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Order of Appearances

Northern Gateway Panel 4

Aboriginal Engagement and Public Consultation

Ms. Janet Holder	Mr. Paul Anderson	Mr. John Carruthers
Mr. Ray Doering	Mr. Jeffrey Green	Ms. Michele Perret
Ms. Catherine Pennington	Ms. Jan Whitney	Mr. Jeff Paetz

Examination by Ms. Candace Kerr for Fort St. James Sustainability Group 26218
 Examination by Mr. Allan Stonhouse for Enoch, Ermineskin & Samson Cree Nations 26774

Examination by Ms. Candace Kerr for Fort St. James Sustainability Group 26218

Ms. Kerr asked, “Does interest in the land, specifically the type of title, ... have any bearing on the type and degree of consultation with stakeholders?” Mr. Jeff Paetz replied that nature of the interest would dictate the type of consultation. Ms. Kerr used the example of herself as a landowner on the pipeline right-of-way versus a person with no title interest in the pipeline. Mr. Paetz said, “You would be subject ... to a different type of consultation program.” 26218

Consent required to go on private land

Referring to Transcript [Volume 151](#), Para 26184, Mr. Paetz confirmed that the transcript said he said that consent was obtained in all cases prior to surveys or studies on landowner properties. Ms. Kerr said, :”This is where the power went out, so I’m going to re-ask the question. What would be the course of action if consent is not obtained?” Mr. Paetz said, “If consent if not obtained, the agents or the Enbridge employees are not to enter the lands.” 26228

Ms. Kerr described two incidents. In the first, a landowner living on the Necoslie River near Fort St. James reported seeing “a helicopter land in her field and encounter a survey crew working for Enbridge without having any previous knowledge” or having given any consent. In the second, “a landowner received a cheque in the mail from Enbridge thanking him for allowing their survey crews to be on his land and he had no idea that they had been on his land, had not given consent.” Mr. Paetz denied having any knowledge of these events. 26235

Missing stakeholders or landowners

Ms. Kerr pointed to this statement, “Northern Gateway (NGP) strongly believes that, because of the public consultation program design and process, virtually all potentially affected persons and groups have currently been identified and provided with a meaningful opportunity to participate in reviewing the Project.” [\[Exhibit B2-1, Adobe 16\]](#) She asked what the word “virtually” means here. Ms. Janet Holder replied, “The word “virtually” I think is just a terminology that’s being used. ... I don’t think there’s anything to be meant by the word “virtually” other than in the context of the definition of “virtually” in the context of this sentence.” Ms. Kerr: You may have missed someone? Ms. Holder: “There is always a possibility that we will miss somebody.” 26243

Ms. Kerr asked if there’s an acceptable margin of error, “It’s okay to miss a certain percentage of landowners?” Mr. Paetz: “No, there is not.” Ms. Kerr: “Is it possible?” Mr. Paetz said it is unlikely, but possible. “For the people that we do require land rights from, we can’t miss anyone because then we’d have a gap in the right-of-way and the gap in our rights, so that process is fulsome.” 26255

In reply to Ms. Kerr’s questions, Mr. Paetz confirmed that in 2010, NGP completed a field program to engage with all the landowners that were directly affected and adjacent to the proposed pipeline. Those are people within one kilometre of the pipeline or 1.5 km

of the pump stations. In 2011 NGP followed up with those people who still had issues. Ms. Kerr asked when when was the last time we met with landowners in the Fort St. James area. Mr. Paetz replied that it was in 2011. He said, “There are concerns in Fort St. James like there is in other places along our pipeline route.” 26262

Ms. Kerr put up a map which shows occupied dwellings close to the proposed Fort St. James pump station location. [[Exhibit B113-7](#)] She identified a property close to the pipeline and said it had changed ownership in 2012. Extensive discussion ensued about whether the new landowner had been contacted by NGP, and how NGP tracks property changes. 26284

Not serving section 87 land acquisition notices until after project approval

Ms. Kerr returned to the question of landowners being “provided with a meaningful opportunity to participate in reviewing the Project,” as noted above. She asked about the materials which were given to landowners in the initial contact, in 2010. Specifically, “Were any section 87(1) [NEB Act] notices given out at all?” Mr. Paetz said, “No.” “It is our intention not to acquire the land rights or even a significant portion of the land rights until after the certificate has been acquired.” 26339

