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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. Jennifer Griffith for the Haisla Nation 27661

Examination by Ms. Carrie Humchitt for the Heiltsuk Tribal Council 28292

Examination by Ms. Tracy Campbell for the Michel First Nation 28796

Examination by Ms. Jennifer Griffith for the Haisla Nation

27661

Northern Gateway and JRP have some duty to consult

Ms. Griffiths said that “In its Appendix M summarizing issues and concerns identified as a result of its Aboriginal engagement, Northern Gateway has said the following about the duty to consult Aboriginal peoples and appropriate Crown consultation: “To the extent that Northern Gateway may have certain consultation duties, it has sought to discharge any such duties.” [[Exhibit 2-33](#), Adobe 46], She asked if the Crown specifically delegated any aspects of consultation to Northern Gateway Pipelines (NGP). Ms. Janet Holder said, “We do believe that through the Aboriginal consultation framework, that they have at least assigned to NGP as well as the JRP process part of the responsibility or duty to consult.” 27661

Ms. Griffiths said, “In its response to the Haisla Nation IR 1.1(a), the federal government stated explicitly that it “has not delegated aspects of its consultation or accommodation obligations to NGP.” [[Exhibit E9-21-12](#), Adobe 2]. “Please identify which of NGP’s Aboriginal engagement activities are to be considered consultation activities?” Ms. Holder replied that “certain procedural aspects of the duty to consult have been delegated to us,” and quoted from Adobe 3, “The Government of Canada is relying on the Joint Review Panel process as part of the broader consultation including efforts of Northern Gateway, to the extent possible...” She said, “Our efforts are everything that we have filed in this Application around our engagement with Aboriginal communities.” 27667

This discussion is fairly complex, and should be followed directly in the transcript from 27661.

Consultation and the Haisla

Referring again to [[Exhibit 2-33](#), Adobe 46], beside “Appropriate Crown consultation,” Ms. Griffiths quoted, “NGP has communicated, and will continue to communicate, this concern to Crown agencies that may have a review or decision-making role.” Ms. Griffiths asked what has NGP communicated in this respect, “in relation to the Haisla Nation since this was filed?” (May 2010 with the original Application) Ms. Laura Estep

for NGP objected because it is “an incredibly broad question.” Ms. Griffiths went on to her next question. 27677

Ms. Griffiths said, “NGP has recently submitted 12 applications for temporary use permits for geotechnical exploration work in Haisla Nation territory to the provincial Crown.” She put up one of the applications as an aid to cross-examination (AQ), and said, “each ... includes a section on Haisla Nation concerns.” “But none ... identifies the Haisla Nation’s concerns with the federal government consultation process.” Ms. Holder said, “This application is for a B.C. permit and what we have provided is the concerns that the Haisla have with the B.C. permitting issue. We did not provide Haisla’s concerns with regards to the JRP process.” Ms. Griffiths: ‘Did you provide any information about the Haisla Nation’s concerns with respect to the federal consultation process with respect to the project?’ Ms. Holder: “No, we did not.” 27692

Ms. Griffiths asked if it were NGP’s position that it has no intention “to advise provincial decision-makers about the Haisla Nation’s concerns surrounding federal consultation.” Ms. Holder said, “We’re not restricting at all. ... Where we would ... meet with the B.C. Government, we would talk to them quite openly about all aspects of this project. But ... the B.C. Government has not been engaged, nor will they engage with us.” Mr. John Carruthers said, “Ms. Holder spoke about B.C. hasn’t engaged. That’s more at a political aspect. We certainly work with the Province of British Columbia [at the level of permit applications.]” This discussion continued at length. 27713

Impact on way of life vs impact on shareholders

Ms. Griffiths established that the Haisla territory encompasses the terminal site, the area around Kitimat and the pipeline route through the Kitimat River Valley. She stated that the Haisla “rely on the lands, waters and natural resources of Haisla Nation territory for food and for its cultural heritage.” Then she asked if NGP “operates for the benefit of its shareholders.” Ms. Holder agreed, but said as a regulated entity it has obligations to customers, shippers and other stakeholders. Ms. Griffiths asked, “If the proposed project results in damage to the environment, the ... consequence for NGP is largely financial?” Ms. Estep objected, and the Chairperson stopped the line of questioning. 27739

