

Corporate Privacy and Environmental Review at Export Development Canada: How Billions are transferred to Enbridge and TransCanada without Substantive Disclosure.

Submitted to Antipode

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October 16 2013

Abstract/Synopsis: Export Development Canada (EDC) finances pipeline projects in North America to the tune of billions of dollars each year. Yet, in large part, their corporate environmental risk reviews are not available to the public. Alongside restrictions on public dissent in the regulatory process, such limitations on access to information indicate a marked absence of substantive transparency concerning government oversight of the Canadian oil and gas industry.

The Enbridge Line 9 hearings are ongoing this week in Toronto. In Ontario the reversal of that pipeline, to transport fuel from Western Canada eastward rather than refined fuel from Eastern Canada westward, has sparked public concerns. These center upon the risks that arise from moving corrosive diluted bitumen – as opposed to refined products – through populated areas, as well as a proposed 25% capacity increase of the pipeline [from 240,000 to 300,000 barrels](#) per day. Opponents of Line 9 join a [significant opposition](#) against Alberta Tar Sands production, a movement that unites residents in the vicinity of the route, aboriginal and non-aboriginal, with ENGOs and environment and climate justice activists. Due to sweeping changes to the [regulatory review process](#) under the 2012 Canadian Environmental Assessment Act, public participation opportunities in these hearings, which already posed significant hurdles to the average person, have been significantly reduced. Various challenges to the changed participation rules are in the offing, including a [recent legal suit](#) which argues that they restrict the right to free speech and thus violate the Canadian Charter of Rights and Freedoms.¹ One of the financial institutions providing vast backing to Enbridge is Export Development Canada (EDC), the Canadian government's export credit agency. For the most part, the socio-environmental reviews of the activities financed by EDC remain corporate secrets.

Restrictions on access to information as well as on avenues for public intervention manifest a regulatory 'race to the bottom' in energy projects across the country. In practical terms, industrial calamities exemplify this downward trend. In 2013, these included the horrifying explosion at Lac Megantic, the continuous seepage of crude from [CNRL SAGD operations in the Tar Sands](#), and a leak [of 9.5 billion litres of toxic 'produced water' in Dene Tha territory](#). Another 450,000 litres of oil leaked from a shipping operation in [Sept-Îles](#), Quebec, coating 5 kilometres of coastline in toxic slick. The [Plains Midstream spill in Alberta in 2011](#) was never properly cleaned up, and was soon followed by the [Rainbow Lake](#) oil spill in Northwestern Alberta. Various of these have specific implications for

¹ Here, the charges against Aamjiwnang activist Ron Plain by CN for his role in a blockade during the Idle No More protests offer a stark example of how regulatory restrictions to public input (in the form of Bill C-45 and C-38, which sparked Idle No More), ultimately shape the criminalization of dissent. See <http://rabble.ca/blogs/bloggers/ethan-cox/2013/03/scapegoat-movement-ron-plain-struggles-fight-charges-idle-no-more-a>

environmental racism, and are shaped by Canada's colonial past and present. They point to the ways in which different nations, race and class identified groups disproportionately shoulder industrial risks. South of the border, 2010 delivered BP's Deepwater Horizon Accident in the Gulf of Mexico, and the Enbridge Line 6B Kalamazoo pipeline spill. Enbridge's spill at Kalamazoo was the *largest onshore pipeline spill in US history, costing over \$US 1 billion to clean up.*

The specifics of the technologies and processes employed to remediate these accidents, and in some cases their [size](#), remain [corporate secrets](#); the legislation mandating corporate disclosure is weak, and as contemporary history of toxics politics demonstrates, such information will not be made public without a struggle. But there is one thing we do know: while pipeline spills have devastated landscapes across the continent, Export Development Canada (EDC) transferred billions of dollars in funds to TransCanada and Enbridge, two of the largest North American pipeline companies.

Founded in 1944, Export Development Canada is a Crown Corporation whose mandate is to support the Canadian exports of Canadian companies, in order to "develop ...Canada's competitiveness in the international market-place." The initial funds to EDC were provided via Canadian taxpayers. Given that national export credit agencies like EDC support risky endeavors which would otherwise face high commercial bank rates, EDC funding provides - as described by the Canadian civil society coalition the [Halifax Initiative](#) - "an inherent subsidy from government."² While EDC's mandate is to finance Canadian commercial activity abroad, the relative size of financing to Enbridge, Trans-Canada and other oil and gas exporters stands out among listed transactions³. This particularly so given the profitability of these firms specifically, and Canadian oil and gas exporters in general.⁴

