

June 7, 2011

Ms. Collette Spagnuolo  
CEAA Process Advisory Team  
GatewayProcessAdvisor@ceaa-acee.gc.ca

Dear Ms. Spagnuolo,

In our conversation the other day, we talked about landowner issues and the compromise of their legitimate issues and stewardship responsibilities in the Northern Gateway Joint Review regulatory process. Due to a lack of respect for their rural culture – a culture of trust, it seems that landowners are being misled by information that is not clear and therefore limits their full involvement in this process and in dealing effectively with the pipeline company.

Landowners who will be imposed upon by this project need to be identified early in the process and made individually aware of the consequence to their property and families when this project crosses their land. Notification of the project and of regulatory open houses through newspapers is not sufficient. Notice should have been delivered months ago to each affected landowner including proposed easement agreements, easement agreements as identified in Enbridge's application. Delivery of NEB Section 87 notices after project approval which does not fully explain the regulatory process, is discrimination. These are the people imposed upon by the hardware, the risks and liabilities of the project; they are not just stakeholders.

The lack of direct early notification with a full description of how the project will impact the directly affected landowners shows no respect for the very real and legitimate concerns they have to protect their businesses, land and families. Nor does it show any respect for their **stewardship responsibilities** to the land. In the application, Enbridge has stated that they will not be notifying landowners with a NEB Section 87 notice until after the approval of the pipeline project. This compromises the landowner's right to take part in what is supposedly a fair and transparent regulatory process and also compromises their right to be made whole under expropriation law. Under Enbridge's terms, accepted by the NEB, directly affected landowners will be substantively expropriated without notice.

Landowners are not just stakeholders, these are the people who will live with this pipeline and are forced to change their lifestyle and agricultural (farm and ranch) practices to accommodate this private, for profit pipeline. This project is making their agricultural properties into the equivalent of a "gas station" without any "benefits", only the risks, liabilities and the resulting financial costs that leave many gas stations abandoned.

Both the National Energy Board and the Canadian Environmental Assessment Agency have a

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moral responsibility to make sure that each of these landowners understands the extent of the implications of this project on their property, to notify them of the certificate hearing, and also the consequence of not taking part in the certificate hearing process. Only upon a professional review of this application and full intervention in the certificate hearing can their legitimate concerns be addressed. This is the only place where landowners can present evidence to the regulatory body as to how pipelines impact their property before a pipeline project is approved. The certificate hearing is the only place to test the evidence and the resolution of landowner issues proposed by Enbridge, the project applicant, in front of the hearing panel before the project is approved.

Further, both regulatory bodies have a moral responsibility to advise landowners they will need evidence produced by expert and legal counsel for their input to be taken seriously. The NEB states that there is a "Burden of Proof" in their hearings and have stated so in many decisions. How can the NEB make a decision to approve a project when they do not fully understand how landowners are directly affected?

Expropriation law states landowners are to be made whole. I reference the recent Smith vs Alliance case to state that this includes all costs. What good is intervenor funding when landowners directly affected still have not been identified and given the opportunity to even consider the funds? The cut off for funding was many months ago. Was this intentionally done to compromise landowners' participation?

By allowing a 1 km wide proposed corridor, CEEA and the NEB have created a situation where landowners do not know that they are specifically being affected and therefore do not realize that they need to participate in the certificate hearing. This promotes complacency. Further, by not identifying the route of the pipeline and the directly affected landowners, both Enbridge and the NEB have discriminated against the very people who will end up with this pipeline. As Enbridge has applied to be allowed to not notify landowners until after approval of the Northern Gateway Project has been granted, the landowners that will be directly affected will not know for sure until after the certificate hearing if they are to be imposed upon. It is then too late for them to raise their concerns for their families and their land. The NEB itself proclaims in its publication, *A Guide for Landowners and the Public*, "**If a landowner has concerns about the project itself or the general pipeline location, these concerns must be made known at the certificate hearing-not at the detailed route hearing**".

What's worse, the NEB regulations under Section 87 actually make the NEB complicit in landowner discrimination. The regulation directs the company to notify the landowner of the detailed route hearing, but makes no mention of notification of the certificate hearing. To allow the company to not identify and notify directly affected landowners before the certificate hearing in the Northern Gateway Joint Review process makes CEEA also complicit in landowner discrimination.

