



Department of Justice
Canada

Ministère de la Justice
Canada

Security Classification/
Classification de sécurité :

Prairie Region
300,10423 - 101 Street NW Edmonton
AB T5H 0E7

Région des Prairies
10423, rue 101 NO, bureau 300
Edmonton AB T5H 0E7

Telephone/Téléphone: <contact information removed>
Facsimile/Télécopieur:
Email/Courriel:

Our File/Notre dossier: 10238566
Your file/Votre dossier: 80101

August 26, 2020

VIA ELECTRONIC MAIL: IAAC.GrassyMountain.AEIC@canada.ca

Joint Review Panel for the Grassy Mountain Coal Project
c/o Impact Assessment Agency
160 Elgin Street, 22nd Floor, Place Bell Canada
Ottawa, Ontario K1A 0H3

Attention: Alex Bolton, Chair

Dear Sir:

Re: Grassy Mountain Coal Project - Reference Number: 80101

We write on behalf of Environment and Climate Change Canada, Health Canada, Fisheries and Oceans Canada, and Natural Resources Canada in respect of the Panel's request that participants provide their comments in respect of the questions below.

Question 1 – Procedure of the hearing:

Would you prefer to have the presentation of evidence and cross examination during the electronic hearing be conducted by party or by issue/topic? Please provide a rationale for your stated preference.

The federal authorities have indicated a preference that evidence and cross-examination proceed by issue or topic as has been done in other hearings such as the Milton Logistics Hub Project and the Roberts Bank Terminal 2 Project. This would allow for enhanced expert witness participation, as witnesses would be able to participate in topic-specific discussions tied to their expertise. Proceeding in such a manner could also limit the amount of time any particular witness would need to attend the hearing. This could assist in reducing network usage or potential stresses on Zoom. It will reduce concerns related to witnesses appearing from other time zones for extended periods.

There may be subject areas for which more than one federal authority may have expertise. As such, Canada proposes working with the Panel to identify and make available the federal government witnesses best placed to provide evidence on the subject areas identified.

Question 2 – Concerns about electronic hearings:

As a hearing participant, if you have concerns about participating in an electronic hearing, what are they? What measures (and by whom) could be taken to mitigate those concerns?

The participation of large witness panels, like the federal witness panel, in an electronic hearing format could present challenges in respect of network or platform capacity. As above, proceeding by issue or topic may reduce these challenges. Regardless of whether the presentation of evidence

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and cross-examination proceeds by party or subject matter, federal government witnesses will be directed to attend through strong and reliable internet connections.

The federal authorities have also raised some concern about having side-bar conversations among its expert witnesses who may be in different locations during cross-examination. Witnesses may need to confer to determine who is best suited to answer a question put to them. While the federal authorities are aware of the possibility of separate breakout rooms in Zoom to allow for such private discussion, they are concerned about both the efficiency and the security of those breakout rooms. In particular, Zoom is not currently approved by the federal government for the exchange of certain secure information. Such concerns could be addressed if the Panel permitted the federal witnesses to confer through another means (such as by telephone) or on another platform to ensure confidentiality before returning to the electronic hearing proper to answer questions.

As federal government witnesses would likely attend from multiple time zones, the start and end times of any hearing day involving those witnesses may have to be adjusted to accommodate their attendance. We note the Panel has recognized that the hearing may involve shorter days for an extended period.

**Question 3 – Counsel concerns about electronic hearings:
(If applicable) As counsel representing a hearing participant(s), what do you see as the potential difficulties in fulfilling your roles and responsibilities if the hearing was conducted via electronic means? What measures (and by whom) could be taken to mitigate these perceived/potential difficulties?**

We see the main potential difficulties with proceeding electronically relating to network capacity and the ability of the platform to accommodate multiple parties concurrently. Counsel will ensure they have strong internet capacity in attending the hearing. The Panel's proposal to conduct a mandatory test hearing in advance should reveal whether those difficulties can be managed.

We consider that the best practices that the Panel has proposed in its notice should address most procedural concerns. We add that the instructions and etiquette guide for online hearings released by the Alberta Court of Queen's Bench on August 20, 2020¹, modified as necessary, may provide some further useful guidance to participants.

Please contact us if you require anything further.

Yours truly,

<Original signed by>

Robert Drummond
Senior Counsel
Prairie Region
Department of Justice Canada
RD/kr

¹ <https://www.albertacourts.ca/qb/resources/announcements/instructions-and-etiquette-guide-for-online-hearings-for-counsel-parties-media-and-the-public>