

Enbridge Northern Gateway Project

Joint Review Panel

Procedural Conference

Draft Final Report

On 9 May 2012, the Joint Review Panel (Panel) announced that it would conduct a procedural conference to obtain input on procedural issues relating to the final hearings for the Enbridge Northern Gateway Project (Project).

The Panel listed a number of issues and requested that parties address them in their registration letters for the procedural conference. An initial draft Report provided a summary of the views expressed by parties on these issues in the registration letters. That initial draft did not detail all written comments but rather was intended to capture the major themes expressed. This final Report incorporates the comments heard orally during the procedural conference on 30 May 2012.

The following parties participated in the procedural conference by attending the conference or through written comments:

Northern Gateway Pipelines Inc. (**Gateway or applicant**)
Alberta Federation of Labour (**AFL**)
Alexander First Nation (**AFN**)
Cheryl Brown
Canadian Association of Petroleum Producers (**CAPP**)
Cenovus Energy Inc (**Cenovus**); Nexen Inc (**Nexen**); Suncor Energy Marketing Inc (**Suncor**)
and Total E&P Canada Ltd (**Total**)
Coastal First Nations (**CFN**)
Communication Energy and Paperworkers Union (**CEP Union**)
Council of the Haida Nation (**Haida**)
District of Kitimat
East Prairie Metis Settlement (**East Prairie**) and Horse Lake First Nation (**Horse Lake**)
Enoch Cree Nation, Ermineskin Cree Nation, Samson Cree Nation and Kelly Lake Cree Nation
(**Cree Nations**)
Fort St. James Sustainability Group (**FSJ**)
Gitxaala Nation (**Gitxaala**)
Government of Alberta
Government of Canada
Haisla Nation (**Haisla**)
Living Oceans Society, Raincoast Conservation Foundation and ForestEthics Advocacy
(**Coalition**)
MEG Energy Corp. (**MEG**)
Northwest Institute for Bioregional Research (**NWI**)
Office of the Wet'suwet'en (**Wet'suwet'en**)
Province of British Columbia (**BC**)
Sherwood Park Fish & Game Association (**Sherwood Park F&G Assn**)
Swan River First Nation (**Swan River**)
Terry Vulcano
Josette Wier

ISSUE 1

Final hearings for questioning will take place in three locations. The Panel intends to hold these hearings in Prince Rupert, BC, Prince George, BC and either Edmonton or Calgary, AB. These locations are centrally located, have adequate facilities and reasonable transportation access. Would fewer than three locations be appropriate? What are your comments on the locations chosen by the Panel?

(a) Views on Locations set out by the Panel

i. Prince Rupert

Five parties questioned why Prince Rupert is being considered as it is not directly along the proposed pipeline route. The majority of parties either took no issue with Prince Rupert or suggested an additional venue be added (such as Kitimat).

ii. Prince George

One party questioned why Prince George is being considered, as it is not directly along the proposed pipeline route.

iii. Edmonton or Calgary

Four parties stated that Edmonton would be more appropriate due to its proximity to the proposed pipeline route (and convenience for the responding parties).

Eight parties stated that Calgary would be more convenient, due to its proximity to those participating, Panel members and expert witnesses. Calgary is also the location of the National Energy Board and facilities would be readily available.

(b) Other locations suggested by parties

i. Kitimat

Eight parties stated that a hearing should be held in Kitimat. Gateway suggested that the discreet issue of “shipping and navigation” could be moved to Kitimat, due to the local interest. As well, experts on this issue would be arriving from distant locations and need some timing certainty for their appearance. Gateway advised that they would have upwards of 10-20 witnesses on the issue of marine environment, as well as related support personnel.

The District of Kitimat agreed with Gateway and also suggested issues relating to the marine terminal component of the Project, potential impacts on Aboriginal interests, environmental effects of the marine terminal and construction through the coastal mountains. Ms. Brown also suggested that issues relating to the “marine terminal site” could be added to this location.

The Haisla recommended that hearings be held in the town and not Kitimaat village; as such, Haisla and District of Kitimat stated there would be no logistical issues in terms of accommodation or transportation. Both groups noted that many hearings have been held in the community in the past, without any problems.

The Haisla stated that if the Panel were to find Kitimat an unsuitable location, the Haisla would prefer that hearings on its issues be held in Vancouver.

- ii. Vancouver (four parties)
CFN suggested that Vancouver be added as a final hearing location with videoconferencing of the hearings to both Prince Rupert and Kitimat.

The Coalition stated consideration should be given to the number of counsel, witnesses and experts coming from, or flying through Vancouver on any issue; for those issues, the Coalition would support Vancouver. For Mr. Vulcano, Vancouver would not be easier to get to than Terrace, Kitimat or Prince Rupert.

- iii. Burns Lake (two parties)
The Wet'suwet'en stated that if there are logistical issues in Burns Lake, then the Smithers area would be acceptable as it is well suited for travel.
- iv. Fort St. James (one party)
- v. Smithers (one party)
- vi. Haida Gwaii (one party)
- vii. Grand Prairie
Both the Cree Nations and Gateway stated that they could travel to Grand Prairie in lieu of either Edmonton (Cree Nation) or Prince George (Gateway).