In its application Enbridge states, **"To date, notices pursuant to Section 87(1) of the NEB Act have not been served."** Enbridge further states, **"Surface Rights acquisition process will begin**

**with negotiation of surface rights agreements following the Projects approval**". This means after the certificate hearing, and after the Board has made its decision. At this point it is too late for landowners to have their concerns addressed before the project is approved. Since Section 87 of the NEB Act does not mention the certificate hearing in the mandatory notice, this leaves landowners with no understanding of their need to take part in the process where their legitimate concerns are to be argued and addressed. I repeat, even though the Board states that, **"If a landowner has concerns about the project itself or the general pipeline location, these concerns must be made known at the certificate hearing-not at the detailed route hearing"**, but the NEB fails to ensure in its mandatory notice that landowners are notified before the certificate hearing. All of this says to landowners they have no say in the approval of this project or if approved no say in how it will affect them.

Further, Enbridge's proposed easement, that will be presented to landowners with the Section 87 notice, would preclude landowners from even participating in the detailed route hearing. On page 3 at point #27 of the proposed Easement Agreement it states, **"The Owner acknowledges that Northern Gateway has explained the specific route of the proposed pipeline right of way, as well as the proposed methods and timing of the construction of the pipeline that will be installed therein. This agreement confirms that the owner is in agreement with the location of the pipeline right of way, and methods and timing of construction of the pipeline that will be installed therein. The owner hereby waives any right to ask for a hearing to settle the detailed route or the methods and timing of construction, and understands that Northern Gateway may now serve the Owner with further Notice of detailed route of the Pipeline pursuant to s. 34(1)(a) of the Act."**

Yet the NEB in its publication states, **"Signing a land acquisition agreement does not exclude a person from participating in an NEB process. However, you may wish to assess whether your participation in an NEB process may be a breach of your land agreement."** This is clear as mud for any landowner to understand... one statement negates the other. How can the NEB suck and blow at the same time? Does this not compromise CEAA?

It appears that natural justice is not part of the equation for landowners on the Enbridge Northern Gateway proposed pipeline.

The landowners affected by this project have not been directly notified of the route, have not been directly notified of the certificate hearing, do not fully understand the implications to their land, have not seen an NEB Section 87 notice, have probably not had the time to read the 12 volume application to consider the impacts on their farms, do not understand how to get their legitimate concerns addressed, have not had any expert or legal advice as to the proposed easement or in some cases the cumulative affect of having multiple pipelines on their property nor have they had the time to even attend open houses. They have no idea what the company contract will look like, if any of their issues will be seriously addressed or if they will have an agreement with compensation levels that will truly protect their interests. Negotiations for lease agreements that address all of their issues will never happen under the process CEAA and the NEB are following.

The NEB states that easement agreements are private contractual agreements between the company and the landowner, the same with compensation. If landowners are not negotiated with before approval of this project, it is CEAA and the NEB that have determined what these contracts will be. A private contract is negotiated between two willing parties; after approval has been granted the landowner will have right of entry in front of them and will not be in an equal position to negotiate. The landowner's position to negotiate an agreement that addresses their legitimate concerns has been undermined, might I add, by the process that is suppose to protect them and ensure that they are made whole.

Landowners are seeding, branding and doing all the things that farming and ranching lay before them. They are busy running their own businesses. They have not been following the Northern Gateway project nor do they have time in this very busy season to monitor your activities. From a landowner's perspective it appears that Enbridge has many partners in this project, two of them being the NEB and CEAA and all are **taking advantage of rural culture...a culture of trust.**

In the NEB's new Strategic Plan, it states under its values that it is "fair, transparent and respectful". It is imperative that landowners be taken seriously, respected and allowed justice.

Landowners on this project are pro-development, but within the context of development they want their legitimate concerns addressed. Development that does not respect their families, their environment, their property and stewardship responsibilities to protect the land and water for future generations is not sustainable nor responsible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dave Core', with a stylized, sweeping flourish.

Dave Core  
Director of Federally Regulated Projects

cc Anne-Marie Erickson – National Energy Board