

**JOINT REVIEW PANEL FOR THE ENBRIDGE
NORTHERN GATEWAY PROJECT
COMMISSION D'EXAMEN CONJOINT DU PROJET
ENBRIDGE NORTHERN GATEWAY**



**Hearing Order OH-4-2011
Ordonnance d'audience OH-4-2011**

**Northern Gateway Pipelines Inc.
Enbridge Northern Gateway Project
Application of 27 May 2010**

**Demande de Northern Gateway Pipelines Inc.
du 27 mai 2010 relative au projet
Enbridge Northern Gateway**

VOLUME 177

**Hearing held at
Audience tenue à**

**Best Western Plus Terrace Inn
4553 Greig Avenue
Terrace, British Columbia**

**June 18, 2013
Le 18 juin 2013**

**International Reporting Inc.
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Canada

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as represented by the Minister of the Environment
and the National Energy Board

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HEARING /AUDIENCE

OH-4-2011

IN THE MATTER OF an application filed by the Northern Gateway Pipelines Limited Partnership for a Certificate of Public Convenience and Necessity pursuant to section 52 of the *National Energy Board Act*, for authorization to construct and operate the Enbridge Northern Gateway Project.

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Terrace (British Columbia), Tuesday, June 18, 2013
Audience tenue à Terrace (Colombie-Britannique), mardi, le 18 juin 2013

JOINT REVIEW PANEL/LA COMMISSION D'EXAMEN CONJOINT

S. Leggett	Chairperson/Présidente
K. Bateman	Member/Membre
H. Matthews	Member/Membre

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- Mr. Bernie Roth
- Ms. Laura Estep
- Ms. Kathleen Shannon
- Mr. Dennis Langen
- Mr. Douglas Crowther

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- Ms. Caroline O'Driscoll
- Chief Herb Arcand

Alberta Federation of Labour

- Ms. Leanne Chahley

BC Nature and Nature Canada

- Mr. Chris Tollefson
- Mr. Anthony Ho
- Ms. Natasha Gooch
- Ms. Rosemary Fox

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- Mr. Christopher R. Jones

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- Mr. Chris Peter
- Dr. Hugh Kerr
- Mr. Brian Gunn

Canadian Association of Petroleum Producers (CAPP)

- Mr. Keith Bergner

Cenovus Energy Inc., INPEX Canada Ltd., Nexen Inc.,
Suncor Energy Marketing Inc. and Total E&P Canada Ltd.

- Ms. Bernette Ho

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- Mr. Art Sterritt

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- Peter Lantin

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- Ms. Cheryl Brown
- Mr. Dave Shannon

Driftpile Cree Nation

- Chief Rose Laboucan
- Dr. Ave Dersch
- Mr. Aryn Lalji

Edmonton Chamber of Commerce

- Mr. Ian Morrison
- Mr. James Cumming

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- Mr. Rangi Jeerakathil

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and Raincoast Conservation Foundation - "The Coalition"

- Mr. Barry Robinson

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- Mayor Rob MacDougall
- Mr. Dave Birdi
- Ms. Joan Burdeniuk
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Fort St. James Sustainability Group

- Ms. Kandace Kerr
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- Mr. Ron Kruhlak, Q.C.

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- Ms. Dayna Anderson

Haisla Nation

- Ms. Jennifer Griffith

Heiltsuk Economic Development Corporation

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Hereditary Chief

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Tribal Council

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Youth Voice

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Kitimat Valley Naturalists

- Mr. Walter Thorne
- Mr. Dennis Horwood

MEG Energy Corp.

- Mr. Loyola G. Keough

North Coast Cetacean Society

- Mr. Hermann Meuter
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Office of the Wet'suwet'en
- Mr. Jeff Huberman
- Mr. Michael Ross

Sherwood Park Fish & Game Association
- Mr. Andrew Boyd

United Fishermen and Allied Workers' Union
- Ms. Joy Thorkelson

Dr. Josette Wier

World Trade Center Edmonton
- Mr. Martin Salloum
- Mr. Robin Bobocel

National Energy Board/Office national de l'énergie
- Mr. Andrew Hudson

ERRATA

(i)

Monday, June 17, 2013 - Volume 176

Paragraph No.:

75:

“... March 2010 at 44 – 44J”

Should read:

“... March 2010 at 44 – 45J”

85:

“...[16 Exhibits B83-2...”

“...[Exhibits B83-2...”

94:

“...planning tool. It is now generally recognized...”

“...planning tool that is now generally regarded...”

140:

“...tugs as a mitigation measures.”

“...tugs as a mitigation measure.”

232:

“...[Exhibit B174-7 at 7, Paragraph 82J”

“...[Exhibit D72-92-2 at 254, paragraph 933ffJ”

TABLE OF CONTENTS/TABLE DES MATIÈRES

(i)

Description	Paragraph No./No. de paragraphe
Opening remarks by the Chairperson	1100
Oral argument for C.J. Peter Associates Engineering - Mr. Chris Peter, Dr. Hugh Kerr and Mr. Brian Gunn	1123
Oral argument for the Canadian Association of Petroleum Producers - Mr. Keith Bergner	1286
Oral argument for Cenovus Energy Inc., INPEX Canada Ltd., Nexen Inc., Suncor Energy Marketing Inc. and Total E&P Canada Ltd. (the Funding Participants) - Ms. Bernette Ho	1383
Oral argument for the Council of the Haida Nation - Ms. Terri-Lynn Williams-Davidson and Mr. Peter Lantin	1479
Oral argument by Dr. Josette Wier	1595
Oral argument for the Daiya-Mattess Keyoh - Mr. Ken Sam	1801
Oral argument for the Douglas Channel Watch - Mr. Murray Minchin, Ms. Cheryl Brown and Mr. Dave Shannon	1811
Oral argument for the Driftpile Cree Nation - Mr. Aryn Lalji, Dr. Ave Dersch and Chief Rose Laboucan	1979
Oral argument for the Edmonton Chamber of Commerce - Mr. Ian Morrison	2111
Oral argument for ForestEthics, Living Oceans Society and Raincoast Conservation Foundation (the “Coalition”) - Mr. Barry Robinson	2160

2157. And now we come to the two parties that I believe have agreed to switch. So we will call next ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation.

2158. Good afternoon, Mr. Robinson.

2159. **MR. BARRY ROBINSON:** Good afternoon.

