



Murray & Anne Fraser Building
PO Box 1700 STN CSC
Victoria, BC V8W 2Y2
Phone: 250.721.8188
Email: elc@uvic.ca
Web: www.elc.uvic.ca

June 17th, 2013

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Secretary of the Joint Review Panel
Enbridge Northern Gateway Project
444 – 7th Avenue SW
Calgary, Alberta T2P 0X8

Dear Sir/Madam:

**Re: Enbridge Northern Gateway Project Joint Review Panel
Hearing Order OH-4-2011 and File No. OF-Fac-Oil-N304-2010-01 01
Cover Letter to Motion for Remote Participation in Oral Argument of Other Parties**

Please find enclosed for filing a Motion of BC Nature and Nature Canada seeking leave for remote participation during “bottom up” oral argument of other parties.

Yours truly,

Chris Tollefson
Barrister & Solicitor
Executive Director, Environmental Law Centre
Counsel for BC Nature/Nature Canada

cc Ian Davidson, Executive Director, Nature Canada
Rosemary Fox, Conservation Chair, BC Nature
John Neville, President, BC Nature

**Enbridge Northern Gateway Pipeline Joint Review Panel
NEB File No. OF-Fac-Oil-N304-2010-01-01
Hearing Order OH-4-2011**

**NOTICE OF MOTION OF BC NATURE/NATURE CANADA
SEEKING LEAVE FOR REMOTE PARTICIPATION**

during

“BOTTOM UP” ORAL ARGUMENT OF OTHER PARTIES

June 17th, 2013

Name of Group Bringing Forward the Motion:

1. BC Nature and Nature Canada.

Decision or Order Requested:

2. We respectfully request the Joint Review Panel to allow any party, at that party’s request, the ability to participate remotely in real-time, including the ability to raise and speak to procedural objections, during the “Bottom Up” Oral Argument phase, or any portion thereof indicated by that party.
3. We respectfully request the Joint Review Panel to allow BC Nature and Nature Canada to participate remotely in real-time, including the ability to raise and speak to procedural objections, during the “Bottom Up” Oral Argument of Northern Gateway.

Statement of Facts:

4. The Joint Review Panel (“JRP”), in its Procedural Direction No. 12 (“P.D. 12”), indicated that all Parties have “two opportunities to provide Oral Argument in what is referred to as a “Top Down – Bottom Up” process”.¹
5. In the “Top Down” portion of the Oral Argument, Northern Gateway provides the first Oral Argument followed by other parties in alphabetical order.² The purpose of Oral Argument is “to respond orally to the Written Argument of other parties”.³
6. For the “Bottom Up” portion of the Oral Argument, parties will provide Oral Arguments in reverse alphabetical order ending with Northern Gateway.⁴ The purpose of the “Bottom Up” is to “reply to new matters that arose in Oral Argument after [parties] presented their Oral Argument”.⁵
7. While P.D. 12 provides instructions for parties who wish to present their Oral Argument remotely, the JRP has not issued any procedural direction or otherwise offered any instructions on whether and how parties can participate in the hearing process remotely when another party is giving Oral Argument.
8. On or about Thursday, June 13th, 2013, counsel for BC Nature and Nature Canada Mr. Chris Tollefson spoke via telephone with counsel for the JRP Mr. Andrew Hudson. Mr. Tollefson inquired of Mr. Hudson whether or not the JRP had put in place a system for parties to raise objections remotely when Northern Gateway makes its submissions during “Bottom Up” Oral Argument. Mr. Hudson indicated that the JRP has not made such arrangements, and advised that a party who wished to participate remotely during Northern Gateway’s “Bottom Up” Oral Argument would have to file a motion seeking leave by the JRP to do so.

¹ A303-1 - Panel-Commission - Procedural Direction no. 12 - Final Hearings for Final Argument - A3D9D7, at p. 2

² *Id.*

³ *Id.*

⁴ *Id.*, at p. 3

⁵ *Id.*

Grounds for Request:

9. Through P.D. 12, the JRP has issued instructions on the proper scope of Oral Argument in both the “Top Down” portion and the “Bottom Up” portion.
10. Parties have a right and a duty to ensure that every party submit their Oral Argument within the confines delineated in P.D. 12 and applicable principles of common law governing the scope and nature of reply. Parties adverse in interest must be allowed the opportunity to raise an objection if a party makes reply submissions during Oral Argument that could be interpreted to exceed or be in the conflict with P.D. 12 and the common law governing the scope and nature of oral reply submissions. This is particularly so given the narrow legal scope of what constitutes legitimate reply to oral argument.
11. The importance of allowing other parties to participate remotely and make objections and submissions in relation to the above-noted matters is heightened when the party making Oral Argument has the last word. During the “Bottom Up” portion of the Oral Argument, Northern Gateway, which carries the burden of proof in this proceeding, will be the last party making submissions before the JRP.
12. While parties who attend in person during the “Bottom Up” portion of the Oral Argument have the opportunity to make timely objections to the JRP, natural justice would dictate that parties who cannot attend in person should be accorded the same opportunity to do so by remote participation. This is especially true given the expense associated with parties returning to Terrace for a second time to participate in the “Bottom Up” process.

Respectfully submitted on June 17th, 2013,



Chris Tollefson
Counsel for BC Nature/Nature Canada

Barrister & Solicitor
Executive Director
Environmental Law Centre
University of Victoria
Murray & Anne Fraser Building
PO Box 2400 STN CSC
Victoria, BC V8W 3H7
Phone: 250.721.8188
Email: elc@uvic.ca