The Coalition expressly suggested increasing the number of hearing locations to four. For the most part however, suggestions were made to substitute one location for another. The AFL stated that no more hearing locations should be added.

Gitxaala suggested potentially having Gateway's cross-examination in one location and cross-examination of intervenors in other locations more convenient to them (i.e. Gitxaala in Prince Rupert). Gateway opposed this idea, stating that if an issues based hearing is going to be adopted, it should be used in its entirety.

(c) Factors to be considered

The majority of responses suggested that the factors outlined by the Panel (centrally located, have adequate facilities and reasonable transportation access) are appropriate and valid considerations, given the number of parties and experts travelling to hearing locations.

Comments were received that another factor to be considered is the proximity of the community to the proposed Project. Hearings should be held close to, or in, those communities that may be most directly impacted by the proposed Project. This would allow both intervenors and those in the community to participate. The Haisla in particular noted the centrality of Kitimat and the fact that all three Project components are contained in their territory. The Wet'suwet'en noted that it is important that its hereditary chiefs be able to witness the hearings.

The Coalition suggested that any travel be minimized, to reduce costs and greenhouse gas emissions. As well, high community interest (such as in Vancouver) should be considered.

ISSUE 2

The Panel intends to permit questioning of witnesses by telephone and is exploring other remote means. Do you have any input on the process that should be established for remote participation (either of witnesses or intervenors asking questions remotely)? Do you have any input on the type of technology that should be considered for remote participation?

(a) Use of remote participation

Generally, parties supported the use of technology and remote access during the final hearings. Subject to some caveats outlined below, this could permit some parties to be cross-examined by telephone; as well, counsel could call in to ask questions where necessary.

The use of remote participation was thought to be an appropriate method to mitigate or offset the financial and logistical concerns raised about issues or topics that may only be heard at specific hearing locations. The ability to use remote technology is very important for those parties that are impacted by various aspects of the project but, due to financial and logistical constraints, cannot travel to all hearing locations.

The Gitxaala indicated that it would potentially like to have Dr. Chichilnisky and Dr. Bigano appear by means of videoconference if they are required for cross-examination, given that they reside in New York, USA and Italy respectively.

The Government of Canada took the position that remote participation should be limited to situations of necessity, such as an inability to travel.

(b) Potential considerations for the use of remote participation

Parties indicated that steps must be taken to ensure that any remote participation option meets procedural fairness requirements and does not allow an abuse of the hearing process.

The Government of Alberta stated that expert witnesses should be expected to attend in person. The Government of Canada stated that a process should be in place to confirm who is present with the witness, during the examination.

The Haisla raised some general concerns about the integrity of the evidence obtained and, for that reason, is of the view that parties who seek to have their witnesses participate remotely should first have to obtain the consent of those that would cross-examine the witness. The Haisla also agreed that procedures need to be implemented to ensure that the information is being provided by witnesses and not prompted by others.

The Coalition agreed with the concerns raised by the Haisla regarding procedural fairness.

Cenovus, Nexen, Suncor and Total agreed that consent should be required for remote participation by witnesses, noting the difference between being able to cross-examine a party remotely, and having a witness appear to provide evidence on the telephone.

Cree Nations was not concerned about the receipt of evidence solely by telephone (in addition to allowing videoconference), noting that courts routinely allow telephone evidence. Further, the witnesses would still be under oath.

Sherwood Park F&G Assn raised the idea of some hybrid, whereby direct telephone contact could be supplemented with a computer program which provided a visual of the hearing (perhaps in the form of skype). This party noted that some may need to rely on the phone, where there is no other option.

The use of video conferencing facilities was generally seen to be preferable to teleconference capability only. The Wet'suwet'en noted the importance of seeing those providing evidence.

There may be some limitations on remote participation in rural communities, due to lack of high speed internet, lack of accessibility of appropriate technology and some cell phone only connections (which are costly). Programs which require a lot of data/uploading capacity will be problematic. Ms. Cheryl Brown questioned whether the use of local video conferencing could be utilized. Ms. Josette Weir raised concerns on how the costs of remote participation would be covered.

ISSUE 3

For the duration of the questioning phase, the Panel anticipates that it will sit from Monday to Saturday for two week periods, followed by a one week break. Standard sitting hours would be from 8:30 a.m. to 1:00 p.m. Any specific exceptions to the general schedule will be addressed, as the final hearings proceed. Do you have any input on the proposed general schedule?

(a) Hearing hours

The overarching concern raised in relation to this question is that the Panel design a process that is as efficient as possible, thereby reducing the overall time in communities.

Gateway noted that longer sitting hours could be one tool to achieve greater efficiency. Other objectives noted are that a clear process with a set end-goal be established, while retaining some flexibility.

Four parties were of the view that the proposed hours (8:30 to 1:00) would be acceptable. Shorter days could give parties time to prepare for the hearing the following day. The Haisla stated while slightly longer hearing days could be accommodated, parties would still require preparation time. An additional benefit of shorter scheduled days would be to provide greater flexibility, as days could be extended, as required, as the process unfolds.

FSJ suggested that hearing days could start later in the day, to allow for local travel during a time of year when weather may create challenges in the early morning. Ms. Cheryl Brown agreed.

