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The Resistance Dilemma

Place-Based Movements and the Climate Crisis

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7 After Careful Review of Changed Circumstances: The Demise of Energy East

with Xavier Deschênes-Philion

Overview

When the oil sands coalition became more serious about building a pipeline from the oil sands across Canada to the east, environmentalists knew that their strongest cards were in Quebec. Greenpeace Canada's Keith Stewart was quite direct: "From the very beginning, I said we're going to kill this pipeline in Quebec, and in French" (Stewart 2016). Quebec had a well-established environmental movement with strong grassroots connections to local citizens groups. According to *Équiterre's* Steven Guilbeault, to foster awareness of the project and its risks, his group began conducting community meetings even before the official announcement of the project: "A bit like a rock band on tour, we travelled across southern Quebec and even northern New Brunswick, not to tell people what to think or do, but to share our views on the matter. We were often invited by local groups or organizations, and quite often by elected representatives" (Guilbeault 2017).

Resistance in Quebec was the most formidable obstacle to the Energy East Pipeline. Proposed by TransCanada, Energy East was the most ambitious of the four major proposed oil sands projects, covering the most territory and promising to move the most product. The 4,500-kilometer pipeline would have carried up to 1.1 million barrels of oil per day from Alberta, Saskatchewan, and North Dakota to refineries and a marine terminal at tidewater in eastern Canada. It would have connected the oil sands to refineries in Quebec and New Brunswick and given the oil sands access to Atlantic tidewater in New Brunswick. In doing so, it would have avoided the formidable pipeline resistance in British Columbia, but it would have to run through Quebec, which has a long tradition of environmental activism and resistance to external imposition of costs. Energy East was the most recently proposed of

the four cases but the second to come to finality, with TransCanada's decision to withdraw its application and cancel the project in October 2017.

That a west to east pipeline promoted by TransCanada would become a deeply divisive regional and partisan issue should come as no surprise to anyone familiar with Canadian history. The converted TransCanada Mainline natural gas pipeline from Alberta to Montreal was to be the backbone of the Energy East proposal. That very same natural gas pipeline, proposed, approved, and constructed in the 1950s, was the focus of Canada's first "great pipeline debate." Partisan conflict erupted during deliberations over the pipeline in the House of Commons with regard to government subsidies to an American company and the government's procedural conduct. The conflict is credited with leading to the defeat of the Liberal government of Louis St. Laurent by John Diefenbaker's Conservatives in 1957 (Kilbourn 1970).

The timeline for the project is presented in figure 7.1. Energy East was first announced on August 1, 2013, a few weeks after a train containing crude oil from North Dakota's Bakken shale formation derailed and exploded in the heart of Quebec's municipality of Lac-Mégantic, causing the tragic deaths of 47 people and raising major debates about oil transportation safety across the country. TransCanada first expected to start operating the pipeline by the end of 2017 (Krugel 2013). Initially considered a promising alternative to the lightning-rod West Coast pipelines, Energy East quickly became mired in a similar conflict over environmental values and Aboriginal rights, but this time the claims to the legitimacy of provincial authority were accentuated by Quebec's distinct culture and long-standing grievances within the Canadian federation. The regulatory review process became mired in a crisis as conflict of interest accusations emerged against National Energy Board panel members, the hearing panel was disbanded, and a new panel had to be established. Hearings were scheduled to begin in fall 2017, but before they could get going, TransCanada terminated the project. Worn down by sustained and intense public opposition, market uncertainties, and self-inflicted wounds, the company used new analytical requirements imposed by the reconfigured NEB panel as a justification to cancel the project.

This chapter applies the regime framework to analyze the Energy East controversy but focuses in particular on competing images of the pipeline in discourses across three communities. For the pipeline's supporters across Canada, the pipeline was a nation-building project, but the very concept

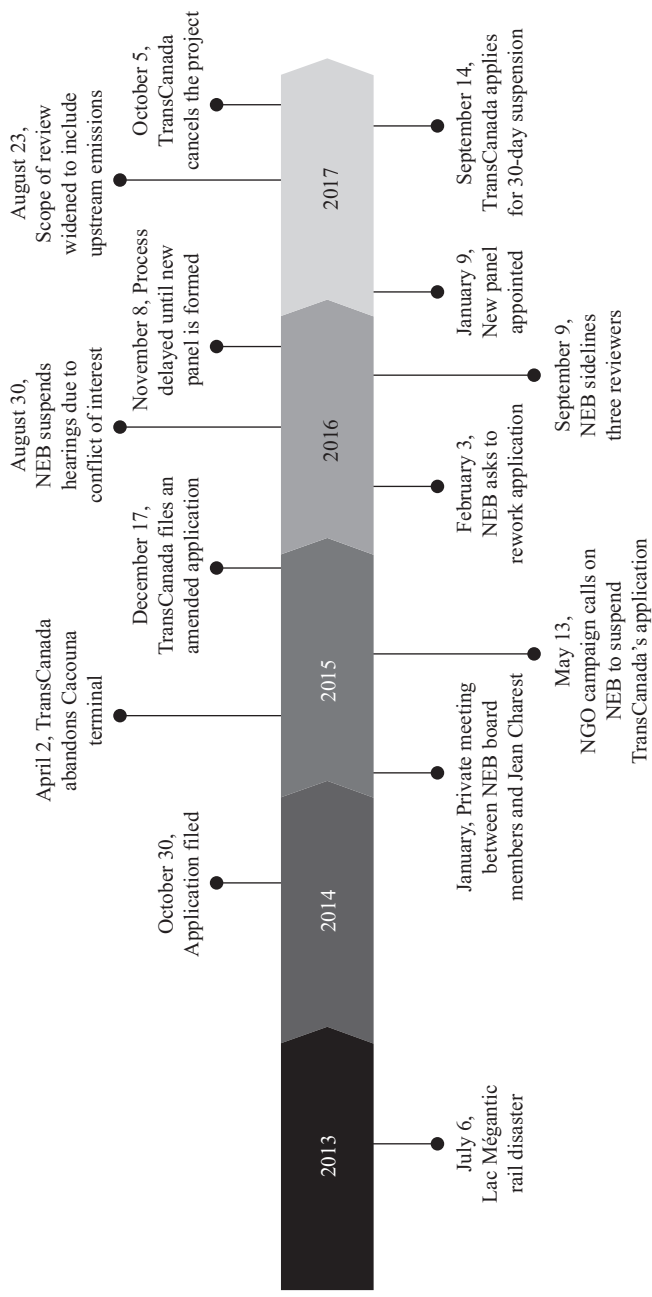


Figure 7.1
Energy East timeline.

of “nation” is contested, both by First Nations, who see themselves as sovereign within their territories, and by Quebec, which has its own form of nationalism. Both the Aboriginal and Quebecois concepts of “nation” challenge the Canadian one and, in this case, fueled pipeline resistance.

The oil sands coalition was initially quite optimistic about Energy East because, when first introduced, it seemed less risky politically. Its all-Canadian route avoided the vagaries of the American political process endured by Keystone XL. Like the Trans Mountain project, Energy East could capitalize on preexisting infrastructure. For two-thirds of the route, an existing natural gas pipeline (TransCanada’s Mainline) would be converted and upgraded to suit oil transportation (TransCanada 2015), but Energy East had the added benefit of avoiding the entrenched West Coast environmental opposition and legal uncertainties of working in unceded Aboriginal territory. Moreover, by delivering bitumen to refineries in Quebec and New Brunswick, it promised a larger share of economic benefits to provinces through which it traveled. As a result, unlike British Columbia, the province at the end of the Energy East line, New Brunswick, enthusiastically supported the project. But that initial optimism was not sustained for long. The pipeline ran through six provinces (Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and New Brunswick), but it was opposition in Quebec that proved to be the most frustrating and eventually fatal to the project. An increasingly influential anti-pipeline coalition harnessed Quebec’s pro-environment, nationalist political culture into an unbeatable wall of resistance.

Actors—The Oil Sands Coalition

Oil Industry

The same company behind Keystone XL, TransCanada Corporation (later renamed TC Energy) is the main stakeholder in the Energy East project. The Calgary-based company operates oil and natural gas pipelines as well as energy production facilities (including natural gas, nuclear, wind, and solar power) across Canada, the United States, and Mexico. The company’s interest in the project was magnified when their Keystone XL project became ensnarled in American political conflicts. In an effort to be proactive and more effective at gaining social and political acceptance for the Energy East proposal, TransCanada hired the world’s largest public relations firm, Edelman. Edelman had committed 40 employees out of its Washington,

D.C., office, along with nine TransCanada employees, to collaborate on the campaign (Goldenberg 2014). The public relations firm's proposed tactics included distracting opposing groups and "causing them to redirect their resources" by working through "supportive third parties who can in turn put the pressure on, particularly when TransCanada can't," and a budget for the mobilization of 35,000 pipeline support activists. The strategy also incorporated digging into any negative aspects of funding sources or litigation issues of opposition groups, such as the Council of Canadians and the David Suzuki Foundation (McCarthy 2014a).

