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Joint Review Panel – Enbridge Northern Gateway Project
444 Seventh Avenue SW
Calgary, AB T2P 0X8

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File No.: 158084-281

Attention: Ms. Sheri Young
Secretary of the Board

Dear Ms. Young,

**RE: Northern Gateway Pipelines Inc. (“Northern Gateway”)
Enbridge Northern Gateway Project (“Project”)
Hearing Order OH-4-2011
Procedural Conference**

The purpose of this letter is to provide comments on behalf of Northern Gateway in respect of questions posed by the Joint Review Panel (“Panel”) in its letter of May 9, 2012. These comments will be supplemented as necessary when we attend at the procedural conference on May 30, 2012.

General Observations

The Application before the Panel seeks approval to construct and operate a dual pipeline system between Bruderheim, Alberta and Kitimat, British Columbia. This includes a marine terminal at Kitimat. Northern Gateway recognizes the interest of the public, government, and First Nations in respect of the potential effects of ships calling on the proposed marine terminal, but it is important to bear in mind that Northern Gateway will not own or operate any marine vessels. No approvals are sought, or required, for such operations, as they are subject only to laws of general application which apply to all shipping into or out of Canadian ports.

As Applicant for permission to construct and operate a pipeline system, Northern Gateway has endeavoured to be responsive to public and Aboriginal concerns, and has invested significant human and financial resources. As is the case with all other Applicants in proceedings before the National Energy Board, Northern Gateway is entitled to certain procedural rights. Included is the right to present its Application to the Panel in an order and sequence that fits in with the manner in which it seeks to have that information considered. Also included is the basic and fundamental right of rebuttal to evidence presented by those opposed to the Project, and to reply to arguments advanced by others.

Issues-Based Hearing Format

Northern Gateway expects that the Panel is considering an issues-based hearing in an effort to streamline the hearing process, and to make the process more accessible to those who want to participate only when specific issues or topics are under discussion. Both objectives are laudable.

However, an issues-based hearing format has the effect of forcing the Applicant to split its case into multiple parts. This is potentially prejudicial to the Applicant – especially if the issues identified for litigation do not correspond to the manner in which the Application has been structured.

To date, it has been Northern Gateway’s intention to present its Application through a series of 8 panels. The panels, and the Application Volumes for which they would be responsible, are as follows:

- **PANEL 1: Policy, Commercial and Economics**
 - Volume 1: Overview and General Information
 - Volume 2: Economics, Commercial and Financing
- **PANEL 2: Terrestrial Design and Engineering**
 - Volume 3: Engineering Construction and Operations
- **PANEL 3: Terrestrial Environmental Effects and Construction**
 - Volume 6A: Environmental and Socio-Economic Assessment (“ESA”) - Pipelines and Tank Terminal
 - Volume 6C: ESA - Human Environment
 - Volume 7A: Construction EPMP
 - Volume 4: Public Engagement
 - Volume 5A: Aboriginal Consultation
 - Volume 5B: ATK
- **PANEL 4: Terrestrial Operations, Emergency Preparedness and Response**
 - Volume 3: Engineering Construction and Operations
 - Volume 7B: Risk Assessment and Management of Spills - Pipelines
 - Volume 7C: Risk Assessment and Management of Spills - Kitimat Terminal
- **PANEL 5: Shipping and Navigation**
 - Volume 8A: Overview and General Information – Marine Transportation TERMPOL
- **PANEL 6: Marine Environmental Effects**
 - Volume 6B: ESA – Kitimat Terminal
 - Volume 8B: ESA – Marine Transportation
- **PANEL 7: Marine Emergency Preparedness and Response**

- Volume 7C: Risk Assessment and Management of Spills – Kitimat Terminal
- Volume 8C: Risk Assessment and Management of Spills – Marine Transportation
- **PANEL 8: Policy Wrap-Up and Rebuttal**

Under the Panel’s proposal, cross-examination would be conducted at Prince Rupert in respect of all Project issues of an Aboriginal, environmental, socio-economic, or consultation nature. This is despite the fact that close to one half of the proposed right of way is within Alberta, and the other half traverses all of Northern British Columbia.

Northern Gateway submits that if an issues-based approach is used, at minimum it should be designed to correspond to the structure of the Application. The venues chosen should fairly reflect the geographic scope of the Project and its potential effects.

