

**JOINT REVIEW PANEL FOR THE ENBRIDGE  
NORTHERN GATEWAY PROJECT  
COMMISSION D'EXAMEN CONJOINT DU PROJET  
ENBRIDGE NORTHERN GATEWAY**



**Hearing Order OH-4-2011  
Ordonnance d'audience OH-4-2011**

**Northern Gateway Pipelines Inc.  
Enbridge Northern Gateway Project  
Application of 27 May 2010**

**Demande de Northern Gateway Pipelines Inc.  
du 27 mai 2010 relative au projet  
Enbridge Northern Gateway**

**VOLUME 180**

**Hearing held at  
Audience tenue à**

**Best Western Plus Terrace Inn  
4553 Greig Avenue  
Terrace, British Columbia**

**June 24, 2013  
Le 24 juin 2013**

**International Reporting Inc.  
Ottawa, Ontario  
(613) 748-6043**

**Canada**

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as represented by the Minister of the Environment  
and the National Energy Board

This publication is the recorded verbatim transcript  
and, as such, is taped and transcribed in either of the  
official languages, depending on the languages  
spoken by the participant at the public hearing.

Printed in Canada

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représentée par le Ministre de l'Environnement et  
l'Office national de l'énergie

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délibérations et, en tant que tel, est enregistrée et  
transcrite dans l'une ou l'autre des deux langues  
officielles, compte tenu de la langue utilisée par le  
participant à l'audience publique.

Imprimé au Canada

**HEARING /AUDIENCE**

**OH-4-2011**

IN THE MATTER OF an application filed by the Northern Gateway Pipelines Limited Partnership for a Certificate of Public Convenience and Necessity pursuant to section 52 of the *National Energy Board Act*, for authorization to construct and operate the Enbridge Northern Gateway Project.

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held in Terrace (British Columbia), Monday, June 24, 2013  
Audience tenue à Terrace (Colombie-Britannique), lundi, le 24 juin 2013

**JOINT REVIEW PANEL/LA COMMISSION D'EXAMEN CONJOINT**

S. Leggett	Chairperson/Présidente
K. Bateman	Member/Membre
H. Matthews	Member/Membre

## APPEARANCES/COMPARUTIONS

(i)

### APPLICANT/DEMANDEUR

Northern Gateway Pipelines Inc.

- Mr. Richard A. Neufeld, Q.C.
- Mr. Ken MacDonald
- Mr. Bernie Roth
- Ms. Laura Estep
- Ms. Kathleen Shannon
- Mr. Dennis Langen
- Mr. Douglas Crowther

### INTERVENORS/INTERVENANTS

Alexander First Nation

- Ms. Caroline O'Driscoll
- Chief Herb Arcand

Alberta Federation of Labour

- Ms. Leanne Chahley

BC Nature and Nature Canada

- Mr. Chris Tollefson
- Mr. Anthony Ho
- Ms. Natasha Gooch
- Ms. Rosemary Fox

Doug Beckett

Province of British Columbia

- Ms. Elizabeth Graff
- Mr. Christopher R. Jones

C.J. Peter Associates Engineering

- Mr. Chris Peter
- Dr. Hugh Kerr
- Mr. Brian Gunn

Canadian Association of Petroleum Producers (CAPP)

- Mr. Keith Bergner

Cenovus Energy Inc., INPEX Canada Ltd., Nexen Inc.,  
Suncor Energy Marketing Inc. and Total E&P Canada Ltd.

- Ms. Bernette Ho

Coastal First Nations - Great Bear Initiative

- Mr. Art Sterritt

Council of the Haida Nation

- Ms. Terri-Lynn Williams-Davidson
- Peter Lantin

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

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**INTERVENORS/INTERVENANTS**

Nathan Cullen

Daiya-Mattess Keyoh

- Mr. Ken Sam
- Mr. Jim Munroe

Douglas Channel Watch

- Mr. Murray Minchin
- Ms. Cheryl Brown
- Mr. Dave Shannon

Driftpile Cree Nation

- Chief Rose Laboucan
- Dr. Ave Dersch
- Mr. Aryn Lalji

Edmonton Chamber of Commerce

- Mr. Ian Morrison
- Mr. James Cumming

Ermineskin Cree Nation and Samson Cree Nation

- Mr. Rangi Jeerakathil

ForestEthics Advocacy, Living Oceans Society  
and Raincoast Conservation Foundation - "The Coalition"

- Mr. Barry Robinson

District of Fort St. James

- Ms. Brenda Gouglas
- Mayor Rob MacDougall
- Mr. Dave Birdi
- Ms. Joan Burdeniuk
- Mr. Riley Willick
- Mr. Russ Gingrich

Fort St. James Sustainability Group

- Ms. Kandace Kerr
- Ms. Louise Evans-Salt
- Ms. Brenda Gouglas

Gitga'at First Nation

- Mr. Michael Reid

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

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**INTERVENORS/INTERVENANTS**

Gitxaala Nation

- Ms. Rosanne M. Kyle
- Mr. Robert Janes

Government of Alberta

- Mr. Ron Kruhlak, Q.C.

Government of Canada (Transport Canada,  
Natural Resources Canada and Environment Canada)

- Ms. Dayna Anderson

Haisla Nation

- Ms. Jennifer Griffith

Heiltsuk Economic Development Corporation

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Hereditary Chief

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Tribal Council

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Youth Voice

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Kitimat Valley Naturalists

- Mr. Walter Thorne
- Mr. Dennis Horwood

MEG Energy Corp.

- Mr. Loyola G. Keough

North Coast Cetacean Society

- Mr. Hermann Meuter
- Ms. Janie Wray

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

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**INTERVENORS/INTERVENANTS**

Northwest Institute of Bioregional Research  
and Friends of Morice-Bulkley  
- Mr. Richard Overstall

Office of the Wet'suwet'en  
- Mr. Jeff Huberman  
- Mr. Michael Ross

Sherwood Park Fish & Game Association  
- Mr. Andrew Boyd

United Fishermen and Allied Workers' Union  
- Ms. Joy Thorkelson

Dr. Josette Wier

World Trade Centre Edmonton  
- Mr. Martin Salloum  
- Mr. Robin Bobocel

**National Energy Board/Office national de l'énergie**  
- Mr. Andrew Hudson

**ERRATA**

**(i)**

**Thursday, April 4, 2013 - Volume 160**

Paragraph No.:

5222:

“...change the attack a little...”

Should read:

“...change the tack a little...”



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**Opening remarks**  
**Chairperson**

--- Upon commencing at 9:01 a.m./L'audience débute à 9h01

4701.           **THE CHAIRPERSON:** Good morning, everyone. I believe we're ready to get underway. Bonjour à tous.
4702.           It's -- I think this is another first where we have people participating in real time remotely and so we look forward to everybody's participation.
4703.           I want to start off by acknowledging the southern Alberta flood situation and say that our thoughts are with all who have been affected by this disaster. We especially offer our thanks and appreciation to the Calgary members of the Joint Review Panel Secretariat who are both here in Terrace or following today's proceedings remotely during this difficult time.
4704.           I'm sure most people are aware from -- if you've listen to two seconds of the news at any point since Friday, that all of downtown Calgary is closed and so people don't have access to the NEB offices to be able to participate. So we appreciate everybody's involvement and commitment to helping the Panel through this.
4705.           As mentioned on Thursday, we'll proceed with the bottom up oral argument. We will follow the reverse order that was used last week during the top down part of oral argument. So switching positions will not be allowed.
4706.           At the end of these opening comments and after any preliminary matters, we will do a roll call to find out who is one the line with us and who intends to present oral reply. And that's the list that we will then use going back up from bottom up.
4707.           The Panel has reconsidered its Ruling 165 in light of a solution having been found that should allow for effective and efficient remote participation. And that solution was summarized and sent to all parties on Friday. Therefore, at this time, remote real time participation will be allowed in the hearing room. If this type of participation becomes unmanageable or disrespectful, the Panel will review its decision.
4708.           Parties should recognize that bottom up argument typically goes much faster than top down. Parties not available when called will not be called again. The sole reason for the bottom up portion is to respond to oral argument that was given after you presented your top down argument. Your comments today must

**Opening remarks  
Chairperson**

- be restricted to this one limited purpose.
4709. As a result, it is anticipated that each party's argument for this final portion will be significantly less than the time spent during the top down portion.
4710. Parties who do not have reply comments specifically related to arguments they have not had the opportunity to address should not provide bottom up argument.
4711. For example, if after you spoke to the Panel during the top down portion, you heard new views that you are not aligned with, this is the time to let the Panel know why you do not agree with that new view. You can also inform the Panel of any new views presented after yours that you agree with.
4712. It is not appropriate to repeat the arguments; you need only inform the Panel which of these new views you adopt. This is not the time to summarize your position and views on the proposed Project.
4713. The Panel asks that you specifically identify the oral argument to which you are responding, preferably by referencing the transcript.
4714. Are there any preliminary matters to raise this morning before we get underway?
- (No response/Aucune réponse)
4715. **THE CHAIRPERSON:** Then we'll begin with the roll call. So as I call each party's name, I'd ask if you would indicate if you are present, and if you don't indicate so, we'll assume you're not; and also if you intend to be presenting oral reply.
4716. United Fishermen and Allied Workers' Union...?
- (No response/Aucune réponse)
4717. **THE CHAIRPERSON:** World Trade Centre Edmonton...?
- (No response/Aucune réponse)
4718. **THE CHAIRPERSON:** Mr. Cullen...?

--- (No response/Aucune réponse)

4719.           **THE CHAIRPERSON:** Sherwood Park Fish & Game  
Association...?

--- (No response/Aucune réponse)

4720.           **THE CHAIRPERSON:** Office of the Wet'suwet'en...?

--- (No response/Aucune réponse)

4721.           **THE CHAIRPERSON:** Northwest Institute for Bioregional  
Research and Friends of Morice-Bulkley?

4722.           **MR. RICHARD OVERSTALL:** Good morning, Madam Chair, this  
is Richard Overstall. I'm in on the call but we do not intend to present any bottom  
up argument.

4723.           **THE CHAIRPERSON:** Thank you, Mr. Overstall.

4724.           North Coast Cetacean Society...?

--- (No response/Aucune réponse)

4725.           **THE CHAIRPERSON:** MEG Energy Corp. ...?

--- (No response/Aucune réponse)

4726.           **THE CHAIRPERSON:** Kitimat Valley Naturalists...?

--- (No response/Aucune réponse)

4727.           **THE CHAIRPERSON:** Heiltsuk Youth Voice...?

4728.           **MS. HUMCHITT:** Good morning, Madam Chair. This is Carrie  
Humchitt from the Heiltsuk Tribal Council and we will be responding briefly. I  
will be responding from the Heiltsuk Tribal Council.

4729.           **THE CHAIRPERSON:** And Ms. Humchitt, it will only from the

**Opening remarks  
Chairperson**

Heiltsuk Tribal Council?

4730. **MS. HUMCHITT:** Yes, in response to the -- a brief response to some new evidence that came forward.

4731. **THE CHAIRPERSON:** That came forward after you presented your arguments?

4732. **MS. HUMCHITT:** Correct.

4733. **THE CHAIRPERSON:** Thank you very much.

4734. So we will call the Heiltsuk Tribal Council and we won't call the other Heiltsuk parties.

4735. **MS. HUMCHITT:** Thank you.

4736. **THE CHAIRPERSON:** Thank you very much, Ms. Humchitt.

4737. Haisla Nation...?

4738. **MS. GRIFFITH:** Yes, good morning, Madam Chair. Jennifer Griffith for the Haisla Nation and I will have a very brief bottom up argument.

4739. **THE CHAIRPERSON:** Thank you, Ms. Griffith.

4740. Government of Canada...?

4741. **MS. ANDERSON:** Good morning, Madam Chair. We are present but we don't intend to make any bottom up argument.

4742. **THE CHAIRPERSON:** So we won't call you then. Thank you very much, Ms. Anderson.

Government of Alberta...?

4743. **MR. KRUHLAK:** Good morning, Madam Chair, it's Ron Kruhlak. We'll be listening in but won't be submitting any bottom up argument.

4744. **THE CHAIRPERSON:** Thank you, Mr. Kruhlak.

**Opening remarks  
Chairperson**

4745. Gitxaala Nation...?

4746. **MS. KYLE:** Good morning, Madam Chair, Rosanne Kyle here for Gitxaala. We will have very brief submissions I suspect, five minutes or less.

4747. **THE CHAIRPERSON:** Thank you, Ms. Kyle.

4748. Gitga'at First Nation...?

--- (No response/Aucune réponse)

4749. **THE CHAIRPERSON:** Fort St. James Sustainability Group...?

--- (No response/Aucune réponse)

4750. **THE CHAIRPERSON:** The District of Fort St. James...?

--- (No response/Aucune réponse)

4751. **THE CHAIRPERSON:** ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation...?

4752. **MR. ROBINSON:** Yes, good morning, Madam Chair. It's Barry Robinson for the Coalition and we will have a brief response.

4753. **THE CHAIRPERSON:** Thank you, Mr. Robinson.

4754. Ermineskin Cree Nation and Samson Cree Nation...?

4755. **MR. JEERAKATHIL:** Good morning, Madam Chair, Rangit Jeerakathil appearing. We will not have any reply arguments.

4756. **THE CHAIRPERSON:** Thank you, Mr. Jeerakathil.

4757. **MR. JEERAKATHIL:** Thank you.

4758. **THE CHAIRPERSON:** Edmonton Chamber of Commerce...?

--- (No response/Aucune réponse)

**Opening remarks  
Chairperson**

4759. **THE CHAIRPERSON:** Driftpile Cree Nation...?

--- (No response/Aucune réponse)

4760. **THE CHAIRPERSON:** Douglas Channel Watch...?

--- (No response/Aucune réponse)

4761. **THE CHAIRPERSON:** Sorry, Ms. Brown, you will have reply --  
could you come to the microphone, please?

4762. **MS. BROWN:** Yes, Douglas Channel Watch will have ---

4763. **THE CHAIRPERSON:** Thank you, Ms. Brown.

4764. Daiya-Mattess Keyoh...?

--- (No response/Aucune réponse)

4765. **THE CHAIRPERSON:** Dr. Wier...?

4766. **DR. WIER:** Yes, I'm present and I want to make a presentation.

4767. **THE CHAIRPERSON:** So you'll have some oral reply ---

4768. **DR. WIER:** Yes.

4769. **THE CHAIRPERSON:** --- to comments that were made after yours?

4770. Thank you, Dr. Wier.

4771. Council of the Haida Nation...?

--- (No response/Aucune réponse)

4772. **THE CHAIRPERSON:** Cenovus Energy Inc., INPEX Canada Ltd.,  
Nexen Inc., Suncor Energy Marketing Inc., and Total E&P Canada Ltd. ...?

--- (No response/Aucune réponse)

**Opening remarks  
Chairperson**

4773.           **THE CHAIRPERSON:** Canadian Association of Petroleum Producers...?
4774.           **MR. BERGNER:** Good morning, Madam Chair. It's Keith Bergner. We'll be listening in. However, I have no oral reply submissions today.
4775.           **THE CHAIRPERSON:** Thank you, Mr. Bergner.
4776.           C.J. Peter Associates Engineering...?
4777.           **MR. PETER:** Good morning, Madam Chair. Chris Peter here for C.J. Peter Associates Engineering, we will be making some brief oral reply.
4778.           **THE CHAIRPERSON:** Thank you, Mr. Peter.
4779.           Province of British Columbia...?
4780.           **MR. JONES:** Thank you, Madam Chair. We're here in the room and we'll be likely making brief reply, depending on what my friends have to say. It will be less than five minutes.
4781.           **THE CHAIRPERSON:** So we'll call you on the bottom up, Mr. Jones, at that point and you can decide at that point if you ---
4782.           **MR. JONES:** Yes, please.
4783.           **THE CHAIRPERSON:** Okay, thank you, Mr. Jones.
4784.           BC Nature and Nature Canada...?
4785.           **MR. HADDOCK:** Good morning, Madam Chair. It's Marc Haddock here. We will not be making any reply submissions.
4786.           **THE CHAIRPERSON:** Thank you, Mr. Haddock.
4787.           Alberta Federation of Labour...?
- (No response/Aucune réponse)



4788.           **THE CHAIRPERSON:** Alexander First Nation...?

--- (No response/Aucune réponse)

4789.           **THE CHAIRPERSON:** Coastal First Nations...?

4790.           Yes, Madam Chair, it's Art Sterritt here. We will be making a very short presentation.

4791.           **THE CHAIRPERSON:** Thank you, Mr. Sterritt.

4792.           **MS. O'DRISCOLL:** Forgive me, Madam Chair, Caroline O'Driscoll. I had my mute button on.

4793.           **THE CHAIRPERSON:** Oh, so ---

4794.           **MS. O'DRISCOLL:** Alexander First Nation is listening, but we are not submitting a bottom up argument.

4795.           **THE CHAIRPERSON:** Thank you, Ms. O'Driscoll.

4796.           Northern Gateway Pipelines Inc. ...?

4797.           **MR. NEUFELD:** Thank you, Madam Chair.

4798.           Yes, we will be providing some replies.

4799.           **THE CHAIRPERSON:** Thank you, Mr. Neufeld.

4800.           So let's proceed, then, and call first Heiltsuk Tribal Council.

4801.           Ms. Humchitt.

--- **REPLY BY/RÉPLIQUE PAR MS. HUMCHITT**

4802.           **MS. HUMCHITT:** Thank you, Madam Chair.

4803.           As stated earlier, you -- we can also provide a reply in regards to comments that were made after us which we are in support of and I just wanted to

- refer to the Kitimat Valley Naturalists who appeared after the Heiltsuk Tribal Council.
4804. I'm referring specifically to paragraphs 4092 to 4093, and that was Adobe page 59 from Mr. Horward and Thorne's presentation.
4805. In regards to their statements, specifically in regards to para 4093, I've not read or I've not seen nor heard any plans by the Northern Gateway to recover submerged dilbit. The Heiltsuk Tribal Council is in support of this statement that there should be some kind of more definite plans by Northern Gateway to recover submerged dilbit, as we are the Coastal First Nations who -- one of the Coastal First Nations who will be impacted by submerged dilbit in coastal waters.
4806. The second part would be paragraph 4096 in regards to Mr. Horwood and Thorne's reference to contained floating dilbit if it is spilled in the Kitimat River and their response was to provide bottled water.
4807. We are in support that it is an insufficient response and that this should be addressed.
4808. Lastly, paragraphs 4104 and 4105 in regards to Douglas Channel reference which they refer to, Mr. Horwood and Thorne, portraying -- referring to Northern Gateway's portraying of the -- of the route as being a quiet, trouble-free waterway, free of islands.
4809. And this in regards -- their reference to social licence, paragraph 4105:  
*"...should not be granted when a company continues to deny, contradict, show indifference and post misleading advertising to the public.*
4810. We are in support of that.
4811. On to Mr. Meuter, the North Coast Cetacean Society presentation right after the Heiltsuk, paragraph 4194 to 4196. This is in regards to the quantitative approach by Northern Gateway to conduct marine mammal surveys as part of the environmental assessment in which Northern Gateway disputes it did not collect adequate amounts of baseline data.
4812. We are in support that the -- that there was not enough baseline data

gathered as in paragraph 4196 on Adobe page 69:

*"For a research station that has the experience of thousands of whale monitoring days within the CCAA, we strongly disagree that the 10 marine mammal surveys (two aerial and 8 boat based) in five years can be seriously called thorough nor can they, [...] be rigorous."*

4813. We are in support that there was not enough whale monitoring done to make the statement.

4814. Also, I'd like to refer to paragraph from that same portion from the Cetacean Society, paragraph 4198 to 4203 in regards to -- we also support that there was not enough assessment done for the marine mammal protection plan to further reduce potential harm to marine mammals, so we are in support of the statements made in those paragraphs by Mr. Mueller of the Cetacean Society.

