

November 11, 2006

To: The Proponent and all Interveners registered to participate in the Joint Review Panel (the Panel) hearings scheduled for November 15-16, 2006 and for November 17, 2006

On Friday November 10, 2006 Justice Phelan of the Federal Court of Canada issued his Judgment in a court challenge initiated by the Dene Tha' First Nation concerning the proposed Mackenzie Gas Project (the Project). This Judgment has implications for the environmental review of the Project being conducted by the Panel. In his Judgment, Justice Phelan ordered that:

"5. Until further order of this Court, the Joint Review Panel hearing process shall be stayed, no further hearings may be conducted and no report shall be issued, all in respect of any matters involving the Connecting Facilities¹ ... or the territory in which the Dene Tha' First Nation have or have asserted aboriginal or treaty rights."

To address the complexities of a project the size and geographic extent of the proposed Project, the Panel published a document in February 2006 and subsequently updated, entitled *Guidance Document for Hearings: Topics and Locations of Community, General and Technical Hearings (revised July 19, 2006)*, (referred to as the *Guidance Document*). In the *Guidance Document* the Panel set out the scope of the topics and associated subject matter it expected to hear during the public hearings phase of its review of the environmental impacts of the Project. The public hearings phase began on February 14, 2006 and has involved 66 hearing days that have included Community, Technical, Open General and Topic-Specific General Hearings that have been available to people in all communities ranging from the Beaufort Sea in the north to High Level, Alberta in the south. The Panel has not yet completed the hearings phase in which a further 15 hearings (25 hearing days) are scheduled to be held.

In light of Justice Phelan's Judgment, the Panel has made the following decisions in relation to the hearings that are currently scheduled for next week.

November 15 & 16, 2006 Topic-Specific General Hearing: Wildlife and Wildlife Habitat, including Birds and Bird Habitat

As stated in the *Guidance Document*, the purpose of the hearing set for November 15 & 16 is to address, under the theme of the biological environment, the topic of 'wildlife and wildlife habitat, including birds and bird habitat'. The *Guidance Documents* directed hearing participants to consider the effects of gas field subsidence and related impacts on the Kendall Island Bird Sanctuary, which is located in the Inuvialuit Settlement Region (ISR), and of the anchor field and gathering system infrastructure and activities, all of which are located in the ISR or the Gwich'in Settlement Area (GSA). This is the second of two hearings on the topic of 'wildlife and wildlife habitat, including birds and bird habitat'. The first hearing focused on effects of

¹ The judgement stated that the term "Connecting Facilities" was to be as described in Justice Phelan's Reasons for Judgment. The Reasons for Judgment refer to "the creation of a corridor of pipeline originating in Inuvik in the far north of the Northwest Territories and terminating 15 metres south of the Northwest Territories and Alberta border, where a proposed connecting pipeline will link it up with existing provincial pipelines for southern distribution (the "Connecting Facilities")".

pipeline infrastructure and activities to the exclusion of effects of gas field subsidence. The Proponent and Interveners were instructed to consider matters related to this topic “as they apply to the Sahtu and Deh Cho regions in the Northwest Territories, and to northwestern Alberta”. This hearing was held August 23-24, 2006.

The second hearing, scheduled to take place November 15 & 16, 2006, is to focus on the effect of activities in the anchor fields and the gas gathering system and to consider matters related to the topic of wildlife and wildlife habitat “as they apply to the Inuvialuit Settlement Region and the Gwich’in Settlement Area”. The Panel is of the view that discussion of the effects of Project-related activities intended for this hearing will focus on only those activities and impacts that will occur in the ISR and the GSA – the northern part of the Northwest Territories. These areas are geographically at a significant distance from the Connecting Facilities and the territory in which the Dene Tha’ First Nation have or have asserted aboriginal or treaty rights.

All Parties wishing to participate in the November 15-16 hearing have already registered in accordance with the Rules and Procedures of the Panel. The Panel has reviewed the list of Interveners registered to participate in this hearing, as well as the respective submissions and presentations of those Interveners, and is satisfied that the subject matter for the hearing is restricted to the northern portion of Project, specifically to activities in and impacts on the ISR and the GSA, and that discussions at this hearing will not address matters that apply to the Connecting Facilities or to the territory to which the Dene Tha’ First Nation have or have asserted aboriginal rights. Accordingly, the Panel has decided to proceed with the hearing as scheduled.

November 17, 2006 Topic-Specific General Hearing: Harvesting and Other Land Use

As set out in the *Guidance Document*, the purpose of the hearing set for November 17th is to address the potential impacts of the MGP on “subsistence, sport and commercial harvesting and other land uses”. The November 17th hearing will be the third hearing on this matter. The first two hearings were held in Fort Simpson (May 17-18, 2006) and Norman Wells (August 21-22, 2006).

It was the Panel’s general intention that when Topic-Specific General Hearings were scheduled to occur in more than one region, the matters that would be considered at that hearing would relate to the particular topic as it applied to the general region in which the hearing was scheduled to take place.

In its *Guidance Document* the Panel did not specify that particular hearings on ‘harvesting and other land use’ would be for the purpose of considering matters as they apply to particular regions. The Panel is of the view that the *Guidance Document* is sufficiently broad that during the scheduled November 17th hearing, discussion of matters related to the Connecting Facilities or to the territory to which the Dene Tha’ First Nation have or have asserted aboriginal rights, might take place. Therefore, the Panel has decided to postpone the Topic-Specific General Hearing on ‘Harvesting and Other Land Use’ that was scheduled to take place in Inuvik on November 17, 2006.

The Panel will be carefully considering the remainder of its hearing schedule in light of Justice Phelan's decision and will release details regarding the remainder of its schedule at a later date.

Sincerely,

A handwritten signature in blue ink that reads "Robert Hornal". The signature is written in a cursive style.

Robert Hornal
Joint Review Panel Chair