Acceptable risk level of a spill

Ms. Griffiths said NGP had never asked the Haisla Nation what an acceptable level of risk of a spill into the Kitimat River Valley is. “In the event there is a spill, you’re referring to an oil spill response plan.” She said, “NGP is not prepared to complete a ... spill response plan for the Kitimat River Valley that could be tested and assessed during this JRP process.” “Haisla Nation has made it very clear ..., that it’s concerned about a spill into the river, and NGP ... has not put together a comprehensive spill response plan for the Kitimat River.” Mr. Carruthers agreed, and extensive discussion followed about the level of information that NGP has put together regarding response planning and the Kitimat Valley specifically. Ms. Griffiths said, “The level of work done to date does not provide the requisite level of certainty required by the Haisla Nation.” 27776

Ms. Griffiths asked, “Would Northern Gateway commit, as a condition of approval, to identifying and meeting the acceptable risk levels of the Haisla Nation in the Kitimat

River Valley? Mr. Carruthers replied, “No. ... We are looking to what the Joint Review Panel’s decisions would be in terms of this project.” 27834

Assertion of title is based on exclusive use and occupation

Ms. Griffith mentioned the “Haisla Nuyem” or traditional law, and “the stewardship obligations it imposes.” She asked, “Does NGP acknowledge that the Haisla Nation asserts Aboriginal title to the proposed terminal area and the proposed pipeline route in the Kitimat River Valley?” Mr. Carruthers replied, “Yes.” Ms. Griffiths: “And NGP understands that the Haisla Nation’s assertion of title is based in the Haisla Nation’s exclusive use and occupation of its territory?” Mr. Carruthers said, “I don’t think we can make any comment about assertions of title.” 27838

Ms. Griffiths asked whether NGP understands that the Haisla Nation claims an Aboriginal title and, as a result of that Aboriginal title, claims a right to choose the use to which the land is put. She put up the statement that “The proposed project would require the use of Haisla Nation aboriginal title land [referring to the terminal site] for a purpose that is inconsistent with Haisla Nation stewardship principles and with the Haisla Nation’s own aspirations for this land.” [[Exhibit D80-51-2](#), Adobe 3 & 18] 27873

Ms. Griffiths referred to letters sent by NGP “to Aboriginal groups in BC providing information about the spill at Kalamazoo.” She asked, “Has NGP sent any other updates to Aboriginal groups about this spill?” Ms. Holder replied that there have not been specific letters since this time to the Haisla Nation. However, Enbridge did provide information by way of full page ads across B.C. and Alberta.” 27914

Ms. Griffiths asked whether NGP “advised Aboriginal groups that it is opposing the EPA’s proposed administrative order directing further clean-up for the Marshall spill.” Mr. Carruthers: “Difficult for us to answer because we’re on the panel. That’s happening in the last couple days. ... I have never characterized it ... as opposing.” [Ref: [EPA Response to Enbridge Spill in Michigan](#), [EPA Response to Comments - March 14 2013](#)] 27928

Impacts on Haisla Nation title land

Ms. Griffiths asked a series of questions about whether NGP was planning on mitigating impacts on - in particular alienation of - Haisla Nation Aboriginal title land required for purposes of the project. Ms. Estep took issue with the questions and no answers were provided. Best to read the transcript. 27947

The veracity of NGP’s aboriginal update

Ms. Griffiths compared a letter from the Haisla dated January 11th to NGP’s Feb 13, 2013 Aboriginal Update [[Exhibit B207-8](#)] and suggested that the Aboriginal update provided by NGP doesn’t fully capture the concerns that were set out in the Haisla’s letter. The Haisla letter expresses concerns about the physical impacts to the Haisla territory from proposed field work and the timing of the proposed field work in relation to the least risk period for mountain goat. 27974