4815. There is also paragraphs 4204 and paragraph 4233 to paragraph 4243 on Adobe page 75, specifically referring to 4242:

*"Contrary to Northern Gateway, we submit that these are the true 'substance of all the oral statements and letters of comment'."*

4816. And the last statement, the JRP, the Panel, can accommodate the sense:

*"... by rejecting the evidentiary restraints listed by Northern Gateway and, instead, include the summary of such comments that is required under paragraph 9.1 of the JRP Agreement as a basis for the Panel's assessment of which of the consequences that might arise from this Project are the ones that matter."*

4817. In regards to having the full comments from the -- those statements and letters of comment.

4818. Give me a moment here.

--- (A short pause/Courte pause)

4819.           **MS. HUMCHITT:** Lastly, from the Office of the Wet'suwet'en, referring to paragraphs 4315 to paragraph 4318, in regards to the Wet'suwet'en's note where the Enbridge right-of-way intrudes on already disturbed and affected areas impacts on ecological goods and services are less than compared to undisturbed and unaffected areas.

4820.           The Heiltsuk are also in support of this in that the Heiltsuk Nation is also affected regardless if the intrusion goes upon already disturbed and affected areas of the Heiltsuk Nation.

4821.           And, specifically, in regards to the Wet'suwet'en argument, in 4316:

*"This assumption, in effect, treats Aboriginal people's territories as black boxes, ..."*

4822.           And they refer to what has been recognized by the Courts specific to the Wet'suwet'en.

4823.           This is also in support by the Heiltsuk Nation, as they referred to *Delgamuukw* in their argument and, likewise, the Heiltsuk has also referred to the recognition of the Courts to the Heiltsuk Nation by way of *R v. Gladstone*, the commercial right to fishery.

4824.           And in regards to, lastly, paragraphs 4317, 4318, specifically, the:

*"...Wet'suwet'en houses living with significant disturbances to their particular house territories may well experience the addition of the impacts of Enbridge's right-of-way even more keenly in regard to their ecological goods and services."*

4825.           While we don't have a house system like the Wet'suwet'en, we are in support of their statement in recognition that there will be a lot of impacts to Chiefs, territories and in regards to the impact on Heiltsuk traditional territory.

4826.           And that concludes bottom up oral argument for the Heiltsuk Nation.

4827.           Thank you.

4828.           **THE CHAIRPERSON:** Thank you very much, Ms. Humchitt.

4829.           The Panel has no questions.

4830.           We'll call, next, the Haisla Nation, please.

--- **REPLY BY/RÉPLIQUE PAR MS. GRIFFITH:**

4831.           **MS. GRIFFITH:** Yes, thank you, Madam Chair.

4832.           Good morning, Madam Chair and Panel Members.

4833.           In its oral reply argument, the Sherwood Park Fishing Game Association, at Transcript Volume 179, line 4423, acknowledged that it is critical that Canada: ...

*"...comes to term..." with "...outstanding Aboriginal challenges but..."*

4834.           stated that:

*"...holding a particular project hostage until such complicated and perplexing long-term issues are resolved is fundamentally unfair."*

4835.           With all due respect, this portrays a basic misunderstanding of Aboriginal rights and Aboriginal title and the duty to consult. It is precisely because of the complicated issues associated with unresolved Aboriginal rights and Aboriginal title claims and the long-term and often irreversible impact of government decisions on these constitutionally protected rights that the impact of this Project on Aboriginal rights and title must be considered.

4836.           The Haisla Nation's participation in this review is not about holding a particular project hostage, it is about assessing the impacts of the Northern Gateway Project on the environment and on Haisla Nation Aboriginal rights and title and making sure that these impacts are properly understood and considered so that the Haisla Nation's Aboriginal rights and title are given their due constitutional protection.

4837. Thank you.

4838. **THE CHAIRPERSON:** Thank you, Ms. Griffith.

4839. The Panel has no questions.

4840. We'll call, next, Gitxaala Nation.

**--- REPLY BY/RÉPLIQUE PAR MS. KYLE:**

4841. **MS. KYLE:** Thank you, Madam Chair.

4842. The Gitxaala Nation wishes to respond briefly to comments made by the federal government in its oral submission.

4843. In his submission, Mr. Shaw stated that:

*"Canada is committed to [...] fully integrating Aboriginal consultations into environmental assessment and regulatory processes..."*

4844. for this Project.

4845. And this statement highlights Gitxaala's concern that Crown consultation cannot be effectively integrated into the environmental assessment process for this Project because that consultation is not going to take place until after the Panel makes its recommendations and issues its assessment report.

4846. As a result, the Panel will not be in a position to consider or comment on substantive Crown consultation in its environmental assessment report for the Project other than to note the complete lack of such consultation.

4847. In the Aboriginal consultation framework for the Northern Gateway Pipeline Project, Canada advised that what it is proposing to consult on is the Panel's Environmental Assessment Report.

4848. How can consultation be integrated into the environmental assessment process when that consultation is taking place after the Panel has issued its report and the JRP assessment process is over?

4849. To date, there has been no consultation between the Crown and Gitxaala on what Gitxaala rights are potentially affected by the Project; what the nature and effects of the potential impacts are; how effective mitigation measures might be; or how impacts might be accommodated.
4850. With respect to Mr. Shaw's statement at Transcript Volume 178, line 3147, that:
- "Canada has established participant funding programs to support Aboriginal groups in sharing information on potential impacts of [the] projects on proven or asserted Aboriginal and Treaty rights,..."*
4851. it's important to note that Gitxaala specifically advised CEAA on more than one occasion that grossly insufficient funding had been provided. Although some funding was provided, it was vastly inadequate to cover the significant costs required for Gitxaala to participate meaningfully in this process.
4852. In his submission, Mr. Shaw spent considerable time discussing various components from Canada's very recent announcement about tanker safety programs. Gitxaala is very concerned that several of the statements are not supported by evidence filed by Canada in these proceedings.
4853. At lines 3130 to 3132 of Volume 178, the comments made by Mr. Shaw are made in reliance on the evidence of Mr. Carruthers when he read in portions of Canada's media releases about its proposed tanker safety program. It is submitted that absolutely no weight should be given to these submissions that rely on Mr. Carruthers read-ins of Canada's media releases.
4854. The information read in by Mr. Carruthers was not Northern Gateway's evidence and so Mr. Carruthers was in no way capable of attesting to the accuracy of that information. It would be entirely inappropriate for the federal government to be able to rely on this information given that, when it attempted to file that same information directly, the JRP struck it from the Registry as being inadmissible.
4855. The federal government should not be permitted to rely on information it was not allowed to file on the JRP record and which was not presented by a witness who could attest to the accuracy of that information.

4856. Those are my submissions, Madam Chair.

4857. **THE CHAIRPERSON:** Thank you, Ms. Kyle.

4858. The Panel has no questions.

4859. The "Coalition".

**--- REPLY BY/RÉPLIQUE PAR MR. ROBINSON:**

4860. **MR. ROBINSON:** Yes, good morning, Madam Chair and Panel Members.

4861. I would just have a couple of items I'd like to comment on. First, I'll just start by saying the "Coalition" fully supports Ms. Kyle's comments on behalf of the Gitxaala with respect to the Government of Canada evidence that was presented at lines 3130 to 3132 of Volume 178.

4862. In a similar note, we also refer to lines 3118 to 3121 in that same Volume 178 where Mr. Shaw discussed a budget allocation with respect to increasing oil and gas pipeline inspections. He discussed a number of changes to annual audits and that sort of thing. These references raise two concerns very similar to the concerns just raised by Ms. Kyle.

4863. First, there's no reference of evidence to support these submissions. There appears to be new evidence, which the government is trying to put in through its oral argument.

4864. And in particular, in your Ruling A239-1, you rule that the "Coalition" could not question the Government of Canada with respect to budget cuts or staffing changes, except as raised in evidence by the Government of Canada and it would seem to be immensely unfair that at this late stage the Government of Canada would attempt to introduce evidence of budget changes and staffing changes with no opportunity for the "Coalition" or anyone else to question that evidence.

4865. So we would submit that you must ignore also the evidence that is at lines 3118 to 3121.



4866. Also, I wanted to cover another portion of the Government of Canada. This is line 3107. I apologize, Madam Chair, we're sort of juggling here. We're also out of our offices because of the flood, so we're working with limited technology right now.

4867. At 3107, the Government of Canada states:

*"...the government has taken broad based action under the Jobs, Growth and Long-Term Prosperity Act to strengthen the regulatory framework around resource development to meet [certain] goals."*

4868. Again, I don't believe the Act was ever put into evidence, but we also just wanted to clarify what the *Jobs, Growth and Long-Term Prosperity Act* actually did. It took the National Energy Board's decision-making power with respect to Certificates of Public Convenience and Necessity, under Section 52, and it transferred that power to Cabinet.

4869. It narrowed who may participate in public hearings with respect to a Certificate. It narrowed the scope of factors to be considered in Section 52 hearings. It set time limits for this type of hearing, and it gave the National Energy Board the power to issue a permit allowing the destruction of critical habitat of species at risk without reference to the Minister of Environment.

4870. Similar changes were made under the *Jobs, Growth and Long-Term Prosperity Act* to the *Canadian Environmental Assessment Act* and also proposed changes to the *Fisheries Act*.

4871. With respect other than the introduction of administrative monetary penalties, the "Coalition" does not see anything in the *Jobs, Growth and Long-Term Prosperity Act* that actually strengthens regulatory framework for pipeline projects.

4872. Finally, Madam Chair, I just wanted to refer to -- just for clarification of the record, this is the oral argument of MEG Energy, Volume 178, at lines 3372 to 3373.

4873. And, once again, if you could just hold while I bring that up?

4874. Thank you.

4875. At that point, counsel for MEG Energy says, and I'll just quote it:

*"I will have more to say on this later but we now see certain parties, like the AFL and CEP and the ForestEthics Coalition, seek to elevate the testimony that was given way back in Edmonton by witnesses such as Ms. Robyn Allan.*

*While these parties now seek to rely upon this testimony from Ms. Allan to support certain of their economic positions that they are advancing,..."*

4876. And he carries on from there.

4877. The clarification I just would like to make is -- is while the Coalition agrees with much of what was in Ms. Allan's written evidence and oral testimony, the Coalition did not reference at any point in its written evidence or oral testimony the evidence of Ms. Allan. So counsel for MEG Energy's submission on this is just simply incorrect.

4878. Those are the Coalition's submissions subject to any questions you may have.

4879. **THE CHAIRPERSON:** Thank you, Mr. Robinson. The Panel has no questions.

4880. **MR. ROBINSON:** Thank you.

4881. **THE CHAIRPERSON:** Douglas Channel Watch?

--- (A short pause/Courte pause)

--- **REPLY BY/RÉPLIQUE PAR MS. BROWN:**

4882. **MS. BROWN:** Good morning. It's been a rough weekend.

4883. I'd like to respond to a number of comments of the federal government's oral argument and I'll divide my time between discussing the validity of the proposed mitigation measures, additional studies required,

TERMPOL and Aboriginal consultation.

4884. From the argument given by the federal government, it's apparent that the federal government is an intervenor that does not have to adhere to the regulations of the JRP hearings.
4885. It has -- it has added mitigation measures to the response such as increase of monies, increased pipeline inspections, doubling audits. This is in response to the Auditor General's reports of the inability of the -- of various groups within the government that are -- that they -- sorry.
4886. This is in response to the Auditor General's reports of the inability, for example, of the NEB to do what they're required to do and criticisms of the government's limited oversight of projects in the development and operation.
4887. The designation of the Kitimat as a public port for navigational purpose is another mitigation that has been submitted to the JRP through unconventional means. If the JRP is to work within a fair, transparent process, these mitigation measures announced by the government outside the process should not be considered within the decision. For one, they are only proposed and have not been passed by Parliament and they -- and then enacted into legislation. For the time being, they are only rhetoric, with the government trying to buy social licence for the shipment of bitumen.
4888. The federal government indicated that the TERMPOL is satisfactory within the regulatory requirements and the Proponent would be expected to fully implement its commitments and attentions detailed within the TERMPOL submission. The government repeats in their final argument in line 3133 that:
- "...taking into account Northern Gateway's voluntary commitments, the TERMPOL review did not identify any regulatory concerns."* (As read)
4889. Now, I'm trying to understand this. Voluntary commitments cannot be regulated -- cannot be under regulatory control. From what has been stated, I think this means that all regulatory requirements are met by law and Enbridge follows through on marine commitments, but I'm not sure.
4890. As well, voluntary -- as well, the TERMPOL is voluntary and non-binding. So are the additional safety commitments -- sorry. As well, the

TERMPOL is voluntary and non-binding and so are the additional safety commitments proposed. Yet, a recommendation in the TERMPOL review document states that the -- that:

*“The Proponent should notify the relevant authorities if it wishes to alter any of the commitments, operation parameters or characteristics of the projects -- projects so that the authority can review the safety elements of the change.”* (As read)

4891. This was in TERMPOL review page 30.

4892. How can the marine portion of the Project be considered safe by Transport Canada and then have this particular caveat? How is the safety of the marine transport really determined? What is the authority of Transport Canada? Does it mean that if voluntary commitments are dropped by the -- that then the TERMPOL will have to be reviewed? Does it mean that the commitments are not met -- if the commitments aren't met that the marine portion should not be able to operate?

4893. But the marine portion was deemed safe by Transport Canada as it stood. How can it be a voluntary system and then have the regulatory say that if all the conditions are not met, it will then have to again be reviewed?

4894. Or does it mean that the commitments will be mandatory through legislation? Or does it mean that if the commitments are not necessary, it was only done to get social licence of the public at the time and then dropped?

4895. As a person of the public, this lack of clarity in terms of the rigour of the conditions is unsettling. If this Project proceeds, I would argue that the marine commitments of the Enbridge need to be regulated. Other marine projects are planned for this same area and the same safety rigour needs to be applied and regulated by the government.

4896. In line 3139, the federal government states that:

*“The government will conduct scientific research on diluted bitumen to enhance understanding of these substances and how they behave when spilled in the marine environment.”*

4897. This implies that the response -- that the response nature of bitumen is not known along with the response to a spill. Further to a panel -- further to that a panel, as stated in 3140, was created to review the marine spill preparedness and response and proposes -- and to propose new ways to bring Canada's system to a world-class status, however it still needs the research on bitumen to determine how it responds and is to be cleaned up. The government states in 3104 that:

*"Developments of resources must be done responsibly and in an environmentally sound and socially responsible manner."*  
(As read)

4898. As well, that determine must be based on an independent and thorough science-based review. Hopefully, the JRP is not the -- not the end of this review as the research from the JRP has only emphasized the gaps in the science.

4899. The government states that:

*"The cornerstone of our regulatory system is an independent review by qualified experts."* (As read)

4900. Hopefully, that review is open and transparent and accessible for review and questioning by the people of Canada.

4901. However, regarding the bitumen response and clean-up, I would argue that this needs to be known before the Project is approved, not afterwards. This again is the theme about, trust us, we can look after things, but from the federal government. Until science is known on such a critical factor of this, the Project should not be given approval.

4902. Regarding Aboriginal consultation, this outstanding issue needs to be sorted out. One of the federal government's arguments is that jobs, in line 3143:

*"...offers Aboriginal groups huge economic opportunity for investment and employment and that Canada is committed to support Aboriginal people in these resource development opportunities."* (As read)

4903. There has been a large emphasis on economic opportunities, but in contrast, there has been a strong statement by First Nation groups about the threat to culture. The question is, are Aboriginal jobs putting their culture on line -- on

- the line? It's a difficult question.
4904. First Nations in B.C. have a unique culture and they have not signed Treaties. The process of reconciliation and justice for First Nations -- for First Nations is in progress and, as a Canadian, I look forward to it continuing.
4905. The culture, as stated by First Nations, is at risk and it is an ethical and moral consideration, not an economic. If the Project if of job -- is for jobs for jobs, one could argue that it's okay, however it is about the loss of culture and it is a moral and ethical decision.
4906. The Panel and government will have to make this decision for Canadians. It is complex and there's no transparency in how you or the government will make this decision.
4907. As a populous, we need -- we need to be aware that we are at risk for continuing to perpetuate the old style of decision-making and further colonization and the extension of 19<sup>th</sup> century problem-solving into the 21<sup>st</sup> century.
4908. I would argue that there is no transparency and comprehensive process within the JRP to address these concerns. As a consequence, the decision should be denied.
4909. In closing, I would like to say that from the beginning, the JRP process -- sorry. From the beginning of the JRP process, I noted that there were two Proponents in this Project; Enbridge and the federal government. The federal government has taken the role of intervenor and has placed the government in a position of less scrutiny.
4910. It has not allowed us to look at the marine portion of the Project in what they have -- in what there is their responsibility. As a government, they've abused their status as intervenor ---
4911. **THE CHAIRPERSON:** Ms. Brown, I'm sorry but can you identify the portion of the oral argument to which you are responding? It sounds like you're presenting your position and views as opposed to replying to the oral argument that has come after yours.
4912. **MS. BROWN:** I think it came within the earlier part when the -- more of a summary right now.

4913.           **THE CHAIRPERSON:** Yes. And so what I'm hearing is your position and not a response to new information that has arisen after you provided your oral argument.

4914.           **MS. BROWN:** It's in regard to the mitigation measures that the federal government has placed, okay, so that they have ---

4915.           **THE CHAIRPERSON:** And so what we're not -- as I had mentioned before, we're not here at this portion to hear what your position is on things.

4916.           **MS. BROWN:** Okay.

4917.           **THE CHAIRPERSON:** It's what your reply is to oral argument that has come after yours.

4918.           **MS. BROWN:** So just in ending, I would argue that the government has abused their status as intervenor in adding new evidence and mitigation at their convenience. And I would argue that this has compromised the process and has not resulted in a fair -- fair one.

4919.           Thank you.

4920.           **THE CHAIRPERSON:** Thank you, Ms. Brown. The Panel has no questions.

4921.           **MS. BROWN:** Thank you.

4922.           **THE CHAIRPERSON:** Dr. Wier?

**--- REPLY BY/RÉPLIQUE PAR DR. WIER:**

4923.           **DR. WIER:** Good morning. Okay so I want to talk about what has been presented as increased tar sands production in the passive tense. Like production is increasing and I've been wondering how does this happen?

4924.           So we have the Alberta government, on line 2719, talking about, "...given forecasted production". Who are making those decision?

4925.           The funding participant themselves, on line 1421, they talked about, “expected increases in their oil production”.
4926.           When -- so it’s presented in a -- like it’s happening like the weather. No -- I don’t know if it’s good or bad weather but it’s happening. We just have to -- we’re witnessing this increasing of oil of production. I want to submit that it is the Government of Alberta and the federal government who are making those decisions.
4927.           They have increased oil production and the funding participant and others and Northern Gateway have made corporate decision. They have to increase production so I concur with the Coalition that: “Increased tar sands oil production depends on increased pipeline export capacity”.
4928.           And the Government of Canada, always in support of industry, on line 3098 -- I just concur: “...we’re running out of pipeline capacity in this decade.”
4929.           So I concur with the Coalition on line 2179 that: “...the Project [is] inducing or supporting increased western Canadian oil production...”
4930.           And it’s -- so what happen is first, the corporate interest with their supportive government, federal and Alberta, decided to increase tar sands production. It’s not increasing on its own; they made those decision.
4931.           Secondly, due to a poor handle of predictable changing conditions in the U.S., exports to Asia become their Plan B. British Columbia happens to be in the way for Plan B between Alberta and China, which brings us to the next topic. How to sell the Project to reluctant British Columbians? A simple way is it’s going to benefit all Canadians.
4932.           So the Edmonton Chamber of Commerce is really leading the charge. On line 2131:
- “...there has been great benefit to the economy of Canada and the well-being of the general population in Canada by the hydrocarbon industry and by the transportation of those hydrocarbons to market.”*
4933.           Line 2132:



*“The benefits have far outweighed the negative consequences for the hydrocarbon industry and for the hydrocarbon transportation industry.”*

4934. Well, it’s hard to give credibility to that argument. The purported, “great benefit to the economy of Canada and well-being of the general population”, where is it? It didn’t prevent unprecedented federal cutbacks, layoff, lowering of federal transfer payments, and plain downsizing. And in Alberta, 6 billion deficit and service cuts.

