Enbridge Northern Gateway Project Joint Review Panel
NEB File No. OF-Fac-Oil-N304-2010-01 01
OH-4-2011
NOTICE OF MOTION 1
December 5, 2011

Name of the person bringing the motion
<personal information removed>
Josette Wier

Decision or order requested

a. order Northern Gateway Pipelines Limited Partnership ("NGPLP") to provide full and adequate responses to the questions in the Information Requests identified in paragraphs 16 to 137 below by a fixed date;

b. adjourn the review of the Project until NGPLP has provided the requested responses to the Information Requests identified in paragraphs 16 to 137 below and in response to similar motions by other parties; and

c. set new and reasonable deadlines for the submission of intervenor written evidence, community hearings, information requests to intervenors, replies to information requests and final hearings.

Date submitted
December 5, 2011

Signature

PRINT NAME

Statement of Facts

1. I, Josette Wier, registered intervenor in the review of the Northern Gateway pipeline proposal submitted to NGPLP
   - Information Request No. 3 (Doc. No. A31282) on September 12, 2011
   - Information Request No.4 (Doc A31830) on September 26, 2011
   - Information Request No.5 (Doc A34791) on October 28, 2011
   - Information Request No.6 (Doc A34961) on October 31, 2011
   - Information Request No.7 (Doc A35208) on November 2, 2011
2. On November 24, 2011, NGPLP filed a Response to all information requests (Doc.A218I0 to A218L8 and A218Q0) ("Response"). In the Response, NGPLP failed to fully and adequately respond to the Information Request questions described in the Notice (lines 17 to 138)

Grounds for the Request

3. This motion is made pursuant to Hearing Order OH-4- 2011 ("Hearing Order") and section 35 of the *National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208 ("*Rules*").

4. In bringing this motion, I also rely on:

a. sections 15, 16, 18, 20(1) and (2), 32, 33, 34 and 35 of the *Rules*;
b. sections 12, 13, 20 and 52 of the *National Energy Board Act*, R.S.C. 1985, c. N-7 ("*NEB Act*");
c. sections 16(1)(a) to (d) and 16(2) of the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 ("*CEAA*"); and
d. the Hearing Order, Appendix I – List of Issues and Terms of Reference.

5. Pursuant to section 16(1)(a) of *CEAA*, the Panel is obligated to consider the environmental effects of the Northern Gateway Project ("Project"), including the environmental effects of malfunctions or accidents that may occur in connection with the Project.

6. The List of Issues to be considered by the Panel include the environmental effects of the Project on wildlife and wildlife habitat, fish and fish habitat, vegetation, the marine environment, water, hydrology, wetlands, soils, terrain and geology.

7. Pursuant to section 52 of the *NEB Act*, the Panel must have regard to the availability of oil and any other commodity to the pipeline and any public interest that may be affected by the Project.

8. Further, the List of Issues to be considered by the Panel includes the supply of oil to be transported by the Project and commercial support for the Project.

9. Pursuant to section 34(1)(a) of the *Rules*, a party served with an information request is required to provide a full and adequate response to the information request.

10. Pursuant to section 34(3) of the *Rules*, where the party has not objected to providing the information or where the grounds for objection are not sufficient, the National Energy Board ("Board") shall order the party to provide a full and adequate response to the information request.

11. Pursuant to section 20(1) of the *Rules*, where a party does not respond to a request for information, the Board may stay the application until the information is provided.

12. As detailed in lines 17 to 138 below, NGPLP failed to provide a full and adequate response to the five Information Requests I presented pertaining to the environmental effects of the Project, the environmental effects of malfunctions or accidents that may occur in connection with the Project and the commercial support for the Project.

13. The information requested in the Information Requests is required in order for the Panel to make fully informed determinations on the issues that it is mandated to consider by the *NEB Act*, the *CEAA* and the List of Issues. This requirement is thwarted when NGPLP fails to provide full

and adequate responses to the Information Requests.

14. Further, the information requested in the Information Requests is required in order to prepare my written evidence for submission to the Panel.

15. The delay in the provision of full and adequate responses to the Information Requests now makes it unreasonable for me to present my written evidence by the deadline of December 22, 2011.