TransCanada had a major setback when the Edelman documents were leaked to, and subsequently released by, Greenpeace Canada in November 2014. Given the explicitness of the bold, aggressive tactics proposed by Edelman, Greenpeace denounced the strategy as "dirty tricks" (Greenpeace Canada 2014), and the incident exacerbated tensions in TransCanada's relations with opponents and reluctant communities.

From west to east, different oil-related companies also had strong interests in the project. Upstream of the pipeline, oil companies had essentially the same interests they did with the other pipelines: they were hoping for new ways to access tidewater and increase oil transportation capacity to export Alberta's oil sands and shale oil from Saskatchewan and North Dakota. Increasing revenues by reducing or eliminating the oil price differential was also a core interest of oil companies. This argument was critical when Energy East was first announced because the gap between the international Brent price and continental West Texas Intermediate price reached over \$20 per barrel at different times between 2011 and 2014 (Ycharts 2017). Accessing international markets was therefore perceived as a key element of oil companies' business strategy.

On the other end of the proposed pipeline, eastern refineries wanted to diversify their feedstocks and improve their supply security with Canadian oil. Two refineries in Quebec (Suncor in Montreal, Valero in Levis) and one in New Brunswick (Irving Oil in Saint John) would have benefited from the project. Irving Oil would also have operated the marine terminal through a joint venture with TransCanada (TransCanada 2015).

Governments

When Energy East was announced in 2013, Stephen Harper's Conservative government endorsed the project with no hesitation. "We think it's a

good idea in principle,” Harper said, “It is, I think, a good idea that we find pan-Canadian solutions so that all of this country benefits from our energy products and that we enhance our own energy security” (Whittington 2013). In contrast, Justin Trudeau’s Liberal government has taken a more prudent approach toward the project since its election in 2015, arguing that the assessment process must run its course before it takes a position on the project. Trudeau’s approach attracted criticism both from the Conservatives, who wanted the government to show public support for the project, and from the NDP, who believed the NEB review process was skewed in favor of the oil companies.

The government of Alberta strongly supported the Energy East Pipeline. Previous Conservative premiers Alison Redford and Jim Prentice both advocated for the pipeline. Redford praised Energy East because it would reduce the oil price differential and create new markets for Alberta’s oil sands, saying, “I am very pleased with today’s announcement that Energy East is moving forward. My government made a commitment to the project as part of our efforts to build new markets and get a fairer price for the oil resources Albertans own” (Government of Alberta 2013). After she resigned in March 2014, her successor, Jim Prentice, continued the Alberta government’s efforts to promote Energy East across the country.

Rachel Notley’s New Democratic government, elected in 2015, has also lobbied in favor of the pipeline while promoting more stringent climate actions through a provincial carbon tax and a cap on provincial greenhouse gas emissions from the oil sands sector (described in chapter 2). Despite federal approval of Kinder Morgan’s Trans Mountain Expansion Project and Enbridge’s Line 3 Replacement Project in 2016, and Donald Trump’s approval of the Keystone XL Pipeline in January 2017, Notley continued to press the case for Energy East. Notley stressed the Canada-wide benefits of the project, saying, “This is not just about the strength of Alberta’s economy, even though we are feeling the drop in oil price struck more here than anywhere else. This is about the long-term sustainability of the Canadian economy” (Notley quoted in Global News 2016).

In fact, according to TransCanada, a larger share of the benefits stemming from the Energy East Pipeline would have gone not to Alberta but to other Canadian provinces, in terms of job creation, but also with regard to tax revenues and GDP growth. Table 7.1 presents TransCanada’s expected benefits by province for the project’s construction and operational phases.

Table 7.1
Energy East Pipeline benefits by province

Provinces	Job creation (full-time employment/year)						Tax revenues (2013 C\$millions)			GDP impact (2013 C\$millions)		
	Construction		Operations		Combined		Constr.	Oper.	Comb.	Constr.	Oper.	Comb.
	Direct	Indir.	Direct	Indir.	Direct	Indir.						
Alberta	754	524	499	196	1,253	720	350	777	1,127	1,926	5,465	7,389
British Columbia	-	179	-	73	-	252	240	412	652	327	289	616
Manitoba	485	149	49	157	534	306	157	309	466	621	2,354	2,975
New Brunswick	3,123	648	132	129	3,255	777	482	371	853	3,248	3,322	6,570
Ontario	2,148	1,741	114	1,409	2,262	3,150	1,320	2,935	4,255	5,440	18,520	23,960
Other Atlantic	-	123	-	26	-	149	97	149	246	249	127	376
Quebec	1,922	1,206	33	291	1,955	1,497	972	1,151	2,123	3,942	5,315	9,257
Saskatchewan	773	190	49	157	822	347	185	354	539	1,012	3,283	4,295
Territories	-	2	-	1	-	3	9	17	26	10	9	19
Total	9,246	4,762	891	2,447	10,081	7,201	3,813	6,475	10,288	16,776	38,683	55,459

Source: Adapted from TransCanada (2017b). The construction phase is projected over a nine-year period, while the operational phase is projected over a 20-year period.

TransCanada expected the Energy East project to create more than ten thousand full-time jobs per year during the construction phase and over seven thousand full-time jobs during the operational phase. Table 7.1 demonstrates that the project's economic benefits were much more evenly spread across provinces along the route than for the two other Canadian pipelines. New Brunswick, Quebec, and Ontario would all have seen job benefits, especially in construction. These jobs were especially coveted in New Brunswick, which in 2014–2015 faced significantly higher unemployment than Ontario and Quebec. New Brunswick's unemployment rate in 2015 was 9.8%, compared to 7.6% for Quebec and 6.8% for Ontario (Newfoundland and Labrador Statistics Agency 2017). After the construction was completed, however, Alberta would have received the lion's share of operating jobs.¹

Apart from Alberta, two other provinces explicitly supported the project: Saskatchewan and New Brunswick. The Legislative Assembly of Saskatchewan unanimously adopted a motion supporting Energy East in November 2014 (Government of Saskatchewan 2014). New Brunswick endorsed a similar motion in December 2016 (with MLA and Green Party leader David Coone being the only voice against the motion) (Government of New Brunswick 2016). Saskatchewan premier Brad Wall and New Brunswick premier Brian Gallant were among the strongest public advocates for the project. Both premiers attempted to publicize the benefits of the project and downplay the risks around which a majority of Quebecers had mobilized. Premier Brad Wall took a somewhat combative stance against Montreal mayor Denis Coderre for his official opposition to the project. Two weeks after being elected in 2014, Gallant went to Calgary and visited TransCanada's headquarters, where he showed strong support for the project (CBC 2014). Premier Gallant also went to Quebec and Ottawa to publicly defend Energy East's economic benefits, and he agreed to debate Energy East and oil transportation issues with Denis Coderre on *Tout le monde en parle*, one of the most popular shows on French Canadian television (CBC 2016a).

Actors—Anti-pipeline Coalition

Environmental Groups

As with the other oil sands pipelines analyzed in this book, a wide range of environmental groups joined the battle against the Energy East Pipeline. This environmental opposition included well-known Canadian organizations

or their local chapters, such as Greenpeace, the David Suzuki Foundation, Environmental Defence, the Council of Canadians, and Équiterre. As in the other cases, environmentalists carefully cultivated relationships with place-based groups, and the risks to precious places posed by oil spills or tanker activity were the foundation for resistance. But perhaps more so than other pipelines, climate played a very important role in environmental strategies and discourse.

The foundation for resistance to Energy East was the alliance of environmental groups formed with local actors in Quebec. In Quebec, more than 60 environmental groups, Indigenous communities, and civic associations formed the Common Front for the Energy Transition to campaign against further development of the oil sector or new oil transportation projects and to promote further transition toward clean and renewable energy (Front commun pour la transition énergétique 2019).

As part of this coalition, the Don't Spill in My Yard (Coule pas chez nous) campaign received greater attention when a former leader of Quebec's 2012 student strike and now MLA for Québec Solidaire, Gabriel Nadeau-Dubois, decided in November 2014 to personally give C\$25,000 to the campaign (Poitras 2018, 208–209). Following this highly publicized move, the campaign raised \$80,000 in 24 hours and \$400,000 in one week from more than 14,000 donors (Coule pas chez nous 2016a). Coule pas chez nous is very active online (its Facebook page has over 18,000 likes) and on the ground; it has supported and financed more than 30 projects and campaigns in opposition to Energy East, including the Climate Action March with more than 25,000 citizens in Quebec City in April 2015, information sessions across the province, and judicial actions against the hydrocarbon sector (Coule pas chez nous 2016b). Opposition to Energy East in Quebec had also stretched to groups that rarely take positions on energy issues, such as the Union of Agricultural Producers and the Federation of Quebec Workers (Bergeron 2016; Shields 2016a).