Ms. Griffiths summarized that “I’m understanding that NGP makes the decision about the extent to which the information Aboriginal groups provide to [NGP] will be set out in the Aboriginal engagement updates and then provides those updates.” Ms. Holder responded that the process is very open and transparent and provides opportunity ... to fully discuss these matters and expand upon them if it’s felt important by the Haisla Nation. 28012

Ms. Griffiths made an additional – and lengthy - comparison between Exhibit B207-8 and another letter dated February 1st 2013 from the Haisla and stated that the letter “doesn’t capture the full extent of the Haisla Nation concerns as set out in that February 1st letter.” Mr. Carruthers responded that [NGP] did not incorporate the entire letter. The correspondence was regarding 11 applications for Temporary Use Permit’s that NGP had filed to the BC Government. 28015

Ms. Griffiths then determined that NGP’s February 23rd update was written prior to NGP having received the Haisla’s letter dated February 20th (which was a response to a November 14th letter from NGP). 28075

Mr. Carruthers confirmed that the Haisla’s February 20th letter states that JRP IR 15.1 did not address or alleviate the concerns the Haisla Nation as about the potential impacts of this project on the lands, waters and resources and on Haisla Nation culture and culture heritage. [Haisla Nation AQ7] 28091

Addressing Aboriginal title concerns through mitigation measures

Ms. Griffiths asked, “Is NGP addressing the Haisla’s Nation’s Aboriginal title concerns through its mitigation measures?” Ms. Holder responded that NGP has avoided taking a position on the merits of the claim asserted by the Haisla Nation with regards to rights, including title. NGP has sought to identify the interests and concerns underlying those claims so that project could be developed in a manner that achieves alignment between ourselves and the Haisla Nation were practicable. Mr. Doering gave examples of how the project has considered the Haisla’s concerns regarding the potential for spills. Ms. Griffiths sought what NGP is proposing to do to address the use of [the Haisla’s] territorial lands and title land in an ways that are inconsistent with the Haisla Nation’s stewardship obligations. Mr. Carruthers talked about the evolving discussions regarding the terminal site referencing a 2006 map. 28109

NGP role in the Crown’s consultation process

Ms. Griffiths asked if NGP views the consultation process to be between the Haisla Nation and the federal government. Ms. Holder explained that NGP has being undertaking certain procedural aspects of the Crowns’ duty to consult that has been outlined to NGP through the Aboriginal consultation framework. She believes that the Crown has assigned NGP certain procedural aspects of the duty to consult. She clarified that the issue of *title* is between the government and the Haisla Nation, and not NGP. Read the transcript for specific wording. 28122

PNCIMA – Tides Canada funding, NGP lobbying DFO & updates to First Nations

Mr. Green and Mr. Carruthers confirmed that NGP knew that the Haisla Nation were involved in PNCIMA, that PNCIMA was doing marine planning and zoning, and that NGP was involved in PNCIMA. 28132

Ms. Griffiths asked about a presentation that NGP made to DFO regarding the credibility of PNCIMA using Haisla Nation AQ1. Mr. Carruthers confirmed that NGP raised concerns with respect to the funding and the organizational structure of PNCIMA, specifically the role of Tides Canada. He made reference to [Exhibit B70-8](#). 28157

Ms. Griffiths asked if NGP raised its concerns about Tides Canada's involvement with PNCIMA during its engagement with Aboriginal groups in the context of the Northern Gateway project. Mr. Carruthers said, "No". Ms. Holder said that the Haisla may have been present at one of the CAB meetings where this topic was discussed. 28181

Ms. Griffiths asked a few more questions about PNCIMA – how its scope has been watered down, whether or not NGP has discussions with DFO after the December 2010 presentation. She got no substantial answers. 28197