Evidence supporting the request

Information Request J. Wier No. 3.1e

16. The question asks for different design parameters between Canadian and American standards for pipelines
17. The answer simply mentions the standards are CSA Z 662 in Canada and ASME B 31 4 in the USA which is meaningless to the general public like me. In its response to 3.2f, the proponent refers to a study of the differences "Baker Project" which is also too technical for the uneducated
18. It is important for intervenors who do not have the support of specialized consultants to understand the differences between the American and Canadian standards which should be communicated clearly to fully assess the risks associated with the proposed pipelines before submitting evidence to the Panel

Information request J. Wier No. 3.19c

19. To the question "what happens if detailed engineering recommends against valves placement recommended by the RAP -Risk Assessment Program--, which has the final decision?" the proponent answers "The terms are completely different. "Detailed Engineering" refers to a specific phase of the Project in which the "Risk Assessment Program" will be used to estimate risk. There is no conflict between the two".
20. The question referred potential conflicts in risk areas with engineering constraints and is simply not answered
21. It is important for intervenors to understand engineering limitations for the placement of valves in risks areas to fully understand the environmental risks of the project
22. This answer is necessary for intervenors's presentation of evidence

Information request J. Wier No. 3.21a

23. The question "Were such systems [proprietary systems of control] in place for the Enbridge pipelines that failed in Michigan (Kalamazoo system oil spill in July 2010) and in the Northwest Territories (WLR KP380) in May 2011?" is answered by "the system referenced in the preamble is installed in conjunction with the SCADA system, which is in place for monitoring and control on all of the liquid pipeline systems."
24. It is important to understand that those systems were in place on the two pipelines that failed in 2011 to assess their relative reliability
25. The proponent introduced a nuance of doubt to the answer which should have been "yes" but avoids stating it clearly.
26. To assess environmental risks, it is important to understand the failures of monitoring systems
27. The proponent did not adequately answer and should confirm a clear "yes" to the question

Information request J. Wier No. 3.23

28. The question asked "Could the proponent explain why it "intends" but does not

"commit to implement its AMP, and if it cannot commit explain the reasons why not?

29. The cursory response was “Intends” was in the context of receiving regulatory approval.
30. One is left without a clear commitment with this half-answered response
31. It is important to understand the proponent's real commitment to distinguish intentions which can easily been left as such, and real commitments for which the company can be called upon
32. It is important to understand the level of commitment of the proponent to its AMP which if not firmly monitored will have significant negative effects on wildlife and the environment
33. The proponent did not provide an adequate answer and should clarify it they “intend” or “commit”.

Information request J. Wier No. 4.1e

34. Regarding the question if “such a $1 million fine/penalty [has] ever been issued for a pipeline spill in Canada-- Please give example(s)?” the answer is “Northern Gateway is not aware of any fines or penalties resulting from a pipeline spill exceeding $1 million”
35. “Not being aware” does not carry much weight. It does not show that the proponent has looked into it.
36. It is important to understand the lack of deterrence from fines and penalties for pipelines accidents to be able to assess if pipelines companies can easily consider such fines and penalties as a cost of doing business and risk environmental damages in the name of profits
37. The proponent did not provide an adequate answer and should clarify if they even bothered to research the issue.

Information request J. Wier No. 4.1j

38. The question “Are such fines/penalties entered as a business expense and if not, where do they appear in the company's financial statements? is referred to Northern Gateway’s response to J. Wier IR 4-2f which answers something else
39. To understand how insignificant fines and penalties are, and their lack of deterrence, it is important to know if they are treated as a business expense at the risk of the environment
40. The proponent simply did not provide an answer needed for submission of written evidence on the irrelevance of fines/penalties with the present legislation

Information request J. Wier No. 4.2d

41. The question “If similar trends of repeated violations as what took place in Wisconsin during construction are observed, what steps will the proponent take to prevent such occurence?” is answered on a long elaboration starting with “Northern Gateway will comply with all regulatory requirements including its approval conditions. Northern Gateway has no intention of risking its reputation with regulators and the public by knowingly violating permit conditions for Project construction or operations...”
42. The proponent does not describe any action it will take if similar repeated violations (more than 500) occur during construction as happened in Wisconsin
43. It is important to understand what stringent measures the proponent commits to take to avoid what took place
44. The proponent failed to describe the steps they would take, hence not committing to crucial steps to avoid the environmental damage they inflicted in Wisconsin at a cheap cost there

45. The question is not adequately answered inferring a lack of commitment towards protecting the environment which is important to assess in the context of the environmental risks of the pipeline