Another strategic asset for the anti-pipeline coalition was the Quebec anti-fracking movement, which after several years of intense mobilization won a de facto moratorium halting fracking in the province (Montpetit, Lachapelle, and Harvey 2016). A substantial network of local groups emerged in opposition to fracking in the province. Rivard et al. (2014) report that in 2012 there were “over 30 local (municipal to regional levels) opposition groups, 3 provincial protest groups and 63 municipalities” opposed to fracking. The

anti-pipeline movement saw these groups as ripe for mobilization. According to Stewart, “The anti-fracking movement had won a moratorium, and was kind of looking around for what it would do next. And this is a very similar thing. It’s really easy to transition from that to ‘oh, new threat, from oil companies to water’” (Stewart 2016). As a result, a formidable environmental resistance movement emerged soon after Energy East was announced. As will be described, a series of missteps by TransCanada played right into the hands of environmentalists.

Indigenous Groups

As with the other pipeline proposals, indigenous communities had become highly mobilized against the Energy East Pipeline. Given the length of the project, addressing Indigenous concerns was sure to be quite challenging; in its application, TransCanada stated that it was “engaging with a total of 166 First Nations and Métis communities and organizations across the length of the Project” (TransCanada 2016b, 5). By the time the Energy East regulatory review got into full swing, the level of organization and cooperation among Indigenous groups in North America had increased dramatically. In September 2016, First Nations across North America signed the Treaty Alliance against Tar Sands Expansion. The Treaty Alliance was initially formed by 50 First Nations but as of August 2017 had expanded to more than 120 First Nations in Canada and the United States. The Treaty Alliance aims “to prevent a pipeline/train/tanker spill from poisoning their water and to stop the Tar Sands from increasing its output and becoming an even bigger obstacle to solving the climate crisis” (Treaty Alliance 2016a).

The Treaty Alliance was inspired by the Save the Fraser Declaration and the Yinka Dene Alliance (YDA) described in chapters 5 and 6. YDA’s representatives organized the West Meets East Tour and traveled across Canada to meet with First Nations communities living along the Energy East Pipeline route and raise awareness over oil sands’ environmental and social issues. In turn, Grand Chief Serge Simon of the Mohawk Council of Kanesatake, Grand Chief Derek Nepinak of the Assembly of Manitoba Chiefs, and Chief Arnold Gardner of Eagle Lake First Nation were invited to address the 47th Annual Chiefs-in-Assembly of the Union of BC Indian Chiefs, a key event in the creation and solidification of a coast-to-coast alliance against

tar sands expansion and transportation (Treaty Alliance 2016b). The Treaty Alliance brought together Indigenous communities from each of the six provinces Energy East was expecting to cross.

Governments

The Liberal government of Quebec has taken a wait-and-see approach toward Energy East. Former premier from Quebec Philippe Couillard decided to wait until the end of Quebec's environmental assessment process in 2018 before taking a position. Still, as will be discussed in the discussion of institutions, Quebec's government took a somewhat combative approach toward TransCanada, perhaps as a result of the mounting opposition in the province. Ontario chose to conduct its own review process, but former premier Kathleen Wynne seemed somewhat more open to the project.

For instance, in November 2014, Quebec sent TransCanada a list of seven conditions the company must respect for both provinces to grant approval to Energy East. Ontario premier Kathleen Wynne then granted support to Quebec's request following a joint meeting with Philippe Couillard later that month. The list included the following elements:

1. Compliance with the highest available technical standards for public safety and environmental protection;
2. Have world-leading contingency planning and emergency response programs;
3. Proponents and governments consult local communities and fulfill their duty to consult with Aboriginal communities;
4. Take into account the contribution to greenhouse gas emissions;
5. Provide demonstrable economic benefits and opportunities to the people of Ontario and Quebec, in particular in the areas of job creation over both the short and long term;
6. Ensure that economic and environmental risks and responsibilities, including remediation, should be borne exclusively by the pipeline companies in the event of a leak or spill on ground or water, and provide financial assurance demonstrating their capability to respond to leaks and spills;
7. Interests of natural gas consumers must be taken into account. (Ontario Office of the Premier 2014)

The provinces' intention to evaluate the pipeline's upstream greenhouse gas emissions was dropped from the conditions a month later, after a visit from Jim Prentice, then Alberta's premier, to Ontario and Quebec (Morrow 2014). In spite of this political shift, both provincial environmental review

agencies decided to consider the potential impacts of the pipeline on climate change in their assessment review of Energy East (OEB 2015; BAPE 2016a).

Ontario mandated that the Ontario Energy Board (OEB) review the project in 2013 and hold public consultations in 2014. OEB's final report was published a year later and expressed several concerns about the Energy East project, especially in regard to natural gas supply, water protection, impacts on Aboriginal as well as local communities, and its economic benefits (or lack thereof) (OEB 2015). Ontario premier Kathleen Wynne indicated openness to Energy East after a meeting with Alberta premier Rachel Notley in January 2016, during which Wynne praised the climate plan Alberta adopted under Notley's government. Wynne suggested that "the people of Ontario care a great deal about the national economy and the potential jobs that this proposed pipeline project could create in our province and across the country" (Financial Post 2016). According to one environmentalist, the pathway to blocking the pipeline in Ontario ended when Wynne bought into the Trudeau government's process of "turning down the temperature on the pipeline stuff in exchange for commitments to a number of policy initiatives around federal climate policy" (Scott 2016).

At the municipal level, opposition to Energy East had also emerged. Municipal governments along the pipeline routes debated whether to support the Energy East project, mainly because of concerns about regional safety. For example, the city council of Thunder Bay, Ontario, after two years of divisive debate, decided to support Energy East in May 2017 over concerns about railcar safety (Vis 2017). In contrast, the city of Edmundston, New Brunswick, was concerned about similar issues and eventually took a position against the current pipeline route. The city council was not explicitly opposed to TransCanada's pipeline as long as an alternative route that avoided the regional watershed could be agreed on (Poitras 2016).

Municipal opposition to the project was mostly concentrated in Quebec. Many municipalities in La Belle Province, including four of the five largest cities, had expressed formal opposition to the project. Three of those cities are among the 82 municipalities of the Montreal Metropolitan Community (MMC), which had unanimously decided to stand against the Energy East Pipeline. The MMC decided, based on the results of a public consultation process undertaken in 2015, that the risks of the project outweighed the benefits for the region and that it lacked support from the population. Although the Trans Mountain case discussed in chapter 5 demonstrates that municipal

governments don't have the legal capacity to interfere with a cross-provincial pipeline, this concerted opposition from local elected officials sparked passionate reactions in western Canada and raised doubts about the project's political acceptance in Quebec and especially in the Montreal area.

Ideas

Economy, Environment, and Security

Ideas enter the political process by a combination of causal and principled beliefs (Goldstein and Keohane 1993). The oil sands coalition attempted to frame Energy East in terms of economic benefits (mostly job creation, tax revenues, and GDP growth), safety (comparing pipeline safety to the safety of transport by rail was well advised at the time of the Lac-Mégantic accident), and energy security. Former natural resources minister Joe Oliver's public address in support of Energy East summarizes this kind of discourse very well: "Initiatives like this could allow Canadian refineries to process more potentially lower priced Canadian oil, enhancing Canada's energy security and making our country less reliant on foreign oil" (Oliver quoted in Government of Canada 2013). TransCanada's early communication materials about the project emphasized how it would strengthen energy security by displacing significant quantities of Middle Eastern oil: "Eastern Canadian refineries currently import more than 700,000 bbl/d, or 86 per cent of their daily needs, from more expensive overseas sources including Saudi Arabia, Nigeria, Venezuela and Algeria" (quoted in Environmental Defence and Greenpeace 2014).

Jason Kenney, then leader of the Conservative Party in Alberta, made the case for economic benefits and energy security when he commented on the TransCanada termination decision, saying, "It's an attack on our economy and on the energy sector. It's a devastating blow to Canada's economic future. Energy East represented to us an opportunity to make Canada energy independent. Instead, because of uncertainty created by the Trudeau government and the National Energy Board, this decision to cancel Energy East means that Eastern and much of Central Canada will be importing conflict oil through tankers from dictatorships, some of which fund terrorism, rather than buying Canadian oil produced in Alberta and Saskatchewan" (Franklin 2017). Ethical oil champion Ezra Lavant went so far as to describe Energy East as "freedom oil" (Lavant 2013).

In response, the anti-pipeline coalition sought to reframe the pipeline debate in terms of environmental risks (spills and climate change) and challenged the economic and security benefits expected from the project. For example, a petition circulated by Montreal-based environmental NGO *Équiterre* framed the project as “all risk, no reward” and claimed that the project would not reduce gasoline prices; would not increase energy security, because 93% of the volume would be exported; presents a risk of spills to Quebecers that could threaten drinking water; and would “significantly exacerbate climate change” (*Équiterre*, n.d.).

Different worldviews and scales of values seem to separate the pro- and anti-pipeline coalitions. While the pipeline advocates perceive the economy and the security of supply as the key issues in favor of the Energy East Pipeline, environmentalists instead emphasize the local and global environmental threats associated with a pipeline project and oil-industry expansion in general. From their perspective, environmental security is more important and should prevail over industrial development and economic considerations.

“Nation Building”

Another key frame for Energy East, also present in the case of Northern Gateway and, to a lesser extent, Trans Mountain, was the pro-pipeline Canadian nation-building discourse. TransCanada has framed Energy East as a symbol of national unity and a project all Canadians should be proud of, as it would carry oil from western provinces to eastern consumers and benefit all Canadians economically.