4935. The Edmonton Chamber of Commerce carries on in line 2134, stating that:

*“...this Project is really about economic prosperity, it’s about jobs, they had to put family, better healthcare, better schools, better roads.”*

4936. Is it really? How do they fit into their present purported prosperity from oil and gas industry, Alberta's ranking second highest in child poverty rate in Canada after B.C.? Am I okay? Which prosperity -- so, okay.

4937. **THE CHAIRPERSON:** Dr. Wier, this isn’t the opportunity to introduce new evidence. So we’re interested in strictly your reply to the arguments that have been made after yours.

4938. **DR. WIER:** Thank you.

4939. **THE CHAIRPERSON:** Thank you.

4940. **DR. WIER:** I felt I was sliding. I submit that most Canadians have not seen much benefit from the Alberta tar sands production. The second argument, to sell the Project to Canadian is if the Project is denied, dire consequences are predicted.

4941. So Northern Gateway is emphatic about it, economic catastrophe, CAPP as well. And if produce -- okay that’s an argument.

4942. **THE CHAIRPERSON:** Dr. Wier, that went ahead of you, as opposed to after you. So we’re only interested in your reply to the oral arguments that followed yours, not before yours.

4943. **DR. WIER:** So the Government of Alberta, 2709:

*“Accordingly, we submit that the Northern Gateway netbacks don’t just benefit a handful of producers, they benefit all Canadians.”*

4944. The Edmonton Chamber of Commerce, line 2130:

*“So, the Chamber feels strongly that this Project will benefit the vast majority of Canadians.”*

4945. Line 2137:

*“...the prime theme of this Project is really improving the standard of living of Canadians.”*

4946. Really? I contend the producers and those -- okay. So I disagree with this. The 8 percent contribution of the energy sector to the GDP has some significance but only 1 percent of the Canadian workers are employed in the fossil fuel extraction and production. [CCPA] So this argument doesn’t hold.

4947. The Project's powerful corporate supporters attempt to pit Canadians against Canadians using the timeless fear-mongering tactic detracting from whom the real beneficiaries of the proposal, which are themselves.

4948. I support the Alberta Federation of Labour position that it is a private pipeline.

4949. **THE CHAIRPERSON:** Dr. Wier, again, that came before you, not afterwards.

4950. **DR. WIER:** Oh, did it?

4951. **THE CHAIRPERSON:** Yes.

4952. **DR. WIER:** Okay. Then I am going to follow on the Government of Canada belief, assumption, propaganda, I could say, position that the federal government claims to have strengthened the regular -- regulatory framework around resource development. [Government of Canada Final Oral Argument

Line 3107]

4953. And I think Barry Robinson for the Coalition explained that very well that it's not strengthened, it's weakened significantly. So no need to repeat what he said. I totally support that.

4954. I submit that the JRP must look at the proposed Project in a context of weakened environmental protection legislation and cutbacks to regulating bodies.

4955. The second part of the Government of Canada, the mythical strict rules and regulations are not unfounded. On line 3111, the Government of Canada says:

*"Companies operating interprovincial and international pipelines in Canada are required to follow strict rules and regulations."*

4956. We've heard that so many times.

*"Pipelines and equipment must meet Canadian Standard Association specifications which themselves are considered amongst the most stringent in the world."*

4957. Well, as Chris Peter and Associates have shown for this proposal, the supposedly strict CSA standards for steel for the pipeline are kept confidential, so there is no oversight for asserting they are. There is no basis for the assertion that the Project is meeting the most stringent in the world CSA standards for steel.

4958. I slipped again? Okay, thank you.

4959. **THE CHAIRPERSON:** Again, Dr. Wier, C.J. Peter Associates Engineering spoke before you did, and so you had the opportunity to support their argument when you gave your oral argument.

4960. **DR. WIER:** Okay, thank -- yeah, but that's in response to the Government of Canada saying there will be strict regulations, so I support what Chris Peter and Associates said.

4961. Now, the Government of Canada carries on. Reviews, audits and inspections by the federal agencies will ensure safety is maintained .

4962. The Government of Canada on line 3112:

*"Safety, integrity and emergency response programs specific to each company's infrastructure are regularly reviewed and audited by the NEB."*

4963. Line 3118, they are going to increase the number of oil and gas pipeline inspections by 50 percent annually.

4964. Line 3119, it also proposes to double the number of audits and so on.

4965. Line 3121, it is expected that this regulation will be published. They are not published. This is a promise.

4966. So as noted before by several intervenors, this doesn't belong to evidence of the Government of Canada.

4967. It is of note that those regulations have not been published. And if you want to -- if you tell us you are going to inspect -- to increase your inspection by 50 percent, it's a sad statement about how badly they are needed.

4968. And also, I'm wondering if the Government of Canada ever reads the Commissioner on the Environment and Sustainable Development Report, which was very instructive about the lack of capacity for the NEB and Environment Canada and it doesn't support the strict rules and regulation. And that was presented in my evidence.

4969. **THE CHAIRPERSON:** Yes, that's already on the record, and so that's not new information that you need to reply to at this point.

4970. **DR. WIER:** Okay.

4971. So regarding the spill response, the Government of Canada on -- doesn't hesitate to assert, 3134:

*"Canada is well prepared for and is ready to respond to oil spills from ships in Canadian waters."*

4972. And they contradict themselves shortly on line 3139:

*"The government will conduct scientific research on diluted bitumen to enhance understanding of these substances and how they behave when spilled in the marine environment."*

4973. Well, you can't have it both ways. You cannot say we have -- we know how to do it but we don't know -- we don't know its fate and behaviour.

4974. So the -- and the same was mentioned by the report on the -- of the Commissioner on the Environment. That's on the record, that Transport Canada doesn't have proper capacity to -- and doesn't do an adequate job to review emergency response assistance plans.

4975. So I encourage the Panel to give very significant weight to the admitted lack of knowledge on the fate and behaviour of dilbit in aquatic environment which impedes proper risk assessment and effectiveness of proposed mitigation measures.

4976. When it comes to moratorium, the Government of Canada, line 3124:

*"There is no tanker ban on the west coast, nor has there ever been."*

4977. I would like -- I submitted evidence on the moratorium in my argument from transcript, [D217-64 p.23 line 22] and I encourage the JRP to not accept the Government of Canada assertion of the absence of a tanker moratorium on the West Coast for tankers at face value.

4978. The effect on Canadian pricing to -- of oil to Canadians.

4979. I take issue with the Alberta government's statement in line 2721:

*"...no party here has registered concerns to suggest that the approval of Gateway will mean it cannot access adequate and competitively priced feedstock needed for either ongoing operations or future expansions."*

4980. It ignores the evidence that many, including myself in my final arguments [D217-64 p.3 Line 64], brought forward on the effects of increased price to Canadian refineries.

4981. World priced market for oil impedes Canadians to access their own resources and add values to them. Treating Canada as a “colony” from where resources are extracted raw and exported elsewhere where the real profits are made is a time long failure for Canadians.
4982. Alexander MacKenzie dreamt of bringing Canadian furs to China from the same area where the tar sands are being mined. His vision never materialized, but it planted the seed of this pipeline to reach the China "riches".
4983. In conclusion, the final arguments showed nine interventions in support of the Project, all from Alberta, while 25 opposed it, all being from British Columbia.
4984. Those in support talked about the benefits from the Project, mostly to themselves. Those who oppose it are asked to take the risks without being offered much benefits from the Project.
4985. The imbalance of risks/benefits, Alberta/British Columbia, is very clear. There are no reasons for British Columbians to be held hostage to corporate development decisions in Alberta.
4986. I submit again the Project should not be recommended for approval.
4987. **THE CHAIRPERSON:** Thank you, Dr. Wier.
4988. The Panel has no questions.
4989. C.J. Peter Associates Engineering.

**--- REPLY BY/RÉPLIQUE PAR MR. PETER**

4990. **MR. PETER:** Madam Chair, Member Bateman, Member Matthews, thank you for the opportunity to appear before you again.
4991. We wish to first address the proposed Conditions 7 and 8 brought up by Mr. Neufeld in Northern Gateway's comments at the close of the hearing last Friday, Volume 179, lines 4629 to 4630, which would require that Northern Gateway use a three-layer composite coating or a high-performance composite coating for the entire pipeline.

4992. This has been mentioned by both the Coalition and the Government of Canada since our oral argument.
4993. Now, Dr. Kerr spoke about this condition during our final oral argument. *[Transcript, Vol 177, June 18, 2013, lines 1189-1201]* and noted that Northern Gateway wants to “consult with manufacturers” about this, but also would like to have the right to make the final decision.
4994. He quoted a paper in which Northern Gateway itself had filed *[Exhibit B109-25 at 9]* showing not only that Fusion Bonded Epoxy is inferior in properties, but in the long term, multicomponent coatings are cost effective since they require fewer repairs.
4995. Support for the Conditions 7 and 8 was provided by the Coalition. *[Transcript, Vol 177, June 18, 2013, lines 2298-2303]* They also quoted the evidence of Dr. Bill Santos of Natural Resources Canada, *[Transcript, Vol 110, Nov 28, 2012, lines 7561-7580]* who stated that the multilayer coatings would increase pipeline integrity and safety.
4996. The Coalition also noted that, while Northern Gateway claims to be world class, they are retreating to economic arguments.
4997. Mr. Shaw, in testifying for the Government of Canada, and thus for Natural Resources Canada, stated at Volume 178, lines 3151 to 3155:
- “NRCan’s final written argument did not object to the requirement for multi-layer composite coating for the entirety of the pipeline on a technical basis. Northern Gateway’s rationale for objecting appears to be primarily economic.”*
4998. This economic argument appeared to be supported by Mr. Neufeld last week when he spoke about this condition being a “very, very high ticket item”. *[Transcript, Vol 179, June 20, 2013, lines 4629-4630]*
4999. The matter of coatings was, of course, discussed during the hearings. In particular, the cost was asked about on October the 15<sup>th</sup>, 2012. *[Transcript, Vol. 90, Oct 15, 2012, lines 4629-4630]*
5000. Since this appears to be such an important point of discussion, with

your permission, I quote the following very brief exchange between Erminskin and Samson Cree Nations and Northern Gateway:

*"11257. MR. JEERAKATHIL: And is there a capital -- a significant capital cost difference between the single coating of the fusion bond epoxy and the three layer system coating?"*

*11258. MR. TOM FIDDLER: There is. But to put it in perspective, it is inconsequential to the decisions. It is really around the cathodic protection system and preserving the integrity of the initial coating as we put it into -- put the pipeline into place during construction."*

5001. Now, this is not a time to discuss the various cost factors involved with the pipeline. However, here we have direct evidence, from the Enbridge executive in charge of Operations, that what Mr. Neufeld in his oral evidence claims to be a "very, very high ticket item" is instead regarded by their man on the ground, with years of actual pipeline experience, to have a cost which is "inconsequential to the decisions".

5002. Who, within this large company, with the goal of being regarded as a world-class pipeline company, are we to believe at this late date in the hearings? The lawyer, who, with all due respect, is trying his best to defend the company and reduce the cost of the pipeline or the Enbridge employee with years of experience who appears to have intimate knowledge of the real cost if they change it from fusion bonded epoxy to multilayer coating?

5003. Enbridge has been described by many intervenors as only being worried about profit. Ms. Fong, for example at Transcript Volume 178, line 3527, described Enbridge as having a "financially-centred perspective". [*Transcripts, Vol 178, June 20, 2013, line 3527*]

5004. Mr. Neufeld's argument, with all due respect, perfectly illustrates this characterization. Clearly the description of the suggested condition for the coatings as being a "very, very high ticket item" is, to say the least, an exaggeration.

5005. I would like now to briefly address the issue of toughness. Madam Chair, you will recall that Dr. Kerr spoke to Conditions 31 and 32 in our oral final argument. He argued that the use of Category I pipe for most of the pipeline was



not good enough. He suggested that tougher pipe be required, as in the U.S. ---

5006.           **THE CHAIRPERSON:** Mr. Peter, there's no need to repeat what you've already said in your argument. If you could get straight to the reply of other arguments that followed you, it would be helpful.

5007.           **MR. PETER:** In the argument that followed us, Mr. Robinson of the Coalition supported Dr. Kerr. *[Transcripts, Vol 177, June 18, 2013, line 2305]*

5008.           However, at the lunch break that day, Mr. Doering met with several members of the press, and told them that Enbridge is now proposing to use "Category III" pipe. *[Prince George Citizen, June 18, 2013]*

5009.           The report in the Prince George Citizen stated as follows -- and this happened after we had given our oral argument:

*"Although the Canadian regulations allow for category-one pipe, Doering said Northern Gateway is planning to use category three for most of the route."*

5010.           Now, as the Panel is well aware, Northern Gateway has until now stated that they plan to use Category I pipe for most of the pipeline. Since there are no toughness requirements for Category I pipe, we have been pressing for tougher pipe. Category III pipe was not discussed in any detail during the hearings, since Northern Gateway had at no time said they would use it.

5011.           We have tried very hard to get Northern Gateway to reveal their pipe specifications. You may recall that the lack of any reference to Category II pipe was noted in the highly redacted version of pipe specifications revealed to the public.

5012.           Headings were included for Category III pipe, but Northern Gateway refused to answer the question about whether this meant they would only use only Category I and Category III pipe. *[Transcripts, Vol 87, Oct 11, 2012, lines 7067-7095]*

5013.           In that discussion it was shown that Category III pipe is inferior to Category II pipe, since it only requires about half of the energy in a Charpy-V test of Category II pipe. Of course, this raises many questions. Among them are: What can we believe of the thousands of things that Northern Gateway has said in

- these hearings? Can they simply change their mind about an important aspect after everyone has had their chance to ask questions? If so, why hold the hearings?
5014. More importantly, we see this hallway conversation as a way to manipulate public opinion, to try to reassure the public that the pipeline will be safe, while avoiding any opportunity for their evidence to be tested during the hearings.
5015. Would a trial lawyer be allowed to make his case to the press while not presenting the same case in court, where whatever he says can actually be fairly judged?
5016. As with many aspects, such behaviour does not allow us to really trust anything Northern Gateway says.
5017. Besides toughness values, there is another important difference between Categories II and III, which Mr Doering alluded to in talking to the press. He ---
5018. **THE CHAIRPERSON:** Again, Mr. Peter, the Panel will consider what's on the record. And as you know, the evidentiary record is closed and so this isn't the appropriate time to be bringing new evidence.
5019. **MR. PETER:** We understand that there is a due process here and we respect that process, Madam Chair. But is it not a permissible observation that when Northern Gateway started using and issuing design revisions in the press, after relevant intervenor argument had been completed, that they compromised their right to follow -- those intervenors following due process?
5020. **THE CHAIRPERSON:** Again, the Panel will only consider what's on the record. And so the Panel will not consider anything that's -- that's not on the record. And so what I believe you're describing is something that you may have read in the paper that is not on the record.
5021. **MR. PETER:** It is not on the record but it is evidence that has been -- it is -- it is in the -- it is known to all members of the public since it was recorded on Friday.
5022. **THE CHAIRPERSON:** But it's not on the record and it's not been

- tested.
5023.           **MR. PETER:** All right, well what -- what our fear is, is that in -- there are certain conditions that have to be met in testing, there are certain notch toughness tests that may or may not be possible on Category II pipe.
5024.           For instance, Category II pipe have a wall thickness that is being proposed by Northern Gateway. For instance, the drop weight tear test may not be able to be performed by the manufacturer on pipe with a wall as thick as 19 to 22 millimetres. And if there are certain conditions that are difficult to meet with thick walled pipe, is it possible that Northern Gateway will not actually be able to buy thick walled Category II pipe for any section of the pipe?
5025.           In other words, are they now suggesting that their application, in which they stated over and over, that they will use Category II pipe in difficult more demanding areas, is no longer valid? There's an important Category II notch toughness test cannot be met. Is the proposal -- in the proposal Mr. Doering is now suggesting to use Category III pipe, is that to replace Category I pipe or to replace Category II pipe?
5026.           Do they not realize, when they decided to increase the wall thickness, that Category II pipe has conditions which are more difficult for thicker wall pipe?
5027.           This leads to some troubling questions. What type of pipe will they use? Do the engineers who design the pipe system, doing stress calculations to determine pipe wall thickness, understand the implications of thicker pipe walls? Is this a world-class company, which apparently is only now realizing that they may have a toughness problem in satisfying the demands of Category II?
5028.           Do you expect us to trust them when they apparently are making a last minute change to the type of pipe to be used; are not sure if they can pass the toughness test for Category II pipe; are not revealing what pipe specifications they are using; and can simply change their application after the time when the public can ask questions?
5029.           I would now like to turn briefly to marine spills and insurance as discussed in the Gitga'at Nation oral argument, Volume 178, lines 3025 to 3028.
5030.           The Gitga'at Nation has shown us that the payment and responsibility

for tanker spills and the resulting clean-up costs has not been adequately dealt with by Northern Gateway or the Panel.

5031.           The oral argument of Mr. Hill and Mr. Ross is compelling enough to bear paraphrasing:

*“The Proponent has also clearly stated that it will not be liable for any damages for a marine oil spill. As set out in the Proponent's final argument, the individual shippers and their insurance will be the ones responsible, and it is on this basis that we are asked to believe that the compensation for a spill will be adequately dealt with. Yet to date, we still do not know even who the shippers are in this process and which compensation will occur, given the fact that some shippers have already entered into agreements with the Proponent and, according to the Proponent, have contributed a large amount of money to the cost of the Application and review process, we do not understand why liability cannot be allocated prior to moving forward with this process.”*

5032.           **THE CHAIRPERSON:** Mr. Peter, again, I would remind you this is not the time to present -- or re-present your position of argument. It's the time to reply to comments that have come up after your submission. So re-stating your arguments or presenting your position is not appropriate at this time.

5033.           **MR. PETER:** That was not our position. That was a paraphrase of the Gitga'at oral argument which was delivered after we had made our presentation.

5034.           And we agree and support that argument.

5035.           However, the Gitga'at then made a statement with which we take exception because then the Gitga'at say:

*“Alternatively, it should be a condition that the Proponent have a clear system of liability and compensation, which has been reviewed and accepted by the coastal groups affected, in place prior to the approvals.”*

5036.           Unquote.

5037. Now, it's very important to realize that all of the testimony of Mr. Shaw for the Government of Canada at Volume 178, lines -- Volume 178, line 30138 fails to mention that the federal government's recently announced increase in liability for offshore spills to \$1 billion studiously avoids this key issue of liability for the type of marine oil spill most likely to occur in the Northern Gateway Project.
5038. Claims under the liability regime proposed by the federal government for the Northern Gateway would only apply to spills occurring during loading of tankers at the Kitimat Terminal. Mr. Shaw failed to mention this during the Government of Canada oral argument. *[Transcript Volume 178, Line 3138]*
5039. Thus, C.J. Peter's concerned engineers group believes that the way around this issue is to have you, the Panel, add a condition that forces all oil sellers to have their tankers show that they have insurance to cover the costs of a spill cleanup in the Confined Channel or Open Water Assessment Areas that will affect the B.C. coastline. If an upset figure needs to be given, then it should be \$10 billion and subject to appropriate inflationary cost index.
5040. Northern Gateway have already said that tankers will not be allowed that do not meet the SIREs inspection and building guidelines and other conditions. Showing proof of insurance should be added to the requirements for a tanker to birth and load or unload cargo at the Northern Gateway Kitimat Terminal.
5041. The insurance costs then can be added to the price of oil so that the consumer pays for its real costs and the insurance market decides on the risks of spills and the cleanup cost from its extensive database and decides on the cost to be charged per tanker. This should translate to the Canadian public not having to pay for tankers that are unable to pay.
5042. Ten billion was chosen by looking at the cost of cleanup for the BP spill in the Gulf of Mexico purported to be \$25 billion; plus the EVOS spill: \$5 billion; the Marshall spill: .8 billion and growing.
5043. Considering the difficulties of the area for cleanup like access, weather, time to get cleanup crews on site and the unknowns like dilbit sinking before surface cleanup can take place, the 10 billion upper limit is our best estimate.