--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. ROBINSON:

2160. **MR. BARRY ROBINSON:** Madam Chair and Panel Members, as you know, but others may not, my name is Barry Robinson and I'm counsel for three groups, ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation, and we welcome this opportunity to make final oral argument on behalf of those groups in front of you.

2161. In this oral argument, I intend to respond first to a few points raised in oral argument by Northern Gateway. And then I'll present the Coalition's rebuttal to Northern Gateway's written argument, and the Coalition's rebuttal to Northern Gateway's written argument really falls into two categories: One is, Northern Gateway's position that the environmental assessment is complete; and secondly, whether promises made in Northern Gateway's written argument are supported by their past performance.

2162. I will also address Northern Gateway's position as articulated with respect to the proposed conditions that were put forward.

2163. I've provided a written copy of this oral argument to the Panel staff which includes all the exhibit and transcript references, so I will not be referring to lines and paragraphs unless you wish me to at any point.

2164. I want to start with a recurring question around transportation service agreements and whether TSAs are required to demonstrate binding commercial support for the Project and when TSAs should be required.

2165. In their written argument, Northern Gateway stated that the regulatory approvals stage involves, in their words, "a huge financial risk" and that therefore Northern Gateway had to involve its shippers in sharing the risk in the form of funding support agreements and precedent agreements. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 100*]

2166. Northern Gateway concedes that, at the time the application was submitted, it did not have long-term firm TSAs negotiated with its shippers. *[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 110]*
2167. And Northern Gateway then goes on at some length in their written argument as to how precedent agreements and they also refer to testimony of shippers demonstrate financial commitment to the Project. *[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 105-114]*
2168. In his oral argument, Mr. Neufeld acknowledged, but did not agree with, the Coalition's position that Northern Gateway ought to have included and filed binding TSAs. *[Hearing Transcript, Vol. 176 (17 June 2013) at Line 68]* Mr. Neufeld went on to state and I quote:
- “For prospective shippers, capital cost [...] is managed through the use of Precedent Agreements [or capital cost risk rather is managed through the use of Precedent Agreements] and the preparation of a Class III Cost Estimate prior to entering into binding TSAs. This is completely reasonable given that prospective shippers are entitled to understand the full cost of the Project commitments before signing long-term contracts.”*
2169. End of quote.
2170. This approach is also reflected in the written evidence of potential shippers. The shippers' group of Cenovus et al. indicate in their written argument that they should not be required to enter into TSAs before the Certificate of Public Convenience and Necessity is issued and the Class III Capital Cost Estimate is completed. *[Written Argument of Cenovus Energy Inc., Inpex Canada Ltd., Nexen Inc., Suncor Energy Marketing Inc. and Total E&P Canada Ltd. (31 May 2013) Exhibit D29-9-2 at 9]*
2171. And Ms. Ho confirmed that position in her oral argument today.
2172. Similarly, MEG Energy, in their written submission, indicates that the shippers will not execute long-term firm TSAs until they are satisfied that the

Project has been approved and will be subject to acceptable terms and conditions.
[Final Argument, MEG Energy Corp. (31 May 2013) Exhibit D133-7-1 at 15]

2173. So therefore, there remains some uncertainty amongst the shippers as to the economic feasibility of the Project. If the final proposed costs of the project are too great, the Funding Participants are under no obligation to execute and enter into TSAs.

2174. The Coalition understands this uncertainty. However, what the Coalition doesn't understand is the contrast between this Project and the TransMountain expansion program, Kinder Morgan's TransMountain expansion program. The TransMountain expansion, offering a very similar service to that offered by the Northern Gateway Project, received binding 20-year TSAs in a short open season despite not having yet filed an application with the NEB, not knowing the terms and conditions and not knowing the final costs that may apply to the project. *[Hearing Transcript, Vol. 73 (8 September 2012) at Lines 19751-19753]*

2175. It is interesting that Northern Gateway, in their written argument, stated that:

"...it was ... not possible for a Trans Mountain expansion to meet the transportation needs of crude oil shippers."
[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 179]

2176. Yet, TransMountain managed to do in a short open season what Northern Gateway has not been able to achieve in seven years which is to obtain binding transportation service agreements. And Northern Gateway has not adequately explained in either their written or oral argument what obstacle they faced that TransMountain expansion did not.

2177. I'd like now to turn to some arguments that have been made with respect to the economic benefits of this Project. I want to first turn to some statements made by Mr. Bergner on behalf of CAPP. Mr. Bergner said that the economic benefits of this pipeline will continue even if it is not the price setting mechanism and even if the pipeline is full.

2178. The Coalition would submit that a full pipeline has net benefits to Canada only if the volume is not simply shifted from another existing pipeline. If

Northern Gateway is just taking a volume that was or is going down another pipeline, then there is no net economic benefit to the Project even when the pipeline is full.

2179. Therefore, the benefit that Mr. Bergner is referring to must be based on the Project inducing or supporting increased western Canadian oil production or preventing shut-in.

2180. The fact is that Northern Gateway, in the Wright Mansell report, claims that the Project will result in \$109.6 billion in Canadian -- increase in Canadian Gross Domestic Product over the period 2019 to 2048 as a result of increased oil and gas production induced by the Project. [*Public Interest Benefit Evaluation of the Enbridge Northern Gateway Pipeline Project: Update and Reply Evidence (20 July 2012), Exhibit B83-04, Table 3.7 at 62*]

2181. And this represents 35 percent of the net gross domestic product impacts of the Project.

2182. In the Panel session results and decision issued on January 19, 2011, you ruled that the Panel:

“...does not consider that there is a sufficiently direct connection between the Project and any particular existing or proposed oil sands development, or other oil production activities, to warrant consideration of the environmental effects of such activities.” [Panel Session Results and Decision (19 January 2011), Exhibit A22-3 at 13]

2183. Environmental effects as defined in the *Canadian Environmental Assessment Act* includes socio-economic impacts. [*Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52 at s 5(2)(b)(i)*]

2184. Therefore, you have already ruled that induced upstream impacts, including the economic impacts, are outside the scope of these proceedings. Therefore, you must not consider the induced benefits from increased upstream oil and gas production as presented in the Wright Mansell report or the impact of potential shut-in; to do so would be contrary to your own ruling and would be an error in law.