According to former Alberta premier Alison Redford, “This is truly a nation-building project that will diversify our economy and create new jobs here in Alberta and across the country” (Government of Alberta 2013). Even prior to the announcement of Energy East, former New Brunswick premier Frank McKenna was dreaming of a “pipeline network extending from coast to coast.” As he wrote, “This essential infrastructure project would be good for all regions of Canada. It would be an extraordinary catalyst for economic growth. It would be a powerful symbol of Canadian unity” (McKenna 2012). He even characterized the idea as a “bold project, national in scope,” comparable to the nineteenth-century Canadian Pacific Railway. David Alward, who was New Brunswick premier from 2010 to 2014, used similar rhetoric to praise a west–east oil pipeline. He argued that such an oil transportation

project was “as important to our nation’s economic future as the railway was to our past” (Alward quoted in Tedesco 2013). TransCanada’s president and CEO, Russ Girling, also compared the Energy East Pipeline to the Canadian Pacific Railway and the Trans-Canada Highway at the public announcement of the project in 2013, saying, “Each of these enterprises required innovative thinking and a strong belief that building critical infrastructure ties our country together, making it stronger and more in control of our own destiny, and this is true of Energy East” (Girling quoted in McCarthy and Jones 2013).

This nation-building frame became particularly salient following the controversial decision made by the MMC to declare its opposition to the Energy East Pipeline, which had inflamed tensions with western members of the oil sands coalition. Montreal mayor Denis Coderre’s statement that the MMC stands against Energy East “because it still represents significant environmental threats and too few economic benefits for greater Montreal” (Coderre quoted in CBC 2016b) sparked reactions from many politicians in western Canada and other public figures. Saskatchewan premier Brad Wall reacted this way: “This is a sad day for our country when leaders from a province that benefits from being part of Canada can be this parochial about a project that would benefit all of Canada, including these Quebec municipalities” (Wall quoted in De Souza 2016a). Wall also suggested that there should be a quid pro quo for the interprovincial transfers Quebec receives. In return for the equalization payments (C\$10 billion for Quebec in 2015 from “have-provinces”), western Canada should be able to expect “Quebec municipal leaders [to] respond with generous support for a pipeline that supports the very sector that has supported them” (Wall quoted in De Souza 2016a).

CBC television host Rick Mercer also used similar rhetoric to back the Energy East Pipeline, arguing that “we all need this thing [Energy East Pipeline]. It is time for provinces to start asking ‘what’s in it for Canada?’ not just ‘what’s in it for me?’” (Mercer 2016). Interim Conservative leader Rona Ambrose argued that the debate over Energy East “is affecting national unity,” and she also labeled the pipeline a “nation-building project” (Ambrose quoted in Fekete 2016).

Framing Energy East in terms of nation building and Canadian unity had inherent limits, however. First, it was based on an inaccurate image of Energy East as an “all-Canadian pipeline.” In fact, only a fraction of Alberta’s crude

oil flowing through the Energy East Pipeline would have been delivered to eastern refineries. Most of the production would have gone to Saint John's marine terminal for export. As Louis Bergeron, vice president of Energy East, stated during the Bureau d'audiences publiques sur l'environnement Québec (Bureau of Environmental Public Hearings, BAPE) hearings in Québec, out of the 1.1 million barrels of oil expected to be carried every day by Energy East, 50,000 would have been refined in New Brunswick and between 100,000 and 150,000 in Québec (Shields 2016a). That leaves about 900,000 barrels per day of unrefined oil, or 80% of the pipeline's volume, flowing through Energy East that would have been destined for export markets, not Canada. In addition to the fact that the project was mostly about exports, the pipeline also was not planned to carry only Canadian oil. Energy East would have helped North Dakota get its oil extracted from the Bakken shale formation out to foreign markets. TransCanada planned to build a connected pipeline to carry up to 300,000 barrels per day from North Dakota through the Upland Pipeline, making this "all-Canadian pipeline" not so Canadian after all (Shields 2016b). Moreover, it is doubtful that this project would have reduced Canada's imports of foreign oil. As Irving Oil president Ian Whitcomb mentioned, Energy East would have helped diversify the company's assets, but it would have continued to import as much oil as it did at the time: "We will add Western Canadian crude to our portfolio as the economics dictate, but probably not at the expense of our Saudi barrels" (Whitcomb quoted in Cattaneo 2016). Finally, the surge in American oil production would mean imports from the United States, not OPEC nations, would dominate Canadian oil imports. Since 2014, imports of US oil have made up more than half of all Canadian imports (National Energy Board 2017b).

Those facts therefore challenge the Canadian oil for Canadians and ethical oil frames industry advocates tried to create. However, these were not the only challenges to the Canadian nation-building narrative promoted by the oil sands coalition. Two competing narratives have also emerged to challenge this core frame: Québec's nationalist discourse and First Nations' anticolonial discourse.

The Canadian nation-building frame did not have the same resonance within Québec, where Québécois' nationalist sentiments are enormously influential in the province's political culture. As Gordon Laxer claims about Québec, "Its provincial governments, whether federalist or sovereigntist, are

put off by the kind of Canadian nationalist rhetoric invoked to support the Energy East line" (Laxer 2015, 177). In contrast to the Canadian nation-building rhetoric, a discourse about self-determination emerged among Quebec sovereigntist political parties. The Parti Québécois framed the Energy East Pipeline as a nationalist issue. For Parti Québécois Member of National Assembly Alain Therrien, "The rest of Canada treats us as a colony. They are playing a dangerous game. Québécois don't like being told what to do. It increases nationalist sentiment" (Therrien quoted in Lefebvre 2016). Similarly, the pro-independence Bloc Québécois, the third-largest opposition party in the House of Commons in 2016, framed the Energy East Pipeline debate as an issue of self-determination and territorial sovereignty. The party launched an anti-pipeline campaign with internet ads such as "Énergie Est: C'est à nous de dire non!" (Energy East, it is up to us to say no!) or "Oléoduc de TransCanada: Notre environnement, nos décisions" (TransCanada's pipeline: Our environment, our decisions) (Bloc Québécois 2016, our translations). As Laxer argues, Quebec's "sovereignty narrative runs counter to the appeal to Canadian sovereignty on energy" (Laxer 2015, 177).

But this Quebec nationalism narrative also stretched beyond the traditional sovereigntist base within civil society. The campaign "Coule pas chez nous" against Energy East appealed more broadly to the nationalist sentiment from Quebec's Quiet Revolution. As Erick Lachapelle argued, "This 'chez nous' discourse is a highly effective, powerful slogan that appeals to Quebec values of solidarity and identity, regardless of where one stands on the sovereignty question" (Lachapelle quoted in Valiante 2016). Environmentalists in British Columbia chanting "our coast" appealed to a similar urge for place-based cherished values. But in Quebec similar framing of self-determination has even deeper resonance within the political culture, and the anti-pipeline coalition made skillful use of it.

While the Canadian nation-building frame was at odds with Quebec's nationalism, it was also anathema to Indigenous groups struggling to overcome the legacy of colonialism. For Indigenous groups, it is their people's land and governance that constitute their nation. Explicit appeals to Indigenous nations or the desire for self-determination were explicit in many of the statements of Indigenous groups when expressing their opposition to Energy East. Assembly of First Nations of Quebec and Labrador Regional Chief Ghislain Picard stated that their members "will continue to oppose and fight projects which pose a real danger to their Nations, whether it be

Tar Sands pipelines like Energy East, Tar Sands rail projects like at the Belle-dune port, uranium mining or offshore oil and gas drilling in the Gulf of Saint Lawrence” (Assembly of First Nations of Quebec and Labrador 2016). Byron Williams and Jared Wheeler of the Assembly of Manitoba Chiefs (AMC) stated their position this way:

Throughout its active participation in the recent federal reviews of environmental assessment processes, including the modernization of the NEB, AMC has recommended that Settlers reconsider their understanding that Mother Earth can be managed and owned. . . . Mother Earth must be respected. She is a living being, not a “thing” that can be owned or sold. . . . There is an opportunity for the NEB to amend the Draft List of Issues in the Energy East hearing to include the issues of central importance to the nation to nation relationship. Correcting this list now would be an indication that the NEB is committed to its role in the honouring of the nation to nation between Canada and Indigenous peoples and nations. (Williams and Wheeler 2017)

Nowhere was this message clearer than in the text of the Treaty Alliance against Tar Sands Expansion. The preamble reads:

We have inhabited, protected and governed our territories according to our respective laws and traditions since time immemorial. Sovereign Indigenous Nations entered into solemn treaties with European powers and their successors but Indigenous Nations have an even longer history of treaty making among themselves. Many such treaties between Indigenous Nations concern peace and friendship and the protection of Mother Earth. . . .