Ms. Kerr asked, “Would you agree with me ... that not delivering the section 87(1) notices up front has the potential to compromise or limit landowner involvement in this particular phase of the process -- in the certificate hearing phase of the process?” Mr. Paetz said, “No.” He added that the section 87(1) notice, an example of which is in [Exhibit B1-3](#), “is to address compensation and the detailed routing. At this phase of the project ... we are trying to deal with the CPCN certificate and ... the corridor.” 26365

Ms. Kerr put up [Exhibit B47-7](#), another map which displays the pipeline route through the Fort St. James area. A yellow square depicts a stockpile site “in a local cattle rancher’s field.” Mr. Ray Doering said it is a proposed stockpile site – with highway access and near the proposed right-of-way. Ms. Kerr wanted to know how the discussion with this landowner would be different than that for any other landowner. She is told that it would be no different, that the discussion would not start until after the CPCN is granted. Mr. Carruthers said that stockpile sites “are done through negotiation and people seek us out - quite a different process [than] the pipeline or the terminal site.” 26394

Public consultation program re landowners

Ms. Kerr asked if there were differences in the consultation program between BC and Alberta. Ms. Perret said, “No”, but was reluctant to say “identical” or “exactly the same.” Ms. Kerr: “One province has much more experience with pipeline applications than the other. ... Would you not accommodate one province's relative unfamiliarity with pipelines?” Mr. Carruthers: “Yes, you are right. We've done a lot more in British Columbia in terms of an education process.” Ms. Kerr asked a number of questions about the consultation program, including not just the level of understanding that communities had about pipelines but the level of knowledge and awareness that NGP had about the communities. “Do you feel that you had a good sense of the social fabric of each of the communities prior to initiating your consultation program?” 26425

Ms. Kerr asked about an answer that Mr. Paul Anderson gave to the Chairperson in [Volume 106](#), paras 605 – 607. She had asked him how would they have communicated differently. He replied, “We could have provided a map, ... a timeline” of what we’ve done and what we planned to do. “A large calendar or Gantt chart. ... Map that out better, especially in areas where people are not as familiar with the process, like in British Columbia, as maybe perhaps us Albertans are.” Ms. Kerr asked what would a Gantt chart do for her neighbour, “an 85 year old farmer with a grade school education?” Extensive discussion continues. 26456

Land agents

With respect to the old farmer, Mr. Paetz said, “We bring the land agents out there. We try to have people that speak the same language ... a lot of our land agents are farmers.” Ms. Kerr replied, “When the land agent came down here on the first consultation round on Airport Road he drove down the driveways in his truck, rolled down the window, wouldn’t get out of his vehicle, asked if we had a dog and then handed us an envelope with information. Gave us his business card, told us to contact him if we had any questions and then drove away.” 26481

Mr. Paetz said they keep consultation logs. Ms. Kerr asked if they were accessible to a landowner. He replied, “We could provide you with -- each individual landowner should know what that consultation is but if they wanted to know the dates and times that we engaged them we could provide them with that information.” 26486

CABs and landowners

Ms. Kerr put up Table 3-16 “CAB Attendance by Stakeholder Category” [[Exhibit B2-1](#), Adobe 75] verified with Ms. Perret that this represented stakeholder makeup of the CAB process at the time of application - from Rounds 1, 2 and 3 in 2009. She asked where the landowners are in the table and if they were treated as a stakeholder group. Ms. Perret said, “I can’t find them in this table.” Some landowners may be included, but they are shown as belonging to other types of stakeholder category, or as individuals. Ms. Kerr asked how many landowners have been involved in the CAB process. Ms. Perret said, “I can think of one landowner who is a very regular attendee.” Ms. Holder said “They have other ways that they can engage.” Ms. Kerr said, “I’m aware of that. ... I’m speaking right now about the CAB.” 26492

Observers at CAB meetings can become members. Members can be individuals, or organizations. Expenses to attend CABs are reimbursed to individual members and to members attending as representatives of organizations. 26539