Thirteen parties indicated that the Panel should consider sitting longer hours (i.e. 9:00 am to 4:00 pm). This would still allow parties time to be prepared for the next hearing day and would reduce the amount of time that parties would be required to be absent from their work and homes. The Gitxaala also noted that longer days would result in fewer hearing weeks, which would be more efficient and reduce the costs for all parties. This view was echoed by the Coalition and others.

If the Panel were to decide to sit full days, lunch breaks should be increased to two hours to allow counsel to consult with, and receive instruction from, clients on matters that may arise in each session.

MEG suggested that longer days should be seriously considered; the Panel could alternate between shorter days (8:30 am to 1:00 pm) and longer days (9:00 am to 4:00 pm). This would maximize the use of out of town sittings.

(b) Scheduled sittings

The Coalition suggested that the hearing schedule should be arranged in a cycle where the Panel sits for three-week periods, with a one week break, to reduce travel costs and related greenhouse gas emissions. NWI supported this idea.

ISSUE 4

The Panel intends to have questioning on oral evidence completed prior to questioning based on written evidence pertaining to the List of Issues.

(a) Comments in support

Four parties were supportive of this approach to the sequencing of questioning.

Gateway was not against the proposal and advised that it would likely have very little in terms of cross-examination on oral evidence provided. Gateway did note that some of this would entail questions of clarification which Gateway was not permitted to ask at the community hearings, due to logistical constraints.

Council of the Haida Nation took the position that any questions on oral evidence should be provided to witnesses in advance of the questioning, absent which the witness could refuse to answer. The Wet'suwet'en was of the view that both oral and written questions should be provided in advance, to allow witnesses time to prepare.

(b) Comments in opposition

A number of responses raised concerns with the general approach. The primary concern raised is that it would be less efficient and more confusing to separate questioning on oral and written evidence. It may be difficult to separate some issues and some witnesses, between “oral” and “written” evidence especially as some witnesses have provided both types of evidence. The questions should fit the issues presented at the time.

This proposal could also result in more travel and greater costs for some parties, with some witnesses having to attend on different days.

Some parties requested clarification from the Panel on the logistics of this proposal; specifically, where witnesses have provided both oral and written evidence, some of which may cover more than one topic. Gateway noted that it may be difficult to differentiate the evidence where, for example, oral evidence was followed up with written information requests (IRs).

AFN noted that this distinction should not be indicative of any difference in the weight that is given to the evidence; rather written and oral evidence should be weighted equally.

Some concerns were raised surrounding this proposal if it would result in less time being available for questions on the written or technical evidence. Six parties expressly took the position that there should be no time limits placed on questioning.

Five parties suggested that questioning on written evidence should precede questioning on oral evidence and issues related to Aboriginal interests.

ISSUE 5

Questioning of witness panels will proceed at each location based on issues. These issues largely mirror the List of Issues set out in the Hearing Order (dated 5 May 2011) and discussed in the Panel Session Results and Decision (dated 19 January 2011). The Panel intends to address each issue listed below in relation to the entire Project at only one location. The location for each issue is as follows:

Prince Rupert

- (a) Potential Impacts of the Proposed Project on Aboriginal Interests (socio-economic matters; asserted and proven Aboriginal and treaty rights)*
- (b) Environmental Effects*
- (c) Socioeconomic Effects*
- (d) Consultation (with the public and Aboriginal groups)*
- (e) Safety, Accident Prevention and Response (related to the marine terminal and marine transportation)*

Prince George

- (a) Potential Impacts of the Proposed Project on Landowners and Land Use (pipeline crossings; depth of cover; impacts on agricultural soils)*
- (b) Routing (general route of the pipeline and route selection criteria). General location of the facilities and siting of a marine terminal*
- (c) Design, Construction and Operation*
- (d) Follow up and monitoring*
- (e) Safety, Accident Prevention and Response (related to the pipeline)*

Edmonton or Calgary

- (a) Need for the Proposed Project (supply and markets; commercial support; economic feasibility)*
- (b) Potential Impacts of the Proposed Project on commercial interests*
- (c) Financial and Tolling Matters (tolling structure and methodology; proposed financing; financial responsibility of the applicant)*

Do you have any additional issues for each hearing location or any input on the general format identified?

(a) Comments on topical format

There was some support for organizing questions at the final hearings in a topical format.

There were also some concerns raised that splitting the hearings into topics would result in the applicant's case not being presented in its entirety before other parties have to put their witnesses up for questioning.

Other issues raised with respect to the proposed split in topics across locations include:

- i. Some parties' witnesses would have to appear in more than one location; this would be more costly and cumbersome for those parties. Some parties, such as the AFL, would like to be able to have their witnesses respond to all questions in one location.
- ii. This may place an unfair financial and logistical burden on parties to attend all hearing locations, where their issues are being heard.

- iii. This may present issues if the same witness panel has to appear a number of times over a lengthy time span and potentially be subjected to some very similar questioning but on a different topic.
- iv. There may be problems with witness panels sticking strictly to the appropriate topic.

Gateway indicated that it had intended to present its case through a series of eight panels. It may be prejudicial to force the applicant to split its case into multiple parts; particularly where the issues do not correspond to the structure of the application. The preliminary witness panels and application volumes for which witnesses would be responsible are set out in Appendix A.

