

Enbridge Northern Gateway Project

Joint Review Panel

File OF-Fac-Oil-N304-2010-01 01
14 November 2013

To: All Parties to Hearing Order OH-4-2011

Northern Gateway Pipelines Inc. (Northern Gateway)
Application for the Enbridge Northern Gateway Project
Hearing Order OH-4-2011
Notice of Motion #24 filed by Josette Wier dated 13 November 2013
Ruling No. 166

The Joint Review Panel (Panel) is in receipt of a motion (A55234) filed by Josette Wier on 13 November 2013. The motion seeks leave to reopen the hearing record and file the following document as late evidence:

- Fisheries and Oceans Canada. 2013. *Recovery Strategy for the North Pacific Humpback Whale (Megaptera novaeangliae) in Canada* (Recovery Strategy).

The hearing record was closed at the end of the final argument phase as noted in the closing statement of the Panel Chair on 24 June 2013. Re-opening the record once it is closed will only be done in exceptional circumstances. The amended Joint Review Panel Agreement, pursuant to section 104 of the *Jobs, Growth and Long-term Prosperity Act*, provides that the Panel's recommendation report is to be submitted to the Minister of Natural Resources by 31 December 2013.

The Panel notes that the Recovery Strategy has been released in accordance with the provisions of the *Species At Risk Act*, as part of a legislative scheme that operates independently of this joint review process.

As the Panel has mentioned previously during the hearing, the later in the joint review process that new evidence is sought to be filed the greater the likelihood of the prejudice to parties. The Panel is of the view that permitting the Recovery Strategy to be filed at this late stage in the hearing process would be prejudicial to the joint review process. In this case, the Panel also notes that the Recovery Strategy was not authored by or for Ms. Wier.

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For these reasons, the Panel is not persuaded to re-open the hearing record and the motion is denied.

If you have any questions related to this ruling, please contact Ms. Rebecca Brown, Legal Counsel, toll-free number at 1-800-899-1265.

Yours truly,

A handwritten signature in blue ink, appearing to read 'S. Young', is written over a faint, illegible printed name.

for

Sheri Young

Secretary to the Joint Review Panel