

TransCanada pipeline encroaches on aboriginal territorial rights

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Lubicon fight proposed TransCanada pipeline Indian Country Today April 04, 2008.

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by: Kate Harries

TORONTO – The Lubicon Lake Indian Nation in northern Alberta is gearing up to fight a proposed jumbo pipeline that would carry natural gas from the Mackenzie Valley in the west to the oil sands developments to the east.

The \$983 million proposal follows a history of industrial development across the unceded Lubicon territory that has left the 500-member Cree nation impoverished, poisoned and disregarded by Canada and Alberta – despite criticism about violations of their rights from two United Nations committees.

"It's a devastating situation where there is all kinds of activity around our traditional hunting and trapping areas," Lubicon Chief Bernard Ominayak said when he traveled to Geneva two years ago. "It's polluting most of our waters – we have to haul our own water and we can't eat the fish any more."

TransCanada Pipelines filed an application last November for the 185-mile pipeline, stating that it had consulted extensively regarding the pipeline route with stakeholders, including affected First Nations, and received no objections.

That prompted an indignant denial from the Lubicon.

TransCanada representatives never provided answers to repeated questions about construction, operations, safety issues and mitigation measures, and ignored a request that the company recognize Lubicon jurisdiction before applying to the provincial regulatory board, said Lubicon lawyer Fred Lennarson. "TransCanada's so-called 'engagement program' is clearly not a sincere effort to inform the Lubicon people about the project," Lennarson wrote in a letter to company lawyer Line Lacasse in January.

Lacasse, in an earlier letter, said TransCanada must meet its project timelines, and could not wait for a Lubicon decision.

"The response of the Lubicon people is that they are the aboriginal owners of the land that TransCanada wishes to violate with this huge pipeline, and TransCanada can either deal with Lubicon concerns prior to proceeding with provincial project approvals or find some

alternate route,” Lennarson replied.

While Shell, Suncor and Imperial Oil are lining up in favor of the pipeline, Lubicon supporters are writing to the Alberta Utilities Commission in objection to TransCanada’s tactics.

A commission spokesman said the Lubicon will have to demonstrate “a potential direct and adverse effect” in order to be allowed to participate at an upcoming hearing.

Some supporters are targeting the company’s bottom line and warning of shareholder dissatisfaction that will be raised at the company’s annual general meeting in Calgary April 25.

KAIROS, a Canadian church group, has written to board chair S. Barry Jackson to express deep concern on behalf of several religious institutions that hold TransCanada shares.

“We are disturbed by the company’s decision to proceed with an application to the AUC for approval of the NCC project as is, without having concluded discussions with the Lubicon Nation,” wrote KAIROS executive director Mary Corkery.

“Management’s handling of this situation may constitute an undisclosed and poorly managed risk to our investments,” Corkery stated, adding that “this situation constitutes an unacceptable response to a serious, internationally recognized human rights issue.”

Company spokesman Cecily Dobson said in an e-mail that TransCanada respects the Lubicons’ assertion of traditional and cultural use of the land.

Because of an oversight by Crown officials, the Lubicon were left out when Treaty 8 was negotiated in 1899. The lack of a treaty means they retain unextinguished aboriginal title to their territory, estimated at 62,000 square miles.

Oil and gas companies have overrun the territory, purchasing leases from Alberta at will. Development has poisoned the lakes and decimated the wildlife, destroying traditional life and culture. The Lubicons’ water sources have been contaminated by resource extraction and the people suffer a multitude of medical problems, including tuberculosis, asthma, skin rashes, cancer and stillbirths.

Indian Affairs spokesman Glenn Luff said the territory is provincial Crown land and while court decisions mandate consultation, there’s no obligation on the federal government to intervene.

“Mr. Luff can call it ‘Crown land’ all he wants; but the problem for Mr. Luff is that under Canadian law, the land is only surrendered by negotiating a treaty with the aboriginal owners, and there’s no treaty with the Lubicons,” retorted Kevin Thomas of the Friends of the Lubicon group.

The U.N. Human Rights Committee has twice found Canada in violation of an international treaty on civil and political rights. It called on Canada to ensure adequate consultation before licensing economic exploitation of the land, and to ensure that logging and large-scale oil and gas extraction do not jeopardize the nation’s culture and way of life, in violation of their human and aboriginal land rights.

In 2006, the U.N. Committee on Economic, Social and Cultural Rights reiterated the Human Rights Committee's findings and urged Canada to resume negotiations with the Lubicon, a call that was echoed by a U.N. official who visited the Lubicon community of Little Buffalo last year.

The Lubicon are still waiting, after talks broke down in 2003 when federal representatives said they had no mandate to negotiate with Lubicon self-government. Recently, Canada proposed to send an envoy to conduct preliminary talks, but the Lubicon rejected the idea, Luff said.

That's not true, Thomas said, adding that "what the Lubicons would like to see is a federal envoy who is willing to work with the Lubicons to sort out how - not if - a settlement can be achieved."

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