5044. Some will say this is too high but it could also be argued that this figure is not high enough. Considering the Braer incident, referred to on the record in the '90s when the 340,000 ton vessel foundered on rocks and lost its entire cargo, if this happened today using Enbridge's optimistic estimates for marine spill cleanup of \$37,500 per barrel, this translates into a \$76 billion cleanup bill.
5045. If you approve the Northern Gateway project, we urge the Panel to include an insurance condition of at least \$10 billion and pass this requirement and cost to the shipping companies, thus reflecting the true cost of oil. This will also help reallocate the potential burden of paying for a cleanup from the Canadian taxpayer to the companies responsible for the safe transport of the oil.
5046. If this is done, we believe this will reward the good shippers who hire the good tankers and punish the less safe tankers and shippers. Such a condition will make the coast of B.C. safer.
5047. And in closing, I would just like to commend the resilience of the Panel and all the staff who have kept this hearing on schedule despite incredible setbacks.
5048. Please accept our gratitude and admiration.
5049. **THE CHAIRPERSON:** Thank you, Mr. Peter, for your comments and the Panel has no questions.
5050. Thank you.
5051. Province of British Columbia.
- REPLY BY/RÉPLIQUE PAR MR. JONES:**
5052. **MR. JONES:** Thank you, Madam Chair, members of the Panel. I'll be very brief.
5053. I just wanted to make some comments similar to those by my friends, Mr. Robinson and Ms. Kyle.

5054. The Province had some concerns about the statements made by the Government of Canada in its oral submissions, especially in light of ruling -- your Ruling 158, that is, Exhibit A351-1, in which the Panel did not direct the federal government to file information related to the tanker safety program.

5055. And the reason for our expressing concerns today is that, throughout this proceeding, the Province has wanted to ensure that the decision you make, the recommendations that you make are based on the evidence before you and not anything else. And by reference to that, that Ruling 158, the Panel noted that the federal government's tanker safety documents were general statements of intent and were, therefore, of limited use.

5056. Suffice it to say today that the Province is confident that you, the Panel, in light of that ruling, recognizes the limited weight that should be accorded to statements of intent regarding future actions. And echoing what Mr. Neufeld stated at the outset of his comments in oral argument, we will rely on the Panel to review the evidence cited in Canada's argument for the propositions Canada advances and to disregard those arguments not supported by the evidence.

5057. One other brief matter, I should mention that the Heiltsuk First Nation referred to the Province's position regarding Aboriginal rights and title in its argument and, in this regard, I would just refer the Panel to our argument, our written argument, and to our letter to the Panel dated December 17, 2012 -- that's D167-20.

5058. And then, lastly, we are in the midst of filing a letter today just with respect to some corrections to the transcript which has been filed.

5059. And with that, those are my final comments, subject to any questions you may have.

5060. **THE CHAIRPERSON:** Thank you, Mr. Jones.

5061. We have no questions.

5062. **MR. JONES:** Thank you. It's been a pleasure.

5063. **THE CHAIRPERSON:** Coastal First Nations.

**--- REPLY BY/RÉPLIQUE PAR MR. STERRITT:**

5064.           **MR. STERRITT:** Good morning, Madam Chair. It's Art Sterritt here.

5065.           I'm wondering, do you have any special instructions for me?

5066.           **THE CHAIRPERSON:** Mr. Sterritt, I have no special instructions for you specifically. The instructions that we've presented for all parties apply to all parties.

5067.           **MR. STERRITT:** I see. Okay.

5068.           With all due respect, Madam Chair, and may I -- because there are other First Nations on the line here, I'd like to perhaps address them.

5069.           (Speaks in Native language.) Good morning, Chiefs, Matriarchs.

5070.           Madam Chair, I take extreme exception to, especially the comment, you've shown that those whose lands, waters and air this Project proposes to desecrate must be addressed. I followed your instructions earlier on in the mistaken belief that these instructions would be followed by all presenters.

5071.           With regard, Madam Chair, the Alexander First Nation followed immediately after myself and no sooner had I finished when the one lonely Chief who expressed support proceeded to ignore all of your instructions with your apparent blessing as you did not interrupt him even once. You continued your disdain for opposers while embracing everyone who is paid by Enbridge to be here by continually interrupting legitimate discourse.

5072.           This was particularly evident when you interrupted the Heiltsuk, even as they tried to introduce themselves. This on the tail of insulting their Chiefs and community while making them wait while you decided whether or not you would even meet with them.

5073.           B.C. Nature spoke a bit about process and how far is a process that allows these types of interruptions on the heels of a Joint Review process rejections of motions by Coastal First Nations and others, which has resulted in a less than thorough assessment, thus resulting in no cumulative effects assessment of an LNG industry which is going to gobble up the last available air shed before



this Project even sees the light of day.

5074.           The last straw for me was your ruling to allow Enbridge three more days to respond to conditions I proposed to them weeks ago, Madam Chair. You pushed myself and all other opposition to stay on time. You denied others' request to adjust appearance times and then you rule without regard for the cost or inconvenience of others to allow Enbridge three full days to better prepare for closing.
5075.           To show you what? That one of the conditions proposed to reduce pipeline risk is too expensive for them, that equity agreements of 70 percent create First Nation's liability for spills.
5076.           I'd like to close, Madam Chair, with a few other comments about things that have been said during these closing remarks.
5077.           Madam Chair, Ms. Leggett, Mr. Bateman, Hans, use this time to attempt to claw back some of the dignity that has been lost by the federal government undercutting your decision-making power. Use your time deliberating your recommendations by reviewing what has really happened here. We have all witnessed an extreme abuse of power and wealth as manifested by the federal government and Enbridge's actions over the past few months.
5078.           Panellists, Ms. Leggett, Mr. Bateman and Mr. Matthews, you have witnessed democracy in action in British Columbia; a decision by the people for the people. Panellists, maintain your integrity, join with British Columbians in rejecting this Project.
5079.           If the federal government abuses their power by ruling in favour of wealth for a few multi-national corporations, we will teach them a lesson in democracy they will not soon forget, for British Columbians hold one of the fundamental tenants of democracy, the referendum. The last politician to forget this and who became partners with the feds was quickly removed and I'm sure our Premier will remember this, as she contemplates B.C.'s next move.
5080.           (Speaking in native language), walk the good road, walk the good walk till we meet again.
5081.           Thank you to the Panel for all of your deliberations and all of your time. We leave you with respect.

5082.           **THE CHAIRPERSON:** Mr. Sterritt, the Panel has no questions of your presentation.

5083.           We do note that we were here to hear reply to arguments and many of your comments didn't seem to follow in that context but thank you for being present this morning.

5084.           **MR. STERRITT:** Thank you, Madam Chair. I prefer to characterize my comments as a summary of everything that we've heard over the last months.

5085.           **THE CHAIRPERSON:** That brings us to the end of the parties, with the exception of Northern Gateway Pipelines Inc.

5086.           Let's take our morning break now and come back at 10:40, please.

5087.           Thank you.

--- Upon recessing at 10:23 a.m./L'audience est suspendue à 10h23

--- Upon resuming at 10:40 a.m./L'audience est reprise à 10h40

5088.           **THE CHAIRPERSON:** Thank you very much, everyone.

5089.           We're ready to get underway again and call next Northern Gateway Pipelines Inc.

**--- REPLY BY/RÉPLIQUE PAR MR. NEUFELD:**

5090.           **MR. NEUFELD:** Thank you, Madam Chair and Members of the Panel.

5091.           It's been a long process and today I'm going to provide you with the final reply comments of Northern Gateway, and I'll conclude with one or two personal comments of gratitude to the parties involved in respect of this proceeding at the end.

5092.           I expect to take a little less than two hours to respond to the comments provided by the 25 opposing parties last week. And one of the reasons for the need to gather those comments together was to clearly tie it back to the oral comments that you heard last week that we will be doing. You will note from the

- comments themselves and more particularly with the references that we've provided in the script that I've given to the Court Reporter for inclusion in the transcript.
5093. In deciding what to say to you this morning, I considered two approaches. The first would have been to canvass each and every one of the 25 opposing submissions and tell you why we don't agree with those comments. Traversed seriatim is the legal term for that.
5094. The second would be to talk to you about some of the common themes that emerge from those oral comments. And I can say that both approaches have appeal. The first is thorough and detailed. The second has appeal because I can talk to you on a principled basis about some comments that matter.
5095. And as you might have surmised, my preference is for some principled discussions about concepts that matter.
5096. In providing my final reply comments, I'll address you on four common or, to us, important themes that emerged from what you heard last week. Jobs and economic need is the first. The second, which I think is particularly appropriate, given what you just heard before the break, is some general discussion of the concept of respect.
5097. The third is some comments around the need for science and good science. And finally, I want to talk about balance and the public interest because that was a theme that we heard in a number of the comments that you heard last week.
5098. Before addressing those themes, I do want to say that we noted -- I noted in my opening reply last week that there was a need to have appropriate references to the evidence in the written argument, and I referred you to the nearly 2,000 footnotes that we had provided in ours. [*Transcript Volume 176, Paragraph 49*]
5099. There should have been one more, at least. Mr. Tollefson referred to our written argument where we had spoken about Prince William Sound having returned to good health. [*Transcript Volume 176, Paragraph 938*] This was an important point, and I agree with him it should have had references.
5100. Those references can now be found in the copy of this reply argument

that I've provided to the Court Reporters. *[Transcript Volume 133, Paragraphs 593-600, 630-636, and 1334-1338; Volume 136, Paragraphs 5220-5226, 5237-5242, 5250-5257, 5279-5285, 5573-5595, 5726-5733, 5782-5789; Volume 137, Paragraphs 7163-7169, 7171-7179; Volume 141, Paragraphs 11994-11997, 12001-12003, 12037-12043; Volume 142, Paragraphs 13905-13909, 13911-13912, 13938-13948; Volume 144, Paragraphs 16682-16683; Volume 145, Paragraph 18192-18212]*

5101. Let's talk then first about jobs. The Alberta Federation of Labour suggested to you that there were only about 300 permanent jobs offered by the Northern Gateway Project. *[Transcript Volume 176, Paragraph 865]*
5102. They acknowledge that the Project will create construction jobs, but they describe these as being temporary, with the inference being that they're unimportant. *[Transcript Volume 176, Paragraphs 862-864]* Another speaker did the same. *[Transcript Volume 177, Paragraphs 1669-1671 (Dr. Wier)]*
5103. The evidence is that there are over 62,000 person years of these so-called "unimportant" jobs; *[Exhibit B3-16 at 99]* welders, pipefitters, engineers, labourers, camp caterers, drivers, environmental inspectors, Aboriginal liaison people and so on.
5104. It was surprising and, I suggest, a bit disappointing to hear a labour organization and a Member of Parliament speak in such terms in dismissing the importance of those jobs. You know, it's easy to say that in a hearing room, but I expect that no one would dare tell that to a construction crew finishing up a 12-hour shift in winter construction. You wouldn't tell them that they didn't have a job or that they weren't employed or that their job wasn't important.
5105. Northern Gateway has received approximately 2,100 résumés from people across Canada looking for jobs. *[Exhibit B207-2 at 7. As of February 2013]*
5106. What would they think, at least the ones from Alberta, the Alberta Federation of Labour, brushing those jobs off as unimportant? I encourage you to have a look at the letter of comment that was filed by a member of the AFL-CIO in this proceeding. *[A2C5K8]* This person said that this Project is a, and I quote: "A game changer for construction workers in the coming years" and that it means, quote, "more than a few pay cheques to our members".

5107. Now, those of us who had participated in this hearing, Madam Chair, have all made personal sacrifices, as Councillor Hill talked about last week. So too do the workers who spend weeks at a time on construction jobs, away from their families. And when those workers come from communities with chronically high unemployment and all of the social ills that accompany that, those construction jobs do more than provide a pay cheque, we suggest.
5108. For them and the communities to which they return, they provide an injection of income, of enduring skills, and more than that, hope.
5109. Ms. Pennington spoke to you about her personal experience and her personal commitment to providing those opportunities and that hope to communities in Northern British Columbia, including some communities, I might say, whose leaders have appeared before you to express opposition to this Project. *[For example, see Transcript Volume 150, Paragraphs 24373, 24497-24499, 24571; Volume 151 at Paragraphs 24666-24674, 24702-24703, 24878-24880; Volume 155, Paragraphs 30471-30473, 30493-30496, 30863-30868]*
5110. She wasn't the only one that cares deeply about this. So too does somebody like Mr. Carruthers and for that matter, so do I. Jobs make a difference in peoples' lives, including construction jobs; something Northern Gateway sees in communities it visits, particularly in outlying communities, where many children are not finishing school and where we see high unemployment. *[Transcript Volume 77, Paragraphs 25554]* So you just can't brush that off as being unimportant in this country.
5111. Let's talk about economic need. Before leaving the AFL submission, I'm going to respond to suggestions made by Ms. Chahley that Northern Gateway has in some manner shifted its case in terms of the economic need for the pipeline.
5112. Now, most of their oral argument was replied to by CAPP, *[Transcript Volume 177, Paragraph 1303ff]* and others. *[Transcript Volume 177, Paragraph 1456ff; Transcript Volume 178, Paragraph 2690ff; Transcript Volume 178, Paragraph 3371ff]* There remain a couple of points that need to be made to set the record straight.
5113. The first relates to the reference to \$30 billion in lost revenue for Canadian oil producers and governments and the AFL's comments on the Economic Black Swan that I alluded to last Monday. *[Transcript Volume 176, Paragraphs*

726-752]

5114. Let's start with the lost revenue.

5115. AFL argued that Northern Gateway was and I quote:

*"...now appearing to reject the approach of their own experts that we spent so much time hearing from in September."*  
*[Transcript Volume 176, Paragraph 739]*

5116. Ms. Chahley then asked:

*"Why is [Northern Gateway] switching positions at this late stage ..."* *[Transcript Volume 176, Paragraph 749]*

5117. The answer is simple -- Northern Gateway has not switched its position. Its argument and the evidence of Mr. Carruthers regarding what would have occurred, had Northern Gateway been in operation during 2012 -- a look back -- is entirely consistent with the evidence of Mr. Earnest and Dr. Mansell.

5118. If you recall that Dr. Mansell had testified that the price lift had been used in his analysis was -- that the price lift that had been used in his analysis was not the most significant benefit for Northern Gateway or from Northern Gateway.

5119. He said, and I quote:

*"...perhaps the largest benefit would be the diversification benefit and the option value."* *[Transcript Volume 73, Paragraph 19663]*

5120. Mr. Earnest's evidence was entirely consistent with that.

5121. It was put to him as follows:

*"If [Northern Gateway] could estimate anything else in addition to the price uplift that you could measure for diversification of markets, we would have seen it."* *[Transcript Volume 77, Paragraph 24633]*

5122. That's what the proposition was.

5123. He disagreed completely with that. He said:

*"...what we did not attempt to explore is how high capacity access to Northeast Asia markets might act to reduce the price volatility in Western Canada. [Transcript Volume 77, Paragraph 24635]"*

5124. Now, the \$30 billion dollars that Mr. Carruthers referred to is a realistic estimate of the cost of that price volatility to Canadian producers in 2012. *[Transcript Volume 152, Paragraphs 26751-26755]*

5125. This evidence cannot be disregarded based on AFL's argument that it was based upon media reports and that it only came from Mr. Carruthers who they argued:

*"...is not an economist or an expert in economics." [Transcript Volume 176, Paragraph 731]"*

5126. Madam Chair, at this point, it would be tempting to comment on the expertise of those who testified by -- on behalf of AFL on economic matters, but that was canvassed and I'm not going to go back into that at this point. *[Transcript Volume 178, Paragraphs 3373-3375]*

5127. As of September of last year, the evidence was that Canadian crude had been selling at a discount of about \$31 for a number of months. *[Transcript Volume 73, Paragraphs 19522 to 19524]*

5128. We know from Wood Mackenzie's evidence that an \$8.00 discount of heavy crude alone results in foregone revenues in the range of \$8 to \$12 billion per year. *[Exhibit E8-6-4 at Adobe p. 9]*

5129. The estimate of \$30 billion -- of a \$30 billion loss in 2012 that could have been avoided is not only entirely consistent with the evidence of Mr. Earnest and Dr. Mansell, but the quantification is supported by the evidence of the more than \$30 barrel differential -- \$30 a barrel differential that persisted over much of 2012.

5130. Now, the other problem with the oral argument that you heard from Ms. Chahley is that it confused Northern Gateway's estimate of \$30 billion in

option value for 2012 with the argument concerning the cost of an economic Black Swan incident. *[Transcript Volume 176, Paragraph 751]*

5131.           The \$30 billion was a reliable estimate of the likely option value that could be realized as a result of reducing price volatility as I mentioned. Black Swans are not, however, likely or anticipated. That's why they're black not white. They are surprises that give rise to catastrophic losses.
5132.           As painful as a \$30 billion loss in revenues might be, Northern Gateway has not suggested that it was an -- an economic catastrophe of Black Swan proportions. The argument was rather that the \$30 billion in option value loss suffered in 2012 would be a drop in the bucket relative to an economic Black Swan. *[Transcript Volume 176, Paragraphs 220 to 223]*
5133.           The urgency of approval of this Application then is based on a realistic assessment of option value put forward by Mr. Carruthers and supported on the evidence. It was not based on an economic Black Swan.
5134.           So let's turn then to the question of respect.
5135.           One of the attributes of Canadians that gives me most pride is our politeness and the respect and tolerance that we show to others. When you think about it, that's a bit of an odd trait to take pride in as a country, but I don't believe that it's at all unusual. Recall that we started last week's discussions by extending an olive branch of sort, of politeness, for -- for this final argument phase and, for the rest of the week, almost everyone embraced and echoed those comments enthusiastically.
5136.           Now, it's easy to talk about respect and politeness but sometimes it is hard to dispense; not because we don't want to, but because sometimes we confuse the concept of respect with agreement with one's own ideas, with our own values, with sometimes even our own religion or spirituality.
5137.           At various times last week, you heard disagreements that Northern Gateway has with ideas or arguments advanced by others as being "disrespectful", so sometimes they were called "dismissive", "insulting" or "arrogant". I even heard from a couple of people back home who asked whether I really had to say last Monday that positions taken by counsel for intervenors were "wrong."
5138.           Well, yes, actually, I did, because they were.



5139. But, that doesn't mean that such comments are disrespectful or dismissive. In fact, I suggest to you that the opposite is the case. Listening carefully to an opposing opinion, or view, and disagreeing with it in a rational way is the best way to respect and honour that opinion. I'm going to get into that in a little while.

5140. Mr. Robinson went on at some length to wrap his organization in the flag of the oral comment presenters, as did the politician who phoned in. They suggested that by critically analyzing, and refuting the common arguments presented in the oral comment sessions, Northern Gateway was in some fashion disrespecting those views. [*Transcript Volume 177, Paragraphs 2340-2341; Volume 179, Paragraphs 4525-4526*] And I say to you that that's simply not so.

5141. What Northern Gateway was doing there was exactly what you three Panel members are going to have to do over the ensuing few months with the assistance of your staff. It was trying very hard to take a large body of comments that were made and distill them into their common elements and then to assess whether the facts and the expert opinions evidence presented in this proceeding supported those positions.