Examination by Ms. Carrie Humchitt for the Heiltsuk Tribal Council 28292

Heiltsuk Nation as stakeholders

Ms. Humchitt inquired, "...does NGP consider the Heiltsuk Nation to be stakeholders, and if so, how do they define us as stakeholders?" Ms. Whitney responded, "No", and recalled her March 14th testimony on the definition of stakeholders which referenced [Exhibit B2-26](#) Adobe 17. Ms. Humchitt called up [Exhibit D85-3-02](#) Adobe 4, and asked if [NGP] was "aware that Heiltsuk Nation opposes the JRP process because we are treated as stakeholders in this process?" Ms. Holder responded, "It would not be what we would believe to be the case." Ms. Humchitt then asked, "Does NGP recognize the sovereignty of the Heiltsuk Nation?" Mr. Carruthers responded that NGP wasn't looking to make a determination of rights and title, but rather, looking at how the project may impact any concerns the Heiltsuk might have and what mitigation might be available. 28302

Proponents versus sponsors of the project

Ms. Humchitt, sought clarification of Mr. Carruthers' March 12th statement, "Enbridge is a sponsor but not the proponent." Mr. Carruthers responded that "the application was made on behalf of Northern Gateway's pipeline project, which of Northern Gateway's Pipeline Inc. is the general partner". 28335

Ms. Humchitt brought up a notice of motion by Coastal First Nations, [Exhibit D35-11-1](#) Adobe 5, which references comments from Pat Daniels and asked, "...who are the producers and the refiners?" Ms. Holder responded, "...the Proponents are Enbridge, funding partners and First Nations." Ms. Humchitt pressed, "Who are the funding partners?" She stated that as referenced in the notice of motion, in order for proper

consultation to occur all the Proponents need to identified. The Chairperson recalled that this has been canvassed previously and asked the witnesses if they had anything to add. Mr. Carruthers answered, “No”. 28338

Ms. Humchitt tried unsuccessfully to seek clarification between two statements, one stating Enbridge is the Proponent and one stating Enbridge is a sponsor. 28366

PNCIMA funding

Ms. Humchitt discussed NGP’s participation in PNCIMA and the federal government withdrawing funding. She asserted that Enbridge had lobbied the federal government to withdraw funding because of concerns of the Gordon and Betty Moore Foundation having influence. She asked about NGP’s interest in funding PNCIMA and got a vague answer. 28387

Inclusion of the Heiltsuk Nation in List of Aboriginal Communities

Ms. Humchitt returned to [Exhibit B2-26](#), and asked about the omission of the Heiltsuk Nation from the list of First Nations. NGP responded that they had included the Heiltsuk Nation in the Turning Point Initiative. 28417

Community Advisory Boards

Ms. Humchitt sought clarification on the community advisory boards - role, participation, reimbursement and term of reference. 28438

Ms. Humchitt asked about whether the CAB meetings could be held in Heiltsuk Nation territory. Mr. Carruthers responded that the CAB meeting happen closer to the confined channel and right-of-way. Ms. Humchitt proposed, “Is it on the basis of distance away from the right-of-way that NGP is restricting the scope of communities in terms of engagement and consultation with respect to the project?” Mr. Carruthers clarified that “potentially, there’s a correspondence with distance but that’s not a criteria per se...” Ms. Humchitt followed with, “So you don’t recognize that the Heiltsuk has a great interest in this Project?” Mr. Carruthers responded, “No, I didn’t say that at all”. 28464

Ms. Humchitt pulled up [Exhibit B24-2](#), Adobe page 381. Mr. Anderson confirmed that no reference of NGP seeking Aboriginal traditional knowledge from the Heiltsuk Nation could be found here, but [Exhibit 207-8](#), page 55 indicates the possibility of completing a traditional land use study. 28485

Referencing Adobe page 383 of said exhibit, Ms. Humchitt asked NGP to explain its basis for not identifying marine risk mitigation measures or commitments that would apply specifically to the Heiltsuk Nation. Mr. Carruthers responded by describing their general approach to mitigation. 28502

