

# **Summary of Lubicon Lake Indian Nation dispute with TransCanada**

**At the company's April 25 AGM in Calgary, shareholders of TransCanada Corporation (TSX: TRP) will be raising concerns with the application by TransCanada to build a new pipeline across disputed First Nations territory in northern Alberta.**

The shareholders say that TransCanada has not addressed its responsibility to consult fully with the Lubicon Nation and has disregarded key United Nations human rights decisions that should be respected by the company. They say:

How these issues are managed could very well have significant impacts on TransCanada's public image, its ability to secure financing or insurance, or anticipated regulatory decisions. One need only look at the delays and difficulties faced by other northern pipelines to see that failure to adequately address indigenous land rights along the pipeline route has the potential to delay, or even terminate, a project. More to the point, however, this situation constitutes an unacceptable response to a serious, internationally recognized human rights issue that pertains directly to the operations of the company. This is deeply troubling to us.

They will be asking TransCanada to recognize Lubicon rights and deal with Lubicon concerns prior to proceeding with application for provincial regulatory approval for the pipeline project.

The shareholders include seven church organizations. Their letter is attached.

**As shareholders, you are invited to support the Lubicon Nation and the other investors by expressing your concern in a letter to the company, which can be modeled after the attached letter. Further, you can raise the issue with TransCanada at the AGM or, if you cannot be present, by providing your proxy to the Lubicon Nation to take up the issue at the meeting.**

For more information, please contact Kevin Thomas, advisor, Lubicon Lake Indian Nation, at [ktre@sympatico.ca](mailto:ktre@sympatico.ca) or by phone at 416-533-1329.

# **Background**

## **The project**

NOVA Gas Transmission Ltd. (NGTL), a wholly owned subsidiary of TransCanada Corporation, proposes to construct a major, 42 inch diameter gas pipeline called the North Central Corridor Pipeline through land the Lubicon Lake Indian Nation has never ceded in any legally or historically recognized way.

## **The Lubicon Nation**

The Lubicon Nation is an Aboriginal Nation of approximately 500 people living in northern Alberta. They have never surrendered their rights to their traditional lands. They were overlooked when a treaty was negotiated with other Aboriginal peoples in the region in 1899. A reserve promised forty years later was never established. Since large-scale oil and gas exploitation began in their territory 25 years ago, their health, way of life and culture itself have been steadily undermined by resource extraction to which the Lubicon have never consented. Over \$13 billion of oil and gas resources have been taken from Lubicon Traditional Territory since the early 1980s. The Lubicon people, however, still do not even have running water in their homes.

Both levels of Canadian government and various United Nations human rights bodies have recognized the existence of continuing Lubicon land rights over the Territory traditionally used and occupied by the Lubicon people, and there have been on-again off-again negotiations pertaining to settlement of Lubicon land rights between the Lubicon Lake Indian Nation and both levels of Canadian government for over 25 years.

## **International human rights decisions that should be respected**

Canada has been the subject of several UN decisions regarding abuse of the human and aboriginal rights of the Lubicon Lake Indian Nation under two international human rights covenants to which Canada is a signatory. These decisions explicitly address the negative impacts of further oil and gas exploitation activity and call for consultation with the Lubicon people before further projects are approved.

On March 28, 1990, the Thirty Eight Session of the United Nations Human Rights Committee (UNHRC) ruled that the cultural, religious and linguistic rights protected under Article 27 of the International Covenant on Civil and Political Rights “include the rights of persons, living in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong”.

The Committee then found that “historical inequities...and more recent developments threaten the way of life and culture of the Lubicon people and constitute a violation of Article 27 so long as they continue”. (This decision is reported in UN document CCPR/C38/D/167/1984.)

In October of 2005 the Lubicons made another submission to the UNHRC pointing out that 15 years had passed, that resource exploitation activity in the unceded Lubicon Territory had continued to wreak irreparable damage to Lubicon society and the Lubicon people, that no “interim measures of protection” had ever been taken by Canada contrary to the 1987 Committee decision, and that Canada had still failed to comply with Committee findings or to rectify the situation.

In October of 2005 the Eighty-Fifth Session of the UNHRC made the following concluding observations regarding the 2005 Lubicon and Canadian submissions (UN document CCPR/C/CAN/CO/5):

“The (UNHRC) is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party (Canada) has not provided information on this specific issue. (Articles 1 and 27).

“The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant [on Civil and Political Rights], as already found by the Committee. *It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant*”. [emphasis added]

On May 1, 2006 the Lubicons made a submission to the 36<sup>th</sup> Session of the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR). The Lubicons pointed out that UNCESCR had called upon Canada in 1998 “to take concrete and urgent steps to restore and respect an Aboriginal land and resource base adequate to achieve a sustainable Aboriginal economy and culture”.

The 2006 Lubicon UNCESCR submission referred to the 1987 and 1990 decisions of the UNHRC and pointed out that there is still no settlement of Lubicon land rights; that no “interim measures of protection to avoid irreparable damage” to the Lubicons had ever been taken by Canada as per the 1987 UNHRC decision; that continuing resource exploitation activity had severely damaged the ecology of the unceded Lubicon Territory and destroyed the traditional Lubicon hunting, trapping and gathering economy and way of life; and that there had been no Lubicon land negotiations between Canada and the Lubicon people since December of 2003.

