



January 5, 2012

E-FILE

**Attention: Ms. Louise George, Acting Secretary to the Joint Review Panel  
Enbridge Northern Gateway Project**

National Energy Board  
444 Seventh Avenue SW  
Calgary, AB T2P 0X8

Dear Ms. George,

**Re: Northern Gateway Pipelines Application to the National Energy Board  
Enbridge Northern Gateway Project  
OH-4-2011  
NEB File No: OF-Fac-Oil-N304-2010-01 01  
Notice of Motion filed by Josette Wier on 12 December 2011**

Further to the letter from the Joint Review Panel ("Panel") of December 29th, 2011, Northern Gateway is writing to provide its comments on Ms. Wier's Motion of December 12th, 2011.

In response to the requests made in paragraphs (a) and (b) of Ms. Wier's Motion, Northern Gateway confirms that it is not currently proposing to construct a gas pipeline in the right-of-way that would be required for the construction of the Northern Gateway Project. Northern Gateway has been attempting to engage the proponents of the Pacific Trails Pipeline for an extended period of time regarding collaboration on routing, construction and access management, and will continue to do so in the future. As discussed in Northern Gateway's response to BC IR No. 2.7(b):

Northern Gateway anticipates the joint planning and regulatory oversight on the Crown land base would be required and managed by the appropriate Provincial and Federal regulatory agencies to provide the opportunity for shared and efficient use of the Crown land base that minimizes impacts and provides land use for more than one project in the same general corridor.

In response to paragraphs (c) and (d) of Ms. Wier's Motion, Northern Gateway included the Pacific Trails Pipeline in its cumulative environmental effects assessment as confirmed in Northern Gateway's response to Haisla IR No. 1.6(b). Should any proponents (including Enbridge) announce new projects, Northern Gateway would not undertake a revised cumulative effects assessment to incorporate such projects. It is neither necessary nor fair that Northern Gateway do so. The proponents of such future projects would be the ones to undertake a cumulative effects assessment taking into account their proposed project in conjunction with Northern Gateway.

The project inclusion list for the Northern Gateway cumulative effects assessment was determined at the time of finalizing the Terms of Reference established for the Project's environmental assessment. This was more than 2-years ago. Northern Gateway's Application has been under review for over a year and a half with the information request phase of the proceeding on the Application having been completed. It would be impossible to ever complete an environmental assessment for a major project if the project proponent had to continually update its cumulative effects assessment for projects announced during the course of the review proceedings on regulatory applications. In the case of the Northern Gateway Pipeline Project, it may end up taking four years to complete the regulatory approvals process. During such an extended period of time, new projects will inevitably be planned and announced. Northern Gateway cannot be expected to revise its cumulative effects assessment to take into account projects announced during the course of the current regulatory review.

Northern Gateway notes that a similar situation occurred during the National Energy Board's consideration of the Emera Brunswick Pipeline Project while sitting in its capacity as a substituted Review Panel under the Canadian Environmental Assessment Act. In that case, a new oil refinery project was announced while the NEB was conducting its review of a pipeline application. The National Energy Board's Environmental Assessment Report for the Brunswick Pipeline Project (April 2007) discusses the issue as follows at pages 93 and 99 respectively:

When asked by Mr. Thompson of FORP about whether a planned new oil refinery in the Red Head Mispec area was considered in the cumulative effects assessment, EBPC indicated that it was not considered. The CEA Act requires that you consider projects that are likely to take place. At the time of the ESEA, that project was not even known, EBPC submitted at that point, that project was just an idea.

...

With respect to other projects to consider in a cumulative environmental effects assessment, the NEB has ruled in the past that the other projects considered in a cumulative effects assessment cannot be hypothetical. The Courts have said that the decisions of RAs are not required to "consider fanciful projects by imagined parties producing purely hypothetical effects". The Board is of the view that EBPC's methods for identifying other projects for consideration in the cumulative effects assessment were appropriate.

Northern Gateway submits that, at this point, any natural gas pipelines beyond the Pacific Trails Pipeline are hypothetical. Requiring Northern Gateway to include such hypothetical projects in its cumulative environmental impact assessment would be inconsistent with previous practice and NEB decisions and would result in further delay to what has already become a protracted regulatory process.

This document is being filed electronically with the Board and will be served upon all OH-4-2011 Parties.

If the Board should require additional information, please contact the undersigned at (403) 718-3444.

Yours truly,

A handwritten signature in black ink, appearing to read "Ken MacDonald". The signature is written in a cursive style with a large, circular flourish at the end.

Ken MacDonald  
Vice President, Law and Regulatory  
Northern Gateway Pipelines Limited Partnership

cc: CEAA  
Attention: Sarah Devin