2185. I want to turn now to specific elements of Northern Gateway's written

- argument.
2186. Mr. Tollefson discussed, in his oral argument on behalf of BC Nature/Nature Canada, the difference between sufficiency and completeness with reference to section 52(1) of the *National Energy Board Act*. [*Hearing Transcript, Vol. 176 (17 June 2013) at Lines 990-1003*]
2187. Mr. Jones on behalf of the Province of British Columbia touched on the concept of sufficiency as well. [*Hearing Transcript, Vol. 176 (17 June 2013) at Lines 1025-1030*] And the Coalition agrees with both those submissions with respect to completeness.
2188. At several points in their written argument, Northern Gateway expresses the opinion that the environmental assessment is sufficient and complete. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 311, 661, 908*]
2189. And Mr. Neufeld made a vigorous defence of the sufficiency of the environmental assessment in his oral argument. [*Hearing Transcript, Vol. 176(17 June 2013) at Lines 59-60, 67-69, 93-96, 105, 134, 150-159*]
2190. In their written argument, Northern Gateway refers on numerous occasions to the environmental assessment process as an iterative process. [*See for example Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 258-259, 306, 354, 732, 1040*]
2191. In fact, in their written argument, Northern Gateway uses the term “iterative” 16 times, refers to “continuous improvement or refinement” 14 times, uses the term “ongoing” 37 times with respect to matters to be completed at later stages and refers to “follow-up studies” or “follow-up programs” 19 times.
2192. The Coalition submits that while environmental assessment is intended to be ongoing, iterative and dynamic during the environmental assessment process [*Pembina Institute for Appropriate Development v. Canada (Attorney General) 2008 FC 302 at para 24*], by the end of the environmental assessment process, the identification of environmental effects and the identification of technologically and economically feasible mitigation measures must be complete.
2193. Mr. Neufeld stated in his oral argument that ForestEthics is never going to tell you that enough information has been provided. [*Hearing*

Transcript, Vol. 176 (17 June 2013) at Line 99]

2194. But, frankly, it really doesn't matter if ForestEthics is satisfied or not. What matters is the *Canadian Environmental Assessment Act* and what it requires.
2195. The *Canadian Environmental Assessment Act* is clear that the Panel, in assessing the project must consider the environmental effects of the project, including the effects of malfunctions or accidents and cumulative effects; the significance of those effects; and mitigation measures that are technically and economically feasible. [*CEA, 2012 at s 19(1)(a), (b) and (d)*]
2196. Professor Nathalie Chalifour of the University of Ottawa, in a paper referring to a case known as *Pembina Institute versus Canada*, also known as the *Kearl* case to many people, has argued that these three elements must be analyzed in sequence in order for the assessment to be meaningful. [*Nathalie Chalifour, "Case Comment: A (Pre) Cautionary Tale about the Kearl Oil Sands Decision – The Significance of Pembina Institute for Appropriate Development et al v Canada (Attorney General) for the Future of Environmental Assessment" (2009) 5 McGill Int'l J Sust Dev L & Pol'y 251 at 267*]
2197. That is, you cannot identify mitigation measures that are effective and technically and feasible if you have not first identified the environmental effects and their significance.
2198. The Coalition submits that there are significant gaps in the identification of environmental effects of this Project. Since Northern Gateway has not completed the identification of the environmental effects nor determined the significance of those effects in some cases, the effectiveness of the mitigation measures being proposed are theoretical at best.
2199. The *Canadian Environmental Assessment Act* does not require that the Panel to eliminate all uncertainty surrounding project effects. [*Pembina Institute for Appropriate Development v. Canada (Attorney General) 2008 FC 302 at para 23*]
2200. However, the Act does require that the Panel establish that the proposed mitigation measures are technically and economically feasible and that they would actually mitigate any significant environmental effects of the Project. [*Pembina Institute for Appropriate Development v. Canada (Attorney General) 2008 FC 302 at para 24-26*] If this test is not met, the Panel cannot consider the

- mitigation measures in assessing the significance of the impacts.
2201. In his oral argument, Mr. Neufeld stated that the *Canadian Environmental Assessment Act* -- under the *Canadian Environmental Assessment Act*, Northern Gateway can rely on follow-up programs. [*Hearing Transcript, Vol. 176 (17 June 2013) at Line 65*]
2202. The *Canadian Environmental Assessment Act* clearly states that the purpose of follow-up programs is:
- “...to verify the accuracy of the environmental assessment ...”*
2203. and to:
- “...determine the effectiveness of any mitigation measures.”*
[CEA Act, 2012 at s 2(1)]
2204. Follow-up programs are not intended to identify environmental effects and mitigation measures that were deferred during the environmental assessment process. They are to verify the environmental effects that were identified and determine the effectiveness of measures that were identified during the environmental assessment process. So follow-up programs cannot save an incomplete environmental assessment.
2205. Madam Justice Tremblay-Lamer in the *Pembina Institute* case stated:
- “...in the context of a panel assessment, possibilities of future research and development do not constitute mitigation measures.”* [*Pembina Institute for Appropriate Development v. Canada (Attorney General) 2008 FC 302 at para 25*]
2206. It may be useful to illustrate the failure on the part of Northern Gateway to identify all the environmental effects and technically and economically feasible mitigation measures with reference to specific parts of their written argument.
2207. I’d like to turn first to the assessment of geohazards along the pipeline route.
2208. Mr. Neufeld addressed the issue of geohazards in his oral argument

- with assurances that there was nothing particularly unique about this Project and that Northern Gateway has no lack of confidence in their ability to manage the geohazard risk. [*Hearing Transcript, Vol. 176 (17 June 2013) at Lines 85-92*]
2209. In response to questions about the apparent omission of certain geohazards from the Overall Geotechnical Report and the Quantitative Geohazard Assessment, Northern Gateway explains, in their written argument, that those reports included only those geohazards that had the potential to cause a loss of containment event on the pipeline. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 292-294, 311*]
2210. This approach ignores the impact that geohazards may have on other infrastructure such as power lines, road access or other road access that may be required during an emergency event.
2211. In commenting on the Panel's Potential Condition Numbers 75 to 77, Natural Resources Canada recommended, quote:
- "Northern Gateway must assess the terrain from height of land on both sides of the pipeline route (e.g., surficial and bedrock including topography) in the Coast and Rocky Mountains, and describe any additional potential faults or lineaments identified through LiDAR." [Written Argument of Transport Canada, Natural Resources Canada and Environment Canada (31 May 2013), E9-78-2 at 22]*
2212. End of quote.
2213. Natural Resources Canada then went on to say, quote:
- "...without reference to the underlying material and topography, there is no ability to assess whether the [geohazard] identification and assessment is complete." [Written Argument of Transport Canada, Natural Resources Canada and Environment Canada (31 May 2013), E9- 78-2 at 25]*
2214. End of quote.
2215. Therefore, at this point in time, Northern Gateway's assessment of the

geohazard risks is incomplete and the Panel's evaluation must find that the assessment is incomplete.