5142. There is no disrespect there. On the contrary, I suggest that you acknowledge and you really honour the hard work that was put in by so many people by taking the time to assess the comments on their merits rather than simply total up people and opposition versus support and so forth.

5143. So if, for example, presenters hold the common opinion that the Douglas Channel has treacherous weather and navigability issues, you show respect to that opinion when you consider that view seriously and against the hard evidence, the meteorological data that's been presented for the Channel, the findings of the TERMPOLE review and the expert evidence that you heard from people like Captain Wood, people -- and other members of the Shipping and Navigation Panel; and you do that before accepting or rejecting it. That -- that's respect.

5144. If a common opinion is that diluted bitumen is corrosive, you respect that opinion by considering it against the evidence that the Panel heard from experts on that subject, and as against, for example, the corrosion history of a very analogous line which was Line 4 that was -- that was assessed by Enbridge -- and Northern Gateway rather. Again, that's not disrespectful. That's just looking at the views that are put forward and weighing it against what you know the

evidence to be and coming up with conclusions.

5145.           If you see that there's a pattern of misconceptions that emerge from that body of comment, it's not disrespectful or dismissive to ask yourself the question: How could so many bright and industrious, hard-working people reach those opinions if they are not supported by science and not supported by the evidence in the proceeding?
5146.           And the answer to that might be found, I suggest, in the fact that the internet is full of publications promoting ideas that are not supported by science and you saw some of that in this proceeding: Articles on corrosivity of bitumen in pipelines that are written by Washington lawyers. [*Exhibits D66-3-9, D66-3-10 and D66-3-11*] Articles on oil pipeline economics written by policy analysts who split their time between Calgary and Washington. [*Exhibits D66-3-3 and D66-3-4*] Articles on tanker trouble, double hulled tankers written by people who are described as "energy campaigners". [*Exhibits D66-22-8 and D122-7-1*] I never could figure out what that term meant. Is it for or is it against it? But they're campaigning on something.
5147.           Now, to point that out, to point out that these materials are on the public record in the sense of the internet and now some of them found their way on to your record, shows no disrespect to the people that may have relied on them.
5148.           Respect also extends to showing respect and courtesy to the positions, rights, and aspirations of opposing people and their cultures. I agree with Ms. Fong that the adversarial process can sometimes not be the best setting for that. [*Transcript Volume 178, Paragraph 3434*]
5149.           And I tell you that -- I can tell you that if from time to time the positions that have been advanced by Northern Gateway or myself have been perceived to be disrespectful to the rights and aspirations of peoples along the right-of-way or marine transportation routes, we apologize for that. It was never the intent of anyone to cause offence.
5150.           At the same time, I suggest that respect for the rights and aspirations of others is a two-way street. You remember on the phone, the people from the District of Fort St. James noted the courtesy and professionalism of Northern Gateway's representatives, and we really did appreciate those comments. [*Transcript Volume 178, Paragraphs 2448-2449*]

5151. Unfortunately, similar receptions were not always the case, including one or two of the communities who have complained the loudest about Northern Gateway's failure to fully engage them. It's difficult to do that when you are being asked to leave the island.
5152. Ms. Williams-Davidson said that Northern Gateway's engagement activities with the Haida involved little more than providing information about the Project and attempting to solicit information that Northern Gateway could use to propose measures to mitigate impacts. *[Transcript Volume 177, Paragraph 1532]*
5153. I'm not sure what's wrong with that, but it was still a strange comment to make given the strategy of disengagement that the Haida had employed from a very early stage. They weren't unresponsive to Northern Gateway. They actually told Northern Gateway's representatives that they weren't interested in meeting, and in no uncertain terms. This is well documented in the application and the updates. *[Exhibits B2-26 at 201-202 and B24-2 at 417-418]*
5154. So to proceed in the face of those clear directions would undoubtedly have been criticized and we would have received criticism from the Haida, and for good reason. So what the Project did was to listen, to respect that choice and to, in fact, leave the island. But it always left the door open for discussion if the Haida were interested.
5155. Now, of course, many Aboriginal groups did engage and many agreements were in fact reached. And I want to talk about that a little bit here.
5156. The evidence before the Panel is that, in Alberta, 15 of 18 Aboriginal groups along the right-of-way within the engagement corridor have agreed to accept equity ownership opportunities in the Project, and we'll be proceeding with negotiation of further benefits. *[Transcript Volume 155, Paragraph 30831]*
5157. The Project was not able to accommodate the Ermineskin and Samson bands that you heard from last week. They're beyond the engagement corridor, the ones that -- their communities are based -- their reserves are based down around the Hobbema area. It was also not prepared to agree to the economic demands of the Driftpile, who are also -- the community is beyond that engagement corridor, but they had initially been engaged as part of an earlier route iteration that had the pipeline further to the north than the one -- than the corridor that's currently proposed.

5158. But that's a fact of life; you're not going to be able to satisfy everyone. But 15 out of the 18 within the corridor did, in fact, reach engagement with Northern Gateway.
5159. In British Columbia, it was able to reach those agreements with one-half of the groups along the right-of-way, which we suggest is a remarkable achievement given the type of pressure we have seen exerted on those who would come out publicly in favour of this Project [*For example, see Transcript Volume 150, Paragraphs 24169-24171* and the types of comments that we've seen repeated and you heard repeated by opinion leaders such as the person who phoned in from Ottawa last week. [*For example, see Transcript Volume 179, Paragraph 4520*] Not to mention misinformation that's spread from time to time regarding the magnitude of benefits to Aboriginal equity owners.
5160. So while coastal groups have opposed the Project, most groups along the right-of-way do not. And that's a fact that's supported on the record of this proceeding. [*Transcript Volume 155, Paragraphs 30830 - 30833 and 30844 - 30851*]
5161. I want to say, though, that from the Project's perspective, there remains good reason for optimism that, with time, agreements may still be possible with coastal First Nations as well. Their concerns are understood about the potential for spills and the need for good spill response, but there's an enormous opportunity for employment, for training and benefits to be shared.
5162. So what is needed, going back to the respect theme, is to establish or perhaps re-establish a foundation of mutual respect. And clearly, that is a goal of the Project. Respect for each other, respect for the fact that while opposition and concerns exist in coastal communities, Aboriginal communities from B.C.'s coast to Edmonton all stand to benefit greatly from the Project.
5163. In his oral argument, Mr. Hill acknowledged, with appreciation, Northern Gateway's desire to develop a positive relationship with the Gitga'at and its recognition of their sincere concern about the Project. [*Transcript Volume 178, Paragraph 2922*]
5164. He followed this by saying as follows:

*"However, we are still waiting for the proponent to actually act on this statement and treat our concerns and our beliefs as*

*realistic." [Transcript Volume 178, Paragraph 2923]*

5165. In reply, I submit that the Project did exactly that. First, when the initial project description was provided back in 2005 -- you'll recall I addressed this last Monday -- the request was made that this Project be referred for a Joint Review Panel under the CEAA due, in large part, to the concerns such as those expressed by the Gitga'at.
5166. Regarding the Gitga'at concerns in particular, the evidence is that, at their request, funding was provided to negotiate a protocol agreement. *[Transcript Volume 163, Paragraphs 10434 to 10438]*
5167. The Project then spent over two years negotiating that agreement, through which it committed a further \$500,000 to fund work to address their beliefs and their concerns in this hearing process. *[Transcript Volume 163, Paragraphs 10475 to 10458]*
5168. Now, regrettably, the Gitga'at took some offence that Northern Gateway challenged the "science" behind the reports of their experts. And that was too bad. But it was clear from Mr. Hill's oral argument, which essentially equated the challenging of Gitga'at's experts as disregard for the sincerity of their beliefs and concerns which is simply not the case. *[Transcript Volume 178, Paragraph 2919-2920]*
5169. Now, Northern Gateway explained in its written argument its belief that the rescission of the protocol agreement with the Gitga'at was caused by the Gitga'at expert reports. *[Exhibit B226-2 at 256, Paragraph 889]*
5170. In his oral reply, Mr. Hill says this is, and I quote, "simply untrue". *[Transcript Volume 178, Paragraph 2918]*
5171. I would simply say that the understanding of the Project was based on the letter that was sent to it by the Hartley Bay Band Council explaining the reasons for rescission of the agreement, and that was the first one provided. This was fully canvassed in the questioning of Mr. Hill by Mr. Roth, and I will just commend the transcripts to you on that. *[Transcript Volume 163, Paragraphs 10463 to 10467]*
5172. The evidence also was -- the evidence of Dr. Gill was that the perception of the inevitability of an oil spill and its devastating effects on the

Gitga'at was attributed to the movie called the "Black Wave" that featured Riki Ott and documented Dr. Gill's opinions regarding the devastating consequence of oil spills. *[Transcript Volume 163, Paragraphs 10002 to 10042]*

5173. This evidence was clear and I suggest the overall conclusion to be reached is that the Gitga'at experts created a very loud echo chamber. Their concerns and beliefs, as testified to by their experts, were informed by watching the movie the "Black Wave", which had documented the opinions of Dr. Gill, who they then retained to assess their beliefs and perceptions regarding the inevitability of an oil spill and its devastating effects, so it was a bit circular. *[Transcript Volume 163, Paragraphs 10021 to 10026]*

5174. From a science-based perspective, there were a number of problems with the reports of those expert reports that were documented in our argument in-chief.

5175. The most egregious error and one that Mr. Hill addressed in his oral argument was use by the Gitga'at experts of the probability of a major oil spill as calculated by Dr. Chan.

5176. Mr. Hill argued and I quote:

*“As reflected in the actual expert reports, neither the social impacts nor the cultural impacts reported relied upon calculations by Dr. Gregory, Dr. Chan and, for her rebuttal, Dr. Satterfield stated this during her cross-examination by the proponent.” [Transcript Volume 178, Paragraph 2928.]*

5177. In fact, the references produced here do not support that argument. The evidence of Dr. Gregory, who retained Dr. Satterfield, could not have been clearer. *[Transcript Volume 165, Paragraphs 13801 to 13805; Exhibit D7-7-7 at Adobe p. 4.]*

5178. I would now like to turn and divert a little bit to the argument that was placed before you by Mr. Ross on behalf of the Gitga'at.

5179. He tried to argue that routine vessel operations are likely to have significant adverse effects on the Gitga'at. To support his argument, he broke environmental effects into two levels, as I understood it. The first level was effects on the environment and the second level was effects on the Gitga'at

economy and culture.

5180. Mr. Ross argued and I quote:

*“Subsection 5(1)(c) ...”*

5181. He’s referring to CEAA:

*“ ...allows that Enbridge's Project may introduce change into the biophysical environment which may not, in itself, be considered adverse, which may, nonetheless, cause an adverse effect on for instance, Gitga'at socio-economic conditions, cultural heritage and Gitga'at's current use of lands and resources for traditional purposes.” [Transcript Volume 178, Paragraph 2994.]*

5182. These were referred to by him as second-level effects, something that we found quite confusing.

5183. Virtually any activity could be said to affect the environment in the broad sense referred to by Mr. Ross. For example, vessel traffic causes wakes. There was a concern that wakes would cause adverse environmental effects on heritage resources and traditional harvesting.

5184. Northern Gateway performed a second wake study to address this concern raised by the Gitxaala and Gitga'at and others and that showed that these wakes could not cause the physical effects that were of concern to the Gitga'at.

5185. Now, what my friend Mr. Ross appeared then to be arguing last week was that waves are a physical effect on the environment and, even though they do not cause any adverse effect on the environment, the fact that the Gitga'at believe that they will, though contrary to the evidence, will have second-level effects.

5186. Now, with respect, that simply takes science out of the environmental assessment process and is not logical.

5187. Furthermore, the argument finds no support in the evidence of Dr. Satterfield herself. She testified that her report did not address impacts associated with routine operations. [Transcript Volume 163, Paragraphs 9766 to 9770 and 9827 to 9830.]

5188. Now, Mr. Gill's argument made it clear that they trust their experts -- Doctors Gill and Ritchie in particular -- and distrust influences, beliefs and concerns of the Gitga'at, which they ask Northern Gateway to treat as "realistic".
5189. The Project's questioning of the Gitga'at experts, Madam Chair, did not do anything to shake the Gitga'at's faith in them but, in the end result, it's this process based on science that has to determine what's "realistic" and what is not.
5190. Northern Gateway has done everything it can to address the concerns and beliefs and respond with good science, and to do that in a respectful way and I suggest that that's all anyone could ask it to do.
5191. So speaking of the need for good science, let me move on to that as the next theme.
5192. In oral argument, Mr. Robinson and others went on at some length regarding the need for additional data in order to predict environmental effects, and to assess the feasibility of mitigation measures. *[Transcript Volume 177, Paragraph 2188ff.]*
5193. In that context, he suggested that follow-up programs involving data-gathering could not be used as a substitute for collecting baseline data in the first instance during the environmental assessment. *[Transcript Volume 177, Paragraph 2242ff.]*
5194. He gave you a number of examples of what ForestEthics suggest are deficiencies in that regard, all of which, he says -- as I understood his argument -- make it impossible for you to reach the conclusions you need to reach in order to make "recommendations under the CEAA." *[Transcript Volume 177, Paragraphs 2262-2263.]*
5195. I'm going to go through a few of those to show why those arguments do not have merit.
5196. Let's start, first, with geohazard information. *[Transcript Volume 177, Paragraph 2207ff.]*
5197. Identification and management of geohazards is fundamentally an engineering exercise.



5198. Geohazard assessment informs route selection and pipeline design and, in the broadest sense, both can be considered environmental mitigation but, fundamentally, they are a matter of project engineering, in our submission.
5199. The significance of that is that the -- is that, at the environmental assessment stage, you need not have a door-to-door assessment of geohazards, or a kilometre-by-kilometre description of engineering measures to deal with them.
5200. Rather, what you need to know is that, as part of detailed engineering, this engineering issue like other aspects of detailed design can and will be taken into account and you don't need to simply trust people for that. As a regulator with the power to impose conditions, the Board can require evidence of that at the appropriate stage of the permitting process.
5201. Another argument regarding information insufficiency or a spin on that argument was provided by Ms. Griffiths for the Haisla. She referred to two statements -- or to statements in two documents, rather, the "Scope of Factors Guidance" document and the "NEB Filing Manual" which describe the type of fish and fish habitat information to be considered. *[Transcript Volume 178, Paragraphs 3249-3250.]*
5202. She went on to tell you that the Haisla had requested that information for the entire Kitimat Valley -- or Kitimat River watershed, and that information should have been provided. *[Transcript Volume 178, Paragraph 3251.]*
5203. In fact, -- and this is an important point -- Northern Gateway did collect detailed and site-specific fish and fish habitat information at each major watercourse crossing for which information was not already available on the published literature. *[Exhibit B11-1 and Transcript Volume 104, Paragraph 29541.]*
5204. This is standard practice and that included crossing locations along the Kitimat River Valley. *[Transcript Volume 147, Paragraphs 20419-20453.]*
5205. So what Northern Gateway did, not only was consistent with standard practice, but it actually conformed to the guidance provided in the documents to which Ms. Griffiths referred.
5206. Now, we acknowledge and have from the start -- and I think that this debate is something that you probably are tired of hearing about -- but we've

acknowledged that in terms of emergency preparedness, additional data within the watershed can be of assistance.

5207. Dr. Hodson identified some aspects of such a data collection program, and Northern Gateway has agreed to develop a Pipeline EEMP that will include such supplemental data gathering. *[Exhibits B46-39; B226-2, Paragraphs 464-473.]*
5208. But once again, as an environmental assessment panel, you don't need that data now to make predictions of effects, as there is no argument that a major spill into such a river system would have adverse effects, and that these could be significant, which is why they need to be prevented.
5209. The debate regarding adequacy of marine bird data also falls into this category. *[Transcript Volume 111, Paragraph 8482 and 8491; Transcript Volume 133, Paragraphs 1100 – 1103; Transcript Volume 133, Paragraph 1104.]* Based on reasonable pathways, as well as publicly available literature and surveys, it has been predicted that routine vessel operations would have very little impact.
5210. The evidence of Environment Canada and DFO all confirmed that the existing data is sufficient to confirm that, if a spill was to occur, there is a potential for significant adverse environmental effects. *[Transcript Volume 167, Paragraph 16485; Transcript Volume 167, Paragraph 16485; Transcript Volume 167, Paragraph 16493; Transcript Volume 167, Paragraph 16494, Transcript Volume 167, Paragraph 16545.]*
5211. They also confirmed that the follow-up programs proposed are consistent with a precautionary approach for dealing with uncertainty and managing effects through research, monitoring and adaptive management. *[Transcript Volume 167, Paragraph 16517; Transcript Volume 167, Paragraph 16523; Transcript Volume 167, Paragraphs 16526 – 16527.]*
5212. Future programs, such as those agreed to with Environment Canada, will serve to verify predictions in respect of predicted -- or routine operations but, as stated in our argument-in-chief, are primarily directed to emergency preparedness planning *[Exhibit B226-2, Paragraph 465; Paragraph 715]* so that if an accident was ever to occur, the information would serve to provide a basis for evaluation of incident-specific effects, and recovery, and more importantly specific response measures.

5213. But again, this is fundamentally a different process than assessment of Project effects, which involves prediction of effects, evaluation of mitigation and determination of significance. We don't need that information to determine whether a spill is likely, whether it would be adverse, and whether it would be significant, with or without mitigation.
5214. At a more general level, Mr. Robinson also laid out the proposition that follow-up programs under the *Canadian Environmental Assessment Act* have a limited purpose [*Transcript Volume 177, Paragraph 2204*] and I want to talk about that for a bit.
5215. He said that they cannot be used to predict Project effects or to develop mitigation measures.
5216. In fact, if you review the Act and if you review the Canadian Environmental Assessment Agency's Operational Policy Statement on follow-up programs, as is suggested you do under the Scope of Factors guidance document that Mr. Robinson referred you to, you'll see that ForestEthics conception of the role of follow-up programs is overly narrow.
5217. The Act defines follow-up programs as a program for: a) verifying the accuracy of the environmental assessment of a designated project; and b) determining the effectiveness of any mitigation measures.
5218. The policy statement is consistent with that but it's more descriptive. It indicates that follow-up programs can be used to modify or implement new measures where required, to support the implementation of adaptive management measures, to address previously unanticipated adverse environmental effects and to support environmental management systems used to manage the environmental effects.
5219. The statement makes it clear that follow-up programs can be used to verify the scientific knowledge used in the prediction of effects and to verify new or unproven techniques for mitigation. That's all there in the OPS that we're commended to read under the factors -- Scope of Factors guideline.
5220. What we suggest to you is that the various plans and programs committed to by Northern Gateway fit very well into the framework for follow-up and adaptive management that's contemplated under both of those -- both the

CEAA and this Operational Policy Statement.