The 2006 Lubicon submission testified that the Lubicon people have been forced onto welfare in order to survive, live in overcrowded housing conditions without such basic services as indoor plumbing, and suffer from serious health problems related to resource exploitation activity including cancers of all kinds, a tuberculosis epidemic affecting a

third of the Lubicon population, reproduction problems which resulted in 19 stillbirths out of 21 pregnancies in an 18 month period, skin rashes among Lubicon children people so severe as to cause permanent scarring, and near-epidemic asthma and other respiratory problems.

The 2006 Lubicon submission indicated that resource exploitation activity was continuing apace in the unceded Lubicon Territory under licences and permits issued by Canadian government without consulting the Lubicons contrary to the 2005 UNHRC concluding recommendation.

The Lubicons asked the UN Committee on Economic, Social and Cultural Rights to reaffirm earlier UN human rights decisions on the Lubicon situation and to censure Canada for failure to comply with International Covenants and UN decisions and concluding observations.

On May 19, 2006 the concluding observations of the 36<sup>th</sup> Session of the United Nations Committee on Economic, Social and Cultural Rights were released. Echoing the 2005 decision of UN Human Rights Committee that found Canada in continuing violation of the International Covenant on Civil and Political Rights, the UNCESCR decision reads as follows:

“The Committee strongly recommends that the State party (Canada) resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the [International Covenant on Economic, Social and Cultural Rights]. *The Committee also strongly recommends the State party (Canada) conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the (International Covenant on Economic, Social and Cultural Rights).*” [emphasis added]

In October 2007, after visiting the Lubicon territory, the UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, called on Canada to “place a moratorium on all oil and extractive activities in the Lubicon region until a settlement is reached with Lubicon Lake Nation.”

Amnesty International has also recognized the ongoing abuse of Lubicon rights and called for on governments to recognize and respect Lubicon land rights. In addition, Amnesty International has recently written to the Alberta Utilities Commission (the provincial agency responsible for licensing the proposed pipeline), saying:

“In particular, we would urge the Commission not to license construction of the proposed TransCanada pipeline across unceded Lubicon territory without ensuring that construction of the pipeline will not lead to further harm to the internationally recognized human rights of the Lubicon people.”

## **TransCanada's dealings with the Lubicon**

During meetings between the Lubicon Lake Indian Nation and representatives of TransCanada over an eight month period, the Lubicon Chief and Council made clear that they would oppose construction of the proposed North Central Corridor Pipeline unless and until representatives of TransCanada agreed to respect recognized Lubicon land rights and answered Lubicon questions pertaining to pipeline construction and operation prior to making application to a provincial regulatory agency.

TransCanada has never answered Lubicon questions regarding construction and operation of the North Central Corridor Pipeline despite repeated promises by TransCanada representatives that those questions would be answered by someone they would bring to a subsequent meeting. Those promises were made by TransCanada representatives again at a meeting one week before TransCanada representatives filed an application with the Alberta Utilities Commission (AUC) for a license to construct the pipeline, accompanied by false public claims that “no objections were raised in extensive consultation with landowners, native communities and other ‘interested stakeholders’”.

Subsequent to filing their application with the AUC TransCanada representatives have taken the position that there is effectively no relationship between filing the Application and TransCanada's so-called “engagement” with the Lubicon Lake Indian Nation to allegedly provide the Lubicon people with information about the proposed project, to seek information about potential Lubicon concerns and to supposedly develop appropriate mitigation measures. Lubicon concerns potentially impact proposed project design and plans and perforce must be dealt with prior to applying to the AUC for authority to proceed with project construction making clear that TransCanada's so-called “engagement program” is not a sincere effort to inform the Lubicon people about the project, to hear Lubicon concerns and to develop mitigation measures but is rather only a transparent legal strategy designed to fend off any possible legal, regulatory and/or political challenges to TransCanada proceeding as it pleases with the proposed project.

Since filing their Application with the AUC, TransCanada representatives have also claimed that “NGTL was not aware of any specific concerns by the Lubicon Nation with respects (sic) to potential impacts of the NCC proposed pipeline route” when NGTL filed its AUC application. That is carefully phrased language that deliberately creates a false impression. While there were some discussions about pipeline route this claim that TransCanada was unaware of Lubicon concerns is clearly untrue when only a week before filing the AUC Application TransCanada representatives again promised to bring someone to a meeting with the Lubicon Lake Indian Nation who could take a position regarding respect for unceded Lubicon land rights and answer Lubicon questions about pipeline construction and operation that had been repeatedly raised by Lubicon representatives but never answered by TransCanada.

## **What the Lubicons are asking of TransCanada**

The Lubicon Nation has asked TransCanada not to file an application with the AUC for approval of its pipeline project until discussions with the Lubicon Nation on the project are completed. They have told TransCanada that they will oppose construction of the proposed North Central Corridor Pipeline unless and until representatives of TransCanada agree to respect recognized Lubicon land rights and answer Lubicon questions pertaining to pipeline construction and operation prior to making application to a provincial regulatory agency.