

Enbridge Northern Gateway Project

Joint Review Panel

File OF-Fac-Oil-N304-2010-01 01
13 August 2012

Mr. Michael Reid
(on behalf of) Gitga'at First Nation
445 Hayimiisaxaa Way
Hartley Bay, BC V0V 1A0

Dear Mr. Reid:

**Northern Gateway Pipelines Inc. (Northern Gateway)
Enbridge Northern Gateway Project Application of 27 May 2010
Hearing Order OH-4-2011
Notice of Motion filed by the Gitga'at First Nation 11 July 2012
Ruling no. 77**

The Panel has received the notice of motion of the Gitga'at First Nation (Gitga'at) dated 11 July 2012, requesting the following relief:

- a) A directive detailing how the Joint Review Panel's assessment of the Northern Gateway Pipeline Project will incorporate environmental (biophysical and human) effects associated with the Proponent's:
 - i. oil pipeline expansion phases II through IV,
 - ii. condensate pipeline expansion phases II through III, and
 - iii. tanker traffic associated with the pipeline expansions.
- b) An order that the Final Hearings (including the Questioning Phase) are adjourned until:
 - i. the proponent has supplied satisfactory information on the consequences of its pipeline expansion plans for tanker traffic and shipments of oil and condensate through Gitga'at territory, the associated environmental (biophysical and human) effects, and its proposed mitigation measures,
 - ii. the Gitga'at has had a reasonable opportunity to review this information and advise the Panel whether it is sufficient to understand and assess the effects of the expansions on the biophysical and human environment and Gitga'at Aboriginal title and rights, and
 - iii. the Gitga'at has a minimum of six months to assess – including obtaining its experts' technical opinion on – this information and present its conclusions and concerns in a regard to these effects on the biophysical and human environmental and Gitga'at Aboriginal title and rights to the Panel.
- c) Such other relief as the Panel may consider appropriate in the circumstances.

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The Panel notes that the relief requested in the notice of motion relates to possible future expansion of the project. The Panel's Information Request 3.2 (A31029) requested further details in relation to the proponent's design process for both the oil and condensate pipelines, and requested a detailed description of potential expansion scenarios. In response, the proponent stated a range of pipeline capacities and cited a J-curve analysis to determine the optimum pipeline diameter.

The proponent has not applied for, nor filed evidence that it will proceed with, any of the potential expansion scenarios it identified. Further, it is noted that the proponent has recently stated in response to the Haisla Nation's Information Request 3.1 (Exhibit B79-2, e-file A42702) that:

As noted by Northern Gateway in its response to JRP IR 3.2d), an expansion scenario involving a throughput of 850,000 bbl/d is not part of the applied for Project.

Any future expansion scenarios and associated facilities beyond the applied for Project would be the subject of future regulatory applications and would include the required justification and other studies.

Increases above the amount set out in the proponent's application would require that a future application be brought under the relevant regulatory process.

The Gitga'at has referred to section 7.1 of the *Canadian Environmental Assessment Act* in support of its motion. That section defines modification of a project to exclude an expansion suggesting that it is possible that an expansion of the Northern Gateway Project may not require further environmental assessment. That section only applies to projects or classes of projects set out in the schedule to the Act. As the schedule does not include energy pipeline projects such as the Northern Gateway Project, the section does not apply to it. The Panel notes that the *Canadian Environmental Assessment Act* has been replaced by the *Canadian Environmental Assessment Act, 2012*. That Act contains no support for the Gitga'at motion.

As the subject matter of the notice of motion and the relief sought are beyond the scope of the current application, the Panel denies the motion.

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

Yours truly,



 Sheri Young
Secretary to the Joint Review Panel