5221.           So those programs don't render this environmental assessment "incomplete" or "insufficient." It simply makes it one -- they make it one that will be adaptable and enduring well into the future.
5222.           Mr. Robinson also argued that, without having the answers to all of the questions posed by ForestEthics, one cannot make the significance determinations required under the Act [*Transcript Volume 177, Line 2195, Transcript 177, Line 2197 – 2198*] and, again, we say to you that that argument cannot reasonably be supported.
5223.           From an environmental perspective, the essential question to be answered under the CEAA is one that incorporates a number of sub-elements; that is, whether the Project is likely to cause significant adverse environmental effects and, if so, whether those effects are justified in the circumstances.
5224.           Among other things, what that means is that you cannot assess significance in isolation. You cannot ignore, for example, the existence of mitigation program -- mitigation measures or follow-up programs. You cannot ignore the likelihood of an effect.
5225.           So, for example, the likelihood of an effect of a vessel on a particular species could depend on the likelihood of the species being present in the area at a specific time. Similarly, the likelihood of effects arising from an accident or malfunction would be a function, obviously, of the probability of an accident in any given area. So that's not to say that issues such as accidents and malfunctions can be ignored because they are unlikely.
5226.           Designing safety into a program -- into a -- safety into a project is the most effective way to avoid significant effects associated with accidents and many different scenarios in this case, you'll recall, were assessed to provide an understanding of consequences of spills of different sizes and different locations.
5227.           It was also suggested to you that the project has not discharged the onus of proof that vessels will not have significant adverse effects on marine mammals, and specifically whales. [*Transcript Volume 177, Paragraph 22*]
5228.           The suggestion seemed to be that a vessel strike analysis was needed now in order to predict whether vessel strikes are likely and, if so, whether whales

- are likely to be killed by such strikes. Now, Northern Gateway has agreed to undertake additional work in this area but we do suggest that allegations that vessel strikes will happen or, indeed, are likely to happen, are not supported on the current evidence.
5229.           If that was the case, one would expect that action would already have been taken in this area to control or reduce vessel speeds given that Northern Gateway will only be adding a very small percentage of traffic to the existing large vessel traffic in the Prince Rupert area and, indeed, a very small percentage of large vessel traffic in the Outside Passage. *[Transcript Volume 112, Paragraph 9207]*
5230.           We would also have heard evidence, both scientific and anecdotal, I suggest, of actual losses from vessel strikes but we didn't hear any of that.
5231.           In the meantime, with or without additional research, it's reasonable for the Panel to conclude that, if the measures are required in the area, vessels calling on the Northern Gateway Kitimat Terminal will comply in the same manner as all shipping.
5232.           The same goes for underwater noise. Northern Gateway has already committed to measures that will reduce potential acoustic effects, including lower speeds. *[Transcript Volume 116, Paragraphs 17016 and 17025]*
5233.           Now, last week, the Coastal First Nations suggested that lower speeds would make noise effects worse by prolonging presence of the vessel. *[Transcript Volume 176, Paragraph 410]*
5234.           In fact, as attested to by Ms. Ahrens and Mr. Hannay, acoustic modeling shows that the reduction of vessel speed from 15 knots to 9.6 knots decreased sound input by nearly 12 decibels and it also decreased the aerial extent of that factor by three times. *[Transcript Volume 116, Paragraphs 17026-17028]*
5235.           So while vessel -- a vessel may be in the area longer, the evidence shows that the area of the sonification means that a stationary whale would actually be exposed to sound level -- sound levels capable of causing potential behavioural disturbance for half as long. *[Transcript Volume 116, Paragraphs 17021-17028]*
5236.           Another example of suggesting scientific review for an issue that

remains in contention in this hearing concerns the fate and behaviour of diluted bitumen.

5237. Because of the heavy emphasis placed by the Gitxaala on the report by Dr. Short, [Transcript Volume 178, Paragraphs 2754 – 2793] I am going to spend a bit of time responding to those comments. You recall about half of the time taken by the Gitxaala in oral argument was spent on arguing whether dilbit sinks or floats.

5238. All of the issues -- of all the issues raised by the Gitxaala regarding Northern Gateway's Application, they characterized this as:

*“...the most critical issue raised in the proceedings.”*  
[Transcript Volume 178, Paragraph 2744]

5239. Now, much of the Gitxaala argument was spent on trying to defend Dr. Short's work on the susceptibility of diluted bitumen products to sinking in light of the problems revealed with Dr. Short's work during questioning of Dr. Hollebone.

5240. Surprisingly, the Gitxaala denied that Dr. Short had relied upon Dr. Hollebone's test data to calculate his coefficients of thermal expansion. In fact, Madam Chair, his report could not have been clearer on this. [Exhibit D72-80-2 at 5-6]

5241. In reference to the Environment Canada test data, Dr. Short states, and I quote:

*“...the results of these tests are clearly useful for calculating coefficients of thermal expansion for bitumen products.”*  
[Exhibit D72-80-2 at Adobe p. 6]

5242. That's what he said.

5243. The reason the Environment Canada data was so important for the purpose of calculating those coefficients was because Dr. Hollebone's data gave Dr. Short measured densities at two different temperatures. As Dr. Short explained later in his report, he didn't have similar data for the SL Ross testing of Cold Lake diluted bitumen.

5244. In this report, Dr. Short explained that problem as follows and I'll quote:

*“Calculation of the coefficient of thermal expansion requires density determinations at two or more different temperatures, but the data presented in the SL Ross (2012) give densities only for 20° C. However, the corresponding density at 15° C may be inferred from the authors' observation that the weathered bitumen was very close to neutrally buoyant toward the end of the test involving the UV lamp. This implies that the weathered bitumen density was nearly identical with the density of fresh water at 15° C (i.e. 999.10 kg/m<sup>3</sup>).” [Exhibit D72-80-2 at Adobe p. 8]*

5245. So based on a laboratory note, Dr. Short implied a density of -- at 15 degrees Celsius to within one 10,000<sup>th</sup> or four decimal points of accuracy -- one laboratory note.

5246. His implied density was then compounded by the assumption that the co-efficient of thermal expansion was constant across small temperature ranges.

5247. In this case, Dr. Short had to assume that the co-efficient was constant for a 20-degree temperature range. [Exhibit D72-80-2 at Adobe p. 5 and Figure 2 on Adobe p. 19]

5248. Now, you'll recall that Mr. Roth asked a lot of questions of Dr. Hollebhone. Dr. Hollebhone confirmed his understanding that Dr. Short's work was based on Environment Canada's test data. [Transcript Volume 173, Paragraphs 25324 to 25326]

5249. When questioned about Dr. Short's assumption regarding a constant coefficient of thermal expansion across this temperature range, Dr.Hollebone said as follows:

*“I know where [you're] going in terms of the Short interpretation -- he's got two points. And it's impossible to tell on the Short data, based on two points either from my own lab or from the SL Ross work as well, what the shape of those curves [would be].” [Transcript Volume 173, Paragraph 25468]*

5250. Now, Gitxaala suggests in argument that there should have been further questioning of Dr. Short on these issues and I -- but, however, -- however, once Dr. Short admitted that he didn't know anything about the weathering procedures of Environment Canada that had been applied to obtain the data that Dr. Short used, there was nothing further that he could contribute to the conversation.

5251. In his report, he had already admitted as follows, he had said:

*“...without the details of the weathering procedure used at Environment Canada to produce the density measurements, it is not clear how likely spilled bitumen products would weather to the densities measured under natural ambient conditions.”*  
*[Exhibit D72-80 at 9]*

5252. That's what he had said in his report.

5253. So as stated in our written argument, Dr. Hollebone had already testified that the rotor evaporation technique was not used to:

*“...to determine evaporation rate at all.” [Exhibit B226-2 at Adobe p. 246, paragraph 843]*

5254. That test is used to get oil to the full -- to a fully weathered state as fast as you can. It basically cooks it.

5255. Dr. Hollebone testified that his concern regarding this test was whether he was doing enough to get the oil to the state that it would have been in several months down the road. *[Transcript Volume 173, Paragraph 25141]*

5256. The important point here is that, in the real world, on water recovery operations take place right away, not several months down the road.

5257. As noted in the written argument, the evidence of Mr. Belore and Dr. Owens was clear and unequivocal that, in the real world, diluted bitumen would not sink by weathering alone. And by real world situations, what we're talking about here and what Dr. Owens was referring to, was the on-water portion of oil spill response -- one of the immediate priorities. *[Exhibit B226-2 at Adobe p. 241, Paragraphs 832 and 833]*



5258. The evidence of Transport Canada was also based on the timeline of spill response, which has full deployment within three days and recovery of oil on water expected to happen within ten days. *[Transcript Volume 173, Paragraph 25538]*
5259. And I would say, parenthetically, that even this timeline is longer than the deployment that Northern Gateway is committed to.
5260. Transport Canada testified that these products are already being shipped and that response organizations not only have been certified to respond to spills of these products but we know that they can recover them and have demonstrated that. *[Transcript Volume 173, Paragraph 25531]*
5261. What appeared to us from listening to the Gitxaala's argument last week was that there is a lack of appreciation that, when the Project is speaking to the fact that diluted bitumen will not sink, it's not talking about bitumen -- excuse me, it's not talking about some ultimate weathered state that may occur months or years after weathering, Northern Gateway was referring to the timeline on on-water recovery.
5262. The question of what would happen in the event of no spill response was answered by Northern Gateway's Ecological Risk Assessment. Now, that assessment assessed the effects of credible worst case scenarios where products were modelled to weather beyond any on-water spill response time frame.
5263. The mass balance there results of this no-response scenario had quantities of weathered oil in the tidal and sub-tidal areas and assessed the effects on the environment of those quantities of oil being in the sub-tidal and tidal areas after having encountered sediment and it looked at the effects on the environment and human health that could occur under those scenarios. *[Exhibit B16-33 at 34]*
5264. Now, it's been discussed by many intervenors such a scenario would or could result in significant adverse environmental effects. When intervenors like the Gitxaala argue that Northern Gateway has not assessed the environmental effects of dilbit in sub-tidal and tidal areas, or on riverbeds for that matter, they're not correct. Ecological risk assessments were undertaken for both environments and those do include modeling of sunken oil. *[Exhibits B16-33 at 62 and 87-184; B80-2 at 89]*

5265. As noted in Northern Gateway's argument, further fates and effects work is being done. We all know that. Now, it's being done to address the potential for diluted bitumen products that are being shipped today. Years before Northern Gateway commences operations, this work will be completed and response organizations will have to be certified as having response plans to deal with all products that the Project could potentially ship.
5266. In what we consider to be a highly unlikely event that this further research were to indicate any potential for diluted bitumen products to sink within a timeframe for on-water recovery, there is precedent for dealing with such situations, [Exhibit E9-6-32 at 21, Paragraph 66] as you heard Mr. Roth discuss with Transport Canada.
5267. In conclusion regarding this issue that the Gitxaala say is the most critical one raised in the proceedings, our points are as follows: First, Dr. Short's work has not raised any serious doubt regarding the evidence of Northern Gateway's experts that diluted bitumen will not sink as a result of weathering in the real world time frame of spill response.
5268. Second, there's no assessment gap. The ecological risk assessments done have assessed the environmental effects of spill scenarios where no spill response occurs [Exhibit B16-33 page 93] and where some portion of diluted bitumen in both the marine and freshwater environments sinks due to being mixed with sediment.
5269. Let me move on to a different subject. I'm sure you'll be glad to hear the last of diluted bitumen sinking or floating.
5270. You heard from the Fort St. James Sustainability Group and also Dr. Wier and ForestEthics last week about some recent orders that have been issued to Enbridge by the NEB and I'd like to take a moment to address that directly.
5271. You also heard from the Government of Canada that -- the Government of Canada respond by saying that Canada has -- and I quote:

*"...a comprehensive and rigorous pipeline safety regime of enforcement [measures] administered by National Energy Board, an expert, arms-length and independent regulator recognized around the world." [Transcript Volume 178, Paragraph 3110]*

5272. Our suggestion to you simply is that the orders to which Dr. Wier and others referred really do show that regulatory oversight being exercised by the National Energy Board does work.

5273. Those orders show that the NEB is actively exercising the oversight it has over pipelines it regulates. They show that Enbridge and the NEB are regularly communicating in a transparent and open way to ensure that pipeline operation continues to be safe. They show that additional protection is being added to a pipeline system that has multiple layers of safeguards.

5274. Now, that said, Ms. Gouglas and Dr. Wier have taken the NEB's findings out of context in respect to the control centre audit [*Transcript Volume 177, Paragraph 1643; Transcript Volume 178, Paragraph 2630*] by selectively quoting from the June 2013 order.

5275. The main conclusion to be taken from that audit was not that Enbridge's initiatives have not been fully implemented as was suggested in argument. The main conclusion was and I quote:

*“During the course of its inspection, the Board did not identify non-compliances with its regulations that would pose an immediate hazard to public safety or the environment. The Board notes that Enbridge has initiated a broad range of improvement actions. Enbridge’s leadership has undertaken efforts to improve its safety culture starting with a commitment from the top of the organization, which is an important part of safety culture advancement. Enbridge has also begun implementing an integrated management system. This is consistent with the Board’s expectations for an effective management system. Many of Enbridge’s reported improvements are multi-year initiatives that [have] not been fully implemented at the time of [...] verification. The Board will continue to monitor and assess all of Enbridge’s reported improvements until they are fully implemented.” [OF-Surv-Gen 07]*

5276. The Board went on in the same document to say:

*“Many aspects of Enbridge’s management systems were*

*reviewed during the inspection. Since Enbridge [has] not yet fully implemented all the improvements it has identified following the Marshall rupture, the Board is ordering a third-party audit to fully examine Enbridge's management system, any human factors associated with control room operation, and the safety culture of the organization as a whole. The NEB will set the parameters of the audit. The third-party auditor [would] report directly and be fully accountable to the Board."*  
*[SO-E101-004-2013]*

5277. So when you look at the entirety of the findings made by the Board as opposed to one or two sentences that were pulled out of it by commentators last week, you'll see a completely different picture than was given to you.

5278. Mr. Robinson pointed to an NEB order that had to do with back-up power supply and suggested that Enbridge could not be trusted as a result  
*[Transcript Volume 177, Paragraph 2269].*

5279. I just want to make it clear that the fact is that all Enbridge pump stations are equipped with battery-powered uninterruptible power supply and Enbridge can isolate its valves manually, if necessary. So after receiving the direction of the NEB, Enbridge retrofitted and is in the process of retrofitting its facilities to add additional redundancy. *[SO-E101-001-2013 and 2013-05-02NEB Response to Corrective Action Plan for National Energy Board Order SO-E101-001-2013]*

5280. My point is, Madam Chair, that what these sorts of orders and directions show is that the NEB is doing its job and so too is the Pipeline.

5281. I'm going to turn next to responding to a couple of the legal arguments that were made last week and I'll turn, first, with the recurring issue of Project effects on Aboriginal rights and title.

5282. A number of First Nations have argued that the Project would infringe their rights and title. For example, the Gitga'at take the position that they have a strong claim to title to their traditional territory. They say that the approval could infringe their rights in a number of ways.

5283. First, they say that approval would violate their exclusive use of marine areas by authorizing vessels to use it. *[Exhibit D71-35-2 at paragraph 27]*

5284.           Second, they say that approval would violate their right to decide how those marine areas are used by authorizing vessels to use those areas over their objection. *[Exhibit D71-35-2 at paragraph 280]*

5285.           Third, they say that approval would violate their right to choose the economic uses to which title land and water should be put, and to provide economic benefit. As an example, they say that those who derive economic benefits from vessel traffic are interfering with Gitga'at title.

5286.           Similar arguments are advanced by Coastal Nations such as the Gitxaala, the Heiltsuk and the Haida.

5287.           Now, we've talked about this a lot in written arguments and last week but emerging from last week's comments, there are one or two other responses that are required.

5288.           First, with the greatest of respect, it seems to us that these arguments tend to gloss over the fact that authorization of this pipeline project does not confer any rights on any vessel owners or operators. It authorizes a pipeline. It also doesn't derogate from the rights of other marine users.

5289.           Vessels are allowed to transit Canadian waters without permits or authorizations. They must comply with laws of general application such as the *Canada Shipping Act*, but no specific governmental authorizations are sought or required in order to operate a vessel in Canadian waters.

5290.           When you think about it, that just makes sense: What a quagmire that would be if everyone who wanted to operate a vessel in Canadian waters was required to first apply for a permit.

5291.           So what these arguments are putting forward is the proposition that activities that are otherwise completely lawful under Canadian and, for that matter, International law can be circumscribed or indeed prohibited by virtue of an Aboriginal right of self-government, or by virtue -- or as a consequence of a finding of Aboriginal title to ocean areas.

5292.           Both of those concepts, we suggest, would be a substantial extension of legal precedent. And that's what Northern Gateway meant when it cautioned the Panel regarding the expansive nature of some of the claims being advanced in

this case.

5293.           Nonetheless, the law is clear that claims such as these, although unproven, are to be respected. No one disputes that the *Haida* case and others tell us that the Crown should deal honourably with groups who consider that their, as yet, unproven rights may be affected by government conduct. It must consult with them and, if appropriate, it must endeavour to accommodate their concerns.

5294.           So I'm going to turn to that because that also is a subject that has not received a whole lot of discussion here, and the subject is accommodation.

5295.           In the context of projects, accommodation can take many forms. For example, legal writers have noted that accommodation can include things like measures designed to mitigate the environmental impacts of a project. It can include economic accommodation in the form of land grants, revenue sharing, employment opportunities or investment opportunities. Accommodation can include, according to these writers, environmental monitoring. [*Jack Woodward, Native Law, Release 2011-3 (Toronto: Carswell, 2011) at 5-70.11 to 5-71*]

5296.           If that list sounds fairly familiar, it should because we've been discussing those subjects or many of them for almost 18 months now. The evidence is clear in this case that there are many opportunities for accommodation of potential rights or effects on potential rights that remain unproven in both marine and terrestrial settings and I'm going to take you to one example of that; just one example or one group in their argument, which I found actually quite interesting, and that was the argument that was presented by Mr. Grant on behalf of the Wet'suwet'en.

5297.           For the Wet'suwet'en, we suggest, there are a plethora of environmental mitigation measures that are available to reduce potential project effects. Some of those who have been in the Application since Day 1, and some could emerge from future discussions and consultation to come.

