

January 22, 2010

The Honourable Jim Prentice
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec K1A 0H3

Peter Sylvester, President
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd floor
Ottawa, ON K1A 0H3

Dear Minister Prentice and Mr. Sylvester,

**Re: Enbridge Northern Gateway Pipeline Project
CEAR Reference Number 06-05-21799**

We write with regard to the final Terms of Reference for the proposed Enbridge Northern Gateway Project Joint Review Panel released December 4, 2009.

On April 14, 2009 our organization, along with ForestEthics and Living Oceans Society, submitted comments via Ecojustice on the draft Terms of Reference concerning the scope of issues to be considered by the Joint Review Panel. Among our recommendations was that the Terms of Reference for the panel consider the implications for oil sands development in terms of both environmental impacts and contributions to Canada's greenhouse gas emissions.

As the final Terms of Reference still do not cover the impacts of upstream oil sands development or the associated greenhouse gas emissions, we write today to request that the Agency revise the final Terms of Reference for the Joint Review Panel to include these issues.

In a report in the Globe and Mail earlier this week, both an NEB spokesperson and a representative of the proponent, Enbridge Northern Gateway Project, indicated a willingness to expand the scope of the project to include these issues. The comments were made in response to the release of a Pembina Institute report entitled *Opening the Door to Oil Sands Expansion – The Hidden Environmental Impacts of the Enbridge Northern Gateway Pipeline*.

We refer to two excerpts from the Globe and Mail article:

But the panel may opt to broaden its scope if it encounters significant concerns about the upstream impacts, said NEB spokeswoman Kristen Higgins. "Just because it wasn't listed in the terms of reference doesn't mean it's not an issue that the hearing can consider," Ms. Higgins said. ...

Enbridge spokesman Steve Greenaway said the company is prepared to have the full scope of the project review, including potential impacts from production projects. "We fully expect the project to come under significant scrutiny and to have to pass a high test as it relates to the public interest," Mr. Greenaway said.

Watchdog Disputes Pipeline, Tuesday, January 19, 2010, Shawn McCarthy, The Globe and Mail

We are aware that a great deal of concern has already been expressed about this project, and believe the public interest would be best served by expanding the scope of the Terms of Reference. We understand more than 1,000 public comments were received on the draft Terms of Reference, more than for any other project in the history of the CEAA Registry. We believe this is a strong indication of substantial public concern.

While we appreciate that the review panel has the option to hear evidence in relation to these issues, it is not obliged to include such evidence in its decision unless these matters are included in the Terms of Reference. We refer to section 16(3)(b) of the Canadian Environmental Assessment Act which makes clear that the scope of factors to be considered in the assessment of a project referred to a review panel is determined by the Minister, in fixing the Terms of Reference for the review panel. Therefore, we are asking that the Terms of Reference be amended to expressly include the upstream impacts of increased oil sands development, including land, water impacts as well as greenhouse gas emissions, given the willingness to do so indicated by both the NEB and the proponent.

The Pembina Institute has indicated that if these critical issues were included, we would participate in the Joint Review Panel for this project. Accordingly, once the Terms of Reference are revised, we are also requesting the deadline for participant funding be extended to be consistent with the revisions to the Terms of Reference, in order for any additional participants to be able to apply for participant funding.

We look forward to hearing from you at your earliest convenience.

Sincerely,



Karen Campbell
Staff Counsel and Director, Strategy

cc. Jon Pierce, CEAA, Senior Program Officer, Project Reviews
Suzanne Osborne, CEAA, Participant Funding Program