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Features for enhanced use:
- Link to the day's transcript
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Ms. Graff and Chairperson Leggett talk through the matter that arose yesterday about insurance not being an issue for discussion in Edmonton. Agreeing on the difficulty of separating economic matters from insurance and liabilities related to spills, the two agreed that Ms. Graff would try not to get too deeply into material better suited for Prince George, and the Chairperson would monitor her closely.

It did emerge that the “communications” between Ms. Graff and Mr. Neufeld, cited yesterday by Ms. Graff, were actually voice mail messages.

Examination by Elizabeth Graff for BC (continued) 16781

Yesterday, Ms. Graff established that construction and operational insurance for NGP would be by way of a stand-alone policy, and not rolled into Enbridge’s general insurance. She now clarifies that the operational insurance for NGP would consist of a number of policies, of which a general liability policy would be one. Pollution would be included in that. Ms. Graff also establishes that the policy could be exhausted in any given year by claims against it.

NGP has not yet determined its coverage limits and deems it premature to do so, as many engineering and corporate details have yet to be decided, nor have insurers been approached. 18238

Potential cost of spill

The Wright Mansell Public Interest Benefit Analysis (B83-4) estimated that large dilbit pipeline spills have a total cost of approximately $14,000 per barrel, while leaks have a cost of $10,000 per barrel or less. These cost estimates include cleanup costs and environmental damage. 18262

Ms. Graff points to the Enbridge Line 6b Marshall MI spill of 20,082 barrels of oil, applies the $14,000 per barrel estimate to that and concludes that the total cost for that would have been approximately $281 million. In fact, as of July 2012, the costs had exceeded $767 million, and that was just for cleanup, not environmental damages. She asks, why the discrepancy?

Potential insurance coverage

Dr Ruitenbeek replies that primarily it is because the Marshall spill was in a populated area in the United States. He also says that for planning purposes, “we're looking at an exposure of about $60 million in immediate potential clean-up costs once every 250 years or so.” 18271

Ms. Graff asks, is the $60 million figure what Northern Gateway would be looking at in terms of limit of insurance coverage? Dr. Ruitenbeek: these potential liabilities are of the order of 50 million, 60 million. Mr. Carruthers gives an even less specific reply. 18283

Asked how the geography, risks and costs played in the analysis, Dr. Ruitenbeek stated that their modelling was done in 50 meter increments, and Mr. Carruthers mentions the Kitimat Valley in particular. 18312

Ms. Graff returns to the question: “It is possible for a spill to occur that would far exceed that figure that we have arrived at in your report, that 50 or $60 million figure; correct?” Mr. Carruthers: “I would not accept that at this point.” 18341

Mr. Carruthers: “Clearly Marshall was the worst incident in our history. But it was instructive in terms of what we need to do to continually improve.” 18359

Mr. Graff asks about notification requirements, that is, the insured’s obligations to notify and report to the insurer following a spill. Mr. Carruthers has no information about this but undertakes to find out and reports later that it is 60 days. 18369

She next asks about the role of the insurer in the event of a spill. Would the presence of an insurance representative at the scene influence spill response decision-making? Mr. Carruthers says that would not be the case, that the priorities with a spill are to make sure everyone is safe, to limit exposure, then clean up. 18403

Financial wherewithal of NGP

In the context of a spill costing more than NGP’s coverage, Ms. Graff asks first about the ownership of the Northern Gateway Pipelines Limited Partnership. Exhibit JRP IR 2.8(b) indicates that Enbridge Incorporated provides 99.181% of the equity funding for the partnership, and Northern Gateway Pipelines Inc., the general partner, would provide 0.19%. Mr. Carruthers: “That is correct at this stage.”

Mr. Fisher adds that the project is two separate applications, the crude export line and the condensate import line. “So a funding participant has the option to purchase equity in either one or both of the pipeline projects.” Pursuant to the funding participant agreements, the funding participants have the right to acquire a portion of equity (4.9% per unit), as do Aboriginal interests. (10%).

Once built, the partnership will provide $2 billion, and “there will be debt financing”. To this point Enbridge and the funding partners have spent $300 million. (It’s not clear whether the remaining $5 billion of the total $7 billion will be debt financed.) 18424

Means of covering costs in event of major spill

“We don't know yet what the amount of insurance coverage will be but you must have an idea of how Northern Gateway will or would cover any costs in excess of insurance.” Mr. Carruthers says, “losses and claims in excess of insurance coverage could be covered from cash, from operations, the issuance of debt, commercial paper, credit facility draws and expected future access to public and capital markets or even the sale of assets.”. 18460

Projected net income from the project ranges from $238 million - $304 million per year. In the event of a shutdown because of a spill, this income does not stop. Instead, the transporter (NGP) declares *force majeure* and the shippers continue to pay the toll. 18484

