Morgan, 2013). Approved new infrastructure would increase production capacity up from 1.8 million bpd to 5.2 million bpd when operational (Canadian Association of Petroleum Producers, 2012; Lemphers, 2013). As production is anticipated to rise over the next decade, restricted pipeline capacity could cost as much as CAD 1.3 trillion in foregone exports (Holden, 2013). Hence, pipeline proponents consider increased pipeline capacity to be essential for the Canadian economy.

Stephen Harper, Canada's prime minister at the time of the NGP project proposal, vocally expressed his views on Canada as an "energy superpower" on the world stage (Harper, 2006). Federal government departments align with this position, emphasizing the significant economic benefits of the NGP project. For example, a re-

port by Natural Resources Canada projected the pipeline could employ upwards of 62,700 person-years of employment during the construction phase and provide 1,150 long-term operations jobs. The project promises an estimated CAD 70 billion in labor income, CAD 44 billion in federal revenues, and CAD 54 billion to provincial governments (National Energy Board, 2013c). The project is anticipated to result in over CAD 270 billion in the GDP over the next 30 years (Akins, 2012).

The provincial government of Alberta is also a strong advocate of pipelines. The Albertan economy and government revenues are even more tied to the industry: the oil and gas sector employs over 170,000 Albertans and accounts for 23.9% of the province's total GDP (KPMG, 2013). Moreover, Alberta has long used its oil revenues to offer the "Alberta Advantage"—a flat 10% income tax and no provincial sales tax (Rubin, 2015). But waning demand and discounted prices received for exporting oil to the United States relative to international markets led to a CAD 1.3 billion budgetary deficit in 2012 (Gerson, 2013).

The position of the provincial government of British Columbia is more nuanced. While British Columbia would benefit economically from a new pipeline, it also faces a disproportionate share of environmental risk and argues it must be compensated accordingly (Hoberg, 2013). Only 7.4% of the CAD 81 billion in expected revenue over the next 30 years will be allocated to the province (Dalal, Platts, & Steilo, 2012), yet 58% of the proposed pipeline flows through British Columbia, where a pipeline leak could threaten provincial industries like the salmon fisheries, and risk contamination in remote watersheds (Dalal et al., 2012). At the time of this case, the government of British Columbia has signaled it is open for further negotiation if the province garners an adequate share of economic benefits to compensate the province for the incurred risks.

## Reaching New Markets

Future growth for Canadian bitumen is contingent on gaining access to lucrative Asian markets. An oversupply of oil in the United States and transportation bottlenecks involved in Canadian distribution channels distort continental energy markets.

Stockpiles of oil inventory in the Midwestern United States have dampened Canadian crude demand and consequently depressed export prices relative to overseas benchmark rates (Gattinger, 2013; Hoberg, 2013). Given the oversupply and lower demand for Canadian crude on the North American market, Canadian oil suppliers are forced to sell their resources at a discounted price that costs the industry billions in potential revenues (Moore et al., 2011; Natural Resources Canada, 2013).

Meanwhile, as U.S. demand stagnates, Asian demand grows: in 2013, China surpassed the United States as the world's largest importer of crude oil, accounting for nearly 33% of global oil demand growth (National Energy Board, 2016). Given recent trends in American production of shale, price discounting, record-breaking international oil prices, and growing demand in Asian markets, there is an increasing need to extend Canadian exports to new markets. The NGP would increase Canadian export capacity to the burgeoning Asian markets and secure the industry's future profitability and growth while bringing jobs, tax revenues, and other economic spin-offs to the Canadian economy.

## Critical Project Risks

### Oil Spills

The proposed NGP route crosses over hundreds of sensitive waterways and rugged mountains and through the ecologically rich Great Bear coastal temperate rainforest. Supertankers associated with the pipeline then pass through inner coastal waterways and into open waters (Swift et al., 2011).

The proposed NGP route would pass across over 800 rivers and streams of critical importance to wildlife and humans. A spill along the route could contaminate headwaters of three important watersheds—the Mackenzie, Fraser, and Skeena—which host vital marine migration routes and salmon habitats (Chia, Jensen, O'Neill, & Zhan, 2015). Downstream contamination threatens British Columbia's agri-food and seafood industries as well as the booming recreational industry, which respectively contribute over CAD 4.5 billion and CAD 7 billion to the province's gross domestic product (British Columbia, 2018).

