

Robert C. Freedman
Cook Roberts Lawyers
Seventh Floor
1175 Douglas Street
Victoria, BC
V8W 2E1

January 6, 2006

Dear Mr. Freedman,

Re: DTFN Motion filed with the Joint Review Panel on December 29, 2005 (the Motion)

The Joint Review Panel for the Mackenzie Gas Project (the Panel) has considered the Motion filed by you on December 29, 2005 on behalf of the Dene Tha' First Nation (DTFN). The Motion requests the Panel to make a written Order staying the commencement of the public hearings for the proposed Mackenzie Gas Project (MGP) until the federal Crown's Motions in the DTFN's Federal Court Judicial Review Application (the Crown's Motions) have been decided.. Further, the Motion requests the Panel to revisit the scheduling of its Public Hearings on the MGP once the Crown Motions are decided.

The Motion sets out, from the DTFN perspective, the facts that provide grounds for the Orders sought, the basis for the Motion, the legal test for granting a stay of proceedings and the DTFN argument in support of its position that the criteria for the test have been met.

The mandate of the Panel is found in the *Agreement for an Environmental Impact Review of the Mackenzie Gas Project* between the Mackenzie Valley Environmental Impact Review Board, the Inuvialuit Game Council and the federal Minister of the Environment (the JRP Agreement). Clause 4 (b) of the JRP Agreement obliges the Panel to "carry out its duties and conduct the Environmental Impact Review according to the mandate set out in the Schedule to this Agreement." Provisions of the Schedule that pertain to the scope and conduct of the environmental impact review to be conducted by the Panel (the Review) are as follows:

2.0 SCOPE OF THE ENVIRONMENTAL IMPACT REVIEW

In carrying out the review, the Joint Review Panel will address the factors outlined in the Annex 2 to this Schedule. The Environmental Impact Review shall have regard to the protection of the environment from the significant adverse impacts of proposed developments, and to the protection of the existing and future social, cultural and economic well-being of residents and communities.

...

4.2 Conduct of the Environmental Impact Review

Public Participation

The Joint Review Panel will conduct its review in a manner that will promote and facilitate public participation and ensure that the concerns of aboriginal people and the general public are taken into account in that process.

The Schedule obliges the Panel to: make available for public review and comment, the Environmental Impact Statement (EIS) prepared by the Proponent; conduct a conformity check for sufficiency of information in the EIS to proceed to technical analysis; supervise the conduct of a process of written Information Requests during the technical analysis phase of the review; and to determine whether the

information available is sufficient to proceed to the public hearing phase of the process. The Schedule also contains provisions that oblige the Panel to coordinate its hearings, to the extent possible, in time and place with those of the National Energy Board and to do so within the timeframes set out in the Schedule for each phase of the Review.

The Panel completed each of the above noted required steps in accord with the Schedule and on July 18, 2005, the Panel determined that, subject to the provision of specified information from the Proponent of the proposed MGP, there was sufficient information to proceed to the public hearing phase of its review. Based on a review of information that was filed by the Proponent in response to the July 18th determination, the Panel announced on October 7, 2005 that there was sufficient information on its Public Registry to proceed to the public hearing phase of its review.

As part of the October 7th announcement Parties to the Review were provided with a preliminary list of hearing types, locations and topics and invited to provide the Panel with the type and locations of hearing at which they proposed to address the topics set out by the Panel. Based on responses to this invitation, the Panel issued its Notice of Hearings on December 20, 2005.

In response to the October 7th invitation, the DTFN submitted a letter to the Panel dated November 14, 2005 setting out the types and locations of hearings in which they wished to participate. This is the letter referred to in paragraph 7 under “(a) Relevant Facts” of the Motion. The DTFN filed a second letter with the Panel December 8, 2005 (referred to in paragraph 10 under “(a) Relevant Facts” of its Motion) providing notice to the Panel that “in the event hearings are scheduled in such a way as to potentially interfere with Den Tha’s ability to obtain an effective remedy in the Application for Judicial Review, Dene Tha’ will make a formal application to adjourn these proceedings and reserve the right to seek relief in the Federal Court against the Panel proceedings occurring prior to the determination of the Application for Judicial Review.” These concerns and comments were carefully taken into consideration by the Panel when designing its public hearing schedule.

While the Panel has discretion over its procedures, the Panel is of the view that it must exercise that discretion within the overall mandate and timetable provided to it by the parties to the JRP Agreement.

Based on the provisions of the JRP Agreement, the Panel is of the view that its mandate, once it has reached a determination that there is sufficient information to proceed to the public hearings phase of its review, is to conduct the public hearings and to do so in such a way as to “ensure that the public hearings afford an opportunity for the communities and people in the project area to present their views about the potential impacts of the Project on the environment.” [Paragraph 4.6 of the Schedule to the JRP Agreement]

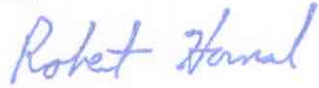
Under the heading “Grounds for Orders” the Motion describes the DTFN concerns for which it is seeking remedies in the Application for Judicial Review that was filed in the Federal Court of Canada (Court File No. T-867-05) on May 17, 2005 (the Application). The Panel notes that the issues raised in the first six paragraphs under the heading “Grounds for Orders (a) Relevant Facts” involve parties other than the Panel and are based in historical relationships that pre-date establishment of the environmental review process for the MGP and appointment of the Panel. The Panel has played no role and will play no future role in the resolution of those concerns.

The Panel is of the view that the matters set out in these paragraphs and in the Application are beyond the jurisdiction of the Panel and are best resolved by the courts. Legal argument on those alleged defects are scheduled to occur in front of the Federal Court of Canada in June 2006. The decision of the Federal Court in relation to the Crown’s Motion to stay the DTFN Application, which is the subject of the February 21 and 22, 2006 hearing, will not affect the ability of the Panel to conduct the public hearings phase of its review.

The Panel notes there are significant uncertainties associated with timing and resolution of these issues whether by way of litigation or by negotiated settlement. Delay by the Panel in the commencement of its public hearings will not cure the alleged defects raised by the DTFN in its Application.

Based on the foregoing, and pursuant to Rule 43 of the *Joint Review Panel Direction on Procedures for Hearings*, the Panel dismisses the Motion.

Sincerely,



Robert Hornal
Chair, Joint Review Panel