Social licence and the effectiveness of consultation

Ms. Kerr said she will ask about “social licence and the effectiveness of your public consultation program.” “How does Northern Gateway define social licence?” Ms. Holder said, “We generally would refer to it [as] the acceptance of stakeholders in the project. ... Sort of the public acceptance of this project.” As an aid to cross examination (AQ), Ms. Kerr put up speaking notes for Enbridge CEO Al Monaco in which he said, “It means we need public trust and confidence that we can operate safely and bring benefits to the communities that we operate in.” 26552 & 26707

Ms. Kerr asked whether “achieving social licence” was an initial goal of the public consultation program. Ms. Holder said, “I would not say we had it as a goal.” Mr. Carruthers said, “Yes, from the beginning we would have had a very strong interest in building the trust and confidence of the region. ... That was front-of-mind for us.” 26564

Is it necessary to achieve social licence?

Ms. Kerr asked, “Is it necessary to achieve social licence in British Columbia for this project?” Ms. Holder: “It's very difficult for us to answer that question. ... [It] has so many different definitions by so many different people.” Ms. Kerr reminded her of the CEO's definition. She said, “My answer to that question is yes ... but how do you define public trust and confidence?” 26575

Fort St. James as a measure of effectiveness of consultation

In reply to questions from Ms. Kerr, Ms. Perret provided some contextual information: Some meetings predated 2005, but since then there have been about 18 meetings in Fort St. James. Some were public, some private, some just with individuals. Some were focussed on specific topics or with specific stakeholders. There are three CAB members from Fort. St. James, two of whom are active, and one is an elected official from the regional district. Ms. Perret said they have made donations in Fort St. James but would not disclose the amounts or the recipients and said they are not in the evidence. The general approach is the same from one community to the next, but tailored where they know of specific interests or characteristics. 26591

Fort St. James opposed to the project

Ms. Kerr put up another AQ, a July 2012 letter of comment from the District of Fort St. James [[A2Z1C6](#)] in which “the District of Fort St. James Mayor and Council passed unanimous resolution to oppose the Enbridge Northern Gateway pipeline.” The letter explains that the District's position is supported by the Nak'asdlı First Nation. Ms. Kerr asked, “After all the meetings and ... contributions, what do you think happened in Fort St. James?” Ms. Holder said they were not in a position to answer that question. 26641

Donations to communities

Putting up Section 6, “Community Investment and Benefits” [[Exhibit B207-02](#), Adobe 23], Ms. Kerr asked how communities were identified for donations. Ms. Perret said, “We used a map and the proximity of the proposed right-of-way ... and crossed referenced that with the communities we've been discussing.” Ms. Kerr said that the communities are primarily on the right-of-way. She noted that Fort St. James and Vanderhoof are both missing. Ms. Perret agreed, and said that they had been unable to make a donation to the Fort St. James food bank, and she thought Vanderhoof was missing for the same reason. 26672

Subsequent discussion tended not to be specific or supported by or explanatory of evidence and may be followed in the transcript from 26688.

Nos to yeses, and vice-versa

Ms. Kerr said, referring to the District of Fort St. James letter and Mr. Monaco's speaking notes, "I understand this to mean that Fort St. James and Nak'azdli are denying NGP a social licence to operate the project in their communities. Would that be your understanding as well?" Ms. Holder said, "No, that's not my understanding." She suggested that might be what they meant at the time of the letter, but "a lot of nos in this project ... have been changed to yeses." Ms. Kerr: "Have you heard a lot of yeses turning to nos?" Ms. Holder: "No, I have not." She added that there was one Aboriginal community. 26722

Attaining social licence

Ms. Kerr asked, "How will you know if you've attained social licence?" Ms. Holder replied, "We can't speculate on that ... we have not defined it today." She and Mr. Carruthers expand considerably on that answer. In the transcript. 26735

Ms. Kerr: "Is a social licence ... a precondition for constructing Northern Gateway?" Ms/Holder said, "It's not a precondition by this panel." Mr. Carruthers expands the question of social licence from local communities to the economic benefits which NGP said in Edmonton would accrue to all of Canada if the project were built. "We see this from a broader perspective. Social licence is critically important, but it's critically important for all Canadians." 26748