If an issues-based approach is used Gateway submitted that, at a minimum, it 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.

Sherwood Park F&G Assn cautioned that if the Panel were to opt for an issues-based approach, it should not separate issues out too much for the sake of convenience; if the Panel did so, it could lose the advantage of an issues-based approach.

(b) Comments on the issues outlined, for each hearing location

If an issues-based approach is used then Gateway is of the view that the hearing venues should broadly correspond to three categories: (i) Economics/ Need for the Project; (ii) Conventional Pipeline issues; and (iii) Marine components.

Some other parties similarly suggested that marine and terrestrial issues within topics should be considered separately and potentially at different locations. Alternatively, issues could be broken down by facility / infrastructure.

It was also stated that issues relating to consultation with Aboriginal groups needs to be differentiated from issues relating to general consultation with other stakeholders.

Several Alberta based Aboriginal groups indicated that it would be unfair to limit questioning with respect to consultation and Aboriginal and treaty rights to the Prince Rupert location. It was suggested that questioning on the following topics be permitted at an Alberta location, if not each final hearing location:

- Potential Impacts of the Proposed Project on Aboriginal Interests (socio-economic matters; asserted and proven Aboriginal and treaty rights);
- Potential Impacts of the Proposed Project on Landowners and Land Use (pipeline crossings; depth of cover; impacts on agricultural soils); and
- Safety, Accident Prevention and Response (related to the pipeline).

It was requested that the Design, Construction and Operation issue be split into two parts: (1) marine terminal and marine shipping design, construction and operation issues to be heard in Prince Rupert/Vancouver; and, (2) pipeline design, construction and operation issues to be heard in Prince George. It was also requested that these issues are most effectively heard in conjunction with the corresponding Safety, Accident Prevention and Response issues.

It was noted that the list of issues for questioning fails to include, or requires clarification that the following specific issues are included:

- purpose of the project;
- alternatives to the project;
- alternative means of carrying out the project;
- issues relating to Canadian public interest;
- asserted economic benefits of the project;
- potential costs associated with the project;
- approach to accommodation of impacts to Aboriginal and treaty rights;
- Northern Gateway responsibility/liability for costs/damages associated with a spill;
- treatment of costs/damages associated with impacts on Aboriginal communities in the event of a spill;
- risk assessment methodology; and
- human health risks.

These “orphan issues” were discussed at the procedural conference and parties generally agreed that each of these issues could be captured under the existing list of topics. For example, Mr. Vulcano and others suggested that the first six bulleted issues would likely be addressed in Calgary; the seventh would be in the “Prince Rupert topics” and the last four would be in Prince George.

While these and other orphan issues could likely be captured under existing topics, parties requested that further details be provided on the scope of issues to be covered at each location, well in advance of the final hearings. This is important to ensure that parties are clear on where specific topics will be addressed and that no issues are “lost”. AFN also requested confirmation that Aboriginal issues would include treaty rights.

In its written comments, Gateway suggested that if an issues-based and multi-venue process were to be used, a fairer approach may be as follows:

Prince Rupert location

- (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 Malfunctions in a marine environment (Application Volumes 7C and 8C)
- (d) Effects of the Project on Aboriginal rights and interests

Prince George location

- (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 location

(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)

At the procedural conference, Gateway noted that issues relating to the marine terminal, and shipping and navigation (Volume 6B and 8A) could alternatively be heard in Kitimat.

Gateway submitted that the issues set out above largely correspond to those identified by the Panel, while for the most part tracking the structure of the application. One exception noted, is that Aboriginal Engagement was separated 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 approach recognizes the fact that this issue has predominated oral evidence hearings held in coastal communities.

The Gitxaala took issue with separating out the two Aboriginal issues, as suggested by Gateway, as this would force the issues into two venues. Rather, it was suggested that the Panel allow questions on Aboriginal impacts followed by Aboriginal consultation, at the same venue after all other technical issues are heard.

The Haisla and other parties argued that Aboriginal groups need a clear understanding of the Project before answering questions on potential impacts; questioning Gateway witnesses will assist with that. As such, issues of Aboriginal and treaty rights, the potential impacts of the Project on Aboriginal interests and consultation should be addressed last. The Government of Canada agreed that it made sense to have issues relating to Aboriginal interests and consultation addressed after other technical issues.

Gateway did not believe that these issues needed to be addressed all together at the end of the entire hearing. Rather, issues relating to Aboriginal and treaty rights and interests could be heard at the end of the coastal hearings (either in Prince Rupert or Kitimat). Issues relating to Aboriginal and treaty rights and interests could similarly be dealt with at the end of the Prince George hearings to address these issues for the pipeline component of the Project.

(c) Other considerations

Some parties requested clarity from the Panel on the sequence in which issues will be heard.

As noted in Issue 2, various parties stated that an arrangement that would enable their participation (allowing witnesses to answer questions and counsel to ask questions) via video conference or teleconference would be an acceptable solution to address fairness or other logistical problems with the issues-based approach.

ISSUE 6

What parties' witnesses do you anticipate questioning during the final hearings? What issues do you anticipate you will ask questions about? How much time do you anticipate you will require for questioning for each issue? (Please note parties will not be held to these estimates; this is for planning purposes only.)

