

# Enbridge Northern Gateway Project

## Joint Review Panel

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File OF-Fac-Oil-N304-2010-01 01  
20 November 2012

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**  
**Ruling No. 125 - Notice of Motion filed by Ms. Josette Wier**

On 18 September 2012 the Joint Review Panel (Panel) for the Enbridge Northern Gateway Project (Project) received Notice of Motion #12 (Motion) from Ms. Josette Wier (as amended 20 September 2012), requesting an order as follows:

- a. to reconsider her submission to question Environment Canada on water quality issues; and
- b. to order Environment Canada to review Northern Gateway fresh water contamination models and analysis in:
  - Exhibit number B80-02 Adobe pages 71-116 entitled Overview of Hydrocarbons Fate;
  - Exhibit number B80-12 Appendix 11 Environmental Fate and Weathering Models for Hydrocarbon Spills;
  - Exhibit number B39-03 Response to Haisla Nation IR #1 1-47 Adobe pages 171-177.

In support of her motion, Ms. Wier stated:

1. Environment Canada did not present any evidence reviewing Northern Gateway on-shore spills modeling in regard to short and long term effects on water quality;
2. Environment Canada recently (5 September 2012), asserted in their reply submission E9-21-12, a clear statement that their mandate “*includes the preservation and enhancement of the quality of the natural environment, including water, air, soil, flora and fauna, and the conservation and protection of Canada's water resources*”;
3. She was denied approval to question government participants on water quality issues on the grounds that they had not submitted any evidence on that matter; and
4. There is a contradiction between Environment Canada’s statement in their submission of 5 September and their absence in the review of fresh water related issues associated with the project.

On 10 October 2012 the Panel sent a letter to all parties seeking comments from the Federal Government Participants (FGP) in respect of the Motion. As well, in its letter, the Panel advised that they will consider the Motion as an application for a review pursuant to section 21 of the *National Energy Board Act*.

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The submission from the FGP was received on 15 October 2012. The FGP took the position that the Panel's original decision on 30 August 2012 to deny Ms. Wier's request to question the FGP was correct. In the FGP's view, the Motion seeks to question on "issues related to mandate, rather than evidence; and to question on evidence filed" by the applicant. Even if a doubt had been raised (which is denied), there is no prejudice in denying the Motion because Ms. Wier can still test Northern Gateway's evidence relating to, among other things, water quality through questioning.

On 22 October 2012 Ms. Wier filed her reply to the FGP comments on the Motion. Ms. Wier confirmed her concern that the agency whose mandate it is to protect Canada's water resources has not submitted any evidence on water quality. Ms. Wier further challenged that the "best way to test the evidence presented by Northern Gateway" is for her to ask questions of the applicant. Rather, Environment Canada has greater expertise on these issues, as such should do the requisite analysis.

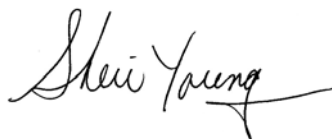
On the review, the Panel notes that the original decision was based on the fact that the questions that Ms. Wier seeks to ask surrounding the safe levels of the contaminants in water" or water quality more generally are not addressed in the evidence of the FGP. The statement referenced regarding Environment Canada's mandate does not constitute new evidence, and Ms. Wier has otherwise failed to raise any new evidence that would raise a doubt as to the correctness of the Panel's initial decision. The request to review and reconsider the Panel's Decision of 30 August 2012 is dismissed on that basis.

Ms. Wier has also asked for an order that Environment Canada review certain evidence prepared by Northern Gateway – namely, fresh water contamination models and analysis. The Panel does not assess how any particular FGP fulfills its mandate, or chooses to participate in the review of the Project. The FGP chose not to file its own evidence on fresh water quality issues. The Panel is not persuaded, on the basis provided, that it requires the analysis and information sought to make its recommendations and decisions on the Project. Accordingly, the relief sought by Ms. Wier is denied.

The Panel notes that Ms. Wier still had the opportunity as an intervener to question Northern Gateway regarding their evidence on water quality issues, to test that evidence.

If you have any questions, please contact Mr. Andrew Hudson, Legal Counsel at 403-299-2708 or toll-free number at 1-800-899-1265.

Yours truly,

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

Sheri Young  
Secretary to the Joint Review Panel