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August 22, 2012

**VIA ELECTRONIC FILING
TO FOLLOW BY FACSIMILE**

Secretary to the Joint Review Panel
Enbridge Northern Gateway Project
444- Seventh Avenue S.W.
Calgary, Alberta T2P 0X8

Attention: Ms. Sheri Young

Dear Madam:

**Re: Hearing Order OH-4-2011
Enbridge Northern Gateway Project
Response to Nathan Cullen, MP letter dated August 3, 2012**

The Attorney General of Canada offers the following submissions on behalf of the Federal Government Participants in response to Nathan Cullen's request to question Government Participants during the final hearings of the Joint Review Panel of the Northern Gateway Pipeline Project, dated August 3, 2012.

On July 20, 2012, the Attorney General of Canada submitted a comprehensive response to twenty-one requests to question Federal Government Participants during the questioning phase of the final hearings. As Mr. Cullen's request is similar in nature to several of those requests, the Attorney General will refer this Panel to those submissions for its substantive content rather than duplicate it here in this response.

Section 8.9 of Hearing Order OH-4-2011 provides that Parties must receive approval from the Panel to question a Government Participant orally during the final hearings. A request to question a Government Participant must indicate:

1. The nature of the questions;
2. The relevance of the questions to the proceeding; and
3. Why fairness required the questions.

Similarly, section 8.9 of the Hearing Order relates questions asked of witnesses during the final hearings *to the evidence submitted*:

“During the first part of the final hearings, Parties may ask oral questions about the evidence that has been submitted by other Parties during the joint review process. Parties may not

present new evidence during the final hearings except in response to oral questions. The purpose of oral questions is to allow the Panel and Parties to “test” the evidence submitted.” [emphasis added]

Mr. Cullen has outlined the nature of the questions he would like to ask the Federal Government Participants as follows:

- 2) **Environment Canada:** new versus old environment assessment threshold;
- 3) **Fisheries and Oceans Canada:** application of fisheries act, net loss, habitat protection, water crossings;
- 4) **Transport Canada:** independence of review of application, regulations on diluted bitumen compared to conventional oil;
- 5) **National Resources Canada:** project promotion abroad, carbon pricing implications under government climate change plan.

First, the following proposed topics are outside the List of Issues found in the Hearing Order and therefore not within the mandate of the Panel:

- independence of review of application;
- project promotion abroad; and
- carbon pricing implications under government climate change plan.

Second, the following proposed topics are not related to the evidence filed by the Government Participants:

- new versus old environment assessment threshold;
- independence of review of application;
- regulations on diluted bitumen compared to conventional oil;
- project promotion abroad; and
- carbon pricing implications under government climate change plan.

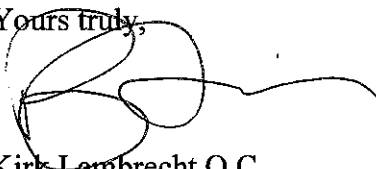
Third, two of the proposed topics are unrelated to the mandates of the Government Participants:

- Environmental assessment thresholds are not within the mandate of Environment Canada. Rather, the Canadian Environmental Assessment Agency, the National Energy Board and Canadian Nuclear Safety Commission, none of which are parties to the JRP process, are responsible for administering environmental assessment legislation.
- Transport Canada’s mandate does not include responsibility for the independence of the review of the application. The Government Participants note that the Panel has previously confirmed the independence of its review of the application in Ruling No. 17, dated January 31, 2012.

Finally, the request to question Fisheries and Oceans Canada on the application of the *Fisheries Act* is overly broad and in the nature of a blanket request. Such a request provides no guidance to the Government Participants to assist in witness preparation; it undermines fairness to the witnesses and has the potential to delay the proceedings.

To the extent that the nature of Mr. Cullen's questions relate to matters which are not related to the List of Issues, are outside the written evidence or mandates of the Federal Government Participants, or are blanket or generalized requests, the request does not demonstrate compliance with the criteria defined by the Panel. To allow such questions would undermine fairness to the witnesses, delay the proceedings and would not assist the Panel in its assessment of the application.

Yours truly,



for
Kirk Lambrecht Q.C.
General Counsel
Prairie Region
Department of Justice Canada

cc: Parties to OH-4-2011