Referring to an Insights West finding from a January 2013 poll that 61% of the British Columbians polled oppose NGP, Ms. Kerr asked if that indicates no social licence in BC for the project. Ms. Holder would not accept the finding, because she knew nothing about the poll. 26757

Ms. Kerr's last question was whether the witnesses would agree that "given the opposition in British Columbia, the actions in the community of Fort St. James and other actions from other communities in British Columbia who oppose Northern Gateway, that your public consultation program has not achieved its original goals and objectives?" Ms. Holder said, "I can't agree." 26761

Examination by Mr. Allan Stonhouse for Enoch, Ermineskin & Samson Cree Nations 26774

Aboriginal economic benefits package

Mr. Stonhouse was calling in from Saskatoon and watching the proceeding via WebEx. He said he was filling in for Rangi Jeerakathil. His first questions were about the Aboriginal economic benefits package, described in Volume 5A, [Exhibit B24-2](#), Adobe 42. Ms. Jan Whitney said that 45 groups were offered benefits packages, 18 in Alberta, of which 15 have accepted, and 27 in BC where 11 have signed. 26776

Ms. Holder said the benefits package is "very broad" and "goes into the future" and "the benefits wouldn't necessarily even be at a stage where we had agreement at this point in time. ... It's a very difficult question to say how many have accepted a benefit package,

[but] we can say how many have accepted or signed an equity ownership agreement.” Ms. Laura Estep said that the exhibit includes a detailed list of who has received the benefits package [page 43]. Ms. Whitney said that this list is for those groups who were made an equity offer and not all groups were eligible for equity.” She said there are 34 Alberta groups that NGP is working with. 26795

Mr. Stonhouse asked if the 3 Alberta groups who have not signed, of the 18, “have rejected.” Ms. Holder said that “rejected” is not the correct word.

Detailed walk through of \$1 billion in Aboriginal benefits.

Mr. Stonhouse asked if “the economic benefits package can include [one or more of] an equity participation offer; procurement, employment and training initiatives; a community investment fund and access to corporate branded programs.” Ms. Whitney agreed. He asked if there are other components. Ms. Catherine Pennington said that the Aboriginal benefits are worth about a billion dollars. It includes equity, \$300 million in construction, \$200-\$300 million in the tunnels and marine services, and \$100 million in labour. To give these a reference, he asked the capital costs of the project. Mr. Carruthers said, \$6.6 billion, plus \$1.3 billion for the cost of capital used during construction. 26816

Equity participation

Mr. Stonhouse examined each component of the benefits package, beginning with the equity offer which is up to 10% of the project, and which can be funded by their portion of the equity. [Note: the purchase cost of the equity share will essentially be a loan, borrowed from future revenues which accrue to that share of the equity.] Mr. Carruthers said they would have to enter into the Aboriginal ownership agreement and eventually, into the Northern Gateway Pipelines Limited Partnership Agreement.” 26856

Procurement

With respect to the procurement initiative [page 45], Mr. Stonhouse asked for confirmation that the target for this is \$300 million from Aboriginal businesses and joint ventures “within the engagement area.” He asked what is meant by “the engagement area.” Ms. Perret referred him to [Exhibit B2-26](#), Adobe 18] and explained it as communities located within the 80 km corridor on either side of the right-of-way, plus groups that had expressed an interest whose traditional territory would traverse the project corridor. More precise clarification of this is in the transcript. No actual tasks or areas have been “set aside” yet, and no contracts have been drawn up. 26868

Employment and training initiatives

With respect to employment and training initiatives [page 46], Mr. Stonhouse has verified that there will 15% Aboriginal participation in construction and operation phases of the project. He suggested that these are temporary jobs. Ms. Pennington replied that this project is to be built in “spreads and in windows”, and that there are other pipeline and construction projects, and great demand for trained workers in the sector. Mr. Stonhouse asked “how long construction might last at any given locality.” Mr. Doering said that the project is broken up into 12 to 15 spreads to be scheduled over five construction seasons, and perhaps four to six months per spread. Three or four primary mainline pipeline construction contractors would be assigned a series of spreads over those four or five

seasons. They would tend to have fairly consistent crews that would stay with them. In addition there are facilities: pump stations (perhaps a year), tunnels (three years), and the Kitimat terminal (three years plus). 26916