Pipeline spills are commonplace. A study by Alberta's Energy and Utility Board found over 12,000 incidents of leaks and ruptures over a period of 15 years, 57% of which were caused by internal corrosion (Alberta Energy and Utilities Board, 2007). The JRP estimates that the average cost of cleanup and damage from an oil spill is CAD 37,500 per barrel (CAD 236,250 per m<sup>3</sup>) of bitumen (National Energy Board, 2013c). A spill size of 5,000 m<sup>3</sup> (which, according to Enbridge, has a 9% chance of occurring) would thus cost over CAD 1 billion in cleanup and damages. The costs of a large spill like the Exxon Valdez could cost upwards of CAD 10 billion (Concerned Professional Engineers, 2014). Enbridge responded to this concern by committing to thickening pipeline walls through major tributaries; however, project opponents consider these measures inadequate given the terrain and fragile ecosystems the pipeline is planned to traverse (Phillip, 2012).

The risks of spills are also relevant for coastal and marine environments as supertankers associated with the NGP are anticipated to pass through Northern British Columbia's Douglas Channel. The route to open waters is a 185 kilometer long passage as narrow as one kilometer across, through a treacherous pass of mountainous fjords and islands that often experience hurricane force winds and deep fog (Honerich, 2012). Notably, the proposed tanker route is six times narrower than the passage where the Exxon Valdez sunk off the coast of Alaska, which spilled nearly 11 million U.S. gallons of crude oil over 1,300 miles of coastline (Lyon, & Weiss, 2010).

These routes are home to critical orca and humpback whale habitats, which are threatened by deadly collisions, toxic contaminants, and underwater noise impacts (North Coast Cetacean Society, 2013). To date, given the risk of spills, an informal moratorium on all oil tanker traffic in this region has been in place since 1972 (Honerich, 2012). Supertankers have never navigated this route.

## Ecological Impacts and Human Health Consequences

The pipeline is believed to have adverse effects to ecology and human health. The pipeline's permanent "right of way," a narrow (25 to 30 meter) slice of clear-cut forest, would pass through the ranges of at least five of the most threatened herds of Woodland Caribou and eight grizzly bear populations in Canada (Cryderman, 2013; Vanderklippe, 2012). Conservation groups like Forest Ethics advocate that these routes should pass through previously disturbed lands to minimize the ecological impact of the pipeline on native species.

Permanent ground displacement caused by landslides, faults, or liquefaction present one of the most significant geohazards associated with pipeline systems (Nyman, Lee, & Audibert, 2008). In its current state, "stress design requirements in the standard [Clause 4.2.4] do not include the effects of inertial earthquake loads, slope movements, fault movements, earthquake-induced earth movements, frost heave, or other loading sources" (Rathje, 2011).

Adverse impacts of hydrocarbons on human health are also considered to be significant.<sup>2</sup> Indigenous communities who rely on these ecosystems cite concerns about degraded air and water quality as a result of increased industrial activity (National Energy Board, 2013e). Increased concentrations of hydrocarbons in sediment (38% from 1999 to 2007), arsenic in water (1.5 µg/L to 2.6 µg/L from 2003 to 2007), and volatile organic compounds in the air (119% from 2005 to 2010) have been linked with increased cardiovascular disease, increases in respiratory symptoms, and lung cancer in sites downstream of oil sands production (Timoney, & Lee, 2009). In communities that depend upon aquatic life for food, mercury and arsenic in local fishes have contributed to a 30% increase in the number of cancer cases. Spills have led to elevated levels of contamination. Elevated levels of sulfate and various metals have been documented following incidents of industrial pollution. Disruptions to traditional living have led to increased mental illnesses from psychological stresses and diminished social wellbeing of the affected communities (National Energy Board, 2013e). Indigenous groups vocally argue that their lands and waterways—a source of livelihood and a spiritual and cultural foundation for thousands of years—are threatened by the pipeline (Gibson, & Klinck, 2005).

## Threats to Indigenous Sovereignty

Numerous Indigenous communities opposed the NGP, arguing that the pipeline would be a violation of their sovereignty. Over 25% of the proposed pipeline and tanker corridor sits within 80 kilometers of 69 Indigenous communities, many of whom hold traditional titles to their lands (Carrier Sekani Tribal Council, 2011; McCreary, & Milligan, 2014). Indigenous titles are acknowledged under the Canadian constitution, following the Supreme Court's 1973 Calder Case ruling (Godlewska, & Webber, 2007). More recently, a 2004 Supreme Court ruling enforced the Crown's duty to consult and accommodate Indigenous groups for developments that could negatively impact their rights or titles (Newman, 2009).