2216. Further, in their written argument, Northern Gateway stated that the quantitative geohazard assessment was intended, quote:

"...to provide an early indication of appropriate mitigation measures." [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 311]

2217. End of quote.

2218. Further, Northern Gateway stated, with regard to geohazards, quote:

"...the detail of mitigation measures is sufficient at this stage. It is not necessary, nor expected, that detailed design of mitigation measures be completed now." [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 380]

2219. End of quote.

2220. Clearly, the *Canadian Environmental Assessment Act* requires the identification of mitigation measures that are technically and economically feasible, and not just an indication of potential mitigation measures. Further, it's not clear how Northern Gateway can identify technically and economically feasible mitigation measures, when, as stated by Natural Resources Canada, Northern Gateway's identification and assessment of the geohazards is not yet complete.

2221. In their argument -- written argument, Northern Gateway states, quote:

"Geotechnical risk assessment, like risk-based design, is an iterative process. The work to identify geohazards and [to] mitigate them is ongoing." [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 305]

2222. This is a clear admission that the requirement to identify environmental effects and technically and economically feasible mitigation measures during the environmental assessment process is not complete.

2223. Therefore, Northern Gateway has not completed the assessment of the geohazard risks at this time and you, the Panel, cannot meet your obligation under section 19 of the *Canadian Environmental Assessment Act* to assess those risks and the feasibility of any mitigation measures.

2224. Similarly, I'll turn now to the question of the fate and behaviour of diluted bitumen. I don't want to spend too much time because it's been covered by others, touched on by Mr. Jones [*Hearing Transcript, Vol. 176 (17 June 2013) at Lines 1037-1041*] and Dr. Wier and Driftpile First Nation as well. But I would like just to delve little more deeply than Mr. Jones did in his oral argument.

2225. In their written argument, Northern Gateway concedes that there is, quote:

“...little experience with how oil sands products behave when spilled into aquatic environments”. [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 836]

2226. End of quote.

2227. Northern Gateway also concedes that the question of diluted bitumen sinking in the marine environment remains uncertain. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 837-838*]

2228. I'd like to respond to a statement made by Mr. Neufeld in his oral argument. Mr. Neufeld stated that the laboratory research conducted by SL Ross confirmed that dilbit, quote:

“...will not sink when spilled, and it will not sink due to weathering”. [Hearing Transcript, Vol. 176 (17 June 2013) at Line 181]

2229. End of quote.

2230. To be clear, what the SL Ross studies actually showed was that weathered dilbit will not sink in a tank at 15 degrees Celsius with no sediment present. That is all that the SL Ross studies showed.

2231. Northern Gateway concedes in its written argument that diluted bitumen may sink when it becomes attached to suspended sediments and that the total volume of oil that sinks depends on the amount of suspended sediment. *[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 543, 828, 838, 848]*
2232. Having made that concession though, Northern Gateway then fails to provide any information on the level of sediment concentration in combination with other factors such as temperature that will cause diluted bitumen to sink and at what rate, fails to present any information on the suspended sediment levels found at the mouths of rivers entering into Kitimat Arm or Douglas Channel, and it fails to provide any information on how these sediment levels vary seasonally or geographically across the channel.
2233. The uncertainty with respect to the fate and behaviour of diluted bitumen was also discussed extensively by witnesses from Environment Canada, in particular Dr. Bruce Hollebhone, and that evidence has been canvassed in our written argument and I won't repeat it here. *[Final Written Argument of ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation (30 May 2013) Exhibit B66-31-2 at para 155-167]*
2234. So therefore, we're left with a most fundamental question unanswered with respect to the risk posed by diluted bitumen. Will diluted bitumen sink in the marine environment, and under what conditions?
2235. That unanswered question is reflected in the Panel's Potential Condition No. 165 requiring Northern Gateway to conduct additional research on the fate and behaviour of heavy oils in the freshwater and marine environments *[Collection of Potential Conditions, Northern Gateway Pipelines Inc., Enbridge Northern Gateway Project (12 April 2013), Exhibit A346-5 at 38]* and in Northern Gateway's statement that it will participate in a Scientific Advisory Committee directing further research into the fate and behaviour of diluted bitumen. *[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 849]*
2236. However, this commitment to further research does not satisfy the requirement under *Canadian Environmental Assessment Act*, that environmental effects and technically and economically feasible mitigation measures be identified as part of the environmental assessment process, not after. Therefore,

again, you cannot meet your obligation under section 19 of the *Canadian Environmental Assessment Act* to assess those risks and the feasibility of mitigation measures.

2237. I just have one further comment with respect to the sinking bitumen question, and that is that section 4(1)(b) of the *Canadian Environmental Assessment Act* states that one of the purposes of the Act is to ensure that projects are considered in a careful and precautionary manner to avoid significant adverse environmental effects. [CEA, 2012 at s 4(1)(b)]
2238. And section 4(2) of the Act states that the Government of Canada, the Minister, the Agency, federal authorities and responsible authorities must exercise their power in a manner that applies to precautionary principle. [CEA, 2012 at s 4(2)]
2239. And the precautionary principle states simply that:
- "Where there are threats of serious or irreversible damage, a lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." [Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development, 3-14 June 1992, UN Doc. A/CONF. 151/26/ (vol. I)
<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>]*
2240. So what would be the precautionary approach with respect to the uncertainty regarding the fate and behaviour of diluted bitumen in the marine environment look like?
2241. The Coalition submits the precautionary approach would be to plan for sinking bitumen and to develop mitigation and response measures on the assumption that dilbit will sink in the marine environment. Instead, what we get from Northern Gateway are denials of that proposition based on limited tank tests and one incident in Burnaby.
2242. Similarly, we lack -- we see a lack of baseline data for several important biological components of the environment.