As sovereign Indigenous Nations, we enter this treaty pursuant to our inherent legal authority and responsibility to protect our respective territories and coast in connection with the expansion of the production of the Alberta Tar Sands, including for the transport of such expanded production, whether by pipeline, rail or tankers. (Treaty Alliance 2016a)

While the Canadian nation-building frame may have been a resonant concept within the oil sands coalition, it bred alienation among core constituencies from whom the project needed to garner social and political acceptance.

Media Issue-Mention Analysis

Once the formal application for Energy East started in 2014, the project received far more attention in the Canadian media than the other pipelines addressed in the previous chapters, as shown in figure 7.2.² By 2015, Canadian media attention to Energy East was greater than the second most

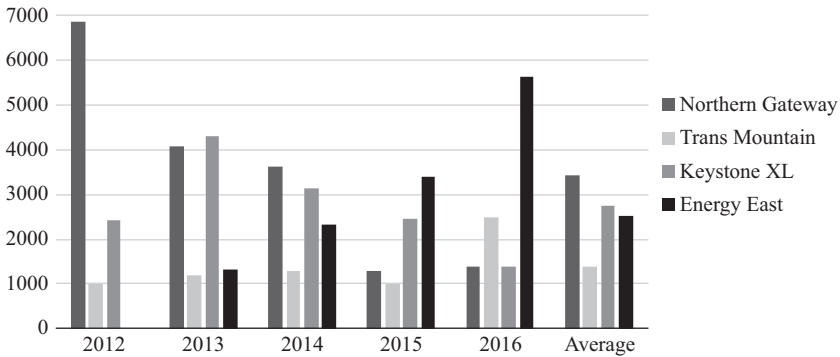


Figure 7.2
Total media mentions of Energy East each year in English Canada, 2012–2016.

mentioned project (Keystone XL), and by 2016, attention to Energy East was more than twice that of its closest competitor (Trans Mountain). No doubt, the pipeline’s route through five provinces helps explain the high degree of media attention. The controversy in Ontario and Quebec, Canada’s two largest provinces and the seats of the most media, certainly contributed to that attention.

Figure 7.3 analyzes which issues got the most attention from the media from 2013 to 2016.³ When the Energy East proposal was first announced in August 2013, the attention was squarely on jobs and the economy. In 2013, economic themes were mentioned twice as often as the next closest category—accidents and spills. Climate concerns was the category mentioned least. By the following year, however, climate concerns had nearly doubled as a percentage of mentions and had become increasingly competitive with jobs and the economy. By 2016, climate concerns exceeded jobs and the economy as a percentage of mentions. This trend indicates the enormous success of the counterframing conducted by environmental activists.

Consistent with coverage of the other pipeline cases, media reporting on Energy East raises questions about the relative importance of local versus climate risks in discourse about the pipeline, at least as represented in media reports. While accidents and spills got more mentions than climate in 2013, when the controversy really heated up in 2014, climate mentions exceeded those of local environmental concerns. This shift can be credited in large part to a change in emphasis in environmental discourse resulting from the increased role played by 350.org, an international group focused on climate.

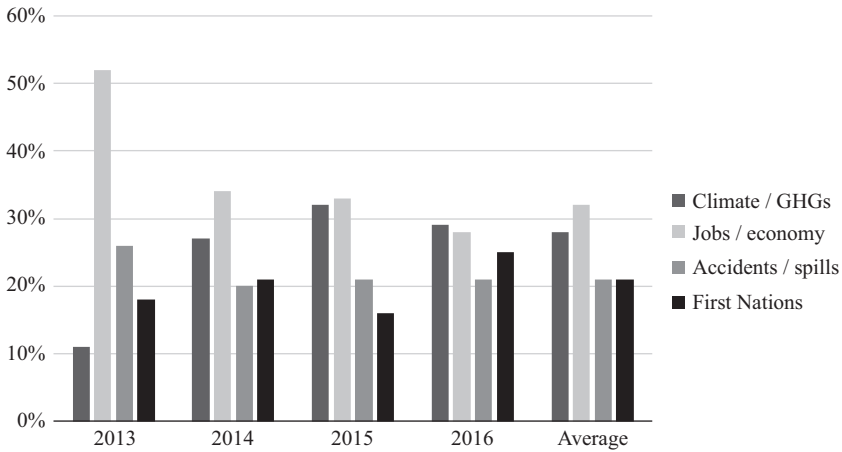


Figure 7.3

Aggregated issue mentions of the Energy East Pipeline in French and English in Canadian media, 2013–2016.

Prior to May 2014, 350.org did not have paid staff in Canada. That changed when Cam Fenton was hired by 350.org to focus on Energy East. From the start, Fenton’s strategic goal was to “make the pipeline a climate pipeline” by advocating the adoption of a “climate test” in the pipeline review and approval process (Fenton 2017a). That campaign is described in more detail below.

Figure 7.4 compares the category of issue mentions of Energy East in English- and French-language media in Canada. The differences in the relative balance of economic and environmental concerns are striking. While in the English media jobs was the dominant category over the four years, in the French-language media climate concerns dominated the themes discussed by the media. This result provides another indication of the distinctively strong environmental values in Quebec and the merits and success of the anti-pipeline coalition focusing on resistance to the project in French Quebec.

Public Opinion

Nationally, public opinion consistently showed support for the Energy East Pipeline, but the project also strongly divided the country at the regional level. According to a March 2016 poll by Forum Research (see figure 7.5), 55% of Canadians approved of the project, compared to 32% who disapproved of it. If we look by province, however, the picture is quite different. On one side, approval exceeded opposition in all provinces except Quebec.

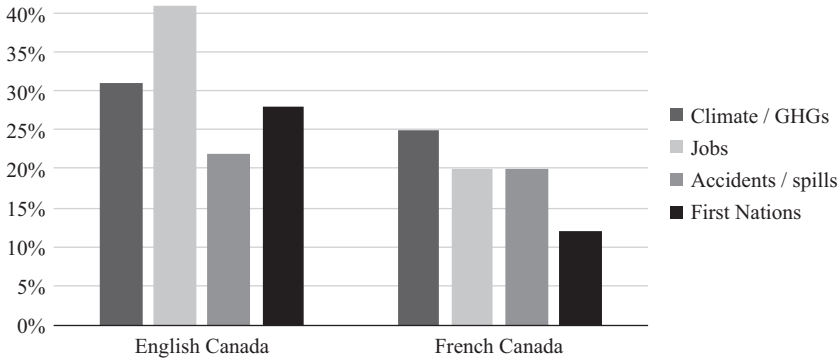


Figure 7.4

Comparison of issue mentions between French- and English-language Canadian media.

Support reached 82% in Alberta and 71% in Saskatchewan, Manitoba, and the Atlantic provinces. There was somewhat less support in Ontario and British Columbia, but supporters still outnumbered opponents (in Ontario, 57% supporting and 28% opposing; in British Columbia, 45% supporting and 39% opposing). On the other side, Quebec was the only province where opposition was higher than support. Only 38% of respondents there supported the project, while 50% stood against it.

Some regional polls seem to confirm this provincial divide. An online survey conducted by CROP-L'Actualité in December 2014 showed similar results: 35% of Quebecers supported the project, whereas 49% opposed it (Castonguay 2015). A poll conducted by Erik Lachapelle in 2015 showed that only 31% of the respondents from Quebec supported Energy East, whereas 51% were against it. In contrast, 71% of Alberta's population supported the pipeline, while opposition reached a mere 15% (Baril 2015).

Institutions and the Politics of Structure

As in the other pipeline cases, much of the conflict over Energy East was a battle over the rules of the game. There was disagreement over the role of provincial governments, especially the Quebec government, as always highly protective of its jurisdiction. Municipal governments also came to play an important role in the Montreal region. Even more so than in the other Canadian cases, the credibility and legitimacy of the regulatory review process led by the National Energy Board came under relentless attack. Some of the

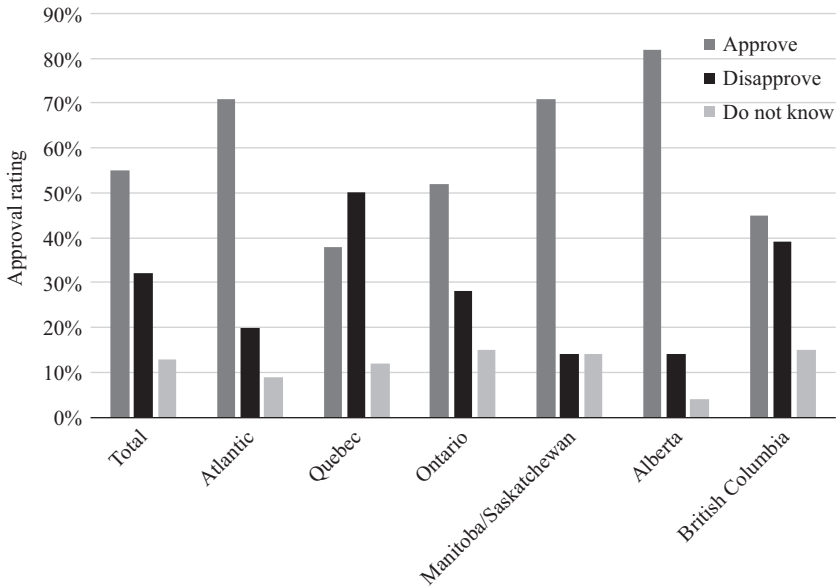


Figure 7.5

Forum Research poll of opinions on the Energy East Pipeline (March 2016).
Source: Forum Research (2016).

wounds were self-inflicted, but environmental opponents mobilized a concerted and remarkably successful campaign to discredit the regulator. Opponents also took to the courts early in this case, blocking one of the two export terminals and forcing Energy East to substantially amend its proposed project.