This question was included by the Panel, for planning purposes. A summary of the estimates provided by parties is attached as Appendix "A".

During the procedural conference there was a fair amount of discussion on the importance of the Panel obtaining accurate and predictable scheduling information from parties as soon as possible. Most notably, who Gateway and other parties (i.e. Government of Canada) intend to question, which witnesses would generally need to be produced for questioning and parties' realistic estimates for cross-examination. Gateway witnesses' CVs would also be important, to allow parties to determine which witnesses intervenors would like to question. A preliminary schedule could then be prepared and distributed in the short term.

In order for the Panel to set a schedule which is as accurate as possible, parties will need to work with their witnesses and each other to assess and share their best estimates. The Panel should press parties to be more forthcoming in providing estimates. This could be done through the standard letter to parties asking for information on witness panels to appear in various locations and cross-examination estimates.

Several parties took the position that it is difficult for them to formulate accurate estimates, as evidence continues to be filed by Gateway. Gateway explained the timing for certain reports and noted that under the current schedule reply evidence is to be filed 20 July 2012.

Parties requested direction from the Panel on the timing and how to proceed with formulating estimates for the final hearings for questioning. Gateway suggested the following general steps:

- Panel will issue its decisions on the final hearings, following the procedural conference
- The filing process for evidence, including Reply evidence, will be completed
- Gateway will file a list setting out which of its witnesses will be made available to address the evidence (i.e. specific application volumes, IRs, etc)
- Parties will exchange timing estimates
- Thereafter, Gateway can provide full information on witness panels (including CVs)

The Gitxaala also provided its view, on the necessary steps, as follows:

- Gateway to provide a draft schedule on who it intends to call and on what issues
- Parties to advise which witnesses they want to question (of Gateway and other parties); this step should happen shortly after the deadline for responses to IRs.
- When parties indicate who they want to question, they must also provide time estimates
- Shortly thereafter, the Panel could release a tentative schedule

Parties require information from Gateway on topics to be addressed by witnesses well in advance of the final hearings, to ensure parties know where their questions can be asked. Without this, parties may be told they cannot ask a question, as the appropriate witness was on a prior panel.

Some unrepresented intervenors requested further information to help them understand the process for questioning, including what “evidence” entails and when and how they can question the applicant. Gateway agreed that it may be helpful for unrepresented parties for the Panel to reiterate what information can be relayed at each of the stages of the larger hearing process.

ISSUE 7

The Panel is considering a process for expert witnesses which would entail having expert witnesses for parties with conflicting opinions seated together in a single witness panel and questioned at the same time. This approach would be specific to issues or sub-issues that are highly technical in nature such as those related to Safety, Accident Prevention and Response. This process would be used to assess complex expert evidence, understand differences, and focus on certain technical issues in an efficient manner. Parties will not be precluded from seating their expert witnesses independently for other issues that are not highly technical in nature. Please provide any input you may have on this proposal.

(a) Support for the concurrent expert evidence proposal

Seven parties supported the seating of concurrent experts without any stated reservations.

The Coalition and NWI were supportive of having expert witnesses seated in a single witness panel for highly technical issues or sub-issues. The Coalition agreed with Gateway that issues relating to shipping and navigation could be appropriate for concurrent expert evidence and also for some commercial issues.

East Prairie and Horse Lake were supportive of the concept because it may allow the Panel members to more easily see the distinctions in the evidence presented.

(b) Opposition to the concurrent expert evidence proposal

Six parties rejected the idea of concurrent experts outright.

The issues raised by AFL with the proposal include that the Panel needs to hear each expert on commercial and economic issues individually, without the complication of the expert needing to respond to direct comments of their peers. It is more valuable to the Panel to hear each expert's answers to all questions in the usual manner. It is highly unlikely that seating experts together would result in any kind of consensus.

The AFL further submitted that it would be prejudiced if it is unable to consult with its sole expert witness while cross-examining other experts on extensive and complex economic and commercial issues. This would also be less efficient.

MEG noted that issues with respect to highly technical matters (Safety, Accident Prevention and Response) are likely to be contentious and could be the subject of significant cross-examination by a number of parties, not just the Panel. Certain parties may seize the opportunity to seek comments from "like minded" witness panel members, which could lend itself to friendly questioning. Given the nature of this proceeding, MEG submitted that the traditional witness panel structure may be preferable.

The Cree Nations expressed concerns with the approach as it would be difficult to administer.

(c) Other concerns regarding the concurrent expert evidence proposal

About seven parties were cautious about the use of concurrent experts and raised a number of concerns and procedural issues about the proposal.

While the Gitxaala submitted that this approach may be acceptable, it noted that the groupings must be sufficiently small so that they do not prolong the time required for some to attend at the hearing or require experts to return for questioning. They also appreciate the complicating factors and the concerns raised by the AFL.

Parties would need to have an opportunity to provide input on the respective make-up of, and issues to be addressed by, the witness panels, as well as the scheduling of these panels in the context of the timing for the experts to testify independently. Discussion would also be required in relation to how the expert panel approach would work if no one asks to cross-examine some of the relevant experts.

The Governments of Alberta and Canada submitted that although the joint seating of experts may be appropriate for certain specific technical issues, they would have concerns if witnesses who do not share common qualifications are seated together. The procedure by which the experts are qualified must be in place prior to questioning.