5298.           In their oral argument, the Office of the Wet'suwet'en maintained, for example, that the 25-metre permanent right-of-way, even though much of it is on disturbed lands, will infringe on the harvesting of certain houses. [*Transcript Volume 179, Paragraphs 4312-4318*]

5299.           Northern Gateway is aware of those concerns and has committed to measures that will help to mitigate not only the effects of the right-of-way and

- other facilities but also legacy disturbances not associated with the Project. It's important to note that other activities, especially logging, have taken place in areas such as this.
5300. To address habitat losses along the right-of-way, let's go through some of the commitments that Northern Gateway has made. It's committed to restoration of vegetation along the 25-metre temporary workspace and any extra temporary workspace. *[Exhibit B226-2, Paragraph 445]*
5301. It's committed to using native plant species along the permanent right-of-way *[Exhibit B3-4, pages 74-75]*, including the use of rare plants or other plants that may be of value culturally, such as medicinal plants. *[Transcript Volume 176, Paragraph 326]*
5302. It's included offsite restoration of habitat within the Telkwa caribou range, as well as offset measures for restoration of habitat within the Bulkley Grizzly Bear Population Unit. Of note, both of these areas include the Burnie and Clore river areas mentioned by Mr. Grant in his submissions to you. *[Transcript Volume 179, Paragraph 4313]*
5303. The measures include removal of physical access and reforestation measures in legacy disturbances on a 1:1 basis. You'll recall this was part of the overall Enbridge tree-for-tree commitment for every hectare of disturbance caused by the 25-metre permanent right-of-way *[Exhibit B226-2, Paragraphs 445-450]*.
5304. Now, there's lots of opportunity there. What we're saying in accommodating potential effects on asserted rights, there's lots of opportunity there for accommodations to be made and for very useful programs to be identified to address not only project effects but legacy effects that the Wet'suwet'en were concerned about.
5305. I could go on but I won't. There's lots of opportunities and lots of programs.
5306. The Project is also committed to engaging participating Aboriginal groups in route walks to finalizing the centreline right-of-way and so forth. *[Exhibit B226-2, Paragraph 458; Exhibit B226-2, Paragraph 1430]*
5307. And again, if you look at the law relating to the duty to consult, the

- duty to accommodate, it's absolutely clear that that is considered to be a two-way street. The groups are expected to participate in reconciliation of objectives, reconciliation of their interests with the broader public interests, and these are some opportunities that are available to them to participate. And we certainly hope, as a Project, that the Wet'suwet'en and others will take advantage of them.
5308.           The same applies for Coastal communities and let me switch to that, particularly the Haisla, the Gitga'at and the Gitxaala, who are along the Confined Channel Assessment Area.
5309.           Although, obviously, the nature of accommodation measures may be different -- they have a different setting -- the evidence showed that the Gitxaala were able to reach accommodation regarding concerns they had, you'll recall, with the KLNG project. Chief Councillor Moody didn't want to talk to me about that, about the details, but an agreement was reached well after the project had been assessed from an environmental perspective and approved.
5310.           We concede that, for more distant First Nations such as the Haida and the Heiltsuk and the Samson, Ermineskin Bands, and that sort of thing, finding accommodation measures may be more difficult, at least measures that tie back specifically to potential Project effects, and the reason for that is quite simply that there is a lack of clear and apparent Project effects to begin with.
5311.           I'm going to talk about that for a bit because we heard an awful lot from all four of the organizations arguing on behalf of the Heiltsuk. I want to talk about the Heiltsuk a little bit. They've asserted that tanker traffic -- and especially the effects of oil spills -- will have an impact on their established Aboriginal right to commercially harvest herring spawn on kelp.
5312.           Specifically, Chief Harvey Humchitt, on behalf of the Heiltsuk Hereditary Chiefs, said that if an oil spill were to occur around Price Island, Aristazabal Island, Milbanke Sound, or Queen Sound, due to the rapid and strong tides in these areas, no containment of a spill would be possible. As a result, he said, an oil spill would have a direct effect on their established right. [*Transcript Volume 179, Paragraphs 3794-3797.*] And Ms. Fong echoed -- made -- expressed similar concerns. [*Transcript Volume 178, Paragraphs 3517 to 3522.*]
5313.           Ms. Humchitt, on behalf of the Hereditary Chiefs, claimed that the tanker routes intersect herring spawning areas and that this was affirmed in her cross-examination of DFO. [*Transcript Volume 178, Paragraph 3601.*]



5314.            However, if you go back to that and look at AQ-89 that was used during this cross-examination, you'll see that it didn't illustrate herring spawning areas; rather, the purple dots on the map, as noted in the map legend, are to fishing areas. *[Transcript Volume 168, Paragraphs 18465-18478.]*
5315.            Important herring spawning areas are shown in Northern Gateway's reports at Exhibit B9-26, page 1. Based on the areas identified as important herring roe harvest areas by Chief Humchitt, which is generally the area around Bella Bella and Klemtu, the southern route through Queen Charlotte Sound is some 90 kilometres west of the named harvesting areas. *[Exhibit B3-26, page 24.]*
5316.            The tanker route through Caamano and Campania Sounds is approximately 40-50 kilometres from the named harvesting areas.
5317.            So with respect to effects on the herring spawn on kelp fishery, herring in the region typically spawn, as you heard, in near-shore areas up to 11 metres in depth during March to April; larvae remain in these near-shore areas for two to three months, according to the evidence. *[Exhibit B9-25, page 3-16]*
5318.            As tankers will transit in a much deeper water in mid-channel, they will be far away from those spawning locations. Wakes from those vessels have been looked at, even in the Confined Channel, and they're small to begin with *[Exhibits B23-39 and B83-23]*, and they could not possibly, we suggest, affect herring spawn or larvae so far away. The same goes for vessel noise.
5319.            With respect to oil spills, return periods for all incidents for laden tankers range -- as estimated in the DNV report, range from a 1:6100 years for the southern route -- that's Segment 8 -- to 1:1800 to 1:3200 years for Caamano Sound, that's Segments 6 and 7. *[Exhibit B23-15, page 54]*
5320.            However, as discussed during the hearing, the real probability of site and seasonally-specific effects, such as those to herring spawn and larvae, is a probability of a probability of a probability, because you need to have a number of improbable events happen at the same time in order for those effects to occur. *[Transcript Volume 136, Paragraphs 5670-5674.]*
5321.            First, an incident would have to occur in an area along the southern tanker route that's close to the named harvesting sites; that's improbable. Second,

- if a spill occurred, wind and current conditions would have to be suitable to move the slick considerable distances to affect the harvesting areas named by Chief Humchitt. Third, the spill would have to occur during the spawning period. Fourth, tankers would have to be using the southern approach route, which is less likely in the March to April period.
5322.           So the result is that, while we can't say, Madam Chair, that the possibility of an oil spill on -- having effect on herring is zero, it's very close to that and we suggest it's vanishingly small.
5323.           Ms. Williams-Davidson, last week, similarly described risks to navigation in proximity to Haida Gwaii such as Learmonth Bank and the potential for an oil spill to have devastating impact on marine ecosystems of Haida Gwaii. *[Transcript Volume 177, Paragraphs 1516-1517.]*
5324.           So let's go through the same exercise based on the record. For Haida Gwaii, the closest point between the proposed northern tanker route and Haida Gwaii is Rose Spit, a distance of approximately 25 kilometres. *[Exhibit B3-26, page 24.]*
5325.           Langara Island *[Transcript Volume 177, Paragraphs 1516-1517]* referred to by Ms. Williams-Davidson is 35 kilometres from the tanker route. The closest distance between the southern tanker route and Haida Gwaii is around 65 kilometres.
5326.           Route segments 4B and 5 are the closest segments of the northern route to Haida Gwaii, while Segment 8 of the southern route is closest. *[Exhibit B23-34, page 23.]*
5327.           Based on the QRA study by DNV, the return period for all incidents for laden tankers for the two northern segments range from a return period of 1:2200 to 1:12,000 years while the return period on the southern route is 1:6100 years. *[Exhibit B23-15, page 54.]*
5328.           So once again, to affect specific resources of importance in specific locations, one is dealing with probabilities of probabilities of probabilities.
5329.           Now, having said that, the Project does take the concerns seriously in respect of the potential for effect on their current use of land and resources for traditional purposes. It's prepared to work with governments and coastal Nations

- to ensure the plans are ready and that personnel and equipment can respond effectively to any incident in Caamano and Campania Sound, including spills and emergencies from other large vessels or fishing vessels.
5330. Northern Gateway has also offered, as you heard, many opportunities for Aboriginal participation in those plans.
5331. Let me turn then to the issue of -- of the theme of balancing of the public interest and regional effects.
5332. We heard a lot of speakers, last week, talk about that and many of them talked about the *Emera Brunswick* decision that I had also alluded to at the beginning of the week. This was discussed by Mr. Robinson, by Mr. Overstall and by Ms. Fong. As you'll recall, that project did attract a high level of public interest and, after a thorough review and hearing, it was ultimately approved. *[NEB Decision GH-1-2006]*
5333. In doing so, the Board provided a comprehensive analysis of the meaning of "the public interest". It made clear that a specific individual or locale's interest needs to be weighed against the greater public interest and if something is in the greater public interest, that must prevail. *[Ibid at 28]*
5334. In making its public interest determination, the Board carefully balanced --as you'll remember -- and weighed all of the benefits and burdens associated with that project. *[Ibid at 102ff]*
5335. And what we suggest to you is that, if you undertake a similar exercise with the Northern Gateway Project and do a comparison of the two, you'll find that the benefits offered here are substantially larger and broader and the burdens are quite similar to that that you looked at in that previous project.
5336. Like the Emera Brunswick Project, many of the benefits are national or regional in scale but, quite frankly, the ones here dwarf the benefits that were available under the Emera Brunswick Project.
5337. I want to talk about that and summarize that a little bit here for the record.
5338. We understand and appreciate that weighing -- that the weighing of benefits and burdens can be a difficult task, but it's also an instructive one. So

- we're going to set out some of what we perceive and suggest are the key benefits of the Project -- and we're talking about broad benefits here -- and I'll just list them, I'll try to do that fairly efficiently, Madam Chair.
5339. It provides access to new markets; it provides diversification of markets; it maximizes the netback received for one of Canada's main exports; it provides a net social benefit that's been estimated at \$23 billion; it provides almost \$100 billion of increased government revenues over a 30-year operating period; it provides employment opportunities during construction and operation; legacy funds; it provides \$1 billion dollars in economic benefits to Aboriginal groups.
5340. I could go on, Madam Chair, but this is clear on the record, the benefits that we say the Project provides.
5341. Now, we accept that people from different regions, people with different political or cultural outlooks will bring different values to the table in assessing benefits and burdens. We also accept that there's a need to offer opportunities to Aboriginal and non-Aboriginal communities along the Project as a mechanism for reducing disparities in burdens and benefits at a local or regional level.
5342. The Project has done that, though, in an unprecedented fashion and, respectfully, there is nothing before you, in the way of local burdens that outweighs the substantial local, regional and national benefits that the Project will bring and nothing that tips the scale against a recommendation of approval for the Project.
5343. Let me turn then to the question of conditions, Madam Chair, and this will take me a little bit of time but it's necessary to go through it in some detail and in parts, for reasons I spoke of Thursday.
5344. Let's start with the Alexander First Nation.
5345. Ms. O'Driscoll suggested to you that the lack of comment by Northern Gateway regarding their recommended conditions suggested that Northern Gateway has no issue with those recommendations. [*Transcript Volume 176, Paragraph 609*]
5346. Let me be very clear, on a general basis, that Northern Gateway's

silence on any party's proposed conditions should not to be taken as agreement. Quite the opposite, time did not permit a detailed response to all of the conditions posed by parties last week and we cannot be taken to accept each and every condition that's suggested, as if we have not commented on it.

5347. For example, the Alexander First Nation has suggested that many of the JRP's potential conditions should be revised to require their consent. For the reasons that we indicated earlier last week, no operator could accept such a proposal and such a condition and we don't accept that proposal and condition here.
5348. Chief Arcand requested that the Panel attach their conditions to a project approval to ensure -- attach conditions to a project approval to ensure that the Crown's fiduciary and consultation obligations are honoured and fulfilled. *[Transcript Volume 176, Paragraph 685]*
5349. Notably, their proposed conditions didn't actually refer to the Crown. So I can say that, for its part, the Project will continue to work closely with the Alexander First Nation and that will include ongoing engagement and input on monitoring and follow-up programs.
5350. As we stated previously in response to conditions posed by the Gitxaala and the Haisla, the Board can determine for itself who stands to be directly and adversely affected by a particular condition and who is not, and by what conditions and what process is to be used to solicit input.
5351. Let me turn, then, to the submissions of parties in respect to the issue of compensate coating.
5352. Now, C.J. Peter Associates has suggested that Northern Gateway should use a three-layer composite coating or a high performance composite coating for the entire pipeline *[Transcript Volume 177, Paragraph 1189]* and you heard some rather remarkable comments this morning from Mr. Peter on this. I'll come back to that.
5353. The Government of Canada took the position that NRCan's final argument did not object to the requirement for multi-layer composite coating for the entirety of the pipeline on a technical basis. *[Transcript Volume 178, Paragraph 3155]*

5354. They didn't say it must be required and they didn't say why they don't object, other than to say that Northern Gateway's rationale for objecting appears to be primarily economic. Now, earlier today, Mr. Peter indicated that, according to evidence provided by Mr. Fiddler, this was an -- the incremental cost between the different types of coating was inconsequential.
5355. I had a quick look at the transcript exchange that he was referring to and I commend the Panel to that because you will see that his description of that conversation took completely out of context the information that had been presented by Mr. Fiddler.
5356. Let me say, first, that these are not inconsequential costs. This condition alone would cost the Project an incremental \$50 million or so; so economic considerations are a legitimate and real concern in this case.
5357. The evidence shows that Northern Gateway supports the use of high performance coatings, as appropriate, to the terrain and construction conditions to be encountered along the pipelines; in particular the application of three-layer and fusion bonded epoxy coatings in the appropriate locations.
5358. If you go to the transcript exchange that Mr. Peter selectively extracted a statement from this morning, you will see that Mr. Fiddler, when asked, had estimated the stretches of pipeline that would require that to be somewhere around the order of 140 kilometres. That was the context of the discussion that he was having with Mr. Fiddler.
5359. Enbridge has experience with both three-layer and fusion-bond epoxy coatings on its various systems and is familiar with the advantages of each system and how they may best applied to this Project. The evidence was that fusion-bond epoxy is well-suited to the typical soil-type terrain that is encountered in Alberta.
5360. Engineering assessments are expected to confirm that it's the appropriate coating system from approximately KP 0 to KP 600. Three-layer coating, as talked about by Mr. Fiddler, would be well-suited to the more rocky terrains encountered in much of the B.C. region.
5361. Again, detailed engineering has yet to be done but engineering assessments are expected to confirm that it's the appropriate coating system from approximately KP 600 to 800 and 900 to 1177. Dr. Kerr referred to two papers which indicate that the use of three-layer coating is a cost effective solution.

*[Transcript Volume 177, Paragraph 1200-1201; Exhibit B109-25 and B109-26]*

5362. He failed to mention that the same papers identify three-layer coating as, quote “*filling a gap*”, where fusion-bond epoxy coatings would otherwise be deficient; again, such as rocky areas or areas where acid rock drainage may occur.
5363. So that’s Northern Gateway's evidence. Fusion-bond epoxy will be used in areas where it is appropriate and three-layer coating will be used in areas where that is appropriate. *[Exhibit B226-2 at 380-381. Also see Exhibits B32-2 at 22, B47-12 at 12 and B109-2 at 12]*
5364. Now, this same evidence was provided by the expert witness produced by the Government of Canada, Dr. Santos, who confirmed that the use of fusion-bond epoxy is appropriate and is consistent with current industry best practices and three-layered coating is not required for the entire pipeline but, again, is used in areas where it is appropriate for its use such as rocky areas. *[Transcript Volume 110, Paragraph 7551-7552, 7943-7954 and 7581-7582]*
5365. So the standards that Northern Gateway intends to adhere to for pipeline coating are well-known, *[CSA Z245 and Z662]* they’re identified on the record and they could have been cross-examined on. In fact, Dr. Peters did cross-examine on CSA Z245 as it relates to pipe composition and Z662 as it relates to pipe grade. *[Transcript Volume 87, Paragraphs 6975–7213]*
5366. Now, despite Northern Gateway's evidence that it will meet or exceed applicable standards, *[CSA 245 and Z662]* implicit in what you’ve heard from Mr. Peter in his evidence -- or his argument is the assertion that Northern Gateway will not.
5367. It suggested that the professional engineers employed in the design and construction of the Project will not meet their professional and ethical obligations. That’s simply not the case and it’s not fair.
5368. The modifications that Northern Gateway has proposed to draft Conditions 7 and 8 address these concern -- the concerns raised and provide further opportunity for further direction from the NEB on the suitability of the selected coatings, if necessary.
5369. Let’s turn to the issue of fracture toughness and it’s -- this is dealt with in Conditions 31 and 32.

5370. Dr. Kerr also suggested that Northern Gateway should be required to have some toughness requirements for the pipe and its longitudinal welds down to the lowest installation temperature.

5371. He made a comparison to Keystone XL and said that, if the proposed pipelines were to extend into the U.S. -- which they do not -- they would be required to meet toughness requirements there so the NEB should be just as conservative. *[Transcript Volume 177, Paragraphs 1250-1251]*

5372. He argued that Category 2 pipe should be used throughout the Project to address toughness requirements and the:

*“...the applicability of Category 1 verses Category 2 pipe, is and remains controvertible.” [Transcript Volume 177, Paragraphs 1248-1252]”*

5373. ForestEthics weighed in to support Dr. Kerr's arguments. *[Transcript Volume 177, Paragraph 2304]*

5374. There is no evidence on the record to establish that the toughness requirements are "automatic" in the United States.

5375. Dr. Kerr asked Mr. Mihell why PHSMA may have required the equivalent of Category 2 pipe for Keystone XL. Mr. Mihell speculated that Keystone may have wanted to pressure test the pipeline with air. He also said that there may have been other motivations and that he did not know what the reason was. *[Transcript Volume 87, Paragraphs 7135-7140]*

5376. The regulatory requirements governing the design of liquids pipelines are established in Canada under CSA Z662-11 and, in the United States, under the Code of Federal Regulations. *[Title 49 Part 195 - Transportation of Hazardous Liquids by Pipeline]*

5377. The use of pipe with proven notch toughness is not mandated for liquids pipelines under either Code.

5378. In Canada, notch toughness requirements for line pipe are established in Table 5.1 of the CSA Code that I just referred to, which requires Category 1 pipe, having no proven notch toughness, for all low-vapour pressure pipelines that



- are pressure tested with water. *[Also see the CSA guidance notes on Table 5.1]*
5379. The U.S. code is silent on notch toughness requirement, absent some discussions regarding the need for the potential for fracture propagation in CO2 pipelines which, of course, is irrelevant here.
5380. Most importantly, the U.S. Code does not recognize, adopt or incorporate the notch toughness requirements of the ASME Standard that Dr. Kerr referred to in his final argument. *[ASME B31.4 – Transcript Volume 177, Paragraph 1249]*
5381. That Standard is referenced in only two places in that Code: in the determination of external loads and in the scheduling of indications for remediation. No other requirement of the Standard are incorporated in the Code.
5382. So similar to the Canadian experience, the operating experience of liquids pipelines in the U.S. does not suggest that line pipe with proven notch toughness is warranted.
5383. Northern Gateway will select pipe grade in accordance with science-based and approved industry standards. *[CSA Z662-07 and CSA Z662-11]*
5384. In general, I can tell you that Category 1 pipe will be used. Category 2 pipe will be used when required to address fracture initiation. *[Exhibits B64-9, B32-2 at 3; Transcript Volume 91, Paragraphs 12401-12409]*
5385. Canadian codes and standards permit the use of Category 1 pipe for the type of service that Northern Gateway is proposing.
5386. So Dr. Kerr is effectively saying that CSA Z662 is wrong and cannot be trusted which is just not the case.
5387. Now, that's not to say that, as part of detailed design, the company may look at other options that are -- that provide for similar levels of protection but there's been no change in the design that's been presented to this -- to you for approval.
5388. With respect to welding, Northern Gateway's evidence was clear. All welding procedures for mechanized welding will include CVN and CTOD testing in the procedure qualification and all welding procedures for manual welding will

- include CVN testing in the procedure qualification. This will be addressed in the final welding procedure specifications. *[Transcript Volume 89, Paragraphs 9709-9716.Exhibit B101-2 at 19-27]*
5389. So we suggest that the Panel should accept the proposed changes to Potential Conditions 31 and 32 as set out in Exhibit B226-3.
5390. Let me go beyond the engineering conditions and comment about the -- provide some comments on the ForestEthics suggested condition relating to commitments. *[Transcript Volume 177, Paragraph 2291]*
5391. As you recall, ForestEthics suggested that 267 additional commitments be imposed as discreet conditions. *[Transcript Volume 177, Paragraph 2291]* In their view, Northern Gateway's commitment table was incomplete.
5392. Now, to our knowledge, Madam Chair, this was the first time that a pipeline proponent has been asked to produce a commitment table tracking document before project approval. There's nothing wrong with that. It's just simply unprecedented.
5393. But what it did mean was that this would necessarily be an iterative process. So the initial request was made in JRP IR 1 and the tracking table that was produced was significantly updated in response to JRP IR 15. *[Exhibits B27-8 and 165-3]*
5394. The updated table covers the period up to and including November 7 of 2012 and includes some 392 commitments. *[Exhibit B165]* It needs to be updated again because more have been provided and that's what's contemplated under the Panel's Potential Condition No. 12.
5395. For good reason, I think, the Panel chose not to prescriptively define what should or should not be included in the filed commitment table. In its response to your first IR on this, Northern Gateway explained the approach it was using to compile and articulate the commitments that had been made. *[Exhibit B27-1 at 14-16]*
5396. For example, it said that compliance with legislative or regulatory requirements was something that was presumed to be required without being listed as a discrete commitment.