In May of this year Enbridge received funds in amounts roughly equivalent to the enormous cost of the clean-up of their accident at Kalamazoo, Michigan –somewhere between \$500 million and \$1 billion. These funds were directed as financing toward unspecified Enbridge activities in the USA, under the category 'Canadian Direct Investment Abroad'. And that is by no means all of the support Enbridge received. In April 2013, Enbridge benefited from EDC financing to the US Alliance pipeline⁵ in a range of

² As stated in the the 2008 Senate *Study on the Legislative Review of Export Development Canada*: "EDC is able to raise capital with more ease than its private-sector competitors in part due to its higher credit rating. Standard & Poor's AAA rating of EDC reflects the fact that EDC is 100 per cent government-owned; the provision of debt constitutes a direct obligation of the federal government and is a charge on, and payable out of, the federal government's Consolidated Revenue Fund. However, debt is generally financed by EDC's own resources, and EDC has been 'financially profitable for every year except one'" (p 17). That said, the report states "Although EDC's relatively higher credit rating makes it easier to raise capital, the cost savings are not passed on to the client. As a result, EDC's rating does not put it at an unfair advantage over its private-sector competitors" (ibid). That said, EDC – like other export credit agencies- works to promote the strategic advantage of Canadian capital.

³ Karyn Keenan points out that the extractive sector is the single largest recipient of grants from the EDC. See K. Keenan (2010). "[Canadian Mining: Still Unaccountable](#)", *NACLA Report on the Americas*. May/June 2010, p 29-42.

⁴ Recently the business press has commented on EDC's move to engage in projects similar to other large banks. See <http://business.financialpost.com/2013/02/22/how-export-development-canada-is-the-next-big-bank-in-waiting/>. That said, the Senate study cited in the previous footnote did indicate objections from Canadian financial firms seeking EDC's withdrawal from the short-term export credit insurance market.

⁵ The Alliance pipeline is 50% owned by the Enbridge Income fund according to Enbridge's website. The other 50% is owned by Calgary based Veresen which co-owns the Alliance and Aux Sable pipelines. Other principal counterparties whose payment were guaranteed by EDC financing with Enbridge as the 'Canadian company' involved were Enbridge Energy

between \$25-50 million to finance pipeline transmission and distribution systems. Since 2009, Enbridge and its clients— frequently Enbridge subsidiaries in the US - have received between \$1 and \$3 billion towards projects and financing, according to the range presented in individual transaction reporting disclosed by EDC.⁶ In 2012, Enbridge was the beneficiary of at least 4 separate transactions from EDC for financing. These financing transactions were described variously as investment, general corporate purposes, general working capital, foreign direct investment and sales, amounting to between \$225-500 million that year alone. To place this in context of its broader financial picture, Enbridge's 2012 earnings were \$943 million according to its annual report.

Similarly, the amount channeled to TransCanada from EDC over the past several years is remarkable, totaling 365-875 million dollars between 2009 and 2013. While 100-250 million was given in the form of foreign direct investment for the Keystone-XL pipeline, other transactions financed foreign direct investment and sales in the US as well as sales of Canadian goods and services to Mexico.⁷ *According to their reporting, in 2011 TransCanada's net income was \$1.71 billion dollars and in 2012 it was \$1.472 billion.*⁸ This support to TransCanada activities, and the Keystone-XL pipeline in particular, offers an angle on Prime Minister Harper's recent statement that Canada wouldn't 'take no for an answer' from the US on Keystone.

EDC also allocates substantial funds to groups of oil and gas companies – identified only as 'various Canadian exporters-extractive-oil & gas' on its website. In 2011, billions of dollars were provided in this fashion, however it is unclear who the recipients are and, consequently, which developments are being enabled through this mechanism.

EDC, Transparency and Environmental Reviews

As EDC is a "self-sustaining" financial institution, information concerning its activities is protected under corporate competition policy. Given the limited information directly disclosed via the EDC website, we sought further details concerning Enbridge/TransCanada activities supported in the U.S. and the standards applied by EDC to determine the social and environmental risks associated with each transaction. In July of 2012, we submitted Access to Information Requests specific to Enbridge and TransCanada funding.⁹ The 100s of pages of material returned to us was largely redacted, mirroring the results of the work conducted by the [Halifax Initiative](#) and [Probe International](#) on EDC's projects and

Partners L.P , Enbridge US, and Aux Sable Liquid Products (also 50% owned by Enbridge and 50% Veresen). These transactions were categorized as 'financing' on EDC reporting.

⁶ The transaction figures on these reports offer ranges such as " 5- 10 million", "25-50 million", "250-500 million" "500 million – 1 billion" dollars.