Operations jobs: five in Alberta, 35 in BC

There will be 268 operations jobs [Exhibit B146-2] from the project. Mr. Stonhouse concluded that about 40 of those jobs will be for Aboriginal people (15% of 268). He asked how many will be in Alberta. Mr. Carruthers said about 35. Mr. Stonhouse calculated that to be five Aboriginal jobs. Mr. Carruthers agreed but emphasized that the indirect and induced employment (perhaps 1200 jobs) also should be considered. 26943

Mr. Stonhouse asked if “these operation jobs ... will ... be open to Aboriginal groups who have not received a benefits package?” Ms. Pennington said that “communities in a partnership” will have “certain opportunities” but “we maintain an open and inclusive program.” 26977

Mr. Stonhouse gave the example of a member of the Samson Cree Nation – would this person be precluded from an operations job because because the Samson Cree Nation hasn’t received an economics benefits package? Ms. Whitney said, “We’re open to have that type of dialogue. In fact we have had dialogue in relation to business procurement with Samson Cree.” 26995

Ms. Holder said, “The more engaged communities are, the more likelihood is that they will be in a position to be eligible for these positions. ... If somebody’s qualified to do the job and apply for the job then they will get the job.” Mr. Stonhouse: “If a band receives those training initiatives its members would be in a better position to compete for that employment; is that correct?” Ms. Pennington: “Working with communities in advance of the project ... is a real key ... opportunity for both parties.” 26998

Community investment fund

Mr. Stonhouse moved to the community investment fund: “Proceeds from the Community Investment Fund will be distributed towards programs deemed to be of benefit to Aboriginal and non-Aboriginal groups along the Project corridor.” [page 47]. He asked whether any portion of the fund will be set aside for Aboriginal groups.” Ms. Holder said, “We have not gone that far in our thinking.” Likewise, no decisions have been made about who decides on the funding distribution or if there would be an application process. Mr. Stonhouse asked if Aboriginal groups which do not have a benefits package will be able to apply for funding through the investment fund. Mr. Carruthers said, “Yeah, absolutely. There would be no distinction made.” 27018

Corporate branded programs

Mr. Stonhouse asked about “corporate branded programs,” again wanting to know if those who have not been offered an Aboriginal benefits package would be able to participate. Mr. Carruthers said this was for all “communities that are in proximity to the pipeline.” 27039

Engagement and the engagement area

Mr. Stonhouse's next questions deal with which Aboriginal groups were engaged and the basis on which Aboriginal groups were engaged by NGP. He returned to the definitions of the engagement area, project engagement area, and engagement zone. Ms. Whitney said they mean the same thing, as do zone, project corridor and 80 km corridor, and they all mean the area within 80 kilometres on either side of the pipeline right-of-way. Mr. Carruthers said it applies to the marine transportation corridor, "what we've defined as the confined channel assessment area." 27052

Mr. Stonhouse asked how NGP came to establish the 80 km distance. Ms. Whitney explained that in 2002 Enbridge had three different routes going west from Fort McMurray, Edmonton and Bruderheim. During that time the proposed Alaska gas pipeline project was also using 80 km. [Though she does not actually say so, she likely means that Enbridge adopted 80 km for NGP because the Alaska gas project was using it.]. 27069

Mr. Stonhouse put up [[Exhibit B2-26](#), Adobe 13] and said the first bullet point is where his confusion comes from. The bullet says, "identify and engage Aboriginal groups or Métis regions located within 80 km of the project corridor and the Kitimat Terminal or whose traditional territory may overlap with the project corridor (the engagement area)" The second bullet says, "understand the interest in project engagement of Aboriginal groups located outside the engagement." Mr. Stonhouse and Ms. Whitney endeavoured to arrive at a shared understanding of the meaning of this text. For example:

Mr. Stonhouse: "We're speaking about traditional territory overlapping the project corridor."

Ms. Whitney: "Yes, their traditional territory would have to traverse the corridor right-of-way."

Mr. Stonhouse: "The traditional territory would have to be traversed by the project right-of-way. Is that what you're saying?"

Ms. Whitney: "Yes, the traditional territory would traverse the project right-of-way."

Mr. Stonhouse: "Thank you."