Routine effects and accidents and malfunctions

Parties discussed the difference between routine effects and accidents and malfunctions and the location of community sessions that gave an update on the Kalamazoo oil spill. 28508

Summary of Oral Hearings from Heilksuk

Ms. Holder agreed that [Exhibit B74-8](#) is a summary of the oral hearings and it doesn't provide the full range of evidence that was given at these hearings. 28518

Cancellation of community hearing in Bella Bella on April 2

Ms. Humchitt attempted to ask NGP if they realized the impact the cancelling of the April 2 hearings had on the Heiltsuk Nation in terms of consultation with NGP and the JRP. Got not response. As well, she asked NGP if they had any safety concerns with respect to the hearing in Bella Bella. No response given. [Note: it was the JRP that cancelled the Bella Bella hearing, not NGP.] 28527

Providing funding

Ms. Humchitt inquired about the funding that was and could be available to First Nation on the coast in order for them participate in the process. Specifically she asked whether NGP recognized that many First Nations [...] lacked the technical expertise to go through the various scientific reports. Ms. Holder agreed, and said they had provided funding to various FN communities (in addition to what CEEA might have provided). 28538

Exclusion of Heiltsuk from the equity agreement

Ms. Humchitt asked why the Heiltsuk Nation is excluded from the equity agreement and any other potential benefits to this project which are afforded to other First Nations. Ms. Holder responded that equity offerings have not been finalized. Mr. Carruthers mentioned the potential of getting the Heiltsuk involved in response plans. Ms. Humchitt asked if NGP recognized that any benefits may be nullified by a spill. Ms. Holder talked about the lack of engagement of Coastal First Nations, as an organization, and this is why they are wanting to have engagement with individual First Nations. Mr. Carruthers talked about the oil spill response capacity being used in a non-Northern Gateway related incident. 28566

Discussed NGP's communications with the Heiltsuk Integrated Resource Management Department. 28576

Reconsidering the Fisheries Liaison Committee and Herring Fishery

Mr. Carruthers stated that the Fisheries Liaison Committee is something they will develop with the communities and they are interested in meeting with the Heiltsuk. 28591

Mr. Green recognized the Heiltsuk's priority allocation of the herring roe fishery. 28604

Framework for aboriginal consultation

Questions about the aboriginal consultation framework were attempted but the Chairperson ruled the questions outside the scope of the review. 28606

Consultation with First Nations living off-reserve

Ms. Humchitt claimed that Heiltsuk members living off reserve were excluded from the consultation process because the hearings in Vancouver and Victoria were closed to the public. Ms. Holder responded that the general public and members of the Heiltsuk could

have watched the hearings in real time from a separate building, could have listened on-line, read the transcripts or attended a CAB meeting. 28619

Consultation - slowing down the speed

Ms. Humchitt asked whether NGP would request slowing down the process in order for more meaningful consultation to occur. No substantive answer was given. 28641

Consultation process incorporating Heiltsuk traditional law

Ms. Humchitt asked, “How does the consultation process incorporate Heiltsuk traditional law in regards to assessment?” Mr. Anderson responded, “the stewardship values that your community has would be consistent with those of the federal government’s and would be consistent with our attempts to mitigate the impacts of our project on the environment. 28665

Cultural Impact Assessment

Ms. Humchitt asked if NGP would reconsider having a cultural impact assessment done for the Heiltsuk Nation specifically. Mr. Carruthers stated [NPG] would like to meet the Heiltsuk to discuss. 28683

Heiltsuk opposition to Enbridge Northern Gateway and economic benefits

Ms. Humchitt asked if NGP was aware of the Heiltsuk Nation’s basis for opposition to the NGP. Mr. Carruthers responded, that it’s concerns about the potential for a spill and questions about the economic benefits. Ms. Humchitt asked about an economic benefit analysis specifically in regards to the Heiltsuk Nation. She asked about how many positions or jobs that would entail. Mr. Carruthers responded that they would need to work with the Heiltsuk to determine exactly what that might look like. Ms. Holder explained the broader economic benefits as discussed at the first panel in Edmonton. Ms. Pennington restated their interest in skills and training and business development standpoint. Ms. Holder stated that even though this Project goes forward there is an opportunity to benefit. 28689