While the federal government called for consultations with Indigenous groups along the pipeline route (excluding downstream nations), Enbridge states that it intends to proceed with its development with or without consent from Indigenous communities (West Coast Environmental Law, 2009; 2011). In response, Indigenous groups have invoked the United Nations Declaration on the Rights of Indigenous Peoples to support their right to make free and informed choices about the development of their lands and resources (Boutilier, 2017; United Nations, 2008; Ward, 2011). The right to free, prior, and informed consent (FPIC) under the UN declaration is, however, a non-binding instrument to guide the behavior of states (McCreary, & Milligan, 2014). Indigenous groups have thus requested that Indigenous rights be recognized on lands with title claims, through consultation and consent for all impacted communities (Fine, 2014). The NGP faces perhaps its greatest opposition among coastal communities who fear a spill would destroy the marine environment (McCarthy, & Lewis, 2016).

## Climate Change

Opponents of the project also oppose the NGP for its potential contribution to the climate crisis. The production associated with the proposed pipeline would increase Canada's "well-to-wheel" greenhouse gas emissions by as much as 100 million tonnes of CO<sub>2</sub> equivalent (MtCO<sub>2</sub>eq) per year, which is approximately 14% of Canada's 2008 emissions (Zickfeld, 2011). This would make it increasingly difficult, if not impossible, for Canada to meet its emission targets pledged under the United Nations Copenhagen Accord (and the Paris Accord that would follow in 2015).

## Negative Economic Impacts



Those opposing the pipeline argue the environmental and social costs of oil sands developments are inadequately quantified and, as such, the benefits are grossly inflated (National Energy Board, 2013c). Moreover, increased reliance on fossil fuel operations poses risks to the Canadian economy. Higher oil prices result in inflationary pressures that influence domestic interest rates and business investments which lead to increased unemployment and declining production in non-oil related industries like the export-reliant manufacturing sector (Allan, 2012). Furthermore, foreign ownership of oil sands operations costs Canadians an even larger share of economic benefits, as profits and value-added refining capacities are exported offshore. Canada's largest labor union, Unifor, opposed the NGP, arguing that pipelines not only export Canada's resources but also export profits and jobs (Dias, 2014).

## General Instructions

This negotiation simulation is intended to replicate the process that stakeholders underwent through the JRP consultation on the NGP. In 2013, the JRP recommended the approval of the pipeline if a total of 209 conditions were met. In this simulation, students attempt to achieve consensus on 10 similar conditions. The JRP will support the committee's recommendations if at least five of the six stakeholders can agree on 10 of the 20 conditions indicated in each stakeholder's confidential instructions package. Each stakeholder, including Enbridge, will have an opportunity to negotiate and vote in favor of conditions that align with their interest. Students will have three rounds (20 minutes each) to negotiate their positions on each condition, voting for those they favor at the end of each round. If no agreement is reached, the JRP will reject the recommendation.

After students have read and discussed the case, they will be randomly assigned to play the role of one of six stakeholders involved in the JRP consultation and e-mailed confidential information on their stakeholder and its position on the NGP. The brief includes a scorecard that represents their gains and losses with respect to 20 conditions that could be included in the JRP's decision. This case asks readers to put themselves in the position of their respective stakeholder and provide a joint recommendation on whether the benefits of the pipeline exceed the costs.

## Discussion Questions

1. In your role as a member of the JRP, do you believe Canada would be better or worse off if the NGP project is built?
2. Why are stakeholder perspectives so divisive?
3. How did you best represent your stakeholder's position while still seeking opportunities to advance your interests through the negotiation? For those groups that did particularly well, what characteristics about their strategy or group led to their success? What role did issue saliency, urgency, and legitimacy play in explaining this outcome?
4. How did the negotiation process, voting criteria, and scores reflect each participant's understanding of their stakeholder?
5. How might your views on the pipeline development change in light of current economic and environmental circumstances?

## Notes

1. Alberta's tar-like bituminous reserves are highly viscous and denser and are referred to as oil sands, tar

sands, or bituminous sands.

2. The Northern Gateway's Ecological and Human Health Risk Assessment noted human health risks but exposure is argued to be below Health Canada's thresholds with adequate containment. MacDonald, K. (2012). *Ecological and Human Health Risk Assessment for Pipeline Spills*. Northern Gateway. Retrieved from <https://www.ceaa-acee.gc.ca/050/documents/p21799/80422E.pdf>

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