

Enbridge Northern Gateway Project

Joint Review Panel

File OF-Fac-Oil-N304-2010-01 01
25 April 2013

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

Northern Gateway Pipelines Inc. (Northern Gateway)
Application for the Enbridge Northern Gateway Project (Project)
Hearing Order OH-4-2011
Comment Process regarding Federal Government Tanker Safety Program
Ruling no. 158

Background

In a ruling from the bench on 19 March 2013 (Transcript Volume 156; line 31458) the Joint Review Panel (Panel) ordered that certain documents filed by the Federal Government Participants relating to the Federal Government's Tanker Safety Program (Tanker Safety Documents) be removed from the record, as the information had not been properly filed as late written evidence.

In Ruling no. 154 dated 9 April 2013 the Panel dismissed, with reasons, the Coastal First Nations' motion to expunge testimony given by Mr. John Carruthers, President of Northern Gateway, relating to the Federal Government's Tanker Safety Program. In that letter, the Panel sought comments from Parties on the following questions:

1. Should information regarding the federal government's proposed Tanker Safety Program be filed as late evidence by the Federal Government Participants;
2. If so, what information should be filed; and
3. What additional accommodations to other Parties would be required?

Comments Received

By comment letter dated 11 April 2013, counsel for the Federal Government Participants indicated that they take no position on whether the Tanker Safety Documents should be filed as evidence. Counsel also indicated that if the Panel considers this information to be relevant and of possible assistance to it, then the information will be filed. Federal Government Participant witnesses in Panel 2 will be prepared to answer questions relating to these documents if they become evidence, or if used as an aid to cross examination.

The Province of British Columbia also did not take a position on whether these documents should be made exhibits.

.../2



National Energy Board
Office national
de l'énergie

Canada



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

- 2 -

Northern Gateway submitted that the Tanker Safety Documents should be filed as late evidence by the Federal Government Participants. This is because there would be no prejudice to other Parties, the documents are highly relevant, and no purpose would be served by excluding them.

The Government of Alberta also submitted that the Tanker Safety Documents are relevant and likely to be of assistance to the Panel and therefore should be filed as evidence. It noted that witnesses will be able to respond to questions about these documents and indicated that it does not believe that any Party will suffer prejudice from the filing or that any additional process will be required because of the late filing.

The Haisla Nation (Haisla), the Gitxaala Nation (Gitxaala), and the Coastal First Nations opposed the Tanker Safety Documents being filed as evidence.

The Haisla submitted that these documents, made up of a press release and backgrounders, do not contain substantive information about how or when the program will be implemented, are statements of intention only and are not relevant. The Haisla also note that there is no information about consultation with the Haisla or other First Nations. According to the Haisla, Parties may question on the documents by using them as aids to questioning rather than as exhibits.

The Gitxaala submitted that it would be prejudicial to Parties to allow the Tanker Safety Documents to be filed this late in the Joint Review Process since there would not be time for information requests or to engage experts to review the information. Gitxaala also submits that late acceptance of this information would be inappropriate given that the Federal Government Participants have chosen not to follow the process for filing late evidence and continue to take no position on whether the information should be entered as evidence.

The Gitxaala argued that if this new information is relevant so too should be new information relating to shipping activity within the Confined Channel Assessment Area such as recent approval of various liquid natural gas projects. Finally, the Gitxaala say that if this evidence is allowed, those authoring the documentation must be made available for questioning and all documents relating to the preparation of the Tanker Safety Documents should also have to be filed.

The Coastal First Nations did not take a position with regard to whether the Tanker Safety Documents should be filed as late evidence. However if the Panel admits the material into evidence, the Coastal First Nations argues that that all source documents and relevant briefing notes related to the documents should also be produced. As well, Ministers Lebel and Oliver, who made the announcement, should be available for cross-examination. The Coastal First Nations also indicated that it will require sufficient time to engage experts to review the material and prepare for questioning.

- 3 -

In reply, the Federal Government Participants objected to making available authors of the documents, ministers and source material relating to the Tanker Safety Documents as requested by Gitxaala and the Coastal First Nations as this would be speculative and would only serve to delay the proceedings.

Decision

The Panel views the Tanker Safety Documents as consisting of general statements of intent and therefore of limited use. The Panel further believes the probative value of these documents does not exceed the prejudice and delay that could be caused by its filing as evidence. For these reasons, the Panel will not direct the Federal Government Participants to file information relating to the Tanker Safety Program as evidence. The Panel notes that the Tanker Safety Documents remain available to all Parties for use as aids to questioning.

Should you have any questions about this letter, please contact Ms. Carol Vats, Legal Counsel at 403-299-3643 or 1-800-899-1265.

Yours truly,



 Sheri Young
Secretary to the Joint Review Panel