

Enbridge Northern Gateway Project

Joint Review Panel

Procedural Direction #8 Final Hearings

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

The oral component of the Procedural Conference was held on 30 May 2012. Northern Gateway participated in the Conference, together with 34 intervenors and government participants (collectively the Parties).

The Parties made submissions on a series of procedural issues, defined by the Panel in its letter of 9 May 2012. Parties' comments and suggestions are available on the Panel's website at: <http://gatewaypanel.review-examen.gc.ca/clf-nsi/index.html>.

Based on the comments received and the Panel's own considerations, the Panel has made the following decisions on certain procedural matters regarding the final hearings for the review of the Project.

Location and Remote Participation Options for the Final Hearings for Questioning

Final hearings for questioning will take place, starting 4 September, 2012, in the following three locations:

- (1) Edmonton, AB
- (2) Prince George, BC
- (3) Prince Rupert, BC.

As noted previously, these locations are centrally located, have adequate facilities and reasonable transportation access. The Panel is of the view that these locations are appropriate as they are relatively close to the proposed Project and are readily accessible by all parties who are actively participating in the Northern Gateway hearing process and their witnesses. Further, these locations will allow for appropriate hearing facilities that are safe, of an adequate size and can logistically and technologically accommodate a hearing with many participants.

Some parties advised that they and their witnesses would be financially and logistically unable to attend three different hearing locations for questioning in Alberta and British Columbia. The use of remote participation was identified as a potentially effective method of offsetting many of these concerns. Some parties noted however that care should be taken to ensure any option for remote participation meets procedural fairness requirements and does not allow for an abuse of process.

The Panel will, to the best of its ability and to the extent reasonable, accommodate interested parties' participation at the final hearings through remote participation. Standard procedures for the final hearings for questioning will allow for the following:



- (i) Parties and members of the public may listen to all of the final hearings live, through the webcast (available from the Panel’s website).
- (ii) Parties may register their appearance on the first day of the final hearings remotely by telephone, or other technology to the extent feasible such as videoconference or webex. Details regarding potential audio-visual options will be provided in advance of the final hearings.
- (iii) Parties may ask questions of other party’s witnesses by telephone, or other technology such as videoconference or webex to the extent possible. Parties will be asked to confirm their method of participation, in advance of the final hearings for questioning.
- (iv) Parties’ witnesses may be presented for questioning by technology such as videoconference or webex that is capable of capturing audio and visual images of the witnesses simultaneously.

The Panel acknowledges that there may be technological constraints that will prevent some parties, particularly in remote communities, from accessing certain remote options (i.e. videoconferencing). Panel staff will work with parties to address these issues to the extent possible.

Should a party wish to present a witness for questioning by telephone only, or in another manner not set out above, they will be required to bring a motion to the Panel with that request.

Format for the Final Hearings for Questioning

The Panel will proceed with the final hearings for questioning at the three locations set out above on an issues basis. A list of the issues to be addressed at each location is attached as Appendix A.

The Panel will not require that questioning on oral evidence be completed before questioning based on written evidence. Rather, all evidence on the public registry (both oral and written) will be subject to questioning based on the issues set out in Appendix A.

Numerous parties stressed the importance of having a schedule created that is as accurate and predictable as possible. Toward that end, the Panel has issued a letter to all parties requesting information on expected witness panels. A further letter will be issued shortly to all parties requesting more precise information on how long each party expects to take for questioning the witnesses presented by other parties.

Schedule for the Final Hearings for Questioning

The Panel will generally sit six days a week (Monday to Saturday) in two week intervals, followed by a one week break. Standard hearing hours will be as follows:

Monday to Friday	8:30 am – 3:30 pm (PT) (with a one hour lunch break) 9:30 am – 4:30 pm (MT)
Saturday	8:30 am – 12:30 pm (PT) 9:30 am – 1:30 pm (MT)

A more detailed schedule will be issued closer to the start of the final hearings. The standard hours and schedule will be reviewed and may be modified from time-to-time to accommodate the needs of the Panel and parties as necessary and appropriate.

Use of Concurrent Expert Witness Panels

If possible, the Panel is interested in having concurrent expert witness panels seated for certain discrete, specialized issues.

Northern Gateway has stated that its expert witnesses on shipping and navigation issues could be seated in a concurrent expert panel with intervenor expert witnesses who have provided evidence on these issues. Living Oceans Society, Raincoast Conservation Foundation, and ForestEthics Advocacy (Coalition) have filed expert evidence on these issues and are supportive of Northern Gateway's proposal.

In addition, the Panel has identified effects on marine mammals as a potential issue that could be appropriate for a concurrent expert witness panel.

