

Enbridge Northern Gateway Project

Joint Review Panel

File OF-Fac-Oil-N304-2010-01 01
28 January 2013

Mr. Mike Ridsdale
EA Coordinator
Office of the Wet'suwet'en
3873 - 1st Avenue
Smithers, BC V0J 2N1

Dear Mr. Ridsdale:

**Northern Gateway Pipelines Inc. (Northern Gateway)
Application for the Enbridge Northern Gateway Project
Hearing Order OH-4-2011
Notice of Motion filed by the Office of the Wet'suwet'en on 26 November 2012
(Motion) - Ruling No. 140**

On 26 November 2012, the Joint Review Panel (Panel) for the Enbridge Northern Gateway Project received a motion from the Office of the Wet'suwet'en (Wet'suwet'en) requesting that the Panel accept the report of Mr. Patrick Hudson, entitled *Gateway Pipeline Oil Spill Pathway Analysis* (Report), as late evidence.

The Wet'suwet'en state that the Report gives an analysis of the potential spill pathway from the Upper Morice River to the Skeena River estuary and describes the likely travel time estimates. The Wet'suwet'en argue that the Report is important, as the modeled domain for ecological and human health risk assessment conducted by the applicant is largely insufficient and downplays effects to very limited geographical areas. Mr. Hudson will be available for questioning, if required.

On 13 December 2012 the Panel issued a letter seeking comments on the Motion. On 19 December Northern Gateway provided its comments, taking the position that the Motion ought to be denied.

Specifically, Northern Gateway argued that they would be prejudiced by the late filing in light of the fact that the report was filed:

- almost one year past the deadline for intervenor evidence;
- after Northern Gateway's relevant witness panel was excused in Prince George and the Wet'suwet'en had completed its questioning of that panel; and
- after Northern Gateway had concluded its evidence on the terrestrial aspects of the pipeline in Prince George.

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Further, in Northern Gateway's view, the hydrological report is a simple model, addressing a single hypothetical spill. Northern Gateway's Ecological Human Health Risk Assessment (EHHRA) and the various spill modeling assessments it has tendered as evidence provide much more detailed information and largely address the concerns raised in the Motion and the Report.

No reply comments were received from the Wet'suwet'en.

The Panel has reviewed and considered the Motion, the Report and the comments received from Northern Gateway.

The Panel is of the view that the hydrologic modeling in the Report is relevant to its review of the Project. The Panel is also of the view that the issues covered in the Report are sufficiently related to some of the issues to be covered in Prince Rupert, specifically surrounding the EHHRA.

The Panel notes the concerns raised by Northern Gateway with respect to the potential prejudice it may face due to the late filing, however, is of the view that these concerns can be adequately addressed.

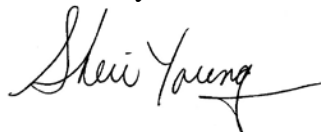
As noted above, there is a link between the information provided in the Report and questioning on the EHHRA, which will take place in Prince Rupert. In its Motion, the Wet'suwet'en confirmed that Mr. Hudson would be available for questioning.

As noted by Northern Gateway in its comments, it has already filed evidence on the record, in relation to the issues raised in the Report. It also remains open to Northern Gateway to seek leave to file direct evidence in response to the Report, should they deem it necessary to do so. Lastly, any issues relating to the relevance or relative weight to give to the Report could be addressed through final argument.

In light of all of the above the Panel grants the Motion and will allow the Wet'suwet'en to file the Report, as late evidence. Northern Gateway, together with any other parties who wish to test the Report are asked to provide written confirmation of their intention to question Mr. Hudson in Prince Rupert.

Should you have any questions about the ruling, please contact Mr. Andrew Hudson, Legal Counsel at 403-299-2708 or 1-800-899-1265.

Yours truly,

A handwritten signature in black ink that reads "Sheri Young". The signature is written in a cursive, flowing style.

Sheri Young
Secretary to the Joint Review Panel