Assertions of Provincial Authority in the Absence of an Intergovernmental Equivalency Agreement

Unlike the West Coast pipelines, there was no intergovernmental agreement dividing labor or establishing equivalency between the federal government and the provinces. Both Quebec and Ontario chose to conduct their own environmental reviews. In Quebec, the authorization process for interprovincial pipelines is subject to the Environmental Quality Act and includes an assessment and review procedure as well as public hearings under the auspice of BAPE. The provincial government sent TransCanada a letter in late 2014 informing the company that it was expected to comply with provincial laws and undergo a provincial assessment (Government of Quebec 2016a).

TransCanada was conflicted about how to respond, and their position vacillated as events unfolded. On the one hand, they wanted to defend federal supremacy on pipeline regulation and avoid what they considered unnecessary duplication and delay. On the other hand, they were justifiably concerned that formal political opposition from the province of Quebec could doom the project in the federal cabinet. Initially, TransCanada refused to comply, insisting that the supremacy of federal jurisdiction over pipelines means that the company was not required to comply with provincial review requirements.

In response, Quebec initiated a generic review of the project by the BAPE in January 2016 that could proceed even without the company's participation. Before the hearings could begin, however, the province altered course somewhat and, in March 2016, Quebec environment minister David Heurtel filed for an injunction to force TransCanada to comply with the provincial environmental assessment process. Quebec's request was filed two weeks after a coalition of environmental groups filed for an injunction calling for the same thing. A few weeks later, TransCanada, sensing escalating opposition within the province, decided to comply with Quebec's environmental assessment procedures and provide a distinct environmental impact study for Quebec's portion of the pipeline (Government of Quebec 2016b). In return, Quebec agreed to withdraw its injunction (Gralnick 2016). Once the project proposal and environmental impact study were submitted by TransCanada, the provincial environmental review process was taken over by Quebec's Ministry for the Environment (officially the Ministère du Développement durable, Environnement et de la Lutte contre les changements climatiques—MDDELCC). On September 14, 2017, the MDDELCC also suspended its evaluation process for Energy East at the request of TransCanada (Croteau 2017).

Legal scholars have disagreed about the role of provincial government in interprovincial pipelines. In reaction to the seven conditions imposed by Quebec and Ontario, Dwight Newman, professor of law at the University of Saskatchewan and senior fellow at the Macdonald-Laurier Institute, wrote an op-ed in the *Globe and Mail* arguing that "premiers have no constitutional basis to be making conditions, demands or anything else on this pipeline, and they play a dangerous game in attempting to do so. . . . Provinces that want their own provincial jurisdiction respected play a very dangerous game if they do not respect well-established principles of the constitutional division of powers. If Quebec is not willing to respect the clear jurisdiction of the

federal government, why should the federal government respect tomorrow the clear provincial jurisdiction of Quebec?" (Newman 2014).

Quebec constitutional scholars disagreed, and reacted to Newman's article by arguing that provinces can impose conditions and sanctions in order to protect the environment, health, and security of their populations even for projects falling under federal jurisdiction (Robitaille et al. 2014). As described in chapter 5, the April 2016 *Coastal First Nations v. British Columbia* decision by the Federal Court of Appeal involving the equivalency agreement about Northern Gateway came to the somewhat confusing conclusion that provinces have the responsibility to review interprovincial pipelines and could attach additional conditions for their approval but could not take any action that was tantamount to rejecting the pipeline (Olszynski 2018). The British Columbia reference case described in chapter 6 clarified the supremacy of federal power over interprovincial pipeline decisions. Provincial authority does not constitute a formal, authoritative veto point. Instead, provincial influence is political. Quebec's position was particularly pivotal to the Trudeau government. Trudeau's electoral support in Quebec was considered essential to his governing majority and could have collapsed if he had approved the pipeline against the will of the Quebec government and a majority of its population.

Municipal Opposition

Municipal governments have less legal leverage than provinces to block a transprovincial pipeline, as the court cases involving Burnaby and the Trans Mountain pipeline reinforced (chapter 6; Olszynski 2018). But the concerted opposition from the Montreal region's mayors threatened the political viability of Energy East. For instance, former Conservative interim leader Rona Ambrose expressed skepticism over TransCanada's ability to build Energy East given the opposition from the MMC. She stated, "I don't see Energy East getting through Montreal, and that's just the political reality of it," adding, "If you think that Denis Coderre in Montreal and the groups that have gotten organized against Energy East are going to give the government social license to go through Montreal, I don't believe it. I'd like to be more optimistic" (Ambrose quoted in Scotti 2017). Reactions to the MMC's anti-pipeline position from western Canadian politicians such as Brad Wall, Brian Jean, and Rachel Notley also illustrate how seriously they considered this opposition from local governments to be. Despite the Montreal region's lack

of legal power to veto the Energy East Pipeline, its political power carries significant weight.

Legal Challenge over the Deepwater Terminal in Cacouna, Quebec

Environmentalists were very active in using the courts to attack TransCanada's Energy East proposal. The first critical target was TransCanada's plan to build a deepwater port in Cacouna, along the shore of the St. Lawrence River in Quebec. TransCanada wanted a deepwater port in Quebec for two reasons: it would diversify the points of exportation on Canada's east coast and provide additional economic benefits to Quebec, which TransCanada hoped would foster greater project acceptance in the French-speaking province. However, the choice of Cacouna quickly became a flashpoint for the opposition. The area is known as a nursery for beluga whales living in the St. Lawrence estuary and gulf and therefore represents a highly sensitive habitat for the reproduction of this endangered marine mammal. This created an inviting target for anti-pipeline activists, who then set out to "beat them up with belugas" (Stewart 2016).

Only a few months after TransCanada launched the Energy East project in 2013, environmental groups mobilized against the terminal. Local and regional groups such as the Coalition Bas-Saint-Laurent pour une prospérité sans pétrole (Prosperity without Oil Bas Saint-Laurent Coalition) and the Mouvement Stop Oléoduc (Stop Pipeline Movement) organized protests, marches, and information campaigns in order to prevent TransCanada from conducting seismic surveys in the region that were required in order to advance the proposal for the terminal. They claimed that the drilling would disturb belugas' natural reproductive cycle and harm the already declining population (estimated at 900 in 2012 according to Fisheries and Oceans Canada) (Government of Canada 2017b).

On March 5, 2014, TransCanada announced it would "voluntarily" participate in Quebec's environmental evaluation process for the deepwater port in Cacouna (but not for the entire portion of the pipeline crossing Quebec) while at the same time asserting that the decision to authorize the project fell in the hands of the federal government. On August 21, 2014, Quebec authorized TransCanada to start underwater drilling operations and geotechnical surveys in Cacouna. Five days later, a request for an injunction was filed at the Superior Court of Quebec to stop drilling operations in Cacouna. The request was cowritten by the Centre québécois du droit de

l'environnement, David Suzuki Foundation, Nature Quebec, the Canadian Parks and Wilderness Society Quebec, France Dionne, and Pierre Béland (Greenpeace and WWF-Canada also backed the injunction). On September 1, 2014, the superior court rejected the request for a "safeguard order," arguing that it is "alarmist" to affirm that belugas will suffer irreparable harm from drilling activities. In turn, superior court judge Claudine Roy argued that delays in the drilling works would cause "economic harm" to TransCanada (Cour Supérieure du Québec 2014a).

The environmental organizations came back to the court with additional scientific arguments and two weeks later, on September 23, were successful at convincing the court to impose an interlocutory injunction on drilling activities in Cacouna until October 15, when the beluga spawning period would be completed. Judge Claudine Roy found in her judgment that Quebec's MDDELCC, despite spending two months analyzing potential harms on belugas from drilling, could not confirm that mitigation measures proposed by TransCanada would have been sufficient to prevent harm to belugas. The judge also found that Quebec's minister of the environment sought advice from Canada's Department of Fisheries and Oceans (DFO) but that it decided to authorize testing despite not getting a response from DFO. The Superior Court therefore ruled that the applicants were successful in "raising a serious doubt as to the reasonableness of the Minister's decision" and imposed the temporary injunction (Cour Supérieure du Québec 2014b). The ban on drilling was extended beyond October 15 because Quebec's Environment Ministry then refused to issue a permit.

In a coincidental development that elevated the salience of beluga vulnerability, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) recommended changing the status of St. Lawrence belugas from a "threatened" to an "endangered" species in November 2014, putting additional pressure on TransCanada and Quebec's government to back down on Cacouna's deepwater port proposal (COSEWIC 2016).