The Panel has instructed its legal counsel to work with Northern Gateway, the Coalition and other intervenors to organize the logistics surrounding these potential concurrent expert witness panels.

Further details on this proposal will be issued as they become available.

Final Argument

In terms of final argument, the Panel will allow parties to provide: (i) written argument; (ii) oral argument; or (iii) both.

The Panel will accommodate parties' participation at the final hearings through telephone and other reasonably available technology capable of capturing audio and visual images (i.e. videoconferencing).

Details on the location for the final hearings for final argument will be announced at a later date. The Panel will also issue further information on the procedure, schedule, and remote participation options for final argument, in a future procedural update.

Notice of Constitutional Question and Outstanding Motions

The Panel will hear the constitutional question which the Gitxaala Nation has given notice of, at the end of final argument.

The Panel does not anticipate that it will hear any additional "Aboriginal law" or other issues following the final argument phase, as suggested by the Gitxaala Nation and others at the procedural conference. The Panel will continue to consider specific motions on a case-by-case basis and as appropriate.

Other Procedural Issues: Filing of Late Evidence and Rebuttal

Several Parties stated that processes and procedures should be established regarding the filing of additional evidence by Northern Gateway. It was argued that it may be prejudicial to intervenors for Northern Gateway to file further evidence without providing intervenors with an opportunity to ask additional information requests or file additional evidence.

There are a variety of reasons that Northern Gateway, as the applicant, continues to file additional evidence on the record. Some information has been filed in direct response to information requests from the Panel. The original application was filed in May of 2010, and some additional studies or reports have been filed as they come available or as updates to studies or information filed in the initial application. In accordance with the Hearing Order, the applicant will also be given the opportunity to file reply evidence by the deadline of 20 July 2012.

Any evidence filed prior to 3 November 2011 (date of IR Round 2) was subject to information requests by all intervenors and government participants. At the final hearings parties will have the opportunity to ask oral questions of Northern Gateway's witness panels on all of the evidence filed.

Should a party take the position that it is necessary for Northern Gateway to answer a specific question in writing to respond to new information filed, the party may bring a motion to the Panel to ask a further specific information request. Otherwise, the party may ask the question of the applicant orally at the final hearings.

Several parties stated that it would be inappropriate to allow Northern Gateway to provide rebuttal evidence during the final hearings. The Panel will address any request by the applicant to provide evidence in rebuttal when that request is made and based on the facts at that time.

Interpretation at the Final Hearings

Parties who wish to participate in the final hearings in a language other than English or French, including an Aboriginal language, must identify an interpreter by contact Louise Niro, Regulatory Officer, at 403-299-3987 or toll-free at 1-800-899-1265. This information must be provided to Ms. Niro no less than two (2) weeks prior to the scheduled appearance.

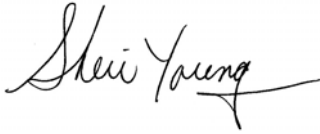
Further details on interpretation at the hearings are set out in Section 11 of the Hearing Order.

Conclusion

The Panel notes that other issues brought forward in the Conference may be addressed through future procedural directions.

The Panel would like to thank all Parties for their time and participation in the Conference. All comments received have been considered by the Panel in its deliberations on the process for the final hearings.

Yours truly,

A handwritten signature in cursive script that reads "Sheri Young". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Sheri Young
Secretary of the Joint Review Panel

**APPENDIX “A”
LIST OF ISSUES BY LOCATION
FOR THE FINAL HEARINGS FOR QUESTIONING**

Background

All evidence related to the following issues would be subject to questioning at the location identified. For greater clarity, the Panel has identified sub-issues and noted the relevant volumes of the application that may apply to these issues. **The sub-issues are intended to be illustrative and are not exhaustive.**

Where application volumes or other filings contain information pertaining to more than one issue, parties should limit their questioning to the evidence that relates to that issue. The following issue lists will be supplemented by the applicant and other parties, with information regarding witness panels that will be responsible for each issue/ location. The Panel notes that the applicant and other parties may choose to have a single witness panel address more than one “topic” simultaneously.

The preliminary timelines are intended to be an estimate for planning purposes and are not conclusive. These estimates may be subject to change, based on revised estimates provided by parties and the Panel’s experiences as the questioning phase proceeds. Please note all timelines outlined below are inclusive of breaks/ weeks that the Panel will not sit.