Applying these principles, if an issues-based, and multi-venue process is to be utilized, a fairer approach would be as follows:

Prince Rupert

- (a) Environmental and Socio-Economic Effects of Marine Terminal and Shipping (Application Volumes 8B and 8C)
- (b) Safety, Accident Prevention and Response related to marine terminal and marine transportation (Application Volume 8A)
- (c) Environmental Effects of Accidents and Malfunction in a marine environment (Application Volumes 7C and 8C)
- (d) Effects of the Project on Aboriginal rights and interests

Prince George

- (a) Engineering Design and Construction (Application Volume 3)
- (b) Public Consultation and Aboriginal Engagement (Application Volumes 4, 5A and 5B)
- (c) Environmental and Socio-Economic Effects of Pipeline Construction and Operation (Application Volumes 6A, 6B and 6C, 7C)
- (d) Environmental Effects of Accidents and Malfunctions (terrestrial operations) (Application Volume 7B)
- (e) Pipeline Operations, Safety, Accident Prevention and Response related to terrestrial pipeline (Application Volumes 3 and 7B)

Calgary/Edmonton

- (a) Economic Need; potential impacts on commercial interests; financial feasibility and tolling (Application Volume 2)
- (b) Applicant Policy Wrap-Up and Rebuttal (Application Volume 1)

It will be noted that for the most part, the issues set out above correspond to those identified by the Panel, while for the most part tracking the structure of the Application. The exception here is separating Aboriginal Engagement from the issue of effects of the Project on Aboriginal rights and interests, in terms of the venue at which they would be heard. This is in recognition of the fact that this issue has predominated oral evidence hearings held in Coastal Communities.

Northern Gateway agrees with the Panel's observations regarding the need to select hearing venues that are centrally located, have adequate facilities and reasonable transportation access for the large numbers of witnesses and back-up support personal required. Northern Gateway also agrees that Prince Rupert, Prince George and Calgary/Edmonton meet these criteria. Northern Gateway also agrees that if economic issues are to be dealt with in a single venue, it would be appropriate to do so in Calgary or Edmonton. Of the two, Calgary would be a more logical location given its convenience for those participating in that aspect of the proceeding.

Witnesses to be Cross-examined

Northern Gateway intends to cross-examine each of the authors of reports prepared for Interveners opposing the Project, and filed as written evidence. In some cases, the evidence filed with the Panel does not identify authorship, which makes it impossible to specify who will be cross-examined. Materials filed by certain interveners also include information collected through means such as access to information requests, which also makes it impossible to identify who might speak to such evidence if it is allowed to remain on the record.

Northern Gateway's review of the written evidence filed by interveners has identified approximately forty five detailed reports that have been prepared for this proceeding. Reports of a more basic variety, those that provide general information on traditional use matters and reports of marginal relevance need not be subject to extensive cross-examination by Northern Gateway (if at all). Although no final decision has been made, for planning purposes the Panel should allot approximately twenty hearing days for cross-examination by Northern Gateway. Once a decision has been made on hearing venues and format, we will provide a more definitive estimate to Panel counsel and to counsel for the interveners involved. Where Northern Gateway does not consider it necessary to cross-examine a particular author, we will advise others of that so as to avoid unnecessary expense and inconvenience.

Northern Gateway will also have a limited amount of cross-examination of individuals who presented oral evidence, by way of follow-up on responses to Information Requests posed to these Interveners.

Concurrent Evidence

Northern Gateway has considered the potential for concurrent evidence for expert witnesses. As noted by the Panel, this concept has been utilized for assessing complex, technical evidence. We understand however that it has only rarely been used in Canada.

Conceptually, Northern Gateway considers that concurrent evidence may assist the Panel in assessing one or more of the technical issues relating to the Application, in an efficient manner. Further analysis and discussion between counsel would be required to identify what issues might lend themselves to concurrent expert evidence, and how the evidence submitted by the Applicant and Interveners align in respect of the framing of those issues by qualified experts in the subject area. Such alignment seems to be essential for the concurrent evidence concept to be workable, as opposed to generating a debate between witnesses who are at cross-purposes (i.e. whose evidence address different questions or issues). At present, it is unclear to Northern Gateway whether the concept is feasible for this Application.

Remote Participation

Northern Gateway has no issue with having expert witnesses made available for cross-examination by telephone (as suggested by the Gitxaala), or having counsel phone in to the hearing to ask questions (as requested by Mr. Carter on behalf of Alberta Lands Ltd.). Northern Gateway does expect that the Panel would apply the usual rules and practices of the National Energy Board to ensure procedural fairness, and abuses of the hearing process irrespective of whether participation is in person or remote.

Final Argument

As Applicant, Northern Gateway is entitled to present its argument in chief to the Panel first, and to reply to arguments made by other hearing participants last. This is particularly important in the present case, where the Panel process contemplates receipt of oral comments after the final hearings. At present, we expect that Northern Gateway would provide its argument in chief in writing, and deliver its reply argument orally. We would also seek dispensation to provide a brief oral opening argument at the commencement of the argument phase.

In addition, because the current hearing structure contemplates receipt of oral statements after the evidentiary record has closed, Northern Gateway may seek dispensation from the Panel to reopen the questioning phase at the conclusion of oral comments in order to provide final reply evidence, prior to final argument.

Yours truly,

Fraser Milner Casgrain LLP



for: Richard A. Neufeld, Q.C.
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