5397. Now, many of the ForestEthics', some 267 additional commitments, we suggest, are not discreet commitments at all, but rather are better described as either a requirement to comply with regulatory requirements and standard mitigation practices or constitute what I would describe as "sub-commitments" -- excuse me -- representative of the execution steps that are required towards completion of a higher level commitment.
5398. For example, commitment A3 regarding monitoring and measuring of H2S prior to entering confined spaces is standard safety practice. It doesn't need to be listed as a discreet commitment. Commitment A4 is standard engineering practice, as it involves adherence to the CSA and API codes and standards.
5399. Some of the other commitments identified by ForestEthics are, in fact, included in the Northern Gateway list of commitments. So for example, Forest Ethics includes the commitment to staff pump stations [*Commitment A1*] which is also on Northern Gateway's list. [*Commitment O-06-01*]
5400. It includes the commitment to acquire additional LiDAR [*Commitment A18*] which is also on Northern Gateway's list. [*Commitment E-01-15*]
5401. It requires commitment to implement a river crossing monitoring program [*Commitment A70*] which is also on Northern Gateway's list and so on. [*Commitment O-06-05*]
5402. Northern Gateway also notes and we question, we have to question the accuracy of some of the content of ForestEthics' additional commitments. For example, their commitment A133 indicates that Northern Gateway will produce -- will procure 100 percent of the required pipe in Canada. Northern Gateway notes that this commitment was followed by the caveat:
- "...if mills can meet Northern Gateway's needs [that is] (wall thickness and diameter as well as availability)."*
5403. That's an important caveat to that commitment.
5404. The Project provided evidentiary references in its table just as ForestEthics did in order to aid in interpretation and provide context. So what we're suggesting is that the Panel and its staff can certainly reference and have -- take note of the ForestEthics table as a tool to confirm the accuracy of the commitments that we've listed for you.

5405. We understand the effort that it -- that it takes to produce tables such as this. There's a lot of work involved and we commend them for the work that they've done but, for the reasons that we've indicated, we simply can't accept the expression of commitments in the way that they've done.

5406. Let me move to the issue of emergency response exercises and this is dealt with in proposed Conditions 168 and at 195.

5407. In their argument, B.C. comments on Northern Gateway's Marine Response Capacity and, specifically, they stated and I quote:

*"...what Northern Gateway has committed to is effective and world-class spill response, which is different than simply going one step beyond [the] existing Transport Canada requirements." [Transcript Volume 176, Paragraphs 1058-1063]*

5408. I want to make it clear, Madam Chair, to the Panel and everyone else that Northern Gateway has -- that what Northern Gateway has committed to is not merely one step beyond Transport Canada requirements, as you heard discussed many times during the hearing.

5409. The General Oil Spill Response Plan [*Exhibit B21-2 at 49; Transcript Volume 234, Paragraph 2626*] is in complete alignment with what the Province states is necessary which is to have:

*"...effective mitigation to prevent adverse [...] [effects] requires rapid response, containment, and recovery to minimize the spread and impact of spills." [Transcript Volume 176, Paragraph 1060]*

5410. This is a core element of the approach that the Project has outlined on marine response and it's why some of these prescriptive requirements that have been put out don't fit.

5411. The system that Northern Gateway described is very different than the existing system anywhere else in Canada. The Response Organization Standard in Canada is based on a cascading of resources to meet a maximum required 10,000 tonne capacity on site within 72 hours. [*Exhibit D9-6-20 at 21*]

5412. The Project's 36,000 tonne response concept is based around a premise of multiple response bases throughout the North Coast. What this does is to enable a rapid response, rapid containment and rapid recovery capacity but across a broad area as opposed to having bulky large equipment stored in one area in order to meet one prescribed standard.
5413. The six to twelve-hour response standard, mentioned in draft -- JRP draft condition 5, is for first response systems to be on site anywhere in the CCAA or in the OWA plus travel time. That is not to say that the tugs or the smaller faster systems would not be able to arrive much sooner and focus on source control and containment because that is the imperative in the event of a spill.
5414. During the hearings, Northern Gateway discussed the strategy that will include both fast-response boats and large-response barges. Nowhere else in Canada have commitments come even close -- even close to what Northern Gateway has made for emergency response, let alone for existing operations.
5415. So the Project, I can tell you, would absolutely welcome the opportunity to discuss its commitments with the Province of British Columbia and to further explain and engage around a discussion of its conception and its vision for emergency response on the North Coast, which I think anyone, after a thorough examination, will agree is truly world class.
5416. We also understand that that is currently part of a reassessment being undertaken by the Province of British Columbia along with the Government of Canada. So, ultimately, I say, in this case, it will be the Government of Canada that will set spill response standards for the Northern Gateway Project, because those will be -- those spill response commitments will be part of the CEAA 2012 condition process.
5417. So there's ample time for opportunity for those discussions between the different levels of government and industry -- both Northern Gateway and industry generally -- if there's to be a review of those standards.
5418. I can tell you that Northern Gateway is generally supportive of JRP Conditions 168 and 195 but has recommended some -- what we consider to be minor changes as discussed in Northern Gateway's written argument.

5419. Now, similar comments would apply to B.C. government's recommended additional Condition Number 5. *[Exhibit D167-24-02]*
5420. Now, several intervenors, including the B.C. government, have commented on Northern Gateway's proposed changes *[Transcript Volume 176, Paragraphs 1073-1097]* and this deals with the issue of emergency response exercises.
5421. To be clear, Northern Gateway does not oppose the use of unannounced drills and exercises and we accept that this constitutes world class standard. That's completely in alignment with the evidence of Dr. Taylor. *[Transcript Volume 148, Paragraphs 22365 and 22366]*
5422. Dr. Taylor described a range of tabletop and field deployment exercises and then noted and I quote:
- “The other one that I find very successful and I really like to see in world-class operations are your unannounced exercises, and that is the surprise.” [Transcript Volume 148, Paragraph 22365]*
5423. In argument last week, B.C. had used the terms such as “full-scale exercises” and “full-scale mobilization” in the context of this discussion *[Transcript Volume 176, Paragraph 1073]* and that's where really the problem happens.
5424. The reality is that a full-scale exercise is one that involves mobilization of a huge number of people from different walks of life and with different day jobs.
5425. So, for example, we will be calling in to participate in a full-scale mobilization or a full-scale exercise people from various government departments, various provincial government and federal government departments.
5426. So it's one thing to do that with respect to an announced full-scale exercise, you can give some people time to plan their lives and to schedule it into their operations. So if you announce that you're going to have a full-scale mobilization exercise or a full-scale exercise for response planning, people can pencil that in so that, in the future when that happens, they can actually show up.

5427.           You know, it's one thing to require people to drop everything and participate in an actual event. When you require them to drop everything and participate in a exercise that you have initiated at your timing and for your purposes, it's another thing. So that's the problem.
5428.           So while full-scale unannounced exercises aren't feasible -- and I think this is what Dr. Taylor was speaking to -- unannounced exercises for elements of the Emergency Response Preparation Program can be done and they can be done without the sorts of dislocations that I've talked about that would occur for a full-scale program.
5429.           In the final argument that was filed, our argument-in-chief, Northern Gateway had referenced the PREP Guidelines and we suggest that those can be referred to and they'll clearly show that unannounced full-scale exercises are really beyond industry best practice for the reason that I mentioned. [*Exhibit B226-2 at 386, Paragraph 1445; Exhibits B92-3 at 90 – 91 and B21-2 at 16*]
5430.           Regarding B.C.'s comments on JRP draft Condition 195, Northern Gateway maintains that the proposed changes made -- suggested by Northern Gateway are important and this deals with reporting.
5431.           An annual report for smaller exercises will allow Northern Gateway to summarize important findings over an appropriate timeframe, which we say is a better way to report on those exercises than doing them shortly after they're done and filing them on a piecemeal basis.
5432.           Once again, however, let me emphasize that the Project absolutely welcomes further discussions with B.C. as to what it would like to see in terms of reports from these exercises and we can say that we would have those discussions irrespective of the conditions that are set by Canada.
5433.           Madam Chair, we come to the end. Those are our reply comments. I can tell you this has been a long proceeding for everyone involved and I know that no one spent more time on it than you three, with all that entails in terms of time away from families.
5434.           So on behalf of the Project and myself and the other lawyers from our side of the room who have taken part, I want to express our gratitude to you, to Panel staff and the great support people that you've had with you.

5435. Ms. Niro and Ms. Mills have been deservedly singled out by many speakers. But being married to a court reporter, I would be remiss if I didn't thank them as well. Theirs is a very, very difficult task in a proceeding of this sort, both technologically and linguistically. The terms are difficult and to produce a transcript on a daily basis is truly a monumental -- it's -- they did that in good humour and professionalism and they're to be commended.

5436. I also want to commend the other counsel involved in the proceeding. We've -- I think -- managed to present the positions of our clients with a high degree of courtesy and cooperation as between the different sizes -- sides and I appreciated that and I hope that the Panel did as well.

5437. So with that, we wish you well in your deliberations and ask that you recommend approval of this Project.

5438. Thank you.

--- (A short pause/Courte pause)

5439. **THE CHAIRPERSON:** Thank you very much, Mr. Neufeld.

5440. The Panel has no questions.

5441. **MR. NEUFELD:** Thank you.

5442. **THE CHAIRPERSON:** In the instructions that were sent out on Friday, the 21<sup>st</sup> of June, it -- which communicated the participants' agreement on how we would proceed today using remote real-time participation, it said:

*“At the conclusion of the Northern Gateway reply argument, an invitation will be extended to parties to provide objections to any comments heard.”* (As read)

5443. Therefore, we will now call for objections to any comments heard.

--- (No response/Aucune réponse)

5444. **THE CHAIRPERSON:** Hearing no objections -- oh, Mr. Peter.



## Objections to comments

5445.           **MR. PETER:** Madam Chair, I'm sorry, one minor point on what Mr. Neufeld said.
5446.           There is evidence on the record that U.S. pipelines are -- oil pipelines are required to have proven toughness requirements and that's found in Enbridge's own specification for pipeline steel conforming to EPI 5L, which filed as Exhibit D25-9-6, Enbridge Specification EES102 -- 103, excuse me, Enbridge Specification EES103, Adobe page 4, Section 1.1.2.
5447.           Thank you very much.
5448.           **MR. NEUFELD:** I'm sure they've read it, Madam Chair.
5449.           **MS. HUMCHITT:** Good morning, Madam Chair.
5450.           Hello?
5451.           **THE CHAIRPERSON:** Hello. Who's that on the microphone?
5452.           **MS. HUMCHITT:** Oh, that's Carrie Humchitt from the Heiltsuk Tribal Council.
5453.           **THE CHAIRPERSON:** Yes, Ms. Humchitt?
5454.           **MS. HUMCHITT:** Yes, just one objection to note in regards to my friend Mr. Neufeld's categorization of the Northern Gateway Project having no impact upon the herring fishery.
5455.           I do want to object to that statement as there has not been a full assessment on the impact the Project may have on the Heiltsuk right to spawn on kelp fishery.
5456.           So I just wanted to have that noted.
5457.           **THE CHAIRPERSON:** Any comments, Mr. Neufeld?
5458.           **MR. NEUFELD:** No, Madam Chair.
5459.           **THE CHAIRPERSON:** Dr. Wier, did you have an objection?

## Objections to comments

5460. **DR. WIER:** I don't know if it's an objection. It's more clarification to dilbit not sinking within recovery time.
5461. And my understanding is the spill response committed was 10 days. So I would like a clarification if it's within the confine of what can be done.
5462. The second thing, Mr. Neufeld did mention the SED device in the NEB orders. He only mentioned the alternate source power.
5463. And I also wanted this morning to mention that what Mr. Doering had expressed, Category 3 pipe to the press in the hall here was mentioned in my presentation, in my final oral argument.
5464. So Mr. Peter could have quoted me there.
5465. **THE CHAIRPERSON:** Mr. Neufeld?
5466. **MS. O'DRISCOLL:** Madam Chair, Caroline O'Driscoll ---
5467. **THE CHAIRPERSON:** Excuse me.
5468. **MS. O'DRISCOLL:** --- for the Alexander First Nation.
5469. **THE CHAIRPERSON:** Excuse me just a minute, Ms. O'Driscoll.
5470. **MS. O'DRISCOLL:** Oh!
5471. **THE CHAIRPERSON:** Mr. Neufeld?
5472. **MS. O'DRISCOLL:** My apologies.
5473. **MR. NEUFELD:** I have no response to Dr. Wier.
5474. **THE CHAIRPERSON:** Ms. O'Driscoll?
5475. **MS. O'DRISCOLL:** My apologies, Madam Chair.
5476. Just a point of clarification: Northern Gateway's recent comments with respect to the conditions -- the additional conditions proposed by the Alexander First Nation.

5477.           Again, due to limited technologies, I cannot pull on the electronic copy right now of the written submissions of the Alexander First Nation but the conditions that are provided in their written submissions do expressly request that the federal and provincial government of Alberta do the -- are subjected to conditions by the Panel and they, of course, are representative of the Crown.
5478.           Just a clarification on that comment made by Northern Gateway.
5479.           **THE CHAIRPERSON:** Again, this is atypical to have clarifications at the end of reply. I'm doing my best to be flexible here.
5480.           I don't see that this is an objection that's been raised but, Mr. Neufeld, any comments?
5481.           **MR. NEUFELD:** I don't hear any objection either, Madam Chair, so I have no comment.
5482.           **THE CHAIRPERSON:** Hearing no objections beyond what's been raised as comments or clarifications, this now completes the final argument phase which is the final procedural set for parties.
5483.           The Panel will shortly begin our deliberations. Before we do close this hearing, each of us has some words that we'd like to express to everybody.
5484.           So we'll begin with Mr. Matthews.
5485.           **MEMBER MATTHEWS:** Good afternoon, everyone.
5486.           Thanks for your -- putting your time in today and sharing your views and arguments with us.
5487.           We've reached a very significant milestone in this process and, you know, a process that we began before -- in May of 2010 and I just wanted to thank the many people who participated in this process: the many intervenors, the governments, the communities, the Applicant and the many legal advisors.
5488.           It's been quite an adventure for me personally in visiting all the communities, the Aboriginal communities, to pick up knowledge and understand -- try to understand the communities and also in our many hearings with the oral

**Closing remarks  
JRP Members**

- statements and the oral evidence and reading the many oral statements -- sorry, the written comments and going through the evidence.
5489.           So it's been -- to me, it's like being -- going on a huge shopping trip and you pick up all the stuff in your basket and you -- at the end of the day, you take it home and now you have to sort it out, figure out what you need and how you're going to make something great out of it.
5490.           And I hope that that greatness is something that will serve the public interest and that will be -- will take heed of the law and also take heed of the many interests of the communities that I've heard from.
5491.           And I have all that information in my journals and I have that -- all that information in my mind and -- but, more importantly, I have a lot of information in my heart so I want to thank every one of you for your -- for sharing all your wisdom and your comments with me.
5492.           So with that, I am -- I also want to thank my -- our staff who are now going to -- I don't know probably work even more diligently in supporting me and helping me come out with some recommendations for the Government and -- as we move forward.
5493.           So, again, thanks, everyone, for your participation and your input.  
Thanks.
5494.           **MEMBER BATEMAN:** Good afternoon.
5495.           A Joint Review process is very much like a journey. It's designed to be public. That's important and it is as it should be. The Joint Review proceeding was designed to hear from all directly affected and interested people.
5496.           The Canadians share in that view is evidenced by the significant numbers of people who chose to participate in the Northern Gateway Joint Review and I would like to express my personal thank you to all who have participated.
5497.           It has been a particular privilege to travel to the many communities along or near the proposed pipeline route. The perspectives of participants have been communicated with logic, passion and personal conviction and, at times, with deep emotion and we have been touched by that as well.

**Closing remarks  
JRP Members**

5498.           What is remarkable to me is that the participation by so many people has been punctuated by a commitment to proceed with respect. Thank you for that.
5499.           I would also like to take a moment and personally thank the NEB and CEEA staff and the many service providers and community members in the communities we have travelled to.
5500.           In these settings, the Joint Review Panel have been supported. We've been supported by bright, dedicated, hard-working people who have been exemplary in their commitment to the comfort and the safety of participants and to the success of the Joint Review process. Thank you for that.
5501.           After today, I will deliberate with my colleagues, Sheila and Hans, all of the evidence that is on the record. We will do so with openness, objectivity and integrity. Our objective and our commitment is to make a decision that is thorough and complete and is in the public interest.
5502.           Thank you to all.
5503.           **THE CHAIRPERSON:** Thank you to both Kenneth and Hans.
5504.           It's difficult to come up with words at this point in a process like this. It's been a process that, for me personally, has been a time of tremendous growth. It's been a humbling experience. It's an absolute privilege to have been involved in this process.
5505.           The time and effort that individuals and parties have put into this process is staggering and I believe that everybody has worked hard to provide the Panel with the best evidence possible during these proceedings and we thank you for that.
5506.           As Kenneth and Hans have said, we have read and we've listened to all the evidence that's been put forward and we will be considering all this evidence during our deliberations.
5507.           Thanks to everybody's participation, we've been able to gather an incredible amount of information about the proposed project and have insights that would never have been possible without the dedicated efforts of many parties

- and individuals.
5508. And again, my colleagues have spoken to this but it goes to all the parties, to all the individuals and to everybody involved in the logistics.
5509. The evidentiary record is closed so I won't put anything on the record but I do know that there was an article, I think in a Prince George paper at one point, that referenced the -- you know, the efforts that it took within the community to support the Joint Review process coming to town.
5510. And so you can take that and carry that across to the many dozens of communities that our Panel has visited in the course of these hearings and so we thank everybody for all the work that's gone on in that piece.
5511. As noted previously, in previous communications, the Panel will release its report to Governor-in-Council on or before the established deadline of the 31<sup>st</sup> of December 2013. Parties will be provided advance notification of the anticipated date of release and a copy of the report will be available on the Panel's website.
5512. I don't think we can ever thank our staff and the support people enough who've helped us through this. I'm trying to think of another word beside "journey", but it is an incredible -- it has been an incredible experience as we've gone through and unfolded the process as we've moved along, given the commitment of individuals who want to be involved and this Panel's commitment to hear from everyone who wanted to express views that were relevant to this Project.
5513. And that has required a tremendous amount of flexibility, of diligence, of commitment, of quick left and right turns, as we went along through the process, and the Secretariat staff have gone way above and beyond being able to accommodate that.
5514. I'm sure that, you know, as it's unfolded and you look at the transcripts and you go, "Okay, the Panel was in this location at this day and they moved to that location at that day", well, it didn't unfold in that way. The Panel, you know, had bookings in numerous locations at various times as we were trying to sort out what would be the most efficient calendar for moving forward and that type of thing involves goodwill on the part of so many people to be able to accommodate that, such that, ultimately, it unfolds in a process that was orderly and, I believe,

quite respectful.

5515. I think this is a process where people have been involved for the first time -- we've heard that as we've gone forward -- and the ability of people to, by the end of the process, provide the Panel with what their views are in a succinct manner, and in a very clear manner, I think is evidenced by the fact that the Panel had no questions of parties as we were going through the oral argument phase.
5516. We believe we've heard clearly what the positions of people are, and we thank you for that. We know that that would take a great deal of time to distil down your views and your thoughts in a way that could be that concisely presented to this Panel for our consideration. So we are grateful for that.
5517. Going back to the staff, we also have a number of support service people as we've recognized: court reporters, sound technicians, the interpreters. I don't know how the interpreters have put up with us. There is no time where we've seen interpreters emerge from their booth to say "Slow down" and sometimes I'm very guilty of getting so involved in the process that I forget to interrupt to ask people to slow down. So thank you very much to the interpreters for "beavering" through and keeping up with us.
5518. It's a strenuous job and all components of this file have had to come together with everybody doing their very best at what they can do, from all parties and staff, to have this unfold in the way that it has.
5519. I would like to also just offer a personal thanks to my family, friends and colleagues for the tremendous support that I've been given personally through the hearing process.
5520. And so with that, the Joint Review Panel Hearing for the Proposed Northern Gateway Project is now concluded.
5521. Thank you everyone. Safe travels. Goodbye.

--- Upon adjourning at 12h42 p.m./L'audience est ajournée à 12h42