Information request J. Wier No. 4.2e

46. The question "Is the proponent willing to stop construction if a contractor violates repeatedly regulations" refers back to the mantra of promised compliance but does not bother to address the question about stopping construction
47. Once again, the proponent does not show any commitment to avoid the shocking repeated more than 500 violations that took place in Wisconsin and avoid answering the question
48. The question is not answered, inferring a lack of commitment towards protecting the environment which is important to assess in the context of the environmental risks of the pipeline

Information request J. Wier No. 4.8a

49. The question "How does the lack of dialogue with the other pipeline proponent on the same right-of-way change the evaluation of insignificant cumulative effects?" is referred to response to Haisla Nation IR 1.6b).
50. The response to Haisla Nation IR1.6b describes the methodology used to assess the Cumulative Effects
51. Hence the question about the effects of the lack of dialogue with other proponents on the evaluation of cumulative effects is not answered
52. It is important to understand the effects of staggering construction of pipelines on the same Right-Of-Way on cumulative effects, to assess the environmental risks of the pipeline
53. The question is not answered, inferring a lack of commitment toward protecting the environment which is important to assess in the context of the environmental risks of the pipeline

Information request J. Wier No. 4.8b

54. The question asked to "revise the cumulative analysis without the assumption of satisfactory joint planning" is referred the the response to the Haisla Nation 1.6 b
55. The response to Haisla Nation IR1.6b describes the methodology used to assess the Cumulative Effects
56. It does not answer the question
57. The answer is important to assess the environmental risks of the pipeline

Information request J. Wier No. 4.9a

58. The question "What is the information still missing to refine the risk assessment?" is answered "The information currently being compiled and analyzed to complete the risk assessment includes the identification of causal factors and events, and the determination of the magnitude and frequencies of spills as a result of those factors. This determination is underway and the preliminary risk assessment will be submitted when complete".
59. This information is key to understand the environmental risk of the proposed pipelines
60. This information is necessary to present written evidence
61. Given the lack of this information, I request that the deadline for submission of written evidence should be extended to 1 month after release of this information.

Information request J. Wier No. 5.2b

62. This question asked the proponent's strategy if discussions with Pacific Trails Pipeline do not occur as early as possible
63. This question was asked for the second time
64. The reply refers to the response to BC Province IR2.7b which itself refers to JRP 3.10b. The latter is a summary of attempts to discuss synergies/conflicts etc... but does not describe the strategy if those unsuccessful attempts continue to fail
65. It is important to have a clear commitment from all projects proponents in or nearby the proposed Right-of-Way for Northern Gateway to synchronize their activities to assess cumulative effects.
66. The proponent does not offer any strategy if it is forced to work without collaboration from other project proponents
67. Hence the question is not answered for the second time, compromising the ability to submit written evidence on cumulative effects

Information request J. Wier No. 5.3

68. The question asked for the second time was "what are the cumulative effects without the implied joint planning" and the response refers to Haisla Nation IR 1.6b) as in line 55 of this Notice
69. As noted above, the reply only describes the methodology but does not describe effects without joint planning
70. From the repeated avoidance to answer this question, it is reasonable to imply that there will not be joint planning and cumulative effects will have to be assessed for each project proceeding at different times
71. Uncoordinated construction activities are likely to have increased environmental effects which are important to describe to understand risks from the project construction
72. The question is not answered compromising the ability to submit written evidence on cumulative effects

Information request J. Wier No. 5.5

73. The question repeated for the second time asked for a list of options for mitigations
74. The response is postponed to an unknown time "A preliminary list of mitigation measures that will be considered to reduce the risk of a spill will be provided in Northern Gateway's preliminary pipeline risk assessment. Please refer to Northern Gateway's response to JRP IR 8.1 for further information".
75. It is impossible to submit written evidence on the proposal when mitigation measures are not described
76. The question is not answered compromising the ability to submit written evidence on cumulative effects

Information request J. Wier No. 5.10b

77. To the question "is a rupture different from a spill" is answered : "A pipeline rupture is a condition where there is a complete loss of pressure containment in the pipeline".
78. The response brings more confusion to the uninitiated public; defining what a rupture is does not answer the question about the difference between a rupture and a spill. When the proponent mentions rupture frequency, (Response to Eco Justice 1.21d), it is impossible to understand if it is the same as spill frequency
79. The proponent did not provide an answer and introduced confusion compromising the ability to submit written evidence on evaluation on risks on spills (or ruptures?)