As legal, scientific, and political pressure to abandon the Cacouna terminal grew, on December 2, 2014, Premiers Jim Prentice of Alberta and Philippe Couillard of Quebec met to discuss the pipeline. Couillard suggested that TransCanada should seek "alternative sites" for its deepwater port. Prentice emphasized the nation-building benefits of a deepwater port in Quebec, saying, "I hope there will be discussions between the proponents and Premier Couillard about the other alternative locations" to Cacouna. He added, "It

would seem to me that the project will be stronger as a piece of nation-building infrastructure if there is a port facility in the province of Quebec” (Prentice quoted in Van Praet and Perreux 2014).

On April 2, 2015, TransCanada finally decided not to proceed with a marine terminal in Cacouna, citing concerns over belugas’ safety in the St. Lawrence River. According to CEO Russ Girling, “This decision is the result of the recommended change in status of the Beluga whales to endangered and ongoing discussions we have had with communities and key stakeholders” (Girling quoted in Penty 2015). This decision was a major setback for the project for two reasons. First, it created significant delays in the project review and approval process because TransCanada would have to amend its application filed with the NEB (Morgan 2015). Second, it increased the political risks to the project by reducing the economic benefit flowing to Quebec. According to Greenpeace’s Keith Stewart, “it shifted the risk-benefit calculation for Quebec even further into the ‘all risk, no reward’ frame” (Stewart 2016).

Delegitimizing the National Energy Board

Mobilizing political and legal pressure against Energy East was critical to the environmental strategy, but there was also a conscious political choice to attack the legitimacy of the regulatory process itself. As described in previous chapters, the NEB has generally been friendly to pipeline projects, but the Harper government chose to increase political control over the regulator by changing the law to transfer the final decision authority on inter-provincial pipelines to the federal cabinet. One effect of this change was to politicize the regulatory process further, and in the confrontational energy politics of the 2010s, environmental groups responded by attacking the board and its procedures. The core of the campaign, organized by 350.org, LeadNow, the Council of Canadians, and Greenpeace, was a petition for a “People’s Intervention” demanding that the NEB consider climate impacts in its NEB review. The campaign also flooded the hearing process with requests for participation to reiterate that claim. The online petition stated:

The Energy East pipeline could move over 1 million barrels of tar sands from Alberta to the Atlantic Ocean each day—exporting bitumen and dangerous carbon emissions to the world.

Without considering climate change and listening to people’s voices, any review of Energy East will be incomplete and illegitimate. (350.org, n.d.)

The strategy was described by Cam Fenton from 350.org this way:

The general public didn't see the regulator as illegitimate, but the movement did. This was around the time that Obama had clearly stated that climate will be the measure [on Keystone XL, see chapter 4]. So the US is judging our pipelines on climate, but we are not. It seemed like this big missing piece. It seemed like the NEB was theoretically an arm's length regulator that could make its own determinations. We basically could target this institution and put it in a decision dilemma whereby it either has to include climate change or declare it won't, and further delegitimize itself in public. (Fenton 2017a)

The credibility of the pipeline regulation process was also a major issue in the federal election campaign of 2015. Environmentalists began "bird-dogging" candidates, especially Liberal leader Justin Trudeau, demanding a commitment to a climate test. But the Trudeau camp also saw electoral advantages in criticizing the Harper government's regulatory record. While the Harper government defended the process, Justin Trudeau's Liberal Party platform called for a review of the NEB to "modernize and rebuild trust in the National Energy Board" and changes to the environmental assessment process to "ensure it includes an analysis of upstream impacts and the greenhouse gas emissions" (Liberal Party of Canada 2015b). The New Democratic Party pledged similar changes.

Already tarnished heading into the election, both Harper and Energy East managed to aggravate the NEB's credibility crisis. Harper's appointment of Steven Kelly to the NEB, two days before the start of the 2015 federal electoral campaign that would lead to the Conservative Party's defeat, certainly did not help improve the board's reputation for independence from the industry it regulated. As vice president of IHS Global Canada Ltd., Kelly was hired by Kinder Morgan to defend the economic benefits of the Trans Mountain pipeline expansion in front of the NEB (Cattaneo 2015).

Like the three other pipeline cases, the Energy East case strongly supports the third behavioral hypothesis. Competing interests chose venues that gave them the best chance of success. The anti-pipeline coalition took advantage of the absence of an equivalency agreement to push resistance by provinces, especially Quebec, and politically powerful municipalities. TransCanada fought as hard as it could to keep the review under exclusive federal control but in the end was overwhelmed by the reality of Quebec's power in the federation.

The NEB Review Process

TransCanada announced its intention to proceed with the Energy East proposal in August 2013. Its formal application was submitted to the NEB in October 2014. As a result of the setback with the Cacouna marine terminal, however, the proposal had to be revised. It was resubmitted in December 2015, but the NEB sent the proposal back to the company for revisions. Three months after the Liberals' victory in the federal election campaign, Trudeau's government announced interim principles that would guide both environmental assessment processes and the NEB's ongoing pipeline reviews (described in chapter 6). The government also made it clear that no project would have to start from scratch.

Specifically, three interim measures were identified in regard to the Energy East Pipeline review process:

1. Undertake deeper consultations with Indigenous peoples potentially affected by the project and provide funding to support these consultations;
2. Help facilitate expanded public input into the National Energy Board review process, including public and community engagement activities. The Minister of Natural Resources intends to recommend the appointment of three temporary members to the National Energy Board;
3. Assess the upstream greenhouse gas emissions associated with this project and make this information public. (Government of Canada 2016a)

The NEB officially launched the review process for the Energy East Pipeline on June 16, 2016. It was then supposed to complete its review and submit its report within a 21-month period (National Energy Board 2016e). TransCanada ran into conflicts over its reluctance to translate the application document into French, prompting a legal challenge from Quebec activists. As the company struggled to manage that issue, the NEB process came off the rails as the board descended into crisis in summer 2016. Ethical concerns over the board members, legal challenges, and disruptive protests of the hearings in Montreal led to the cancellation and subsequent reconstitution of the review process and eventually to TransCanada's decision to terminate the project.

Perhaps the biggest blow to the legitimacy of the NEB was the tenacious investigative journalism of Mike De Souza of the *National Observer*. In July 2016, De Souza revealed that in January 2015 former Quebec premier Jean Charest had a private meeting with NEB members reviewing the Energy

East Pipeline (Poitras 2018, 185–189). The NEB confirmed that the meeting occurred, but at first defended itself by arguing that the board members explicitly warned Charest, then a lobbyist for TransCanada, that they could not discuss the Energy East project. The NEB also argued that the board members were not aware of “any contracted work that Charest may have had.” “The meeting was set up . . . with the purpose of asking Mr. Charest for his thoughts on how the NEB could effectively engage in Quebec and which stakeholders the NEB might consider meeting,” said NEB spokesman Craig Loewen in a statement (De Souza 2016b). Present at the meeting were NEB president Peter Watson and two of the commissioners on the panel reviewing the Energy East proposal, Jacques Gauthier and Lyne Mercier.

In August, an Access to Information Act request pried loose from the NEB the records on the meeting with Charest. Those records revealed that Energy East had in fact been discussed during the meeting, and Charest had given strategic advice for the pipeline’s acceptance in Quebec. The NEB was forced to apologize, acknowledging that, “Our response did not accurately reflect the meeting” (De Souza 2016c). These media revelations aggravated the NEB’s legitimacy problem just as Energy East hearings were about to begin. In August, two separate requests for motions were filed by environmental groups requesting that the NEB members who participated in the meeting with Charest recuse themselves from the Energy East review (De Souza 2016d).⁴ On August 25, former Montreal mayor Denis Coderre added his voice to the growing protest movement and asked the federal government to suspend the NEB’s public hearings on Energy East. The Montreal mayor had expressed doubts about the impartiality of the process since the revelations about the private meeting held with Jean Charest (Champagne 2016).

The crisis was heightened when, on August 29, NEB’s public hearings held in Montreal were disrupted by a group of protesters. Holding a bilingual banner quoting Justin Trudeau as saying “only communities grant permission,” the protesters chanted, “TransCanada on n’en veut pas, ONÉ congédié” (TransCanada we don’t want it, NEB fired). The NEB chose to cancel that day’s hearing and the one scheduled for the following day as well. “This decision was made in light of a violent disruption in the hearing room this morning which threatened the security of everyone involved in the panel session,” according to the NEB (National Energy Board quoted in Shingler and Smith 2016). Natural Resources Minister Jim Carr expressed his concerns about the events as he mentioned that, “Not everyone’s going to agree. But

everyone should have a right to express themselves, and that's a fundamental Canadian value" (Carr quoted in Shingler and Smith 2016).

A day later, on August 30, the NEB decided to suspend the public hearings on Energy East in the midst of a credibility crisis. On September 9, the NEB panel members finally stepped down and the Energy East hearings were halted until a new panel could be appointed. The NEB said that "all three panel members have decided to recuse themselves in order to preserve the integrity of the National Energy Board and of the Energy East and Eastern Mainline Review. The members acted in good faith" (Marandola 2016). Chair Peter Watson and vice chair Lyne Mercier also recused themselves from administrative duties.