EDMONTON

Preliminary timeline: September 4 – September 28, 2012

- (a) Economic need for the Project (Application Volumes 1 and 2)
 - (i) Purpose of the Project;
 - (ii) Alternatives to the Project
 - (iii) Supply and markets
 - (iv) Commercial support and economic feasibility

- (b) Potential Impacts of the Proposed Project on Commercial Interests (Application Volumes 1 and 2)

- (c) Financial and Tolling Matters (Application Volumes 1 and 2)
 - (i) Tolling structure and methodology
 - (ii) Proposed financing
 - (iii) Financial responsibility of the applicant

PRINCE GEORGE

Preliminary timeline: October 1 – November 10, 2012

- (a) Environmental Effects associated with the Pipeline (Application Volumes 3, 5B, 6A, 6B, 6C, 7A, 7B, 7C, 8B, and 8C)
 - (i) Cumulative effects
 - (ii) Effects associated with accidents and malfunctions
 - (iii) Environmental assessment methodology including ecological risk assessment
 - (iv) Mitigation measures and alternative means of constructing the project
 - (v) Potential effects on land use plans and protected areas
 - (vi) Environmental protection plans
 - (vii) Follow up and monitoring pertaining to engineering matters

- (b) Socio-economic Effects associated with the Pipeline (Application Volumes 3, 5B, 6A, 6B, 6C, 7A, 7B, 7C, 8A, 8B, and 8C)
 - (i) Socio-economic assessment methodology
 - (ii) Potential effects on human health including assessment methodology and risk assessment and effects associated accidents and malfunctions
 - (iii) Human occupancy and resource use
 - (iv) Heritage resources
 - (v) Traditional land and resource use
 - (vi) Social and cultural well-being
 - (vii) Infrastructure and services
 - (viii) Employment and economy

- (c) Potential Impacts on Landowners and Land Use (Application Volumes 6A and 7A)
 - (i) Pipeline crossings
 - (ii) Depth of cover
 - (iii) Impact on agricultural soils

- (d) Routing (Application Volumes 3, 6A, 6B, and 6C)
 - (i) General route of the pipeline and route selection criteria; alternative means regarding routing
 - (ii) General location of the pipeline and siting of the marine terminal (alternative means regarding siting)

- (e) Design and Construction of the Pipeline and Marine Terminal (Application Volumes 3, 7A, 7B; filings dated March 2011 in response to Panel Session Results and Decision document)
 - (i) Design methodology and risk assessment
 - (ii) Geotechnical issues
 - (iii) Follow up and monitoring pertaining to engineering matters

- (f) Operations, Safety, Accident Prevention and Response Related to the Pipeline (Application Volumes 3 and 7B; filings dated March 2011 in response to Panel Session Results and Decision document)
 - (i) Mitigation measures to avoid or limit accidents and malfunctions including risk assessment
 - (ii) Emergency response plans
 - (iii) Financial resources and other compensation measures available in the event of an accident or malfunction

PRINCE RUPERT

Preliminary timeline: November 12 – December 18, 2012

- (a) Potential Impacts of the Project on Aboriginal Rights and Interests (asserted and proven Aboriginal and treaty rights, including Aboriginal title)
(Application Volumes 3, 5A, 5B, 6A, 6B, 6C, 7A, 7B, 7C, 8A, 8B, and 8C)
- (b) Environmental Effects associated with the Marine Terminal, and Marine Shipping
(Application Volumes 3, 5B, 6A, 6B, 6C, 7A, 7B, 7C, 8B, and 8C)
 - (i) Cumulative effects
 - (ii) Effects associated with accidents and malfunctions
 - (iii) Environmental assessment methodology including ecological risk assessment
 - (iv) Mitigation measures and alternative means of constructing the project
 - (v) Potential effects on land use plans and protected areas
 - (vi) Environmental protection plans
 - (vii) Follow up and monitoring pertaining to engineering matters
- (c) Socio-economic Effects associated with the Marine Terminal and Marine Shipping
(Application Volumes 3, 5B, 6A, 6B, 6C, 7A, 7B, 7C, 8A, 8B, and 8C)
 - (i) Socio-economic assessment methodology
 - (ii) Potential effects on human health including assessment methodology and risk assessment and effects associated accidents and malfunctions
 - (iii) Human occupancy and resource use
 - (iv) Heritage resources
 - (v) Traditional land and resource use
 - (vi) Social and cultural well-being
 - (vii) Infrastructure and services
 - (viii) Employment and economy
- (d) Operations, Safety, Accident Prevention and Response Related to the Marine Terminal and Marine Transportation (Application Volumes 7C, 8A, 8B, and 8C)
 - (i) Operation of marine vessels
 - (ii) Measures and mitigation to avoid or limit accidents and malfunctions including risk assessment
 - (iii) Emergency response plans
 - (iv) Financial resources and other compensation measures available in the event of an accident or malfunction
- (e) Engagement and Consultation
 - (i) Public Consultation (Application Volume 4)
 - (ii) Aboriginal Engagement and Consultation (Application Volumes 5A and 5B)