2243. In their written argument in response to intervenors who argued that Northern Gateway had not collected adequate baseline information to complete the environmental assessment, Northern Gateway stated, quote:

“...the amount of information available did not affect the ability to do a rigorous environmental assessment.” [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 661]

2244. However, one paragraph later, and as noted by Ms. Williams-Davidson for the Haida Nation, Northern Gateway concedes that they had, quote:

“...not conducted surveys for any biological group in the open water area”. [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 662]

2245. Unquote.

2246. Further, in oral testimony, witnesses for Northern Gateway conceded that they did not conduct any fish surveys in the marine project effects assessment area [*Hearing Transcript, Vol. 112 (11 December 2012) at Lines 9509-9512*], they did not conduct any field work to identify salmon streams that drain into Kitimat Arm or Douglas Channel [*Hearing Transcript, Vol. 112 (11 December 2012) at Lines 9530-9531*], they did not make any attempt to identify intertidal spawning habitat for salmon [*Hearing Transcript, Vol. 112 (11 December 2012) at Lines 9513-9515*] and they did not collect any baseline data on water quality, sediment quality or contamination of fish on salmon-bearing streams [*Hearing Transcript, Vol. 112 (11 December 2012) at Lines 30119-30125*].

2247. Northern Gateway indicated that surveys of fish abundance, diversity, habitat and information on specific fish habitat would not be conducted until after Project approval. [*Hearing Transcript, Vol. 113 (12 December 2012) at Lines 12511-12518*]

2248. With respect to fisheries impacts, Northern Gateway stated that it was committed to mitigating, quote:

“...risk to fish and fish habitat through a safe, reliable and responsible design and construction program”. [Northern Gateway Pipelines Inc., Written Argument (31 May 2013),

Exhibit B226-2 at para 324] End quote.

2249. Northern Gateway cannot accurately assess at this point in time the potential impacts on fish and fish habitat when basic baseline information have not been collected.
2250. Further, under the *Canadian Environmental Assessment Act*, Northern Gateway must demonstrate that mitigation measures are technically and economically feasible now as part of the environmental assessment process and not as part of the final design and construction program.
2251. We see a similar issue with respect to marine mammals. In their written argument, Northern Gateway concedes that marine mammal density surveys will not be conducted until the post-approval stage. And in their written argument, Northern Gateway states that it does not dispute the importance of this work, but incorrectly, in our opinion, states that it is not required for the purposes of an environmental assessment. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 908*]
2252. Northern Gateway also concedes that a confident determination of the significance of the impact of residual underwater noise was not possible at this point in time. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 684*]
2253. Northern Gateway states in their written argument that noise impacts and the risk of vessel strikes would be mitigated through reduced vessel speeds, whale monitoring, remote detection and low noise designs for tugs. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 694*]
2254. Northern Gateway then goes on to conclude that, quote:
- “...the residual environmental effects of Project-related marine transportation may lead to changes in the distribution and abundance of some marine mammals within the CCAA, but that effects are not expected to affect the long-term viability of marine mammals at a population level. [Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 696]*

2255. End of quote.

2256. Contrast that conclusion with the testimony of Dr. John Ford of Fisheries and Oceans Canada who stated, I do not -- quote:

“...I do not think we have enough information on the spatial distribution in the context of risk of ship strike, for example, which in order to better appreciate and assess the potential risk in that area, we need very high resolution information at a scale of a few kilometres or less even, in terms of -- in the confined channel area, where the animals are with respect to the shipping corridor.

So this is one of the main reasons we have not been able to -- be able to accurately predict what ship strike risk may exist for humpback whales, fin whales and so on because of a lack of high resolution spatial information for that area.” [Hearing Transcript, Vol. 167 (22 April 2013) at Lines 16461-16462]

2257. End of quote.

2258. How then does Northern Gateway determine, with any confidence, that the effects are not expected to have a long-term impact of the viability of the marine mammal populations, when Fisheries and Oceans Canada says there is not sufficient information to predict that risk?

2259. Similarly with respect to marine birds, in response to a question as to whether there was adequate information to estimate the risk of the Project to marine birds, Dr. Sean Boyd of Environment Canada responded, quote:

“As far as determining the impact of the project, I would say no, we don't have enough information, that's for sure. And that's why we are going to need some more information, some more detailed baseline surveys. [Hearing Transcript, Vol. 167 (22 April 2013) at Lines 16483]

2260. End of quote.

2261. The evidence of Fisheries and Oceans Canada and Environment Canada with respect to the inadequacy of the information to assess the risks of the

Project clearly conflicts with Northern Gateway’s assertion that “the amount of information available did not affect the ability to do a rigorous environmental assessment”. Fisheries and Oceans Canada and Environment Canada are saying you don’t even have the basic baseline information.

2262. In summary on this point, the *Canadian Environmental Assessment Act* requires that all significant environmental effects be identified as part of the environmental assessment process, that mitigation measures be established to be technically and economically feasible. Promises of future studies or the collection of additional baseline information post-approval do not fulfill this requirement.
2263. The test is not met when Northern Gateway defers basic information on significant issues as geohazard risks, the fate and behaviour of diluted bitumen, and the spatial distribution of marine mammals and marine birds to a post-approval phase.
2264. The other reason that the Coalition objects to the deferral of so many important studies and the deferral of proven mitigation measures to the post-approval phase is captured in the Government of British Columbia’s position that “Trust me” is not good enough in this case. [*Argument of the Province of British Columbia (31 May 2013), Exhibit No. D167-24-2 at para 5*]
2265. The Coalition submits that Northern Gateway’s past performance speaks louder than its current promises. A few examples are in order. In their written argument, Northern Gateway states with respect to leak detection and control, that they are committed to “applying industry best practices”, “employing industry-leading technologies” and using the “best available leak detection technologies”. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 336-337*]
2266. In written and oral argument, Northern Gateway claims to have had a program of continuous improvement with respect to integrity management in place for at least 10 years. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 551; Hearing Transcript, Vol. 94 (19 October 2012) at Line 16408*]
2267. Yet despite that program, Northern Gateway had pipeline integrity deficiencies identified on at least eight occasions between 1999 and 2010, culminating in the significant spill at Marshall, Michigan in July 2010. [*Written*

Evidence of Living Oceans Society, Raincoast Conservation Foundation and ForestEthics, Attachment J (21 December 2011), Exhibit D66-3-12]