⁷ Among the counterparties were Mexico's Federal Electricity Commission, restructured due to the liquidation of its sister national energy utility in 2009 [via which 44,000 workers](#) lost their jobs in one day. The rest are TransCanada affiliates or subsidiaries: TC Pipelines LP, a US subsidiary and Northern Border pipeline 50% by TC Pipelines US - whose general partner is wholly owned by TransCanada - and operated by a TransCanada subsidiary.

⁸ The upper range of the EDC transfers to TransCanada in 2011 year amounted to 22% of that year's net income figure and roughly 50% of their taxes, listed at 575 million in their annual report.

⁹ It should be noted that all the correspondence and communication we had with EDC staff members was professional and prompt. As far as we are able to determine, staff from a number of their divisions provided us with as much information as permissible under EDC confidentiality restrictions.

disclosure practices.¹⁰ While EDC was brought under the Access to Information Act in 2007 and certain improvements made with regards to disclosure in environmental and social reporting, the EDC retains significant exemptions under both the [Access to Information Act \(ATIA\)](#) and the [Export Development Act \(EDA\)](#). These protect the institution from public pressure to disclose records deemed confidential. Disclosure may be refused, under the *Access to Information Act*, through portions of section 18, 21, 23, and 24. Section 18.1 of the ATIA, *Economic Interests of Canada*, states “The head of a government institution may refuse to disclose a record requested under this Act that contains trade secrets or financial, commercial, scientific or technical information that belongs to, and has consistently been treated as confidential by... Export Development Canada.” Under section 24.3 of the *EDA*, entitled ‘privileged information’, all information obtained by the Corporation in relation to its customers is protected.

These exemptions, as indicated in the redacted responses to our ATIP requests, largely nullify any objective analysis of the application of EDC’s [Environmental and Social Review Directive \(ERD\)](#) according to [Probe International](#) report. According to the ERD only certain categories of financing, deemed ‘projects’, require disclosure of the environmental review process. Category A projects are described as those “likely to have significant adverse environmental and social effects that are sensitive, diverse, or unprecedented. These may affect an area broader than the sites or facilities subject to the physical works, and may be irreversible.” Direct financing to the Keystone-XL pipeline project in 2009 did prompt a Category A environmental review, fulfilled in principle by US environmental assessment processes. According to the EDC, in G7 countries a Category A review seeks to confirm that the project is *designed* to meet host country requirements. In the case of the Keystone-XL, clearly the approval of environmental permits remains indefinite.¹¹

Category B projects are those for which the “potential environmental and social effects are less adverse than those of Category A projects. Environmental and social effects associated with Category B projects are usually site-specific; few if any are irreversible; and in most cases mitigation measures can be designed more readily than for Category A projects.” Category C projects are those expected “to have minimal or no adverse environmental and social effects. Generally, no environmental and social assessment is required for Category C projects. Examples of Category C projects may include: injection molding equipment; office and retail buildings; telecommunications or electrical equipment without

¹⁰ Over the past decade, the Halifax Initiative has advocated for greater transparency and disclosure of information at EDC and worked with civil society organizations to bring attention to violations of human rights and socio-economic justice arising from EDC financed activities. The case of the Barrick Gold Pascua Lama project in Chile is emblematic. Funding from Export Development Canada and the US Ex-Im Bank proceeded despite severe criticism in both Chile and Argentina. See <http://www.halifaxinitiative.org/content/chilean-and-argentine-organizations-question-edc-due-diligence> Ultimately Barrick withdrew its request for funding. See <http://www.mining.com/barrick-disputes-withdrawal-of-financing/> Two weeks ago the business press reported that the attempt of indigenous communities to shut-down the project on constitutional grounds had been rejected by the Chilean Supreme Court.

¹¹ The 2009 Auditor General report on Environmental Review at EDC’s makes the following observation and recommendation with respect to Category A projects, and recommend updating the procedures to reflect this concern: “The Equator Principles require that an independent environmental and/or social expert be appointed, or that the project sponsor retain qualified and experienced external experts to verify its monitoring and reporting information over the life of the loan for all Category A projects and, where appropriate, for Category B projects. This is not a requirement in EDC’s environmental review processes or procedures” (page 11-12).

greenfield infrastructure; transportation services and equipment.” For those activities which are not deemed *projects*, a determination made by the EDC itself, the EDC is required to disclose virtually no information regarding transactions. As described by Norris, the differentiation EDC makes between project and non-project financing contributes to “the circular and self-assessing nature” of the Environmental Review Directive, with “no objective standard to guide this determination, only EDC’s opinion” (Norris 2013: 4).¹²

As such, over the last three years hundreds of millions of dollars of funding to TransCanada and Enbridge were approved without the Category A or Category B environmental review requirement. In many cases, financing was provided for “general corporate purposes”. With no specific project tied to the majority of funds, EDC indicates that they apply a customer-driven approach to assess the environmental and social risks associated with the relevant operations of a company. They rely on the customer’s corporate information, their environmental and social assessment processes, corporate and site level environmental auditing and reporting, their environmental track record and regulatory compliance history. Yet no information is publicly available regarding specific cases, including how internationally-recognized environmental standards are applied to evaluate confidential data provided by customers.