Mr. Fisher describes some contractual details: shippers would pay under *force majeure* for 12 months, then a reduced toll which would include the debt funding. Cleanup costs could be recovered from the shippers through tolling on a “go-forward” basis. 18491

Discussion is also about raising funds by issuing debt. Ms. Graff asks whether the collateral or loan security might be compromised? Mr. Carruthers says, “It really goes back to the utility of the pipeline.”18514

Mr. Carruthers confirms that Northern Gateway Pipelines Incorporated, as general partner, would be liable for all costs and Enbridge Incorporated, as limited partner, would be liable only for the amount of its investment in the partnership. He also confirms that “Enbridge's financial resources in excess of its equity investment cannot be accessed in the event that Northern Gateway could not meet its financial obligations?” 18554

Would Enbridge consider a different structure?

Ms. Graff comes to a point: “British Columbia is interested to know whether Enbridge would be prepared to consider another structure which would enable access to its resources in the event that Northern Gateway's resources were exhausted?” Mr. Carruthers says, “No.”18570

The two discuss aspects of ownership, liability, then Ms. Graff proposes, “Would Enbridge consider backstopping Northern Gateway? Would Enbridge consider serving as guarantor, for instance, in the event of a large spill?” Mr. Carruthers: “I can't distinguish between that and the previous conversation” 18603 Protracted discussion ensues.

The Chairperson: “Ms. Graff, the Panel would ask you to move on. Ms. Graff says she is finished. 18625

Examination by Robert Janes for Gitxaala Nation 18650

Mr. Janes opens with “the questions, as I'm asking them, are designed to address issues around the treatment of the public interest connections between the cost benefit analysis and the public interest, the way Aboriginal interests are dealt with in the cost benefit analysis, the treatment of risk in the cost benefit analysis and certain particular things in the reports.”

Mr. Janes’ questions followed the issues as he noted them above, but did not generally appear to have a tight connecting thread that led to a specific outcome. Rather, he looked at an immense amount of detail, spending a lot of time on “certain particular things in the reports.”

He begins with Exhibit B83-5, the Reply Evidence of Roland Priddle, and cites this passage: “These [public interest] benefits are indisputable certainties. The costs [related to risks] are possibilities. The costs can be mitigated: state of the art engineering reduces already low risks; the consequences of risks that materialize are limited by response preparation; and costs that remain are addressed by insurance.”

Mr. Janes asks if Mr. Priddle is suggesting that once we look at those benefits as disclosed by the cost benefit analysis, that the public interest analysis stops. Mr. Priddle replies, “That is not my position.” 18672

Mr. Janes also confirms with Mr. Priddle that he is not also saying that it's only a question of looking at response measures and insurance in terms of whether or not those should be some form of conditions. “The Board still has to consider the question of risk to local communities and Aboriginal communities as part of the public interest criteria?” Mr. Priddle: Yes, I agree with that.

Giving special weight to Aboriginal communities

He asks Mr. Priddle whether he agrees that the cost benefit analysis doesn't give any special weight to Aboriginal communities such as Gitxaala in terms of how the risks should be treated, because they are Aboriginal? Mr. Priddle essentially agrees.

Mr. Janes takes the same question about giving special weight where risks impact Aboriginal communities to Dr. Mansell, who wrote the public interest benefits analysis. Dr. Mansell also agrees.

Then Mr. Janes puts up a quote from the same report that says, “The cost benefit analysis (CBA) should assume that all Canadians are to be treated equally.” Dr. Ruitenbeek jumps in, because he wrote this sentence. Moments later, we discover that he wrote it in response to a Gitga’at submission which “argues that the risk perceptions of local communities associated with “Stigma Events” such as spills, should in effect add substantially to potential project costs.”

Costs on the ground vs costs in the model

Mr. Janes explores the question of whether and how costs should or might be assessed with respect to impacts and perceptions of local communities, especially Aboriginal communites where treaty rights exist. It is a lengthy and difficult discussion and we don’t propose to follow it in these notes. Dr. Ruitenbeek says the question needs to be split out, with one part being the calculation of costs related to damages, and “the inclusion of things like stigma effects and feelings of costs or damages associated with those. The other part is the relative weighting of those within the “model” for the cost-benefit analysis. In the latter, there is no special consideration of costs given to Aboriginal people. Nor is there consideration for costs related to damage to Aboriginal rights. 18728

Mr. Janes then turns to the valuation of the costs associated with spill, and questions Dr. Ruitenbeek in some detail about the differences between the values he used in the Wright Mansell analysis, and the values he drew on from data assembled in “An Empirical Analysis of IOPCF Oil Spill Cost Data, Kontovas, et al, 2010. The discussion is mainly a process of discovery as to how Dr. Ruitenbeek came up with his valuations, shortcomings in Kontovas, etc.