2268. In their written argument, Northern Gateway claims that pump stations will have numerous operational, safety and containment features and will meet or exceed industry codes and standards. *[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 356]*
2269. And as discussed by Dr. Wier, while Northern Gateway was appearing before you and making those promises, Northern Gateway was, at the same time, being cited by the National Energy Board for failing to have emergency shutdown buttons and backup power on a number of a number of stations. *[Letter, S Young (National Energy Board) to A Monaco (Enbridge Pipeline Inc.), (15 March 2013); National Energy Board, Order SO-E101-001-2013, Enbridge Pipeline Inc. (14 March 2013); Argument of the Province of British Columbia (31 May 2013), Exhibit No. D167-24-2 at para 97]*
2270. So while promising to meet or exceed industry codes and standards on the Northern Gateway pipeline, Enbridge was actually breaching basic industry standards on their existing pipelines.
2271. And I should point out that those inspections, with respect to the emergency shutdown buttons, were done in 2000 -- the fall of 2011, the fall of 2012. So well after Northern Gateway had claimed to have made improvements following the Michigan -- in their environmental performance following the Michigan event.
2272. Mr. Jones and Mr. Minchin referred to a statement by Northern Gateway with respect to the Marshall, Michigan incident but I think it bears repeating. And that is that Northern Gateway argued, quote:
- “[T]o the extent that Intervenors attempt in argument to focus the JRP in any way on an inquiry into the root causes, environmental or other impacts or any other aspects of the Marshall Incident, such arguments should be disregarded.
[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 556]*
2273. End of quote.

2274. The Coalition would argue exactly the opposite. You, as a Panel, must carefully consider the root causes of the Marshall incident as indicative of Northern Gateway's past performance and as instructive -- instructive to current and potential organizational deficiencies.
2275. With respect to the Marshall incident, Northern Gateway, in its written argument, argues that there was -- or states that there was a deficiency in its integrity management program, that changes were made as a result and that the target is zero pipeline ruptures. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 570*]
2276. Northern Gateway also confirmed that its success will be measured by its operational history and safety record. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 494*]
2277. Yet, when asked to commit to a measurable performance standard equal to Enbridge's 2011 performance, Northern Gateway refused to do so. [*Hearing Transcript, Vol. 94 (19 October 2012) at Lines 17010-17026*]
2278. With respect to the Coalition's recommended condition that Northern Gateway be held to a standard equivalent to Enbridge's 2011 spill performance [*Final Written Argument of ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation (30 May 2013), Exhibit D66-31-2 at para 282-283*], Mr. Neufeld, in oral argument, stated that the recommended condition was not reasonable and was "counterproductive" and that the goal should be zero spills. [*Hearing Transcript, Vol. 176 (17 June 2013) at Line 338*]
2279. If Northern Gateway was willing to commit to zero spills, I think the Coalition could support that.
2280. Northern Gateway's reluctance to commit to a measurable performance standard is difficult to understand. The Coalition submits that, as a basic management principle, if something is important to the operation of a business, there should be a measurable performance standard, the performance should be monitored and if the standard is not met, there should be consequences.
2281. Enbridge's 2011 record for leaks per 1,000 kilometres of pipeline and quantity of oil leaked per 1,000 kilometres of pipeline would be based on all of Enbridge's pipelines regardless of age and design.

2282. Despite the fact that the Northern Gateway pipeline will be the most modern pipeline and despite assurances from Northern Gateway the Project will use the most modern integrity management and control technology, Northern Gateway refuses to be held to even the average performance level of their pipelines in 2011. [*Hearing Transcript, Vol. 94 (19 October 2012) at Lines 17010-17026*]
2283. Northern Gateway estimates the spill return period for a greater-than-pinhole leak on Northern Gateway pipeline to be one in 76.7 years. [*Northern Gateway Response to Undertaking U-49 (8 February 2013), Exhibit B195-1 at 3; Argument of the Province of British Columbia (31 May 2013), Exhibit No. D167-24-2 at para 25*]
2284. Yet they won't commit to a spill performance standard of one leak per 1,000 kilometres per year, a standard that is at least 75 times less stringent than their own prediction of leak frequency.
2285. We fail to see how such a standard would be unreasonable or counterproductive but seem that an upper limit on Northern Gateway's performance that would have consequences makes sense. That is why "Trust me" is not good enough in this Project.
2286. I'd like to turn now to the Panel's list of potential conditions and Northern Gateway's response in their written argument to those potential conditions. In their written argument, Northern Gateway concedes that the inclusion of conditions in the Certificate of Public Convenience and Necessity would ensure that plans and programs that remain to be developed are in place prior to applicable Project milestones and are of superior quality.
2287. Further, Northern Gateway acknowledges that the potential conditions, as articulated by the Panel, would facilitate additional refinement and improvement of the Project. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1379-1380*]
2288. The Coalition, while clearly opposed to this Project proceeding, believes that clear, robust and enforceable conditions are essential if this Project were to proceed. As discussed, Enbridge's past performance and refusal to commit to a performance standard does not instil confidence that the deficiencies that led to the Marshall incident have been corrected.

2289. Promises to conduct further research, to conduct further studies and to find future solutions are not sufficient. These commitments must be captured as clear, robust and enforceable conditions. The Coalition supports the Panel's list of Potential Conditions subject only to suggested amendments that we discussed in our written argument. [*Collection of Potential Conditions, Northern Gateway Pipelines Inc., Enbridge Northern Gateway Project (12 April 2013) Exhibit A346-5*]
2290. Further, the Coalition supports the recommendations of Transport Canada, Natural Resources Canada, Environment Canada, with respect to potential conditions as presented in their written argument. [*Written Argument of Transport Canada, Natural Resources Canada and Environment Canada (31 May 2013), E9-78-2*]
2291. As presented in the Coalition's written argument, the Coalition proposes that 267 additional commitments made by Northern Gateway during these proceedings be set as conditions pursuant to potential Conditions 2, 3 and 48-51.
2292. In oral argument, Mr. Neufeld referred to the Coalition's table of 267 additional conditions, which were based on Northern Gateway's oral and written commitments. Mr. Neufeld stated that Northern Gateway cannot accept the characterization of those commitments by the Coalition. [*Hearing Transcript, Vol. 176 (17 June 2013) at Line 332*]
2293. With respect, we have provided hearing transcript and document references for each of the 267 commitments in the table. Most of the commitments were clear and unambiguous. Where there was ambiguity in the commitment, the Coalition either omitted the commitment or presented what we thought was a fair and conservative interpretation of the commitment.
2294. While Northern Gateway may dispute the Coalition's articulation of some of those 267 commitments, the Panel is quite capable of interpreting the intent of those commitments from the reference materials.
2295. The Coalition notes that many of these 267 commitments, as well as many of the commitments made in Volume 7a of Northern Gateway's Application, do not appear to have been captured in Northern Gateway's list of commitments. This would indicate that Northern Gateway's compilation and its list of commitments has not been thorough and is not complete.