Furthermore, the corporate-driven environmental reviews are intended to cover the specific activity described under the transaction (eg. "delivery of pipelines or other equipment), but not the actual infrastructural project that will be built with these inputs, let alone the lifecycle emissions associated with the transfer of product or the ultimate construction of such infrastructure. The 2009 Auditor General report on the EDC's environmental review practices specifically recommended including an analysis of cumulative impacts of Greenhouse Gas emissions in EDC environmental reviews; this recommendation was intended simply to bring EDC in line with the environmental reporting requirements of other G7 Export Credit Agencies.

Also noteworthy is that [critique of EDC could be subject to legal action](#) under section 24.2 of the Export Development Act: “(E)xcept with the written consent of the Corporation, no person shall in any prospectus or advertisement, or for any other business purpose, use the following names and initials: "Export Development Canada", "Exportation et développement Canada", "Export Development Corporation", "Société pour l’expansion des exportations", "E.D.C.", "EDC", "S.E.E." and "SEE" (2) “A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both.” In the

¹²Probe International/Stuart Norris (2013). *The Fallacy of Export Development Canada’s Environmental Accountability*; Probe International, February. Indeed, Norris argues that the ERD, instead of providing an ‘objective’ procedure to analyse the impacts of projects, in fact creates loopholes that allow the EDC to legally approve projects with significant adverse environmental effects. The four specific grounds for approving projects that are environmentally harmful are (1) determination that a project’s environmental impacts are not ‘significant’, based on EDC determined criteria (these are Category B and C projects); (2) that the project is ‘designed’ to meet international recognized standards – without the requirement that it does in factually meet these; (3) that the project would improve the environmental conditions of the host country above ‘baseline’ conditions, a procedure that may employ analyses of ‘trade-offs’ between different forms of environmental pollution; and (4) that environmentally sound technology is being transferred through the project that is of some benefit to the host country. The act states, however, that these grounds are not exhaustive, thus other reasons for approving environmentally harmful projects may be offered.

past, Probe International has received communication from EDC legal counsel “requiring that they cease and desist from the use of EDC’s trademarks”¹³.

Our experience seeking access to specific information on EDC financing to TransCanada and Enbridge flies in the face of any notion of substantive transparency.¹⁴ In matters where such data is not publicly available there is simply no way for the *research community or public* to monitor EDC environmental diligence, let alone to dispute what dimensions of corporate activity are examined under such reviews.

EDC’s extensive funding to major pipeline operators in the absence of both analysis of life-cycle emissions and verifiable environmental review procedures is alarming. As a result of the Canadian government’s financial backing of the EDC, risky investments in further hydrocarbon dependence are directly subsidized, and insured, by the public. Alongside a regulatory process where speed of approval has come to trump due diligence in health and safety, Canadian socio-environmental protections are on a downward spiral. In a recent article, Professor Gibson of the University of Waterloo writes that within the international context the “Canadian government’s new environmental assessment legislation stands as a particularly extreme example of regressive changes.”¹⁵ It is our argument here that constraints on public participation under these changes - as observed in the Enbridge Line 9 process - are shaped by a global financial industry, including state-backed export credit agencies, that prohibits access to key information about the impacts of corporate activities. As visible in the environmental and social review process at Export Development Canada, this actively suppresses public evaluation and criticism. Commercial objectives are thus prioritized over substantive monitoring of socio-environmental standards and protections. In the case of EDC funding to pipelines specifically, the result is regulatory capture of a government institution by the interests of the oil and gas industry.

*Our thanks to Mark Winfield for helpful suggestions on this article and Tim Groves for his advice regarding the ATIP process. All errors are ours.

¹³ Owens Richard (2001). “Jail the Critics”. *National Post*, November 20.

¹⁴ It is thus unsurprising that the Canadian government has yet to become an Extractive Industries Transparency Initiative implementing country, a procedure demanded of various ‘host countries’ for extractive projects in the Global South. At the July 2013 G-8 summit, Harper announced plans to prepare mandatory reporting requirements.

¹⁵ Gibson, Robert (2012). “In full retreat: the Canadian government’s new environmental assessment law undoes decades of progress” in *Impact Assessment and Project Appraisal*, 30, 3. 179-188.