The Haisla submitted that the witness panel makeup may be open to influence through the selection of witnesses to be examined in person. To avoid this, each party must be allowed to put forward its own expert on a topic identified for this approach. The Haisla agreed with the valid concerns raised by Gateway and the AFL on the approach.

Gateway submitted that concurrent evidence may assist the Panel in assessing one or more of the technical issues relating to the application in an efficient manner. However, further analysis and discussion would be required to: identify which issues might be appropriate for concurrent expert evidence; and determine how the evidence submitted by the applicant and other parties align in respect of the framing of those issues by qualified experts in the subject area. Determining how issues are aligned would be essential for this idea to be workable. Otherwise, it could simply generate debate between witnesses at cross-purposes (i.e. whose evidence address different questions or issues).

The applicant suggested that the only area of potential alignment of experts would be shipping and navigational safety; the Gitxaala and the Coalition have both produced reports on this topic that could potentially be aligned with reports sponsored by Gateway.

ISSUE 8

The Panel anticipates allowing parties to present final argument either: (i) orally; or (ii) in writing. On an exception basis, parties may request permission of the Panel to allow final argument on a specific topic both in writing and orally.

About six responses were aligned with the Panel's approach to final argument whereby, absent leave, parties could present final argument either orally or in writing.

A number of other parties stated that they were interested in presenting final argument both orally and in writing.

Swan River submitted that it should not be compelled to choose between written or oral submissions (barring exceptional circumstances with the Panel's permission). It noted that some aspects of the evidence, especially matters relating to traditional use and knowledge as well as the public interest, may be most effectively presented through a combination of oral and written submissions.

Gitxaala noted that arguments in relation to Aboriginal law and constitutional issues are complex and would be more effective if oral argument by all participants were to follow written argument. Allowing written argument in advance allows the Panel to focus on oral questions. The Haisla agreed with the position taken by the Gitxaala.

The Haida are of the view that flexibility is important as some argument – particularly from those groups with an oral tradition – may be more effectively made orally. Parties should be able to present argument both orally and in writing provided they do not repeat information.

Given the complexity and number of issues in this hearing, the Coalition is of the view that parties should be able to present both orally and in writing.

Gateway stated that as applicant, it is entitled to present its argument in chief to the Panel first and to reply to arguments made by other hearing participants last. The applicant contemplates providing its argument in chief in writing and delivering its reply argument orally. The applicant also seeks dispensation to provide a brief oral opening argument at the start of the final arguments. The Cree Nations stated that this suggestion seems reasonable.

ISSUE 9

The Panel anticipates holding hearings for final argument in two locations; namely Prince Rupert, BC and either Edmonton or Calgary, AB. Mechanisms will be established to allow parties to participate remotely (i.e. via telephone or other electronic means). Do you have any input on these locations?

(a) Views on location set out by the Panel

One party suggested that final argument should take place entirely in one single location (Calgary or Edmonton). One party expressed that two locations are appropriate. Two responses suggested that a third location be added (Vancouver and Kitimat, respectively).

On the locations set out by the Panel, parties made the following remarks:

i. Prince Rupert:

Three written responses challenged the choice of Prince Rupert as it is not directly along the proposed Project route. Gateway also expressed a preference for final argument in Kitimat.

ii. Edmonton or Calgary

Three parties would opt for Edmonton over Calgary due to its proximity to the proposed Project. Seven parties would choose Calgary. Many took no position. Mr. Vulcano suggested that hearings could be split, with one (i.e. questioning) in Edmonton and the other (i.e. final argument) in Calgary.

(b) Other locations suggested by parties

i. Kitimat

Eleven parties stated final argument should be heard in Kitimat. The Haisla suggested Kitimat or, in the alternative, Vancouver.

ii. Vancouver (four parties)

Coastal First Nations suggested that Vancouver be added as a final hearing location with videoconferencing of the hearings to both Prince Rupert and Kitimat.

iii. Burns Lake (two parties)

iv. Smithers (one party)

v. Fort St. James (one party)

vi. Haida Gwaii (one party)

vii. Terrace (one party)

(c) Other considerations

There was general agreement that the use of technology, particularly video conferencing, would be essential to fair participation by all parties. It is important to facilitate the use of video conferencing to minimize any disadvantage for those participating remotely.

ISSUE 10

How and when should any outstanding motions, including Constitutional Questions such as that raised by the Gitxaala Nation, be addressed?

There was equal support among the parties that outstanding motions be addressed:

- (a) Before the start of the final hearings for questioning;
- (b) Before the start of final arguments; and
- (c) Following final arguments.

Cree Nations submitted that generally constitutional issues should be dealt with at the same time as oral argument on the main application, provided that such argument can be accommodated within the timeframes established by the Panel for oral argument. To the extent a party has brought a motion however, the Panel will need to decide on it, within a set timeframe.

Gateway agreed that constitutional issues can generally be addressed through final argument and is unsure that the constitutional question needs to be addressed through a separate set of arguments or hearing dedicated for these arguments. Gateway anticipates making further submissions on this matter at a future time.