Ms. Whitney: "So it would enter into the corridor but traverse the right-of-way." 27081

Mr. Stonhouse asked what NGP means when it refers to "traditional territory." Ms. Whitney's reply included, "The Aboriginal groups that we're working with, we look to them for the definition." He understood Ms. Whitney's meaning to be that NGP was "looking at historic traditional territory but also current traditional use." Ms. Whitney agreed. 27105

On eligibility to receive economic benefits

Mr. Stonhouse moved the questioning over to the criteria for economic benefits packages. A discussion took place around proximity of traditional lands to the right-of-way, and the engagement corridor. Ms. Whitney used definitions given in [Exhibit B2-26](#), pages 11 and 17. Mr. Stonhouse asked for clarification around the differences between the formal benefits packages offered to Aboriginal groups as outlined in [Exhibit B24-2](#), page 42, and the equity opportunities offered to others. Ms. Holder and Ms. Whitney indicated that the benefits

packages were just a starting point and that they had “progressed passed that and there’s other opportunities and benefits... [for] participating Aboriginal groups”. 27120-27207

Mr. Stonhouse clarified that what was initially “a formal... package that... opened the dialogue... has now turned into more of an individualized... dialogue between Northern Gateway and the First Nation”. Ms. Holder agreed with the statement. Further questioning around engagement criteria for economics benefits took place including Mr. Stonhouse’s inquiry of the extent to which NGP used its discretion to determine economic benefits in addition to the stated criteria in the Application. Mr. Carruthers confirmed that “all eligible groups were not treated exactly the same” and that NGP did its best to understand the interests of Aboriginal groups. It was established that NGP had offered all “Aboriginal group[s] who had a community located in the project engagement area and who had expressed an interest in economic opportunities” (as per Point 1 in [Exhibit B24-2](#), page 42), in BC and Alberta, an equity package, other than the Coastal Nations. 27214-27259

Ms. Whitney confirmed that other Aboriginal groups would be able to “participate in economic activities” if they hadn’t been offered a benefits package, and could compete for contracts reserved for Aboriginal business. Mr. Stonhouse asked “which is the furthest situated First Nation from the pipeline right-of-way... that received an offer of an Economic Benefits Package” and discussion around the amount of time required to provide an answer took place. 27355

On Samson and Ermineskin economic benefit offerings

Ms. Whitney agreed with Mr. Stonhouse’s statements that Samson and Ermineskin nations have filed evidence showing that their “members have current traditional use” through the engagement area and through the right-of-way. Mr. Stonhouse further inquired into whether or not these nations met equity offerings criteria. 27450

Mr. Stonhouse asked if in 2002, the “onus [was] on Sampson to come forward.... to provide evidence...that its traditional territory was in the engagement area”. Mr. Carruthers indicated that NGP tried to have dialogue with Sampson since 2008. 27494

Mr. Stonhouse asked about NGP’s “policy or guideline with respect to determining which First Nations would receive ATK (aboriginal traditional knowledge) funding to complete the ATK studies”. Ms. Whitney indicated that there was no formal guideline. Mr. Stonhouse asked for the range of funding granted for ATK studies and Ms. Whitney indicated an aggregate amount of \$5 million for all Nations in BC and Alberta (2.5 million in each province). An indication of the factors considered to determine the amounts of money given for each ATK study was given, as read out from Volume 5b, the ATK Study Program. Further discussion established that 26 ATK studies have been funded by NGP in Alberta, and 8 are underway. 27529

Mr. Stonhouse asked about the amount of money offered to Samson and Ermineskin for ATK studies in comparison to what was offered to other groups. Ms. Holder stated that information was confidential. Mr. Stonhouse asked further questions around the amount of funding offered to Samson and Ermineskin for ATK studies, and asked for confirmation that this amount was less than a quarter of the average amount offered to other bands. Ms. Whitney

answered that “you’d have to go back to the original dialogue”. 27567-27588

Similar questioning ensued. Mr. Stonhouse asked about the number of First Nation traditional territories the pipeline would pass through. Ms. Whitney said they could not provide an answer, partly because in Alberta in particular, there were nations requesting confidentiality around traditional territory mapping, and others who did not submit mapping. 27626