Insurance payouts: 2% of actual damages?

Mr. Janes notes a citation in Kontovas to another study which reports that insurance payouts only covered 2% of the modelled cost of a spill, leaving, presumably, 98% to be borne by the public. Dr. Ruitenbeek disagrees with these numbers, arguing that the 98% is a gross overestimate. 18865

The other point from this is a note of caution to be used in using these payout data as necessarily a surrogate for actual environmental damage and even spill costs – that insurance payouts don't come close to matching actual costs. 18873

Dr. Ruitenbeek reiterates that in the Wright Mansell report, for marine spills, they have assigned $15,000 per barrel for cleanup costs, $22,500 per barrel for environmental damage costs, and $37,500 for a total spill cost for the types of large spills that they modelled as a mean case, as an average case. 18963

Table 4.1: Summary of Representative Parameters for Oil Spill Cost Calculations *

	Tanker Spill	Marine Terminal Spill	Pipeline Full Bore Rupture	Pipeline Other Spills
Mean Size	56,700 bbl	1,575 bbl	14,100 bbl	600 bbl
Return Period	250 years	61 years	240 years	4 years
Annual Probability	0.004	0.0164	0.00417	0.25
Cleanup Costs	$15,000/bbl	$11,000/bbl	$4,000/bbl	$9,000/bbl
Damage Costs	$22,500/bbl	$9,000/bbl	$10,000/bbl	$800/bbl

*Note: Estimates for Tanker and Marine Terminal Spills include condensate handling. Estimates for Pipeline are for oil pipeline. Condensate pipeline parameters are similar except mean rupture size is 5,200 bbl with 273 year return period and cleanup costs for other small spills is $5,000/bbl.

Kontovas as evidence

Dr. Ruitenbeek and Mr. Janes entered into a lengthy and at times tense debate over the significance of Kontovas, et al, 2010. It ended, when Mr. Janes asked: "This, in your mind, is a very important article; correct?" and Dr. Ruitenbeek replied, "It's certainly an important article. But in the number of cases, as I said, we draw on this more for stylistic lessons than the hard numbers."

Mr. Janes interrupts, "Madam Chair, Madam Chair, I'm asking the question for -- I'm asking a very specific question for the purpose of asking to have this document as an exhibit." 19118

This livens things up considerably, as the Chairperson, Mr. Roth, Mr. Janes all have things they want to say. It is decided to continue Mr. Janes' questions, then return to the Kontovas debate. Skipping ahead, Mr. Janes and Mr. Roth both presented arguments for and against admitting the document as an exhibit, and the Chairperson said the Panel would decide the matter later. 19245

Black swans

The Exxon Valdes is sometimes referred to as a "black swan" event. There are three elements to a black swan event: it comes as a surprise; it is rare and of high consequence; and after the fact, one will say: We should have seen it coming. Mr. Janes and Dr. Ruitenbeek enjoy a short discussion about black swan events. Dr. Ruitenbeek says you can only identify them after they have happened, and you cannot predict them. Mr. Janes notes that, "… until somebody saw the first black swan in Australia, people would have sworn, based on trends, all swans were white." 19160

Atlantic Canada

Mr. Janes highlights text in Wright Mansell which states that "Canadians have been living with offshore oil spill risks of similar orders of magnitude for many years in Atlantic Canada," and that "such risks when low are acceptable." Discussion ranges over what society finds acceptable and under what circumstances. 19191

Examination by Barry Robinson for "the Coalition" 19307

(ForestEthics Advocacy, Living Oceans Society, Raincoast Conservation Foundation)

Mr. Robinson introduces his co-counsel Tim Leadem. He calls for Muse Stancil 2012 (B83-3) then asks about the grouping of northeast Asian refineries into low, medium, and high. Mr. Earnest explains that these represent the proportion of capacity to refine heavy crudes, as well as to do some desulphurization. 19345

The report gives capacity figures for countries in the region for all Canadian crudes. Mr. Robinson asks for potential market capacities for heavy Canadian crudes, and Mr. Earnest undertakes to provide those figures. 19381

Mr. Robinson asks specifically about the Japanese market for Canadian crude and some features unique to Japan which Mr. Earnest describes. Mr. Robinson observes that Wright Mansell's forecast is for no oil from Canada to be shipped to Japan from 2018-2035. 19387

He also notes that a large volume of synbit will be going to China, but no dilbit. Mr. Earnest explains that synbit fits Chinese demand profile better, and explains some characteristics of the markets for dilbit and synbit. They also discuss the Korean and Taiwanese markets. 19403