The Gitxaala suggested that its notice of constitutional question be dealt with separately at the end of final argument together with other Aboriginal law issues, and not as a separate hearing *per se*. The timing of these arguments was suggested because many of these issues would depend on, or significantly overlap, with other topics set out in the List of Issues. The governments may want to argue more broadly on these issues.

The Government of Canada agreed that the formal notice of constitutional question should be dealt with separately, as it contains certain formalities and notification requirements.

The Haisla were in agreement with the Gitxaala and the Government of Canada and noted that there may be others that are not intervenors that would also want to comment on the constitutional question.

The Haida is of the view that the Panel does not have the requisite expertise to address constitutional issues and will not have the full range of information required. If constitutional questions are considered by the Panel, it should be at the end of the hearing after all facts are in.

CAPP believed it would be helpful, when considering this question, to distinguish between when the motion or other questions are argued and when the decision is rendered.

AFN remarked that any procedural decisions regarding the constitutional question must expressly be made applicable to Government Participants as well to ensure all parties adhere to timelines.

ISSUE 11

The Panel would also be interested in hearing any additional views that parties may have on measures that could be implemented to conduct the final hearings in an efficient and effective manner.

a) Organizing the schedule

A basic schedule for the final hearings should be developed as soon as possible to allow the parties to organize their witnesses. This witness schedule should be updated regularly.

b) Further Procedural Conferences

At least two parties stated that, given the number of parties and related logistical issues, another Procedural Conference should be scheduled; the date for that conference should be set as soon as possible. This conference could be cancelled if no further issues arise.

c) Filing of late evidence

Several parties were of the view that a process needs to be devised in relation to the filing of late evidence. Numerous parties noted that Gateway has filed a number of reports after the deadline for the filing of its application materials without having to seek leave of the Panel.

As the deadline to submit IRs has passed, the Gitxaala argued that it is prejudicial to intervenors for Gateway to file further evidence, and raises issues of procedural fairness. Parties currently have to seek leave to ask any follow up IRs or file responding evidence. It was requested that a process be developed to ensure that intervenors are able to file IRs on any additional material, and file their own responding evidence, if necessary. These comments were supported by others.

Gateway responded by advising when certain reports would be produced (i.e. the human health and ecological risk assessment report is expected by mid-June) and noting that some reports had taken longer than expected due to the technical nature of the work. It also noted that additional information was prepared in relation to IRs issued by the Panel. Gateway expects to have all outstanding reports and information submitted on or before the deadline for Reply evidence.

Parties are seeking guidance from the Panel on Gateway's right to file evidence past the deadline as well as the rights of intervenors to file late evidence and IRs in response. It was requested that timelines be set and enforced in relation to the filing of any additional evidence by Gateway.

The Haisla noted that it will become increasingly difficult to address any new evidence filed, the closer it gets to the start of the final hearings.

The Coalition is also seeking direction on what mechanisms exist for intervenors to file new information (i.e. newly released environmental reports on issues that are relevant to the Project).

Gateway noted that it may be required to file rebuttal evidence, in response to new evidence raised during the final hearings as well as through ongoing letters of comments and the oral statement process. Various parties took the position that intervenors should also have the right to provide rebuttal evidence in response to any new evidence that may arise going forward. The Coalition suggested that the Panel consider establishing duty counsel, who could provide strategic and confidential advice to parties that are not supported by counsel. This could supplement the process information that is being provided by the Process Advisory Team. There was support for this idea.

APPENDIX “A”

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

APPENDIX “B”

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
AFL	Gateway	Socio-Economic effects	Prince Rupert	2 – 4 hours
	Canadian Pipeline Advisory Council	Socio-Economic effects	Prince Rupert	45 minutes - 1 hour
	Gateway	Need for the Project	AB	3 - 6 hours
		Impacts on commercial interests	AB	3 - 4 hours
		Financing and tolling matters	AB	1 – 2 hours
	Gov’t of Alberta	Need for the Project/ impacts on comm. Interests/financing and tolling matters	AB	3 - 5 hours
	MEG	Need for the Project/ impacts on comm. Interests/financing and tolling matters	AB	.5 – 1 hour
	Cenovus	Need for the Project/ impacts on comm. Interests/financing and tolling matters	AB	.5 – 1 hour
	Nexen	Need for the Project/ impacts on comm. Interests/financing and tolling matters	AB	.5 – 1 hour
	Suncor	Need for the Project/ impacts on comm. Interests/financing and tolling matters	AB	.5 – 1 hour
	Total	Need for the Project/ impacts on comm. Interests/financing and tolling matters	AB	.5 – 1 hour
AFN	Gateway	Aboriginal and treaty rights / environmental effects / socioeconomic effects / consultation	Prince Rupert	0.5 hour

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
		landowner rights / general route / design, construction and operation/ follow-up and monitoring/ safety, accident prevention and response	Prince George	0.5 hour
	Gov't of Canada	Aboriginal and treaty rights/ environmental effects / socioeconomic effects/ consultation	Prince Rupert	0.5 hour
		landowner rights / general route / design, construction and operation/ follow-up and monitoring/ safety, accident prevention and response	Prince George	0.5 hour
	Gov't of Alberta	Landowner rights/land use /socioeconomic effects/ financial and tolling matters		0.5 hour
CAPP		Focus on topics in Alberta location		Not extensive
CEP Union	No estimates			
Cheryl Brown	Gateway, Gov't of Canada, Province of BC	Routing/ siting of marine terminal/ safety, accident prevention response related to the terminal and marine transportation		No estimate
Haida Nation	No estimates provided	Too early to determine		
CFN	Gateway	risk assessment, spill response, measures to prevent incidents, and reduce risk of spills, consequences of spills, and Aboriginal consultation		Several hours
	Transport Canada	risk assessment, spill response, measures to prevent incidents, and reduce risk of spills,		Several hours