In an effort to salvage the Energy East review process, the federal government appointed four temporary members to the NEB on October 20 (Government of Canada 2016b), but by that point the controversy had strengthened public opposition in Quebec. On November 7, 2016, an SOM poll commissioned by Équiterre, the Coule pas chez nous foundation, the David Suzuki Foundation, Greenpeace Canada, Nature Québec, and the Regroupement vigilance hydrocarbures Québec showed that "a strong majority of Quebecers (73%) have completely lost trust in the National Energy Board (NEB) following the Charest affair. A strong majority (89%) believe that before the evaluation of the Energy East project starts again the federal government needs to completely reform the environmental assessment process" (Greenpeace Canada 2016). It didn't help the credibility of the NEB review of Energy East when Trudeau's natural resources minister, Jim Carr, announced the creation of the NEB modernization panel on November 8. The very title of the process implied that the NEB was flawed, yet the government was hoping that the Energy East review could still proceed. On January 9, 2017, the NEB announced three new NEB members to review the Energy East Pipeline (National Energy Board 2017a). The newly appointed panel then announced later in the month that it would start the NEB's public hearings from scratch, a decision that added further delays to the project (Snyder 2017).

On May 10, 2017, in a major breakthrough for the anti-pipeline coalition, the NEB announced that it might review upstream and downstream emissions from the Energy East Pipeline since the "Hearing Panel has specifically asked for feedback on this issue" (Government of Canada 2017a; National Energy Board [NEB] 2017c). TransCanada harshly criticized this decision. In a letter published by Blake, Cassels & Graydon LLP on behalf of

TransCanada, the authors asked for more time to reply to public comments and argued that “if the lists of issues for the Projects include the analyses of upstream GHG emissions such analyses will be completely redundant and unnecessary” because the government’s interim measures already established that Environment and Climate Change Canada would be doing that analysis (Blake, Cassels & Graydon LLP 2017, 4).

The NEB’s credibility crisis deepened when the report of the expert panel on NEB modernization was released in May 2017 and declared a “crisis of confidence” in the NEB and recommended deep reforms, including the creation of new regulatory and information organizations to replace the NEB. A month later, Ontario and Quebec abandoned their formal wait and see positions and asked Jim Carr to stop the Energy East review until the NEB reform process was completed. In a June 27, 2017, joint letter, ministers from Quebec and Ontario—Pierre Arcand and Glenn Thibault—wrote: “Quebec and Ontario recommend that an important outcome of NEB Modernization be a framework for the NEB to review major energy projects that is predictable and increases public confidence” and hope that “the process to modernize the NEB and any new rules that are announced by the federal government provide predictable treatment for major energy projects currently under NEB review” (Arcand and Thibault quoted in Goujard 2017). According to Quebec premier Philippe Couillard, “The process should be completely credible and stabilize the way reviews are done before starting discussions [on the Energy East project]” (Couillard quoted in Goujard 2017).

On August 23, the NEB finally confirmed that it would evaluate upstream and downstream GHG emissions for the Energy East Pipeline (National Energy Board 2017c). This represented a major shift from the NEB’s previous approach, in October 2014, not to assess upstream greenhouse gas emissions or the effect of oil production and transport on climate change as part of the Energy East Pipeline review (Shields 2014). It was even an expansion over the Trudeau government’s interim measures’ commitment to review upstream emissions. This change represented a huge victory for environmental advocates in changing the scope of the regulatory review.

Two weeks later, on September 7, TransCanada requested a “30-day suspension of the Energy East Pipeline and Eastern Mainline Project applications . . . to conduct careful review of recent changes announced by the NEB regarding the list of issues and environmental assessment factors of the project

while understanding how these changes impact the projects' costs, schedules and viability" (TransCanada 2017a). In a public statement following TransCanada's request, the NEB announced that "the Board will not issue further decisions or take further process steps relating to the review of the projects" (National Energy Board 2017d). TransCanada also raised the possibility of canceling the project. The company stated: "Should TransCanada decide not to proceed with the projects after a thorough review of the impact of the NEB's amendments, the carrying value of its investment in the projects as well as its ability to recover development costs incurred to date would be negatively impacted" (TransCanada 2017a).

Who Killed Energy East? The Rhetorical Battle to Frame the Termination

On October 5, 2017, four years after it was first proposed and less than a year before it was originally scheduled to come into operation, TransCanada announced that it was terminating the Energy East project. In its media release, the company was notably terse in explaining the decision: "After careful review of changed circumstances, we will be informing the National Energy Board that we will no longer be proceeding with our Energy East and Eastern Mainline applications" (TransCanada 2017b). While the company has remained circumspect in its rationale for the decision, many other strategic actors have jumped into the fray to offer explanations for why the project was terminated.⁵

The Conservative opposition at the federal level blamed the decision on regulatory overreach by the Trudeau government. Conservative MP Lisa Raitt argued that "today is a result of the disastrous energy policies promoted by Justin Trudeau, and his failure to champion the Canadian energy sector. [Trudeau] forced Canadian oil companies to comply with standards that are not required for foreign companies. . . . Everything that Justin Trudeau touches becomes a nightmare" (Ballingall 2017).

Jason Kenney, leader of the United Conservatives in Alberta, took a similar stance, claiming that the decision was "because of uncertainty created by the Trudeau government and the National Energy Board" (Franklin 2017). Trudeau deflected these attacks, claiming that, "It's obvious that market conditions have changed." Natural Resources Minister Jim Carr went even

further, characterizing the cancellation as “a business decision” and maintaining that “nothing has changed in the government’s decision-making process. Canada is open for business” (Ballingall 2017).

Academics and activists joined the fray. Andrew Leach, an associate professor at the University of Alberta School of Business, also laid the blame squarely on market forces, especially the decline in oil prices and the associated reduction in forecast growth in the oil sands. But Leach also points to Donald Trump’s revival of the Keystone XL pipeline, also a TransCanada project, which forced the company to choose which pipeline to lock in shipper’s commitments to. Cam Fenton, a climate organizer with 350.org, agrees that changing rules for regulatory review explain TransCanada’s decision, but unlike Conservative politicians, Fenton praises the change, saying, “Climate concerns killed Energy East. And that’s a good thing” (Fenton 2017b). Climate organizer and Oxford graduate student Bronwen Tucker argued that while market forces were undeniably important, the anti-pipeline social movements played a huge role in Energy East’s demise: “Delays won by Indigenous communities, grassroots groups, labour unions and NGOs prevented Energy East from being built when it was still economically and politically feasible” (Tucker 2017).

Conclusion

The regime framework developed here shows how these competing arguments about different drivers can all work together to explain the outcome. The political viability of a major infrastructure project is determined by the balance of power between project proponents and opponents. Power is a product of political resources and strategic actions, both of which can be strongly influenced by market forces, elections, and other background conditions. When it was first proposed, it seemed like TransCanada had the upper hand. An enthusiastic Conservative government held power in Ottawa. Oil prices were over US\$100 per barrel, projections were for rapid growth in the oil sands, and alarm was growing within the oil sands coalition about pipeline shortages. Competing projects were struggling: the Keystone XL project had been rejected (the first time) by President Obama, and the Northern Gateway deathwatch was well under way.

Once the project was formally proposed, the resistance movement mobilized and proved to be tenacious and formidable. It used the courts to force

delays and even blocked the Quebec terminal. The anti-pipeline coalition skillfully exploited TransCanada's missteps: the revelation of Edelman's heavy-handed strategy, the ill-advised choice of a beluga nursery for the Quebec terminal, the delays in producing French-language documents, and the decision to hire Charest as a lobbyist. The Charest controversy was particularly pivotal in the remarkable success of the anti-pipeline coalition at discrediting the entire NEB process and then expanding the scope of reviews to include upstream and eventually even downstream GHG emissions. Mayors throughout the Montreal region united in opposition, and the Quebec government asserted its jurisdiction to perform its own assessment and make its own decision.

As these points of resistance were emerging, the market changed profoundly. Oil prices crashed in the second half of 2014 and by January 2016 had fallen to less than one-third of what they were in 2013. Oil companies slashed their production forecasts—the Canadian Association of Petroleum Producers' 2017 forecast for pipeline capacity needs in 2030 fell 3 million barrels per day below what had been forecast four years earlier, three times the capacity of Energy East (Leach 2017). The Trudeau government approved competing pipelines, and in 2017 Trump revived Keystone XL.

In deciding whether to continue to pursue the project, TransCanada had to weigh the expected benefits of building and operating the pipeline against not only the costs of construction but also the increasingly costly and time-consuming review process, not to mention the probability of ultimately succeeding in getting government approval to build. In the rhetorical battle to frame who or what to blame for TransCanada's termination decision, it was predictable that Conservatives would blame unduly cumbersome regulatory processes and that Trudeau would deflect all the blame to apolitical market forces. The strategic actions of the anti-pipeline coalition unquestionably raised the process costs of the project, which helped tip the cost-benefit balance to the negative for TransCanada once market conditions had changed so dramatically. Pipeline opponents were proud to celebrate their success, because that is precisely what their relentless legal and procedural strategies were designed to do.