Information request J. Wier No. 5.11

80. The question asked "**Using data from the 359 reportable spills** [emphasis added] during 2005-2009 totalling 40,046 barrels, please describe how the initial spills estimates matched the recovered volumes and the custody transfer measurement informations".
81. The answer confines itself to the Wrigley spill
82. The question was meant to estimate the reliability of spill estimates and is not answered using the large 359 data base of reportable spills
83. It is important to understand the reliability of spill estimates because the spill response planning is likely very dependant on the initial estimate
84. The question is not answered compromising the ability to submit written evidence on reliability of spill estimates and the consequences on teh adequacy of spill responses

Information request J. Wier No. 5.12a

85. The question asked "How the Kalamazoo submerged bitumen is concurrent with the SL Ross' findings on density which shows a maximum density of 0.990 at 1°C for weathered bitumen which would indicate the bitumen would float and not sink".
86. The answer "Table 4-2 of the SL Ross (2010a) Technical Data Report describes the general property changes associated with weathering for the three assessed hydrocarbons. MacKay River heavy bitumen diluted with synthetic light oil has a density that increases to 1.01 g/ml after 48 hours of weathering given average summer conditions expected in Principe Channel" errs to something else than what was asked.
87. The question is not answered compromising the ability to submit written evidence on the consequences of the weathering of bitumen in fresh water conditions and its accumulation in bottom sediments where it is difficult to retrieve.

Information request J. Wier No. 5.21

88. The question relates to the the striking differences between the firmly predicted socioeconomic benefits of the project while the environmental effects remain uncertain with predictions laden with "should, would and could" while both are likely equally full of incertitudes
89. The response refers back to the initial non response to J.Wier 2.12 and does not address the material presented in the preamble. The latter shows, as an example, the flawed methodology for regional construction employment estimates which "may prove inaccurate" and the striking evaluation that "because these estimates are based on the best available knowledge, there is a high level of confidence"
90. The proponent did not explain why the socio economic analysis is so full of certainties while the environmental effects of an oil spill ridden with uncertainties, while both are equally drawn upon uncertain assumptions
91. By not answering the question on the differences of levels of confidence on the very positive socioeconomic effects and the unknown environmental effects of oil spills, the proponent compromises the ability to present written evidence on each.

Information request J. Wier No. 5.22a to e

92. The questions are about "industry best practises for environmental monitoring"
93. The proponent refers to its "follow- up and monitoring programs for hydrocarbons spills for each of the major components of the terrestrial and freshwater environments" but fails to explain how those are "industry best practises"; all further questions (c to f) are referred to the unsatisfactory response to "a"

94. I contend that the proponent squarely refuses to answer the questions asked
95. By refusing to answer, the parties cannot assess if “industry best practises” have any meaning at all
96. Not answering the questions on industry best practises compromises the ability of submitting written evidence on their significance

Information request J. Wier No. 5.25e

97. The question asked “Is it correct to understand that contaminated ground water with "safe" levels of PAH or Benzene compounds represent a loss of the right to access uncontaminated ground water?”
98. The reply “No. Groundwater with safe levels of volatile hydrocarbons and polycyclic aromatic hydrocarbons (—PAH‖) has no adverse effect on to the environment. However if this water needs to be used as a source of drinking water then Canadian drinking water guidelines must be met.
99. The question did not ask about the safety of groundwater with volatile hydrocarbons and PAHs but asked about the loss of access to water without contaminants
100. The proponent neglected to answer the question and compromised the ability of submitting written evidence on the potential loss of access to ground water without contaminants

Information request J. Wier No. 5.25f

101. The preamble quotes the proponent saying “typical approaches are to meet applicable health or ecological standards which reduce the risk to human or ecological receptors” and the question pointed to the reduction only of such risks, not their elimination
102. The reply is inadequate “ No. Groundwater with safe levels of volatile hydrocarbons and polycyclic aromatic hydrocarbons (—PAH‖) has no adverse effect on to the environment. However if this water needs to be used as a source of drinking water then Canadian drinking water guidelines must be met” and does not address the reduction only of risks
103. The response is unsatisfactory and does not allow to differentiate between reduction or elimination of risks from contamination of water and prevents submission of written evidence on the matter

Information request J. Wier No. 5.25h

104. The question asked “Please give a range of times it can take to comply with Tier 1 and Tier 2 guidelines, using examples described in response to 2.16a
105. The answer “The time required to be compliant with Tier 1 or Tier 2 guidelines cannot be predicted since it is dependent on a number of factors including, but not limited to, the nature of the substance released, physical-chemical properties of the substance, volume released, remediation methods, meteorological conditions, and surrounding environments” does not give a range at all and does not use the examples of response to 2.16a
106. The question is not answered which compromises the ability to submit written evidence on recovery time of contamination of ground water, if at all.