2296. The Coalition submits that it is significant, that Northern Gateway, despite committing to a world class project is already trying to weaken potential conditions that were intended to provide for enhanced pipeline and marine safety and environmental protection.
2297. There are a number of potential conditions where the Coalition clearly disagrees with Northern Gateway's position as presented in their written argument.
2298. Potential Condition Number 7-8 call for the use of a three-layer composite coating or High Performance Composite Coating for the entire pipeline. *[Collection of Potential Conditions, Northern Gateway Pipelines Inc., Enbridge Northern Gateway Project (12 April 2013) Exhibit A346-5 at 6]*
2299. I think this matter was ably discussed by Dr. Kerr and the Coalition would submit -- would support Dr. Kerr's position on this.
2300. This Potential Condition appears to be based on the testimony of Dr. Bill Santos of Natural Resources Canada, who clearly said that these coatings would increase pipeline integrity and safety. *[Hearing Transcript, Vol. 110 (28 November 2012) at Lines 7561-7580]*
2301. Despite Dr. Santos' evidence on this point, Northern Gateway suggests in their written argument that these coatings for the entirety of the pipeline would result in an uneconomic design and would add no value in most instances. *[Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1411]*
2302. Despite assurances of a world class standard in using industry best practices, Northern Gateway is retreating, even before receiving approval of the project, to economic arguments of why they can't meet these standards.
2303. The Coalition submits that Potential Condition Numbers 7-8 are important conditions designed to enhance the integrity, safety and environmental performance of the pipeline and that the Panel should ensure that these conditions are maintained as final conditions.
2304. Dr. Kerr also ably reviewed the importance of Potential Condition Numbers 31-32 with respect to fracture toughness. *[Collection of Potential*

Conditions, Northern Gateway Pipelines Inc., Enbridge Northern Gateway Project (12 April 2013) Exhibit A346-5 at 10-11]

2305. And I will say again no more other than that Coalition supports Dr. Kerr's argument on this point.
2306. The Coalition is also concerned about Northern Gateway's response to Potential Condition 168 with respect to emergency response exercises.
2307. Potential Condition Number 168 proposed that Northern Gateway carry out full field-scale exercises for 5 scenarios prior to commencing operations and unannounced full-scale field exercises for the same 5 scenarios in the first 2 years following the commencement of operations. *[Collection of Potential Conditions, Northern Gateway Pipelines Inc., Enbridge Northern Gateway Project (12 April 2013) Exhibit A346-5 at 39-41]*
2308. In their written argument, Northern Gateway responds that they would only carry out two full-scale field exercises prior to commencing operations and that they are opposed to unannounced full-scale exercises on the basis that they are not practical.
2309. The Coalition finds this unusual, given the testimony of Northern Gateway's own witnesses and, in particular, Dr. Elliott Taylor, as to the importance of full-scale field exercises and the importance of unannounced exercises.
2310. To quote Dr. Taylor:
- "...You want to make sure your teams have some experience in the field under different conditions that you might be looking at.*
- And so if we just go with a seasonal aspect, you're probably looking at deployment exercises maybe four seasons: spring, summer, fall and winter. And ideally, you'd have, at a minimum, one year of those under your belt, preferably two years under your belt before you became operational."*
- [Hearing Transcript, Vol. 148 (1 March 2013) at Lines 22358-22359]*

2311. And I'll just reiterate a quote that was referenced by Mr. Jones yesterday where Dr. Taylor states:

*"The other one that I find very successful and I really like to see in world-class operations are your unannounced exercises, and that is the surprise. It gives people a challenge."
[Hearing Transcript, Vol. 148 (1 March 2013) at Line 22365]*

2312. If Northern Gateway is to have deployment exercises for four seasons prior to the commencement of operations as recommended by their own witness, Dr. Taylor, that is at least four pre-commencement exercises. Possibly eight if, as Dr. Taylor suggested, two years might be better and not simply two as suggested by Northern Gateway.

2313. Further, Northern Gateway has promised world class operations yet they are opposing a condition that would require them to do an unannounced full-scale exercise.

2314. Finally, the Coalition wishes to address Northern Gateway's response to Potential Condition Number 147 pertaining to financial assurances for the cost of clean-up, remediation and other damages resulting from Project operations. *[Collection of Potential Conditions, Northern Gateway Pipelines Inc., Enbridge Northern Gateway Project (12 April 2013) Exhibit A346-5 at 33-35]*

2315. You, as a Panel, heard extensive and wide-ranging evidence on the potential costs of clean-up and remediation, the potential damages to important natural resources and the financial resources both within Northern Gateway and Enbridge and outside of those entities to deal with those costs. The Coalition submits that the Panel was exactly right in both the amounts and form of financial security required for the Project.

2316. However, Northern Gateway wants to add a proviso to that financial condition that if regulatory changes are made that standardize the financial assurances required for pipelines, that this condition would be modified or dispensed with. *[Northern Gateway Pipelines Inc., Written Argument, Attachment 1 – Conditions Table (31 May 2013), Exhibit B226-2 at 67-72]*

2317. The Coalition submits that the Panel has determined the appropriate amount and form of financial security for this Project in this environment. Industry-wide regulations that establish a lower amount of security would

- undermine the assurances given to this Panel by Northern Gateway that they would be responsible for all clean-up and remediation costs and damages attributable to the Project. [*Northern Gateway Response to Joint Review Panel Information Request No. 9.3(f), (25 January 2012) Exhibit B58-2 at 11-12; Northern Gateway Response to Joint Review Panel Information Request No. 11.14(c.2 and c.3), (3 September 2012) Exhibit B101-2 at 77; Northern Gateway Response to Fort St. James Sustainability Information Request No. 2.3.2, (24 November 2011) Exhibit B47-6 at 3,5]*
2318. The Coalition also notes that Northern Gateway committed that it would be responsible for all damages to the marine environment that are attributable to the Project and would compensate individuals, businesses and Aboriginal groups for losses resulting from damage to the marine environment. [*Northern Gateway Project Application, Volume 6C: Risk Assessment and Management of Spills, (14 August 2012) Exhibit B3-41, at 9-26; Hearing Transcript, Vol. 98 (1 November 2012), Line 22405]*
2319. These commitments would be outside of any pipeline regulatory framework. Therefore, the amount specified in Potential Condition Number 147 should be maintained regardless of any change to a pipeline regulatory regime.
2320. It is perhaps in Northern Gateway's conclusions in their written arguments where we most clearly see the divide between Northern Gateway's position and that of the Coalition, and I would suggest many other Canadians.
2321. Northern Gateway, in its concluding submissions, talks of the personal and corporate commitment to the review process. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1457]*
2322. Northern Gateway talks of its perseverance throughout the review process. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1459-1460]*
2323. And then, Northern Gateway makes this remarkable statement that has been referred to by Dr. Wier and Mr. Minchin and others that:

“To top that off, shortly after the Application was filed, Enbridge suffered the worst pipeline rupture in its history.”
[*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1457]*

2324. With respect, Enbridge did not “suffer” the worst pipeline rupture in its history, Enbridge caused the worst pipeline rupture in its history. Enbridge was not the victim of the Marshall accident, it was the perpetrator.
2325. Let’s unpack that a bit.
2326. The U.S. National Transportation Safety Board was clear. The NTSB found pervasive organizational failures at Enbridge, including: a “culture of deviance” from approved procedures in the Enbridge control room; inadequate training of control center personnel; deficient pipeline integrity management systems; a failure to identify and ensure the availability of well-trained emergency responders; and failure to prepare for worst case discharges. [*National Transportation Safety Board, Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010 (2012), Pipeline Accident Report NTSB/PAR-12/01 (Exhibit B92-3) at 101, 118-121*]
2327. Enbridge did not “suffer” the Marshall incident; Enbridge caused the Marshall incident through their pervasive organizational failures.
2328. The people and environment of Marshall, Michigan suffered the worst pipeline incident in their history, not Enbridge.
2329. Finally, the Coalition would like to address Northern Gateway’s perception of the public interest.
2330. In their written argument, Northern Gateway states that the Project is urgently needed and meets all the requirements for approval under the *National Energy Board Act* and, therefore, it is in the Canadian public interest. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1451*]
2331. Northern Gateway states that it persevered in this Project on behalf of all Canadians based on its belief in the value of pipeline infrastructure to the Canadian economy and the value of connecting Canadian resources to new markets. [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1459*]
2332. These concepts were also echoed by CAPP and by the funding participants in their arguments.

2333. With respect, the test of public interest is broader than financial impacts and meeting the formal requirements of the *National Energy Board Act*. The National Energy Board has noted in previous decisions that the public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that change as society's values and preferences evolve over time. [*National Energy Board, Emera Brunswick Pipeline Company Ltd. (31 May 2007), NEB Decision GH-1-2006 at 84*]

2334. Section 19 of the *Canadian Environmental Assessment Act* says that you must consider comments from the public that are received in accordance with the Act.

2335. In his opening statement to this Panel, Mr. John Carruthers stated that Northern Gateway had taken note of the nature and extent of public concerns that had been expressed, particularly in British Columbia, and especially in coastal regions. [*Northern Gateway Pipelines Limited Partnership Opening Statement (30 August 2012) Exhibit B95-2 at 2*]

2336. Mr. Carruthers said that Northern Gateway would embrace consultation and conversation as an enduring component of the Project's construction and operation. [*Northern Gateway Pipelines Limited Partnership Opening Statement (30 August 2012) Exhibit B95-2 at 3*]

2337. In contrast, Northern Gateway, in their closing argument, dismissed the public's comments on this Project as variously, having, quote:

“...inflated perceptions of risk...” [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 867*]

2338. Unquote -- being based on, quote:

“...misconceptions, misunderstandings, myths and disinformation...” [*Northern Gateway Pipelines Inc., Written Argument (31 May 2013), Exhibit B226-2 at para 1368*]

2339. Unquote -- and as discussed by Ms. Brown that “statements of a scientific or technical nature” in oral statements and letters of comment “should be given no weight”. [*Northern Gateway Pipelines Inc., Written Argument (31*

May 2013), Exhibit B226-2 at para 1369]

2340. This demonstrates the true nature of Northern Gateway's commitment to public engagement. If you present a contrary view, you will be discredited as uninformed or misled.
2341. The Coalition suggests that those doctors, engineers, fishermen and women, biologists and geologists who made oral statements before you and wrote letters of concern would be surprised that Northern Gateway's position is that their scientific and technical information should be given no weight.
2342. As stated previously, the public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that change as society's values and preferences evolve over time. *[National Energy Board, Emera Brunswick Pipeline Company Ltd. (31 May 2007), NEB Decision GH-1-2006 at 84]*
2343. Society's values involve more than the financial benefits to Northern Gateway or to oil producers or even to government revenues. Society's values today include the protection of wild salmon and the communities that depend on salmon for economic, social and cultural sustenance.
2344. Society's values today include the protection of species at risk, such as caribou, orca and humpback whale. Society's values today include clean, uncontaminated water for drinking and recreation. Society's values today include reducing greenhouse gases and not blindly committing to ever increasing use of fossil fuels.
2345. And you have heard and will hear in articulate and passionate statements the values of First Nations today. These are the values that you must also weigh in reaching your recommendations on this Project.
2346. Finally, I will just echo the comments of those who preceded me. I would like to thank the Panel staff for their efficient and friendly support, supporting us throughout this process. I would like to thank you, the Members of the Panel, for your patient, good humoured and thoughtful approach to those who have appeared before you. It's been a long road and the Coalition wishes you well in your deliberations.
2347. Those are the Coalition's submissions, subject to any questions you

may have.

2348. **THE CHAIRPERSON:** Thank you very much, Mr. Robinson.
2349. Thank you for your kind remarks at the end. We literally couldn't have done it without the staff, we keep saying that, and I hope the staff are feeling the kudos that are being passed onto them whether they're sitting here listening or listening remotely.
2350. The Panel has no questions.
2351. **MR. ROBINSON:** Thank you.
2352. **THE CHAIRPERSON:** Thank you, Mr. Robinson.
2353. The next couple of presenters will be joining us remotely. And so in order to provide certainty of timing and that sort of thing, we'll finish for this afternoon and we'll sit again tomorrow morning at 8:30. The first party we'll hear from is Ermineskin Cree Nation and Samson Cree Nation.
2354. Thank you very much, everyone. Good evening.
- Upon adjourning at 4:06 p.m./L'audience est ajournée à 16h06