Ms. Humchitt asked how would NGP react if, upon consultation with the community, that there was overwhelming non-support. Mr. Carruthers responded, “we have found where we’ve been able to meet with people and talk about it is that we can get close agreement in terms of outstanding issues.” 28762

Stopping the consultation process

Ms. Humchitt asked, “Is there potential for this consultation process to be stopped to allow for more meaningful consultation with the Heiltsuk Nation?” Ms. Holder said, “that the consultation is not intended to stop, that [NGP] will continue on consulting through the next phase as we wait for decision from this Panel, wait for decisions from the government, and then it will continue ongoing after that.” 28742

Ms. Humchitt asked whether NGP recognized that the Heiltsuk Nation views this consultation process as insufficient. Mr. Carruthers responded that NGP would like to meet with the Heiltsuk, and [consultation] won’t stop at that one meeting, it will be ongoing – it can go through once we’re off the panel, it can go through after the decision,

and it will in fact go through even if we get into operation. There's ongoing consultation.
28746

Examination by Ms. Tracy Campbell for the Michel First Nation 28796

Declaration of interest

Ms. Whitney confirmed that Michel First Nation self-declared an interest in the NGP in a letter ([Exhibit D139-3-08](#)). There was some discussion about the turn around period for producing the record of communication.

Consultation guidelines specific for Michel First Nation

Ms. Whitney confirmed that NGP did not consult with the provincial or federal crown regarding consultation specific with the Michel First Nation. NGP just relied on the Crown's Aboriginal consultation framework. 288484

Ms. Campbell asked if an aboriginal group has to be a "discreet entity" in the eyes of Canada for NGP to collect information on traditional use of land and resources by its members. 28861

Defining "environment", "effect" and "environmental affect"

Mr. Green agreed that the term "environment" includes both human and non-human components, that "effect" is an indentified change to a valued component of the environment selected for study and that "environmental effect" is not restricted to identify changes to biophysical components only but includes indentified changes to human components as well. 28881

Defining "issues" and "concerns"

Mr Green talked about how issues and concerns are used in environmental assessments. "There's a specific section on the concerns of Aboriginal people in relation that valued environmental component. And then we continue to go on in the assessment, scoping the assessment because issues and concerns are the first step in scoping and then we eventually get to what is the actual measurable change that we're trying to assess."

Michel FN's aboriginal traditional knowledge studies – status, funding, timing

Referring again to [Exhibit D139-3-08](#), Ms. Campbell highlights that Michel First Nation talked about not having the capacity to specifically document the historical and current traditional uses of land by our membership that are potentially affected by the project.
28915

Ms. Whitney described the subsequent process and Ms. Campbell stated that Michel First Nation didn't control that process. Ms. Whitney described the treatment of groups with similar characteristics based on population, location from the right-of-way, where the community is based.

Ms. Whitney confirmed that the Michel First Nation submitted a budget for a traditional land use study of \$160,000 and that NGP informed Michel First Nation that they would

only entertain a study in the range of \$20 to \$40,000 which is proportional to the scope of the ATK work identified by Michel First Nation and mutually agreed upon. 28936

Ms. Campbell and Ms. Whitney disagreed about the sufficiency of \$40,000 to complete the ATK study as it was conducted by Michel First Nation.

Referring to [Exhibit D139-3-09](#), Adobe 2, Ms. Campbell highlighted a phone call record which stated “Kate called to indicate that Enbridge based their \$40,000 funding amount on internal reasons including MFN’s status.” Ms. Whitney confirmed that the funding decision was not based on MFN’s status as an Indian Band under Section 35 of the Indian Act.

Ms. Campbell sought clarification of the dates that the Michel First Nation ATK was distributed publicly or internally after it’s submission to Northern Gateway. Mr. Anderson clarified the timing of distribution. 29043