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
		consequences of spills, and Aboriginal consultation		
	Fisheries and Oceans	risk assessment, spill response, measures to prevent incidents, and reduce risk of spills, consequences of spills, and Aboriginal consultation		Several hours
	Gov't of Canada	risk assessment, spill response, measures to prevent incidents, and reduce risk of spills, consequences of spills, and Aboriginal consultation		Several hours
	Province of BC	risk assessment, spill response, measures to prevent incidents, and reduce risk of spills, consequences of spills, and Aboriginal consultation		Several hours
East Prairie	Gov't of Canada	proven and asserted aboriginal and treaty rights		No estimate
Horse Lake	Gov't of Canada	proven and asserted aboriginal and treaty rights		No estimate
Cree Nations	Gateway	Aboriginal Issues		2.5 hours
		Environmental Issues		1.5 hours
		Project Need		.75 hours
	Gov't of Canada			2.5 hours
FSJ	Gateway	Consultation / impacts on landowners and land use / construction and related monitoring / pump station operations and safety, follow up and monitoring / accident prevention and response / spill clean-up		Max 3 hours

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
		capability / socioeconomic effects / need for the proposed project.		
	Gov't of Canada	Consultation / impacts on landowners and land use / construction and related monitoring / pump station operations; safety, follow up and monitoring / accident prevention and response / spill clean-up capability / socioeconomic effects / need for the proposed project.		Max 3 hours
Gov't of AB		Will advise when seek leave to question		
Gov't of Canada		Will advise when seek leave to question		
Haisla	Gateway	Impacts on Aboriginal Interests		15 hours
		Environmental effects		85 hours
		Socioeconomic effects		15 hours
		Consultation		30 hours
		Safety, Accident Prevention and Response (marine)		30 hours
		Impacts on landowners and land use		15 hours
		Routing / general location of the facilities and site of marine terminal		65 hours
		Design, construction and operation		55 hours
		Follow up and monitoring		85 hours

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
		Safety, accident prevention and response (pipeline)		55 hours
		Need for the Proposed Project		15 hours
		Potential impacts on commercial interests		15 hours
		Financial and tolling matters		15 hours
		Purpose of the project		5 hours
		Alternatives to the project		10 hours
		Alternative means of carrying out the project		15 hours
		Issues relating to Canadian public interest		30 hours
Gitxaala	Gateway	Impacts to Aboriginal interests		9 hours
		Environmental effects		9 hours
		Socio-economic effects		2 hours
		Aboriginal engagement		4.5 hours
		Marine risk		7 hours
		Economic / financial issues		7.5 hours
	Gov't of Canada	Consultation / impacts on Aboriginal interests / environmental effects / socio-economic effects		4 hours
	Transport	safety, accident prevention and response		4.5 hours

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
	Fisheries and Oceans	safety, accident prevention and response / impact on Aboriginal interests / environmental effects		3 hours
	Environment Canada	safety, accident prevention and response / impact on Aboriginal interests / environmental effects		3 hours
	Natural Resources Canada	safety, accident prevention and response / impact on Aboriginal interests / environmental effects		4 hours
	Aboriginal Affairs and Northern Development Canada	Consultation / impacts on Aboriginal interests		2 hours
Coalition	Gateway	Environmental effects	Prince Rupert / Vancouver	6 hours
		Socio-economic effects		4 hours
		Design, construction and operation (marine)		4 hours
		Safety, accident prevention and response (marine)		6 hours
	Gov't of Alberta	Socio-economic effects		2 hours
	Gov't of Canada	Environmental effects		4 hours
		Safety, accident prevention and response (marine)		2 hours
	Gateway	Routing	Prince George	2 hours
		Design, construction and operation (pipeline)		4 hours

Party Questioning	Party to be Questioned	Issue	Proposed location	Time
		Safety, accident prevention and response (pipeline)		4 hours
	Gateway	Need for the Project	AB	4 hours
MEG	Plans not finalized	Focus on expert reports		
Gateway	Various ~ 45 authors of reports	Maximum of 2 hours, per report (may not need to ask questions on all reports)		90 hours
NWI	Plans not finalized			
Wet'suwet'en	Plans not finalized			
Province of BC	Plans not finalized			
Sherwood Park F & G Assn	Plans not finalized			20 minutes (maximum)
Swan River	Gateway			Time estimates not finalized
	Gov't of Alberta			Time estimates not finalized
Terry Vulcano	Gateway	Need for Project / impacts on commercial interests / consultation / socio-economic effects / enviro effects / impacts on Aboriginal interests		3 hours
Josette Wier	Gateway	Consultation / environmental effects / human health risks		No estimates
	Province of BC			No estimates
	Gov't of Canada			No estimates
	Fisheries and Oceans			No estimates
	BC Hydro			No estimates