Information request J. Wier No. 5.35a

107. The question asked to define a standard deviation for the predicted 2,000 and 7,800 m^3 maximum spill volumes at certain crossings

108. The answer is that the question is not relevant
109. The question is very relevant. One straight number without standard deviation is by definition suspicious and the proponent does not justify not giving a range
110. By not giving a range of potential spill volumes, the proponent compromises the ability of providing written evidence on environmental risks of spills

Information request J. Wier No. 5.35b

111. The question asked about accountability for spilling more volume than the 2,000 and 7,800 m^3 maximum spill volumes predicted at certain crossings.
112. The one line response "Northern Gateway's response will be appropriate to the volume released" does not mention accountability.
113. The proponent choses to not address accountability on their spill prediction volumes which does not allow to understand the reliability of those numbers
114. The question is not answered compromises the ability of providing written evidence on environmental risks of spills

Information request J. Wier No. 5.35c

115. The question asked "If the proponent is not prepared to accept accountability in this matter, what is the use of giving those numbers besides "selling the pipeline" on weak data which may be disproved by events they failed to anticipate?"
116. The response which refers to 5.35b "Northern Gateway's response will be appropriate to the volume released" is irrelevant.
117. The question is not answered and compromises the ability of providing written evidence on environmental risks of spills

Information request J. Wier No. 5.37b

118. The question was "The oil adhesion results of Table 3-5 show adhesion properties for CLB almost 3 times as high as IF-30 with no evaporation. Is it correct to conclude that CLB would stick to shoreline and equipment 3 times more than IFO 30?"
119. The answer provided does not address the question: "The simple adhesion test provides a general indication of the relative adhesion properties of different oils. At the time of a spill, response equipment and response measures appropriate to the oil encountered would be deployed."
120. Given the claim that all crude oils including tar sands oil (DilBit) are the same and the recovery strategies do not differ between grades, it is important to understand if those claims are justified
121. The question is not answered and compromises the ability of providing written evidence on environmental risks of spills

Information request J. Wier No. 5.37e

122. The question asked was "describe the temperatures range for skimmers to operate efficiently"
123. The only line response "Skimmers are generally specific to the oil type rather than temperature" does not address the question whatsoever
124. The question is not answered and compromises the ability of providing written evidence on environmental risks of spills

Information request J. Wier No. 5.41a

125. The question asked "Does the *Brannon et al* statement [that there would have

been no substantial toxicological effects on the critical early life stages of pink salmon] apply to inland river stocks

126. The response "The Brannon et al. (1995) study examined salmon spawning stream gravel at the intertidal mouths of several rivers following the Exxon Valdez Oil Spill (―EVOS‖)." does not answer the question

127. The question is not answered and compromises the ability of providing written evidence on environmental risks of spills

Information request J. Wier No. 5.46a

128. The question asked the definition of "corrosive chemical species"

129. The response states: "The term ―corrosive chemical species‖ was intended as a generic phrase to describe additional trace elements such as oxygen that may also be dissolved in the sediment or water. These trace elements play a small role in influencing the initiation or growth rate of internal corrosion. Sediment and water deposits on the internal pipe bottom are the primary corrosion agent and these can be effectively managed through operational monitoring and, if necessary, further mitigation.

130. It implies that oxygen, sediments and water are "corrosive chemical species"

131. It is an unscientific stretch to call oxygen, water and sediment corrosive chemical species and sheds doubts as to the scientific reasoning of the causes of corrosion.

132. Also, the response vaguely alludes to "additional trace elements" besides oxygen but stops short of describing them

133. The question is incompletely answered and does not allow to present written evidence on the causes of corrosion.

Information request J. Wier No. 5.52a,b,c,d

134. Question a asked about economic benefits of a river before devastation by a spill and is denied an answer "it is not possible to predict the economic benefits that would be at risk and questions "b", "c" and "d" are referred to this lack of answer

135. It is astounding that the proponent can only estimate economic benefits from the project but is unable to estimate economic baseline data from the resources they put at risk

136. This information is essential to a proper economic analysis which, as it stands, only describes benefits, and ignores the cost of what is potentially lost

137. The question is not answered and prevents a written submission to present a critical view of the "economic" analysis presented.