

Enbridge Northern Gateway Project ^(A51763) Joint Review Panel

File OF-Fac-Oil-N304-2010-01 01
7 May 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 filed by C.J. Peter Associates Engineering
Ruling No. 162**

In Notice of Motion ([A51176](#)), filed on 6 April 2013, C.J. Peter Associates Engineering (CJPAE) is requesting that pursuant to Section 16.1 of the *National Energy Board Act*, the Joint Review Panel (Panel) order:

1. Northern Gateway to provide the Panel all sections of the IHS Fairplay database (Database) used by Det Norske Veritas to calculate the spill return periods in their Marine Shipping Quantitative Risk Analysis (Exhibit B23-34) (Marine QRA);
2. Upon receipt of the Database, the Panel undertakes to make this Database available on application to any Party herein for the limited purpose of securing an independent assessment of the spill return periods and probabilities; and
3. That the foregoing shall be governed by the terms of a Confidentiality Order to be drafted by the Panel after consultation with all Parties.

This motion first arose through the examination of Northern Gateway Panel No#5 Shipping & Navigation by Mr. Brian Gunn on behalf of CJPAE on 21 March 2013 (Volume 158, lines 2068 through 2073). The line of questioning at that time related to the Marine QRA and in particular the Database. At that time Mr. Gunn asked for an undertaking that Northern Gateway produce the Database. Northern Gateway did not give this undertaking because it found it unreasonable.

In support of this Motion, CJPAE stated that it would like to have access to the Database for the “parties to judge whether or not it is correct for Det Norske Veritas to give a reduction to the total incident frequency of some 65% (adobe page 131 of the DNV report) because of the application of the Escort tugs”.

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Agence canadienne d'évaluation environnementale

CJPAE suggests that all parties, and the Panel are unable to comment effectively on the spill return predictions without this information.

The Panel notes that the Database is part of the TERMPOL report (B32-34) and has been available on the record since 8 June 2011. The Panel further notes that there has been cross-examination on the IHS Fairplay data and how it was used in the Marine QRA through the joint review process.

Through that cross-examination - and in the information request process, the filing of direct evidence or otherwise through the hearing process - there has been no evidence that there were errors in the underlying Database.

The Panel is not persuaded, based on the Motion, that this underlying data is required for the Panel's deliberations.

Further, as the Panel has mentioned previously in the hearing, the later in the process new evidence is sought to be filed the greater the likelihood of the prejudice to parties. In this case, the Panel notes that the creator of the Database is not a party to the joint review process and it is uncertain what practical issues would arise in seeking to obtain this underlying data. The Panel is of the view that, aside from any practical issues, requiring the Database to be filed at this late stage in the hearing process would be highly prejudicial to all parties. For these reasons, the Motion is denied.

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

Yours truly,



for
Sheri Young
Secretary to the Joint Review Panel